

Business Insurance

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\$4

Seniority trumps ADA High court ruling favors employers but may spark lawsuits

By MARK A. HOFMANN

WASHINGTON—The Americans with Disabilities Act does not override company seniority systems under most circumstances, a divided Supreme Court ruled last week.

But the high court's decision in *US Airways Inc. vs. Robert Barnett* last week may not be unalloyed good news for employers, legal experts on both sides of the issue say. In fact, it's likely to open the door to

more litigation, they say.

At issue was whether the ADA gave Mr. Barnett precedence over workers with more seniority when he sought to keep a mailroom job he'd been transferred to after he injured his back as a baggage handler. The ADA prohibits an employer from discriminating against a worker with a disability who, with "reasonable" accommodations, can perform a job.

Mr. Barnett lost the mailroom job

when workers with more seniority applied for it, and, in 1994, he sued his employer under the ADA.

Eventually, the case went before the 9th U.S. Circuit Court of Appeals, which held that US Airways couldn't deny Mr. Barnett the job solely on the grounds that allowing him to stay in the position would undermine the company's seniority system. US Airways appealed to the Supreme Court.

Writing for the majority in the

high court's 5-4 decision, Associate Justice Stephen Breyer said, "The seniority system will prevail in the run of cases."

"A showing that the arrangement would violate the rules of a seniority system warrants summary judgment for the employer—unless there is more. The plaintiff must present evidence of that 'more,' namely, special circumstances surrounding the particular case that

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AIG sets stage for top exec's successor

By DOUGLAS MCLEOD

NEW YORK—The question of who will succeed American International Group Inc. Chairman Maurice R. Greenberg is still open, but the insurer narrowed the possibilities last week in a reorganization of its top management.

In moves aimed at addressing investor concerns about the company's future leadership, AIG named two longtime executives as co-chief operating officers and created a seven-member office of the chairman that includes top officials of the insurer's foreign and domestic property/casualty and life insurance operations.

Martin J. Sullivan, formerly AIG's executive vp for foreign general insurance, and Edmund S.W. Tse, senior vice chairman for life insurance, were elected co-COOs. Mr. Sullivan was also named vice chairman of AIG, as was Howard I.

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Treating injured workers proving expensive Costs of chronic pain rising

By MICHAEL BRADFORD

As the cost of treating injured employees with chronic pain has risen, employers and insurers are taking a closer look at ways to effectively manage such claims in their efforts to hold down workers compensation costs.

Chronic pain in injured workers has become a big component in workers comp costs. Employers are struggling to cut those costs while making sure workers are properly treated and fit to return to work.

The cost of treating chronic pain is hard to quantify because research is scarce. A 1992 study cited by the *Journal of Occupational & Environmental Medicine* put the yearly costs of chronic pain to the workers comp system at around \$100 billion, said Marty Sheehy, Phoenix-based regional medical director for Liberty Mutual Insurance Co. Mr. Sheehy said the study is the most recent that his research has turned up.

Peter Rousmaniere, a consultant in Little Rock, Ark., who has studied the issue, suggests that the cost to insurers and employers of drugs alone to treat chronic pain may be as high as \$1 billion in recent years. Using Occupational Safety and Health Administration statistics, he estimated that 25,000 new compensable lost-time injuries per year involve chronic pain.

Since 1995, when Nydia Koenig, the director of occupational medicine at the Louisiana Workers Compensation Corp., helped start a pharmacy network for the Baton Rouge-based insurer, the cost of drugs to treat chronic pain has risen significantly.

In 2001, the Louisiana Workers Compensation Corp.'s spending jumped to \$6 million for pain drugs, up from \$4.8 million the year before. The volume of claims did not vary much from year to year, Ms. Koenig explained, but rising drug prices and increased usage



were the biggest factors in the increased cost.

Further increasing the cost of chronic pain cases are expenses associated with physical therapy, psychological counseling, detoxification to wean some workers off narcotics, frequent office visits and multiple surgeries.

Mr. Rousmaniere called chronic pain the "invisible gorilla sitting at the table." He explained that "pain has traditionally been considered a symptom and not a

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Late News

Court blocks lender bid to force cover on owner

A New York appellate judge has reimposed a temporary restraining order blocking LaSalle National Bank from buying terrorism coverage on behalf of the owner of a Times Square building. LaSalle says the property lacks adequate coverage under its \$430 million mortgage agreement. LaSalle last month notified the owner that it was in default for failing to maintain terrorism coverage on the 47-story building known as Four Times Square. The building owner then went to court and won a temporary restraining order, barring LaSalle from paying for the insurance itself from the building's rents. The owner maintains that its current all-risk property coverage, which cost \$500,000, satisfies the insurance requirements of its mortgage agreement. Quotes for a separate terrorism policy have ranged from \$4.5 million to \$5 million for a \$400 million limit. Following a hearing, a state court judge vacated the restraining order. The owner appealed, and the restraining order was reinstated. Further proceedings are scheduled for May 15.

N.Y. high court pollution ruling favors insurers

The burden of proving whether pollution is accidental or intentional falls on a policyholder, not on its insurers, New York's highest court ruled. In a victory for insurers, the Court of Appeals also ruled that insurers that covered a single policy year cannot be required to pay a disproportionate amount of the cleanup costs when the pollution's cause and duration are undetermined. The ruling in *Consolidated Edison Co. vs. Allstate Insurance Co. et al.* means that the insurers, which included syndicates at Lloyd's of London, do not have to pay \$50 million in cleanup costs for a former Con Ed site in Tarrytown, N.Y.

Energy companies form excess mutual insurer

An excess property and business interruption mutual insurer has been established by 12 energy company members of Oil Insurance Ltd. and Oil Casualty Insurance Ltd. The insurer, sEnergy Insurance Ltd., will

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Aviation Insurance Assn.

AIRPORT SECURITY RISKS REMAIN

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Inside

Fed may investigate building disasters

New "national construction safety teams" to investigate building collapses, such as the National Transportation Safety Board investigates transportation disasters, would be created under legislation unveiled last week by the chairman of the House Science Committee. **Page 4**

New computer bug making the rounds

Senior Editor Rodd Zolkos makes a stop on KLEZ-y Street and shares his souvenir with the people in his e-mail address book. **Page 6**

ADA ruling not the final word

Last week's Supreme Court decision generally gives company seniority systems precedence over the Americans with Disabilities Act in determining job assignments, but the challenges the ruling would permit should prompt employers to avoid inconsistency in their employment policies, this week's editorial says. **Page 8**

D&O cases limiting director availability

High-profile corporate collapses in Europe and litigation aimed at board members are making it harder for companies to find non-executive directors. **Page 21**

House of Lords reinstates time bars

Professional service firms are breathing a sigh of relief following a House of Lords ruling that reinstates time limits on negligence cases. **Page 21**

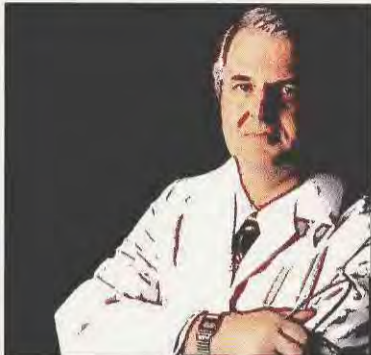
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**REPORTING WEEKLY ON
CORPORATE RISK,
EMPLOYEE BENEFITS AND
MANAGED HEALTH CARE NEWS**

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CONTINUED FROM PAGE ONE provide a combined \$200 million limit for property risks excess of \$250 million and business interruption risks excess of \$50 million. The property coverage will follow the form and limits of OIL, and the business interruption coverage will be provided excess of other programs or a self-insured retention. OIL does not provide business interruption coverage.



Managed care shunned by physician experts: Poll

The Harvard School of Public Health and RAND found that physicians who are experts on managed health care are less likely to choose health maintenance organizations for their own health care than are their university colleagues. The study analyzed the health insurance choices of professors who had published articles on managed care. Researchers compared the insurance choices of the 279 experts, of whom 92 were physicians, with the insurance choices made by 212 non-medical professors. According to the study, 14.9% of the physician experts were likely to choose HMOs, compared with 27.6% of the nonphysician experts and 26.6% of the control group.

ACE blasts reports of slave policies

ACE INA Holdings Inc. said last week that reports claiming that it or any of

Late News

its related companies wrote policies on the lives of slaves are "false and inaccurate." The reports stem from information released by the California Department of Insurance. A September 2000 law which required the Department of Insurance to collect information from insurers and their predecessor companies related to policies issued to slaveholders covering the injury or death of slaves. Eight insurers provided documents related to slavery-era insurance policies. ACE found that its predecessors had not written any life insurance policies on the lives of slaves. But ACE's name did appear in a Department of Insurance listing those insurers that had submitted the findings of their historical research.

Panel backs limited federal terrorism insurance role

A joint congressional committee's report on the costs of terrorism is endorsing a limited federal role in the provision of terrorism insurance. "It is difficult (or impossible) for private firms to accurately price or calculate the new risks of terrorism and private insurers may not be able to absorb additional catastrophic losses from terrorist attacks," according to "The Economic Costs of Terrorism," released May 1 by Congress' Joint Economic Committee. The report holds that federal policy should "facilitate the

provision of insurance for terrorism, albeit as much as possible from the private sector."



Professional, clerical claims more costly: Study

Workers compensation claims filed by professional and clerical workers are, on average, more expensive than those filed by employees in other jobs, according to a California Workers' Compensation Institute study. The organization examined about 2.1 million workers compensation claims filed in California between 1993 and 2000. Of those, nearly 350,000 involved professional and clerical workers.

MRM to sell units, restructure debt

Troubled insurer and captive manager Mutual Risk Management Ltd. has reached a preliminary agreement to restructure its debt and sell parts of the company. Under the agreement, the company's senior

debt holders will exchange their debt for options to take 15% of MRM and 80% of its fee-based MRM Services Ltd. unit, which comprises MRM's brokerage, captive management and other units. David Ezekiel, who heads MRM's captive management operations, will lead MRM Services. MRM also is negotiating the sale of two MRM Services units, Captive Resources Inc. and Mutual Trust Management Ltd.

Briefly noted

The conductor of a Metrolink train involved in a deadly April 23 crash with a freight train is suing Fort Worth, Texas-based Burlington Northern Santa Fe Corp., the freight train owner. In his lawsuit, filed in Los Angeles, Patrick Phillips claims the railroad company failed to install safety equipment that could have prevented the accident. Mr. Phillips suffered a brain hemorrhage in the crash, which killed two people and injured about 270....Boston-based work/life services company Bright Horizons Family Solutions has acquired Edinburgh, Scotland-based child care provider Red Apple Nurseries. Terms were not disclosed. Bright Horizons operates more than 400 child care centers in the United States, the United Kingdom, Ireland and Canada....Aon Corp., Marsh Inc. and Willis Group Ltd. plan to lobby the European Union to support a proposed aviation terrorism insurance program that is similar to the Equitime proposal in the United States. Under the proposed program, dubbed Eurotime, a per passenger surcharge would be imposed to provide third-party and passenger liability coverage for acts of terrorism. E.U. guarantees for airline terrorism coverage expire at the end of May....The average personal injury jury award increased to \$50,000 in 2000, up 26% from 1999, according to a report by Jury Verdict Research. According to the report, plaintiffs also won more frequently, winning 57% of the verdicts in 2000, compared with 52% in 1999.

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All the material in the Late News column, as well as other content in this week's issue, is generated from Daily News postings that appeared on the Web site in the previous week.

Brokerage would use proceeds to repay debts

USI to join publicly traded broker ranks

By JOANNE WOJCIK

SAN FRANCISCO—Given the tight insurance market and the potentially lucrative opportunities it presents for brokers, USI Holdings Corp.'s announcement last week that it was going public did not surprise industry observers.

In its filing Tuesday with the Securities and Exchange Commission, San Francisco-based USI said it is seeking to raise as much as \$115 million in an initial public offering and will use net proceeds "to repay indebtedness." At year-end 2001, the company's debt totaled \$257.3 million. USI's SEC filing did not specify the number of shares, expected offering price or a date for the offering.

"It's obviously a good time (to go

public), given what's going on in the commercial property/casualty business," observed Ira Zuckerman, vp of research at Nutmeg Securities in Fairfield, Conn. "You've got probably at least another 18 months of good commercial pricing."

"I'm not surprised to see what's taking place," said Bobby Reagan, president and chief executive



officer of Reagan Consulting Inc., an Atlanta-based financial consultant specializing in insurance distribution matters. "I would anticipate there will be more in the future," he said.

"With the current market conditions, a lot of the privately held

firms have grown rapidly and their numbers are way up, and their earnings numbers are much more favorable," Mr. Reagan said.

In addition, the fact that public insurance brokers are trading at high price-to-earnings ratios makes them appealing investments, he said.

With Acordia being acquired by Wells Fargo & Co. and Willis Group Holdings Ltd. having an IPO of its own last year, USI had been the only independent broker of its size that was still privately held.

USI's major investors include Capital Z Financial Services Fund II, which owns 25.4%; Zurich Financial Services Group, which owns 11.3%; J.P. Morgan Chase & Co., which owns 10.8%; CNA Financial Corp., which owns 9.5%; and UnumProvident Corp., which has a 6.5% stake in the company. Other investors include individuals, said

Ernest J. Newborn, senior vp and general counsel.

USI ranked as the world's ninth-largest commercial insurance broker by *Business Insurance* in 2001, based on 2000 brokerage revenues of \$359.7 million. The company's 2001 revenues totaled \$388.1 million, 82% of which was derived from USI's insurance brokerage segment, according to the SEC filing. Within this segment, about 65% stems from property/casualty insurance brokerage and 35% from group employee benefits. USI's remaining revenues were derived from its Specialized Benefits Services segment, which includes core benefits, benefits enrollment and communication and executive and professional benefits, the SEC filing said.

Although the company has grown significantly since its forma-

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Aon suing reinsurers over WTC claim

By **RODD ZOLKOS**

NEW YORK—A Sept. 11-related reinsurance dispute between Aon Corp.'s underwriting unit and a group of Lloyd's of London syndicates may be heard in the United Kingdom rather than the United States, leading Aon to book a \$90 million pretax first-quarter allowance for a potentially uncollectible receivable last week.

The dispute involves coverage for the 176 Aon employees killed in the

World Trade Center attacks. Combined Insurance Co. of America, a unit of Chicago-based Aon, provided business travel accident insurance for Aon employees, including the approximately 1,100 who worked in the World Trade Center, and obtained reinsurance on the coverage from Lloyd's syndicates, led by R.J. Kiln & Co. Ltd. syndicate 510.

When the Lloyd's underwriters

moved to deny coverage, Combined Insurance sued for breach of contract Nov. 13 in the U.S. District Court for the Southern District of New York.

AON

The Lloyd's syndicates, however, had filed their own action in the High Court of Justice in London a few days earlier, on Nov. 9, seeking a declaration that, because the reinsurance was for business travel coverage, they were not liable to cover

Aon workers who died at their workplace.

Combined argued that the Lloyd's underwriters had agreed to underwrite its business travel policy "as original," thus providing 100% coverage to Combined with respect to all losses under the business travel policy.

The business travel policy provides coverage for losses due to acts of terrorism, regardless of whether the insured is on a business trip, the Combined suit says, and because

the Aon claims stemmed from an act of terrorism, the reinsurance contract should apply.

The suit says Combined will pay approximately \$100 million in claims under the policy, and the insurer has sought 100% coverage from the reinsurers.

But an unrelated ruling last month could affect Combined's chances of making its case for its claim in New York, potentially affecting chances for recovery, Aon

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Sen. Pete Domenici, left, is co-sponsoring mental health care benefits parity legislation whose goals President Bush has pledged to support.

Bush nod improves parity bill's chances

To pass, legislation likely to need paring, some say

By **JERRY GEISEL**

WASHINGTON—President Bush's pledge to work with congressional leaders to enact mental health care benefits parity legislation increases the likelihood that lawmakers will pass a parity measure this year.

But many observers, noting the qualified endorsement of parity by President Bush and considerable opposition from conservative House Republican leaders, expect that parity legislation will be scaled back in order to win congressional passage and presidential approval.

"I don't think the president's remarks change the reality in the House. But it does give more impetus to those who want to work in good faith to find a compromise," said Paul Dennett, vp-health policy at the American Benefits Council, a lobbying group in Washington.

Last week, President Bush, in a speech in New Mexico, said he would work with Sen. Pete Domenici, R-N.M., and other members of Congress to reach an agreement this year on mental health care benefits parity legislation. Sens. Domenici and Paul Wellstone, D-Minn., are the chief Senate advocates of mental health care benefits parity.

"Mental disability is not a scan-

dal; it is an illness," President Bush said. He urged giving "all Americans who suffer from mental illness the treatment and the respect they deserve."

But in his speech, perhaps reflecting uncertainty as to the exact position the administration will take, President Bush alternated between calling for true parity and advocating conditional coverage.

For example, although President Bush said that it is critical to provide "full mental health parity," he also said that parity has to be achieved without "significantly" increasing health care costs.

In addition, at another point in his speech, President Bush said that he advocated parity, but only for "serious" mental illness, which he did not define.

President Bush's speech comes about five months after a parity measure, sponsored by Sens. Domenici and Wellstone, failed to win congressional approval. That bill, which would require group health plans to cover mental disorders on the same basis as other medical conditions, cleared the Senate last year as part of a broader appropriations bill.

But the parity provision ultimately was stripped from the mea-

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Employers urge HHS to revamp privacy rule

By **MEG FLETCHER**

WASHINGTON—Sixty employers, self-insurers and insurer groups have urged federal officials in a letter to revise a proposed health care privacy rule, warning that the federal rule, if left unchanged, will inadvertently place unworkable restrictions on all state-based workers compensation systems.

The latest version of the U.S. Department of Health and Human Services' rule to protect individuals' personally identifiable health information will subject workers comp payers to "disclosure roadblocks," although the rule's provisions technically apply only to health insurers and not workers comp insurers, according to the 25-page letter that was sent to department officials late last month.

The most serious roadblock includes a requirement that an injured worker's physician disclose only the "minimum necessary" about the worker's condition, which establishes a federal disclosure standard requiring "a legal rather than medical judgment" in workers comp cases. Physicians "are not competent to make this judgment," the letter says.

Physicians are expected to adopt a single, limited dis-

closure standard that will leave unanswered workers comp-related questions, including the work-relatedness of the condition. Also excluded would be information about a worker's prior medical conditions—such as diabetes, which can complicate recoveries—that could affect an employer's expectation about when a worker might be ready to return to work, according to the letter.

According to the letter, the rule also contains another disclosure roadblock that needs to be changed, because it allows patients the right to edit medical records. That right, the letter says, "will compound access problems created by the minimum necessary standard and drive up workers' compensation costs further."

The letter says that the HHS rule would raise higher workers comp costs through delays in the delivery of appropriate medical treatment, in the payment of benefits for lost wages and in the return of injured workers to their jobs. According to the letter, higher costs could also result from increased periods of disability due to increased litigation and delays in the administration of the workers comp system.

The letter was jointly written by Bruce Wood, assis-

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Anthem to acquire Trigon in \$4 billion deal

Blues consolidation continues

By **JUDY GREENWALD**

INDIANAPOLIS—The proposed \$4 billion acquisition of Trigon Health Care Inc. by Anthem Inc. should generate savings that will help keep rates down for Anthem's employer clients, observers say.

The transaction also would be a step toward creating another national health care company—and another welcome option for large employers, some note.

Under the agreement announced last week, shareholders of Trigon would receive \$30 in cash and 1.062 shares of Anthem common stock for each Trigon share. The deal is expected to close in three to six months, subject to regulatory and shareholder approvals.

Both Indianapolis-based Anthem and Richmond, Va.-based Trigon operate Blue Cross & Blue Shield plans. With the addition of Trigon's 2.2 million members, the combined operations, which would operate

under Anthem's name, would have more than 10 million total medical members.

The deal represents a geographical expansion for Anthem, which is currently the Blues licensee in Colorado, Connecticut, Indiana, Kentucky, Maine, New Hampshire, Nevada and Ohio. Trigon has a roughly 35% share of the highly fragmented Virginia health care market.

Following the deal's completion, Anthem would continue to be the fifth-largest publicly traded health benefit company in terms of both revenues and medical membership, "although we are closing the gap on our larger peers," Larry Glasscock, Anthem's president and chief executive officer, said at a press conference announcing the deal.

In 2001, the combined companies would have had assets of nearly \$9 billion, operating revenues of \$13 billion and net income of \$458 million. Trigon Chairman and CEO

Tom Snead will lead Anthem's new Southeast region from Trigon's current facility in Richmond once the deal, which is being treated as a merger for accounting purposes, is complete.

"We believe there is much to be gained" in combining the two firms' strengths and operational synergies, Mr. Glasscock said. He said the deal is expected to result in \$40 million pretax savings in 2003 and about \$75 million in annual pretax savings beginning in 2004.

Observers agree that the buy is a good strategic move for Anthem.

"Anthem is acquiring a very strong Blues plan that has a strong market share and has a good track record of earnings," said Douglas L. Meyer, senior director at Fitch IBCA in Chicago.

Clifford Hewitt, an analyst with Legg Mason Wood Walker in Baltimore, said the deal would be beneficial to both companies.

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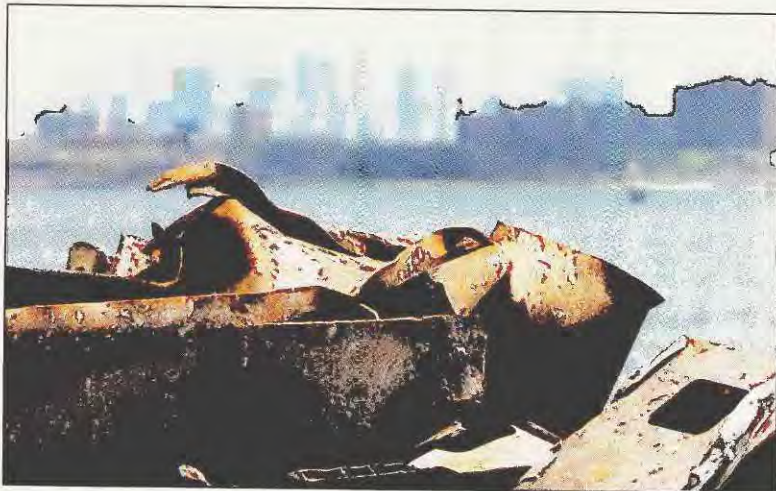


PHOTO: REUTERS

WTC findings prompt call for special construction investigators Panel urges loss control changes

By MARK A. HOFMANN

WASHINGTON—New “national construction safety teams” to investigate building collapses, such as the National Transportation Safety Board investigates transportation disasters, would be created under legislation unveiled last week by the chairman of the House of Representatives’ Science Committee.

The announcement came as the committee received a report on the collapse of the World Trade Cen-

ter’s twin towers and the damage suffered by surrounding structures. The report, prepared by the Federal Emergency Management Agency and the American Society of Civil Engineers, concludes the towers could have remained standing had fire not further strained the structures, which had already been weakened when they were struck by the hijacked commercial jets.

The problem was not, as had been earlier theorized, that jet fuel caused fires to burn at extremely

high temperatures, according to the report. In fact, the report maintains that most of the jet fuel had actually burned off in fireballs outside the building. But, investigators found, the fuel had ignited other combustible materials on several floors simultaneously, the report says. These fires ultimately weakened critical structural elements because the impact of the jets had compromised the buildings’ fire-suppression system and had blown fireproofing materials off of support beams, according to the report.

The panel offered a number of major recommendations for buildings that might become the targets of terrorists. These include ensuring that the water supply for sprinkler systems be reliable and redundant and that buildings have backup structural supports.

The report also calls for taking steps to ensure that fireproofing materials adhere to steel beams; conducting an analysis of how connecting structural elements, such as nuts and rivets, stand up under sudden impact and fire; and evaluating stairwell strength and safety.

The report does not, however, propose any immediate changes to building codes. It does call for continued study of the WTC collapse.

The report’s emphasis on sprinkler adequacy drew praise from the chief engineer of Factory Mutual Insurance Co., which does business as FM Global.

“FM Global particularly supports their finding that a reliable automatic sprinkler system is an integral part of a building’s overall fire-protection design, and it concerns us that, even today, there are still many high-rise buildings that are unsprinklered,” said Mike Burke, vp and chief engineer of Johnston, R.I.-based FM Global.

Before the committee discussed the report on May 1, its chairman, Rep. Sherwood Boehlert, R-N.Y., outlined the National Construction Safety Board Act. The measure authorizes the creation of safety teams within the National Institute of Standards and Technology that would have comprehensive authority to investigate building collapses, including the right to subpoena evidence. He noted that one of the major obstacles that FEMA investigators dispatched to the ruins of the World Trade Center faced was a lack of clear investigative authority to ensure access to all information.

Errors & Omissions

An April 29 story, “Resources Should be Rallied to Fight Unfair Claims Denials,” omitted the name of one of the speakers at a session at the 40th Risk & Insurance Management Society Inc. Annual Conference and Exhibition in New Orleans. Bruce Hillman, editorial director of the Risk & Insurance Markets Professional Publishing Group of the National Underwriter Co., was a member of the three-person panel at the session.

An investigation into the destruction of the World Trade Center found that fires had weakened structural supports, resulting in the towers’ collapse.



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Commentary

Klez: The gift that keeps giving

I experienced a significant milestone in my experience as a connected-to-the-world cyberguy the other day, and it had nothing to do with mastering the nuances of HTML, baud rates or IP addresses.

My right of passage took the form of my first computer virus. To clarify, I was on the receiving end, not the creating, though I guess, given the nature of the bug, I also was an unwitting transmitter.

I'll admit I'm a bit of a Luddite when it comes to all this new electronic stuff. To the consternation of some, I don't own a cell phone (yet). And, while I'm comfortable working with my computer and roaming online, I have yet to do something as ambitious as creating my own Web site.

I've got a couple of friends for whom a highlight of any weekend get-together is several good hours at the computer store. I've never been invited to join them.

Yet, despite my relative lack of e-sophistication, I know the basic rules about virus avoidance. I don't open

attachments on strange-looking notes from unknown senders. I make sure my anti-virus software is up-to-date. So, it was a bit of a surprise when a colleague in our Washington bureau called to say he couldn't connect to the Web site my e-mail suggested he visit.

I hadn't sent him an e-mail. There was no corresponding note in my "sent items" folder. Curious.

Naturally, when he hit reply on the note I'd "sent" him, it came back to me. Clearly, I was the "sender." I felt so violated.

And there was something more. An element of fear. What if this virus sent something weird to a valued source? Or, worse, to my boss? Or, worse still, to our company's chairman? With a subject line that said something like "Hello Honey"? My Washington colleague and I called our IT guys.

His guy responded first. He said he'd checked the e-mail I'd sent and couldn't find a virus. He suggested that maybe I sent the e-mail without knowing it.

Now panic began to set in. It was worse than I'd feared—I'd been infected with the dreaded zombie virus. I'd joined the ranks of the e-mailing undead. I did have my laptop in New Orleans a couple weeks ago. It must be some strange bayou Gris-Gris e-voodoo thing.

Then, I learned from a newspaper story that, in fact, I was one of a vast number of computer users around the globe afflicted by

this particular pest. It even had a name, W32/KLEZ.H. It was a "blended threat" virus, part of the Klez family of computer bugs, according to the story. Given the addresses of some of the e-mail I've received in the past week containing it, I guess some of you have been infected, too.

This particular pest was a fairly benign virus, according to the story, and, with our computer guys' first-class work tending to my machine and our updated virus-screening program apparently filtering out any new attempts, it seemed the worst was past.

But, naturally, any traumatic experience has its lingering effects. For one, there's the impact on

my e-relations with my co-workers. I'm well aware that the joy they previously felt upon receiving my e-mail, with their anticipation of the wit contained therein, has been replaced by nervous trepidation as they weigh whether to open the latest toxic treatise from the staff's e-Typhoid Mary.

Another aftereffect, and worse perhaps, is a lingering sense of paranoia. I'm no longer the e-innocent I was just a few weeks ago. The barbarians are at the gate, and I'm not going to be the one who tosses down the key.

I now operate at a heightened level of e-vigilance. Example: I saw that one antivirus company declared this latest pest a "category 4" risk. Category 4! Faced with a category 4, the only response was to raise my personal security status to DefCon 2.

At DefCon 2, of course, e-mails from anyone I don't know get deleted on receipt, phone callers have 10 seconds to respond correctly to the day's sign and countersign, and I think long and hard before using the autobrew function on my coffeemaker.

All that leaves is DefCon 1, at which point I unplug the computer, look sideways with arched eyebrow at advertising inserts in the daily paper and communicate with the outside world exclusively by yodeling.

Boy, I hope it never comes to that, though it would be nice to be able to tell my wife that all those times she's endured my singing Jimmie Rodgers songs around the house have finally paid off.

Senior Editor Rodd Zolkos' commentary appears periodically and on www.businessinsurance.com. He can be reached at rzolkos@crain.com.



Rodd Zolkos



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Editorial

ADA issue remains far from settled

EMPLOYERS CAN TAKE HEART in the way that the Supreme Court continues to define just what they must do to comply with the Americans with Disabilities Act. After all, the court's decision in *US Airways vs. Robert Barnett* last week falls into the pro-employer category.

Employers need to note, though, that as the high court clarifies their responsibilities, it can sometimes open doors for some forms of litigation as it closes the door to others.

That appears to be the case in *US Airways vs. Barnett*. As we report on page 1, the justices, by the narrowest of margins, held that, generally speaking, company seniority systems take precedence over the ADA when determining job assignments. That decision clears up some of the confusion surrounding the application of the ADA.

The decision also comes as another example of the court's inclination this term to read the ADA in a rather narrow manner, just as it did earlier this year in *Toyota vs. Williams*. In that case, the justices backed off from an expansive definition of what constitutes a disability under the ADA.

But last week's victory for businesses worried about being caught between the conflicting demands of their seniority systems and the ADA is by no means total. It's worth noting that the 5-4 decision drew dissents from both sides in the debate.

Two of the court's more conservative members held that the majority did not go far enough in protecting employers, and two of the more liberal justices held

that the majority did not go far enough in protecting the rights of the disabled.

When there's dissent from both flanks, that's almost always a signal that the issue remains far from settled, and the issue here is no exception. The majority left open the possibility that a plaintiff could successfully challenge an employer's decision to deny an ADA-based claim for a job assignment because of the existence of a seniority system if the plaintiff can prove inconsistency in the application of that seniority system.

While such inconsistency may be hard to prove in most cases, the mere existence of such an avenue to litigation could mean that any seniority system could be subject to the most demanding of examinations in the discovery phase of an ADA lawsuit. That's not a very pleasant prospect for most employers.

Obviously, that should warn employers to make sure that their seniority systems could survive scrutiny of the closest kind. But, more importantly, it should also remind employers that all employment practices should be reviewed periodically to make sure that they meet the requirements of whatever the most recent high court ruling happens to be.

With its decision in *US Airways vs. Barnett*, the high court's majority continues to blaze a generally pro-employer path through the often confusing thicket of employment law. Still, the majority's caveat that leaves open the possibility of litigation over how a seniority system is applied underscores the need for employers to resist the temptation to be inconsistent in their employment policies.

Schillerstrom



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Letters to the Editor

Terminations won't force PBGC to raise premiums

To the editor: In his letter to *Business Insurance*, appearing in your issue of April 8, David Hettinger, chief financial officer of Permanent General Cos., observed that the terminations of the LTV Corp. pension plans and those of Reliance Insurance Co. were a "surprise" that reflected lack of regulatory oversight. And he expressed concern that PBGC premiums would have to be raised as a result.

I can assure Mr. Hettinger that these terminations came as no surprise to us. PBGC has been monitoring those companies for several years. Nor was the funding status of the plans a surprise. Current law does not require plans to fund to the level of termination liability, which can be substantially more than ongoing liability. Plans are required to fund on the assumption that the company and the plan will continue, with accelerated funding if a plan's funded ratio falls below a certain level.

The reporting and funding rules were strengthened in 1994. Today, PBGC has the ability to obtain the information it needs to monitor the health of companies and their plans. Still, there will be terminations, especially when the economy faces a downturn. But few will be surprises.

Fortunately, the PBGC built up a surplus over the last few years when the economy was healthier. We are now using that surplus as it was intended—to pay benefits when the economy entered the expected downturn. Despite the recent increase in claims, and the decrease in our surplus, Mr. Hettinger can rest assured that PBGC remains healthy and that these terminations will not necessitate higher premiums.

Steven A. Kandarian

Executive Director

Pension Benefit Guaranty Corp.

Washington

More in-depth story on RRGs requested

To the editor: The penultimate sentence in the April 8 editorial, "Congress Should OK RRG Expansion Plans," reads: "For two decades, risk retention groups have met their members' needs with great success." According to their trade group's own figures, "nearly 150 risk retention groups have formed" and "about 70 now operate." Did the 80—more or less—risk retention groups all close voluntarily, leaving not a claim unpaid? Were there no insolvencies, no bankruptcies, no receiverships, no liquidations? Did all the risk retention groups meet the needs of all their members for two decades? How do we know?

Whether it is true or not would make a great story, and I am certain *Business Insurance* has the resources to write it. Please do.

See LETTERS/page 17

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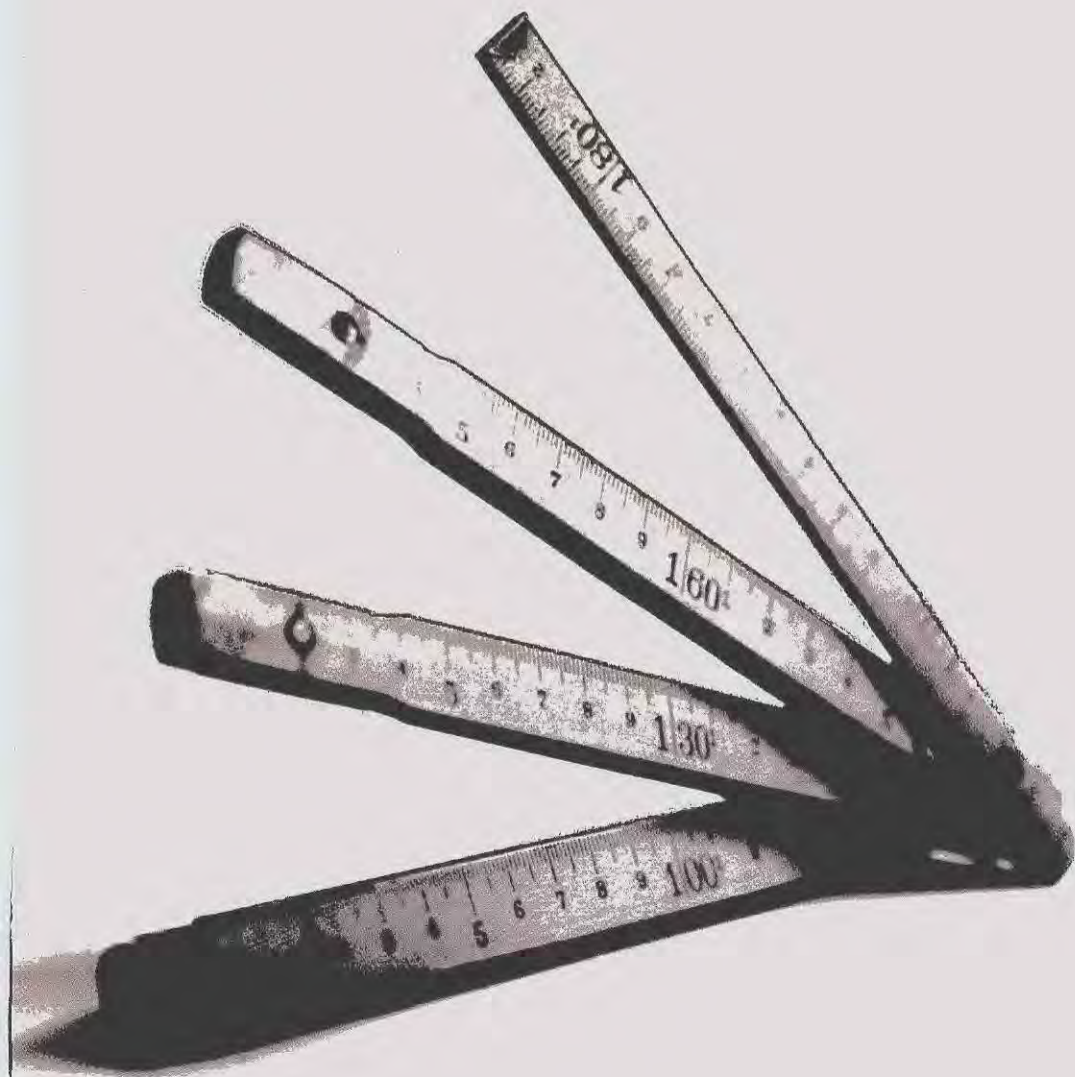
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Collaborative, creative approach needed for 'uninsurable' risks

By Frank Cacchione

Recent events and the insurance industry's responses to them will have lasting global effects on how risks that previously were regarded as "insurable" will be assessed and mitigated in the 21st century.

While most attention has been focused on the massive property and business losses

resulting from the Sept. 11 terrorist attacks, the potentially greater liability exposure of such attacks, of debacles such as the Enron Corp. collapse and of other man-made disasters, has overwhelmed our traditional



concepts of insurance capacity and acceptable corporate risk retention.

Reactions throughout the industry have been dramatic but, for the most part, conventional—advocacy of temporary government intervention, along with massive rate increases and new policy exclusions. Such factors have led to a frantic search by brokers for affordable capacity and a greater reliance on self-insurance. This has been followed by a highly selective return to the market by major insurers in certain lines and regions.

In our view, though, this response is not enough.

First, we must realize that the fundamental problems we now confront will not be eliminated by a gradual return to softer

markets and broader coverage. The contraction of the insurance markets is directly attributable to the recognition that much of this new exposure is well beyond the capacity of the global insurance industry. Insurers cannot and should not be blamed for their dramatic reaction to the threat to their survival, any more than their corporate clients should be faulted for trying to protect their shareholders in the face of potential ruin.

The answer lies in a total shift in the relationship among policyholders, brokers, insurers and other advisers. All must work together creatively to mitigate loss by taking a broader and more collaborative approach to risk management.

Second, we should recognize that, historically, the pendulum never fully swings back to its original position when the insurance market inevitably softens. Whether corporate risk managers and their advisers develop new risk retention groups—such as the proposed airline consortium—or new audit standards to protect investors, creative mitigation strategies will change the risk management landscape permanently.

Third, working with major insurers, brokers and management consulting firms confirms that each of these entities has a significant and interconnected contribution to make in solving this current problem. Risk mitigation in today's environment requires all their disparate skills.

As the industry adjusts to this new world,

the question arises as to where risk management leadership will emerge that can effectively deal with problems that now seem insurmountable. How much risk can the insurance industry, with its limited capacity, absorb? What new markets or structured financial products can brokers develop? What services might be provided by other corporate advisers, such as information technology security and engineering consultants, relocation services, outsourcing organizations and others?

In the long term, the answer lies in a total shift in the relationship among policyholders, brokers, insurers and other advisers. All must work together creatively to mitigate loss by taking a broader and more collaborative approach to risk management.

This approach will have to encompass all aspects of risk mitigation—from decisions on where and how facilities are built, to the pooling of uncorrelated exposures, to the efficient recovery after disasters occur. Optimal approaches are likely to develop from the unprecedented alignment of specialized organizations with core competencies in operational risk evaluation, global security management, outsourcing services, engineering and human relationship management.

Whether all parties can and will meet the challenge is a less critical question than who will lead the way out of the current untenable situation. The precedent provided by other risks that were historically seen as "uninsurable" suggests that answers will come from those who are willing to go beyond conventional responses.

In many instances, when insurers balked at providing coverage, the affected industries responded by solving their problem themselves, through self-insurance

mechanisms such as risk retention groups and captives; through risk engineering, such as the development of modified grain or chemical storage facilities; through aggressive safety engineering, such as that provided by the lumber industry; and through new alternative risk transfer and structured financial products. All of these approaches developed out of a need to manage risks that were "uninsurable" except at unacceptable costs.

Perhaps the current "uninsurable" terrorism and other man-made catastrophe risks will result in similar developments, generated by the affected industries themselves. That is particularly likely to be the case if the insurance industry does not respond creatively to play a key role. Ample evidence exists that the commercial insurance risk transfer market share has not been returning to its prior level after every major underwriting cycle; corporate risk managers and their advisers have been making use of alternative risk mitigation.

Insurers will be integral participants in the process of handling these most recent "uninsurable" risks. It is hoped that such participation will not consist solely of a return to loss-leading, soft-market pricing of the type that historically has served only to distort the benefits of other, more sustainable risk mitigation strategies.

But corporate risk managers also will rely much more heavily on the expanded risk management services of brokers and others not historically included in the process.

Frank Cacchione is a New York-based member of PA Consulting's management group. PA Consulting is a management, systems and technology consulting firm based in London.

COBRA notification requires only 'good faith' effort

The Employee Retirement Income Security Act and its amendments require nothing more than for an employer to make a "good faith" attempt to notify an employee about the right to continue health care coverage, according to the 5th U.S. Circuit Court of Appeals.

Sprint Corp. terminated Monty Degruise's employment on Feb. 4, 1998. On Feb. 11, 1998, Sprint mailed to Mr. Degruise the notice required by the Consolidated Omnibus Budget Reconciliation Act—or COBRA—amendment to ERISA, concerning his right to elect continuing health care coverage. The letter was sent by certified mail with return receipt requested.

On Feb. 17 and 22 of that year, the U.S. Postal Service attempted to deliver the notice that Sprint sent to Mr. Degruise, but he was out of town on both occasions. The Postal Service left a notification in Mr. Degruise's mailbox that a certified letter awaited him at the post office.

When Mr. Degruise returned to town, he went to the post office to retrieve the letter; however, the letter could not be located at that time. Subsequently, the post office returned the letter to Sprint on March 1, 1998, with an indication that Mr. Degruise

Legal briefs

had never claimed the letter.

After Mr. Degruise left Sprint, he started a new job that provided medical coverage. However, before that coverage began, Mr. Degruise required medical treatment, and neither Sprint's plan nor his new coverage would pay for the treatment. Mr. Degruise then sued both Sprint and his new employer under ERISA, seeking coverage for the medical expenses. The trial court ruled against Mr. Degruise.

The appellate court said that the law requires only that an employer make a "good faith" attempt to comply with the COBRA notification provision. According to the court, such good faith can be demonstrated in a variety of ways with respect to COBRA's notification requirements. By using a type of first-class mail, the court said, Sprint had made a "good faith" effort to notify Mr. Degruise of his rights under COBRA. Even though Sprint later discovered that Mr. Degruise's letter went undelivered, the court said that this was irrelevant to the case.

The trial court decision was affirmed. *Degrise vs. Sprint Corp.*, 5th U.S. Circuit Court of Appeals, Jan. 28, 2002 (BI/02/Ju.-\$10)

Ruptured breast implant compensable under comp

An employee suffered a compensable injury when an on-the-job accident caused one of her saline breast implants to collapse, according to the Court of Appeals of Oregon.

Paula T. Smith was employed as a janitor at an airport. As she entered a restroom in the course of her employment, a customer suddenly came out of a stall and slammed Ms. Smith against a wall. Ms. Smith experienced immediate pain on the left side of her chest and noticed shortly thereafter that her saline breast implant had ruptured. Her physician determined that the left breast implant had ruptured and contained no residual fluid.

As a result of the incident, Ms. Smith's breasts were asymmetrical, and the physician recommended that the ruptured implant be replaced. Ms. Smith filed for compensation benefits. Initially, her claim was denied, but the compensation board later awarded

benefits. Her employer appealed.

On appeal, the employer argued that no compensable injury had occurred because Ms. Smith's breast implant was not a "prosthetic appliance" for purposes of the workers compensation law.

The court said it had no need to decide whether Ms. Smith had suffered an injury to a prosthetic appliance because the evidence supported the board's conclusion that she had suffered an injury to her person. The court noted that she received a forceful blow to her chest in the course of her work, and that she had pain and experienced a notable disfigurement as a result of that blow.

"This workplace accident resulted in 'injury' to claimant under any definition of that term," the court said, and it upheld the benefits award.

SAIF vs. Smith, Court of Appeals of Oregon, Oct. 31, 2001 (BI/01/Ju.-\$10)

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available, at \$10 each, by sending a check payable to Mayo H. Stiegler, to Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Provide the listed number for each opinion ordered.



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Giving an overview of Sept. 11's effects

"Terrorism and Business: The Impact of September 11, 2001"

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By Mark A. Hofmann

"Terrorism and Business: The Impact of September 11, 2001," provides a wide-ranging overview of the short- and long-term implications of last year's attacks on the World Trade Center and elsewhere for U.S. businesses. It's not a risk management book per se, yet it could still find a spot in any comprehensive risk management library.

For example, most risk managers will know more about the impact on insurance than the authors sketch out in the few pages they devote to the subject.



After all, many risk managers have already been through post-Sept. 11 renewals. But few will have at their ready disposal such a concise yet detailed discussion of the history of terrorist attacks on U.S. businesses at home and abroad as that which the authors—a father-and-son team—present in their first chapter.

The two also detail what Sept. 11 meant for various industries, including those that may have gotten a boost because the products and services they offer suddenly became quite attractive.

This is a serious book by serious people for serious readers. The Alexanders carry impressive credentials. Yonah Alexander, currently a co-director of the Inter-University Center for Legal Studies at Washington's International Law Institute, is a world-recognized

terrorism expert who has taught at numerous universities and written more than 80 books on terrorism, international affairs and business. His son Dean, who has written six books, is a Rockville, Md.-based lawyer and consultant.

The section likely to be most valuable to employers deals with effects of the attacks on the workforce and their ramifications for employers. On this subject, the authors issue warnings that should be heeded. They write, for example,

that "the negative implications of terrorism on U.S. labor may be compounded by inappropriate actions by management."

"Without sufficient training in being able to distinguish among dilatory tactics blamed on terrorism, reasonable anxiety and mental illness," they write, "an executive could make small matters much worse—perhaps leading to litigation. In truth, not all managers have the requisite knowledge or interpersonal skills to

differentiate between small and large worker behavioral differences."

The authors stress that businesses cannot rely on government alone to protect them against terrorism. "Despite improvements by the United States in the wake of Sept. 11, government authorities cannot offer any guarantee of protection against terrorists' threats and attacks in their conventional and unconventional forms."

"It is increasingly important,"

the Alexanders write, "that the business community understand the expected dangers. Therefore, companies should better prepare themselves to counter terrorist threats. How to reduce this vulnerability is a major problem that will require improving security systems of U.S. corporations domestically and internationally."

Mark A. Hofmann is a senior editor for Business Insurance.

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Knowledge of finance can help risk managers get boards' attention

Understanding a company's cost of capital valuable

By JOANNE WOJCIK

NEW ORLEANS—Risk managers, do you know how your company's exposures affect its WACC?

Do you know what your WACC is?

WACC is an acronym for "weighted average cost of capital," or how much it costs a publicly traded company to raise cash, explained Scott Settje, underwriting technical specialist at FM Global in Dallas, during a session at the Risk

& Insurance Management Society Inc. annual conference, held April 14-18 in New Orleans.

While the cost of capital is not directly related to risk management programs or insurance costs, risk managers who understand such financial terms can more easily capture the attention of corporate officers and directors.

WACC is calculated by adding together a company's debt payments, the cost of issuing preferred and common stock, and subtracting

from that amount any tax deduction for interest paid. It also can be influenced by a variable called a "beta," an indicator of the volatility of a company's stock when compared to other publicly traded companies in the same or similar industries, Mr. Settje explained in an interview after the RIMS session. Betas can either increase or decrease the WACC.

Mr. Settje said that risk managers improve their chances of getting heard by their corporate boards if

they ask how a change in their companies' risk exposures might affect their WACC. Once this question has the board's attention, risk managers can begin addressing risk management issues that can lower the WACC, Mr. Settje said.

For example, say a company is planning to consolidate some of its operations, reducing the number of manufacturing plants from three to two. The chief financial officer likely will present to the board calculations showing how such a move

might lower operating costs. But a risk manager who understands his or her company's WACC could point out how such a move could increase exposure to risks such as terrorism, particularly since Sept. 11, Mr. Settje said.

"Betas are based on historical records, assuming what has happened in the past will happen in the future," he explained. "But if there's a change in the corporate structure, there's new information that may not be in the company's history. So a risk manager can point out that consolidation will likely change the beta, affecting the WACC."

'The capital market doesn't respond that quickly to changes in risk. It could understate risks. This is why risk managers need to speak up.'

Scott Settje
FM Global

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Knowing the WACC also could help risk managers explain to their CFOs why their premiums are going up, Mr. Settje said. Risk managers, for example, could explain how the insurance industry is concerned about the concentration of risk created by consolidation, he suggested.

And because the insurance industry usually responds more quickly to increased risk than financial markets, a risk manager could provide an early warning that a company is headed for trouble, Mr. Settje said.

"The capital market doesn't respond that quickly to changes in risk. It could understate risks. This is why risk managers need to speak up," he said.

Also speaking during the session was Chris Temple, vp of risk management at London-based energy and technology firm Invensys P.L.C. Arnold Garcia, director of asset and risk management at R.J. Reynolds Tobacco Holdings Inc. in Winston-Salem, N.C., served as moderator.

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Worker education urged on threats from AIDS to hepatitis to bioterrorism

Illnesses taking toll on workers and employers

By MICHAEL PRINCE

NEW ORLEANS—Risk managers need to develop strategies to minimize the impact of workplace illnesses, panelists advised at the 40th Risk & Insurance Management Society Inc. Annual Conference and Exhibition.

Not only do risk managers have to address widespread diseases, such as hepatitis and AIDS that affect millions of people, but they also have to address the growing threat

from bioterrorism, speakers said.

Perhaps the most important objective for a risk manager is to educate employees about these diseases, said James McNamara, cost containment manager for Aramark Corp. in Philadelphia.

"There is a screaming need for education" for employees, human resource executives and management, he told attendees at the RIMS conference, held last month in New Orleans. Risk managers should talk to other corporate leaders "and

come up with some policies and procedures," he said.

The bioterrorism scare in 2001 involving anthrax highlights this issue, Mr. McNamara said. After anthrax was found in a post office in New Jersey where some Aramark employees worked, employees became alarmed about possible exposure. Although no employees tested positive for anthrax, Aramark had not been prepared to address the issue and learned that a quick and appropriate response can help pre-

vent panic among workers.

While the anthrax scare has subsided, risk managers should be prepared for another bioterrorism attack. "Bioterrorism should now be considered an occupational disease," he said.

A longstanding workplace issue has been HIV/AIDS. More than 40 million people worldwide are infected with HIV, with more than 5 million new infections occurring every year, said Victor Barnes, deputy director at the Centers for

Disease Control & Prevention's division of HIV/AIDS prevention in Atlanta.

While the toll is greatest on individuals and families, HIV/AIDS has had a big impact on the workplace because infected people are generally in their prime working years.

"You are rapidly depleting the workforce," he said. This problem is particularly acute in developing countries, especially in Africa, where infection rates are much higher than in the United States, he said.

In the United States, more and more people are living and working with HIV as a chronic condition because treatment has improved in recent years.

About 3.9 million people in the United States have hepatitis C, a serious disease that destroys the liver and costs more than \$600 million a year for medical treatment and lost work time.

Natalie Firestone
Near North Insurance Brokerage Inc.

"Ultimately, most businesses will be touched by HIV in one way or another," Mr. Barnes said. The workplace is an excellent place to educate workers and their families about AIDS and how to prevent becoming infected, he said.

Another disease rapidly affecting the workplace is hepatitis, especially hepatitis B and C, said Natalie Firestone, vp-health care risk management at Near North Insurance Brokerage Inc. in Chicago.

About 3.9 million people in the United States have hepatitis C, a serious disease that destroys the liver and costs more than \$600 million a year for medical treatment and lost work time, she said.

Because hepatitis C is commonly transmitted through intravenous drug use, it was not considered a major workplace issue. But as infection rates have soared in recent years, this view has changed.

Workers in any field who handle blood, such as health care or laboratory workers, are most at risk for becoming infected, Ms. Firestone said. But any employer may have infected workers, as symptoms often don't appear until months or years after a person becomes infected, she said.

Ms. Firestone advised risk managers not to put employees with the disease in a position where they might infect other people. And she cautioned that this should be accomplished without discriminating against the infected person. "Employees with hepatitis should not be excluded from work," she said.

Daniel Ballard, assistant vp for risk management at AMA Insurance Agency Inc., moderated the session.



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AGENT/BROKER TOPICS

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Agency/Insurer Relations



Market finders seek to aid agents

By JOANNE WOJCIK

The tight insurance market, which has severed many of the long-term ties between insurers and retail agents, has spawned a new breed of entrepreneur: the market finder.

A market-finding consultant is similar to a matchmaker, but a market finder, instead of arranging marriages of suitable partners, arranges contracts between agents and insurers that are mutually advantageous.

A handful of these market-finding consultants come in "analog" form—they are human beings who interview agents in person to determine their needs and then set out to find appropriate markets.

But a growing number of market finders come in "digital" form. These operations are Internet-based clearinghouses to which agents and insurers both subscribe. Agents post queries seeking markets for specific lines of coverage, and insurers respond to those they like.

Agency consultants say the number of

digital market finders is growing because there's less stigma associated with using an online service to secure markets than there is in using the services of a live person. Plus, they note that online services are virtually anonymous.

"This is an end of the business done under confidentiality agreements. Owners wouldn't want it known that they had to retain someone else to get them a market," acknowledged Andrew J. Barile, a market finder. Mr. Barile is the president and chief executive officer of Andrew Barile Consulting Corp. Inc., an insurance and reinsurance consulting firm in Rancho Santa Fe, Calif.

Still, Mr. Barile said he currently has about 20 clients for his "analog" market-finding services, a number that is up 50% from just six months ago. "It's a growing area of business," he said.

During the soft market, it was mostly agents with poor reputations who sought out the services of market finders, according to Chris Burand, the president of Burand &

Associates L.L.C. in Pueblo, Colo., an agency consulting firm.

But "that's less the case now because market conditions are so intense," Mr. Burand said. "Lots of good agents need help now."

He added that the use of market-finding assistance has become more prevalent among agencies that write program business, for which markets are becoming increasingly scarce.

"There's a philosophical change in the attitude of insurers," Mr. Barile agreed. They're no longer accepting business from small producers that cannot meet a minimum threshold of premium production, such as \$10 million annually, he said. And because insurers had underpriced the business for so long, they no longer are accepting what they consider to be unprofitable business, he added.

"If you have a book that historically runs at a 70% loss ratio and you're looking at A.M. Best's and find companies with 30% and 40% expense ratios, you can't bring

them your business, because the more they write, the more money they lose," Mr. Barile explained. "A business relationship requires mutual respect. You have to constantly prove you're making money for the carrier."

As a market finder, Mr. Barile acts as an agency's advocate. He prepares a profile of the agency—including such information as its loss history, lines of business sold and producer experience—that he shares with insurers he thinks might make good matches. If contract negotiations are required, he handles them. If letters of reference are needed from prior insurers, especially in cases in which insurers dropped agencies because their production levels were too low but the business was still profitable, Mr. Barile obtains them.

Mr. Barile said that though he charges a fee for his services, that fee is often much less than an agency might spend doing all of this legwork on its own. He explained that market finders also can steer agents away from insurer markets that have no interest in

See MARKET/next page

Cooperative advertising cuts costs for agencies / 14D

Kemper using online tools to help sales force / 14F

Big 'I' changes name to reflect membership / 14F

AGENT/BROKER TOPICS

Market: Agents get help with placements

Continued from previous page
appointing them and steer them toward more appropriate partners.

"I want to stop agents from recklessly spending money visiting companies that will never write their program or appoint them," Mr. Barile said.

"It's amazing to me how disconnected agents are with regard to markets," said Larry Neilson, co-founder and president of National Marketing Services in Laguna Hills, Calif., a telemarketing firm specializing in insurance telemarketing. About two years

ago, NMS launched an online market-finding service called Programbusiness.com.

The agents, Mr. Neilson said, "operate in their own universe. With the extended soft market, they didn't have to pay attention to markets; they just had a relationship with the local wholesaler. But now, that wholesaler may not have a solution for them."

As a result, he said, there is a need today for a third party to act as a market matchmaker for jilted agents.

Programbusiness.com is one of the "digital" market finders, providing an online trading floor on which agents, brokers, managing general agents and wholesalers can post their books of business without charge. Insurers, which pay to advertise on the site, then "shop" among the books and select those they find attractive. A type of courtship ensues, and there is usually an additional exchange of information until the agent secures the market.

Insurers also use the service to seek out new distributors of their

products, Mr. Neilson said.

"We found that MGAs and carriers were always looking for agents," he said. "If you own a storefront on Programbusiness.com, you can actively market to our database."

That database consists of more than 18,000 independent agents and brokers, he said.

On the other side of the United States, the newly launched Target Markets Program Administrators Assn. is providing market-finding services as part of its membership benefits, according to Ray Scotto,

Target Markets' executive director based in Wilmington, Del.

Like Programbusiness.com, Target Markets has a Web-based program that enables its agent and broker members to submit specific program information to all of its insurer partners electronically, Mr. Scotto explained.

"We are partnering with carriers that have a program focus and are interested in access to our members," he said. Among Target Markets' participating insurers are Markel Corp., American International Group Inc., Clarendon Insurance Co., XL Capital Ltd. and Old United Casualty Co.

'I want to stop agents from recklessly spending money visiting companies that will never write their program or appoint them.'

Andrew J. Barile

Andrew Barile Consulting Corp. Inc.

Before he launched Target Markets in partnership with reinsurance broker Benfield Blanch, Mr. Scotto, who was formerly with MGA Rockwood Programs, conducted market research to establish that there was a need for such a service.

"Carriers have been deluged with agents seeking coverage for programs," Mr. Scotto said. "We ensure the information they submit is complete and is the information the carrier wants or needs." As for the producer, "our members get access to markets they normally would not have on their own," he said.

While the market-finding service is free to members, insurers pay to "shop" Target Markets' database of agencies.

The initial membership fee is \$1,000 for individuals and \$2,500 for agencies. Because the site became operational only in January, the amount that will be charged in annual membership renewal fees for producers has not yet been determined, Mr. Scotto said. Additional operational logistics will be determined at the association's annual meeting this fall, he explained.

While it would seem that digital market finders such as Programbusiness.com and Target Markets would be in competition with firms such as Mr. Barile's, which do the legwork in person, Mr. Neilson said that is not the case. Some agents, he said, need individualized assistance, something online services don't provide.

"There's a place for expertise like Andrew Barile's," Mr. Neilson said. "If you're an independent agent in Anywhere USA and you don't know who the best match is, you need a third party to act as a go-between."

"Andrew Barile is the next level up. He holds hands," he said.

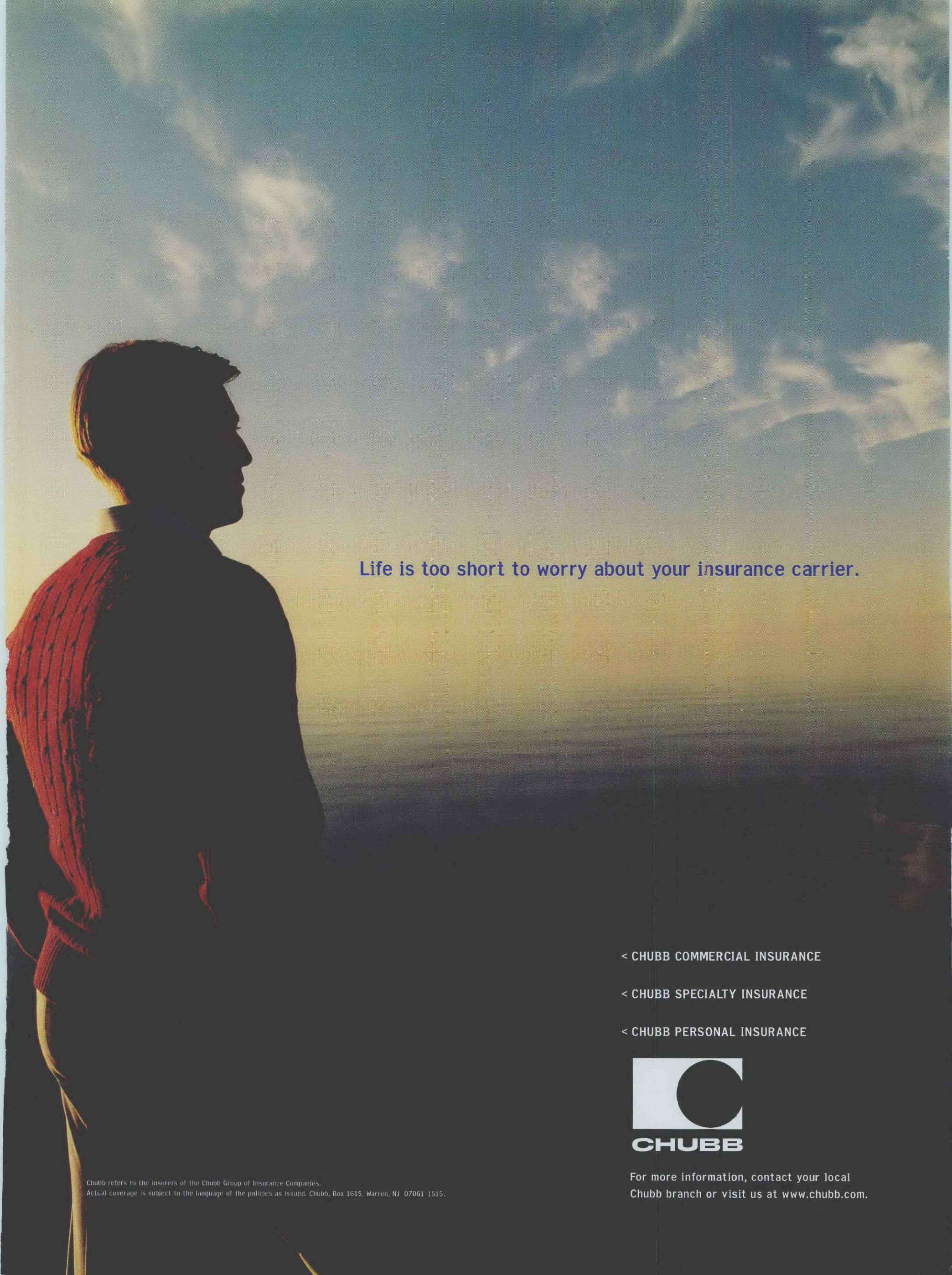
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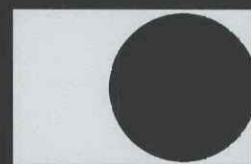


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AGENT/BROKER TOPICS

Many agents frustrated by cooperative ad programs

By SALLY ROBERTS

Advertising and marketing a certain insurance product is an expensive undertaking for any agent or broker. But, with help from an insurer, much of the cost can be alleviated through a cooperative advertising campaign.

For years, insurers have offered agents assistance in advertising and marketing their products to customers—typically providing up to 50% of the cost, up to a specific dollar limit. Under these programs, the insurer's logo is placed alongside the agent's or broker's logo.

But while the concept seems simple enough, when it comes to satisfaction with their insurers, independent agents are least satisfied with cooperative advertising efforts, according to an Independent Insurance Agents & Brokers of America study.

Marketing experts say, among other gripes, that agents are frustrated with the lack of assistance they receive from insurers when

they attempt to co-brand an advertising program.

At the same time, experts and agents point out that much of the frustration surrounding cooperative advertising lies in the fact that many agents don't ask their insurers for it.

Those that do and successfully co-brand an advertising program, however, are seeing a nice return on their investment.

According to the Big I's 2000 Agency Universe Study, which is conducted every four years, of the nearly 3,000 independent agents surveyed, 20% gave their No. 1 small commercial lines insurer a six or seven on a seven-point scale in a satisfaction survey when asked about cooperative advertising.

Only 16% gave their No. 1 medium and large commercial lines insurer a six or seven. And in ranking their overall satisfaction with their No. 1 personal lines insurer, 26% of the agents gave their insurer a six or seven when it came to cooperative advertising.

Although agents generally are not satisfied with cooperative advertising, it does not play a big factor in determining overall satisfaction with insurers, the study points out. Such issues as making it easy for customer service representatives to write business and insurers' underwriting flexibility have more critical importance to overall satisfaction, the study said.

Agents 'don't feel they are able to work with their companies to co-brand their advertising to clients. They don't feel like the marketing reps have enough information available when they come...to help them develop that marketing material.'

Madelyn H. Flannagan
IIABA

While cooperative advertising may not be that important when it comes to overall satisfaction, agents are frustrated, experts say.

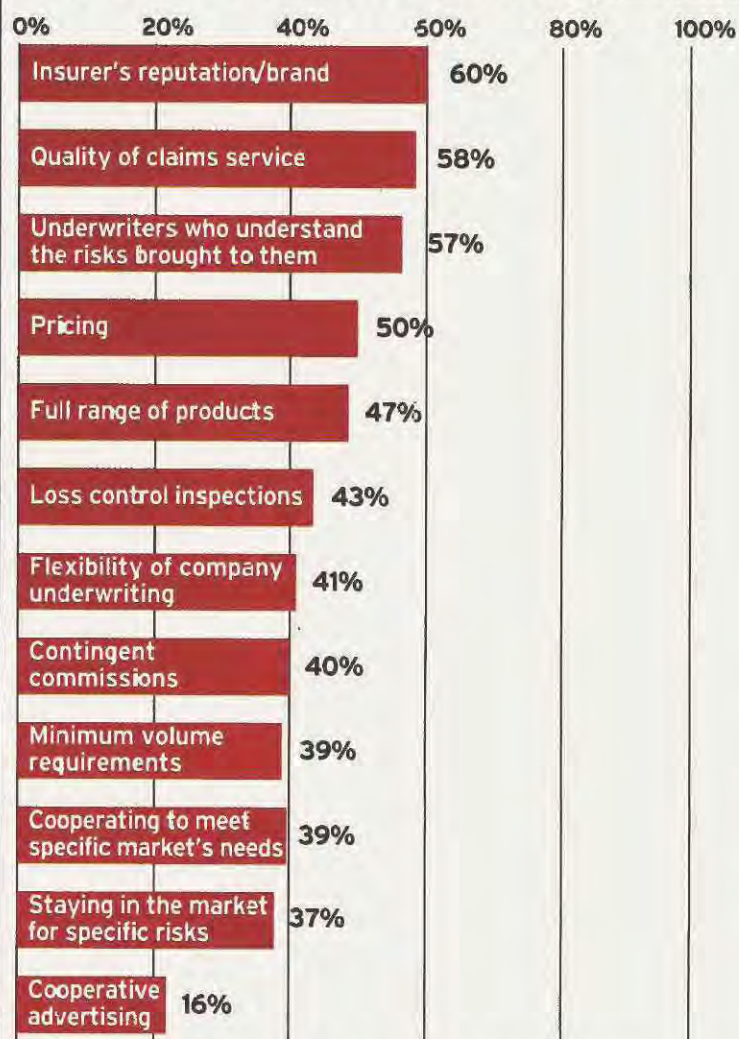
"They don't feel they are able to work with their companies to co-brand their advertising to clients," said Madelyn H. Flannagan, vp-education and research for the IIABA in Alexandria, Va. "They don't feel like the marketing reps have enough information available when they come visit to help them develop that marketing material."

"Prepackaged, ready-to-go, already approved, use-it kind of information is what agents are looking for, and they're seeing very little of it," Ms. Flannagan said.

"What a lot of agencies want is

SATISFACTION WITH LARGE COMMERCIAL INSURERS

Percentage of respondents rating their satisfaction with their No. 1 insurer as a 6 or 7 on a 7-point scale.



Source: Independent Insurance Agents & Brokers of America's 2000 Agency Universe Study

for the company to support their marketing efforts. They want to do it their way with their name up front and they want to choose the

vehicle, and that's not always what the company's agenda is," said Kimberly Paterson, president of Creative Insurance Marketing Co., a Red Bank, N.J.-based marketing communications firm. "The company's agenda, over history, has been to get their product message out there and show the agent as the local provider. While both (agents and insurers) want to sell the product, their agendas don't always match, and that's a lot of where the frustration lies."

That has evolved over time to where many of the cooperative advertising dollars with insurers are now reserved for key agent groups, which is frustrating to agents not in those groups, Ms. Paterson said.

At the same time, Ms. Paterson said, some agents also are frustrated with the amount of money insurers contribute. While many insurers will reimburse up to half of the cost of an advertising campaign, there typically is a dollar limit and in most cases, it isn't enough "to cover the costs of doing anything meaningful," she said.

George Nordhaus, chairman of Insurance Marketing & Management Services in Los Angeles, added, "I think a lot of it is communications, too."

Cooperative advertising is not a high item on insurers' priorities, he said. They don't get the training in

See **MARKETING**/page 14F

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AGENT/BROKER TOPICS

Commercial or personal lines concentrations required

CPCU updates course requirements

By RODD ZOLKOS

Major changes in the American Institute for CPCU's Chartered Property Casualty Underwriter program are geared to make the program a better fit with the current shape of the insurance industry and the professional needs of CPCU students.

Among other changes, the revised program will require students to concentrate in either commercial or personal insurance. It also will have more of a financial services focus, with the introduction of new financial services institutions and personal financial planning courses.

The new program also will consist of only eight courses rather than the current 10.

Terrie E. Troxel, the president and chief executive officer of the American Institute for CPCU and the Insurance Institute of America in Malvern, Pa., said the changes are meant to make the CPCU program more flexible, bring it in line with where the industry is heading and better address the needs of the CPCU students who are the institutes' customers.

"The original CPCU curriculum was designed by the academic and industry people that came together in 1942 and created the institutes," Mr. Troxel said. "In terms of the structure, it really didn't change very much from the late 1970s, when it became a 10-part program."

'To the extent that we've gotten feedback so far, I would say the overwhelming response has been very favorable.'

Terrie E. Troxel
American Institute for CPCU,
Insurance Institute of America

Over the years, criticism of the program has focused on the fact that it hasn't differentiated between personal and commercial lines, he said.

In response, "we've introduced concentrations in the curriculum," said James J. Markham, senior vp and general counsel at the institutes, as well as the director of curriculum. But while students will

be required to choose a personal or commercial focus, "if they're in an environment where they might cross over, they can do that too," Mr. Markham said.

The new curriculum will consist of a five-course foundation series required of all CPCU candidates and three concentration courses focused either on commercial or personal lines. In addition to passing national examinations for the eight courses, candidates for the CPCU designation also must meet the American Institute's ethics and industry experience requirements, as under the old program.

The revised commercial program is very similar to the existing CPCU program, Mr. Markham said. "But I think it was very important to introduce a personal concentration," he said.

"Personal premium volume is actually greater now than commercial," he said. "We thought it was important to get personal financial planning into the curriculum. But we didn't want to force it on everyone, because some folks might be strictly commercial."

"I think the other big change is trying to place property/casualty

insurance in the context of the financial services sector of the economy," Mr. Troxel said.

"Increasingly, the people who are our customers are working for a financial services company rather than a traditional property/casualty company."

To that end, the new program includes a financial services institutions course among the foundation courses and a personal financial planning course as part of the personal lines concentration.

In designing the new program, the institutes opted to drop economics and management courses, which were "good, worthwhile subjects, but they are widely available in colleges and universities," Mr. Markham said.

"I've heard from some old guard that going from 10 down to eight courses, you're lowering standards.... But the decision for going down to eight was that you're getting rid of generic economics and generic management," Mr. Markham said. "Course for course, the program will be as demanding and as rigorous as it ever has been."

The newly designed program also introduces a system under

which a CPCU candidate with a master's degree in business administration or the equivalent or a law degree can waive certain course requirements. "For years, we were challenged to respond to requests for waivers from people who had certain graduate degrees or law degrees," Mr. Troxel said.

Textbooks and course guides for the new courses will be available for purchase in September. This will be a transition year for the CPCU program; students who complete CPCU testing during this year's May-June testing window will have to meet requirements under the existing CPCU curriculum and will be eligible to attend the conferment ceremony in Orlando in October.

Subsequently, students will earn the CPCU designation under the new curriculum. Testing on new courses will begin during the February 2003 testing period.

While Mr. Troxel acknowledged that details of the new program were announced only fairly recently, he noted that "to the extent that we've gotten feedback, so far, I would say the overwhelming response has been very favorable."

A/BT Briefs

Continued from previous page

Glen Allen, Va.-based Hilb, Rogal & Hamilton Co. has acquired substantial portions of the operating assets of LFC Insurance Agents & Brokers Inc. of Beverly

Hills, Calif. Terms were not disclosed.

Bismarck, N.D.-based BNCCORP Inc. recently acquired Milne Scali & Co., one of the largest independent agencies in Phoenix. Under terms of the deal, BNCCORP will pay \$15.5 million in cash for the agency, plus \$2.5 million in newly issued shares of BNCCORP common stock. Additional

consideration of up to \$8.5 million will be payable over a maximum of

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five years, subject to Milne Scali's attainment of certain financial performance targets.

New York-based First Union Insurance Agency, a subsidiary of Wachovia Corp., of Winston-Salem, N.C., recently added a New York office to its current roster of offices throughout New Jersey and in Sparks, Md.

Georgia agents win Herndon Award

WASHINGTON—The Independent

Insurance Agents & Brokers of America recently bestowed awards at its 26th annual National Legislative Conference held in Washington.

The Independent Insurance Agents of Georgia was presented the Maurice G. Herndon National Legislative Award in recognition of its outstanding government affairs achievements in 2001.

The state agents' association was honored for its effectiveness in representing its members' interests before the Georgia Legislature and the Department of Insurance; for the active role it takes in IIBA's overall government affairs program; and for InsurPac, the association's political action committee.

In 2001, the Georgia association

contributed to the successful adoption of the state's Producer Model Licensing Act, which establishes licensing reciprocity for nonresident insurance agents and brings the state into compliance with the federal Gramm-Leach-Bliley Act's agent licensing reform provision.

Also at the legislative conference, Ronald A. Smith, past president of the association and current chairman of the state government affairs committee, was presented the Sidney O. Smith Award, the association's highest individual honor for service in the field of government relations.

"Ron has expertly led (IIBA's) state government affairs efforts during an era of unprecedented marketplace changes and regulatory reforms in the states. This flurry of activity has come in the face of an incredible amount of pressure from federal lawmakers," said Robert E. Fulwider, the government affairs committee chairman who presented the award during the conference.

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Brokers:

Todd Richmond has been named president of Evanston, Ill.-based Richmond Insurance Group L.L.C., an insurance brokerage specializing in risk management and professional liability insurance for law firms. Previously, Mr. Richmond was vp/department manager of J.P. Flanagan Corp.'s professional liability department.

Rick Klein was named division president of Horton Benefit Services for the Horton Group, a Chicago-



Mr. Klein

Co.

Harry C. Wallace has been

based brokerage. Formerly, Mr. Klein was a director for the securities services division and national sales manager at Merrill Lynch &

named managing director of Mazonson Inc.'s executive risk management team in Peabody, Mass. Prior to joining the firm, Mr. Wallace was branch manager and vp of Chubb Insurance Co.'s Nashville, Tenn., branch.

Marsh USA Inc. has named industry veteran **Arlene Corsetti** head of the brokerage's Chicago office and **Ram Kelkar** region leader of Marsh's enterprise risk management practice. Most recently, Ms. Corsetti was head of Marsh's Seattle office. Mr. Kelkar is a former managing director of Merrill Lynch.

Insurers:

Christopher P. Wing has been

named president of Health Net of California, Health Net Inc.'s largest health plan, with approximately 2.4 million members. Mr. Wing comes to Health Net from PacificCare Health Systems Inc., where he served as Western region vp and as president and chief executive officer of PacificCare of California.

David Ficca has been named chief financial officer of The Baltimore Life Cos. Before joining Baltimore Life, he served as a partner in PricewaterhouseCoopers' insurance industry group in Washington. He also was the project manager for the annual survey of all U.S. life insurers conducted by the Alexandria, Va.-based National Organization of Life & Health Insurance Guaranty

Assns., for the purpose of determining annual assessments made by state guaranty funds.

Douglas D. Wisman has been named chief financial officer of Cascade National Insurance Co., a Seattle-based property/casualty insurer. Prior to joining Cascade, Mr. Wisman had been CFO at Washington Casualty Insurance Co. in Bellevue, Wash.

Reinsurance:

David E. Hosler has joined reinsurance intermediary John P. Woods Co. Inc. as senior vp. Previously, Mr. Hosler was the chairman and chief executive officer of Old Guard Group Inc. in Lancaster, Pa. John P. Woods is a wholly owned subsidiary of Arthur J. Gallagher & Co. in Jersey City, N.J.

Other suppliers:

Dr. Darryl L. Landis has been named senior vp of health intelligence and chief medical officer at CorSolutions Medical Inc. in Buffalo Grove, Ill. Mr. Landis replaces **Dr. Richard Vance**, who was recently appointed president and CEO of the company, which provides wellness and disease management services. Prior to joining CorSolutions, Mr. Landis was vp of business development and medical director of medical intelligence services for Ingenix, a division of UnitedHealth Group.

Luke McKinley has joined Buck Harbor Technologies Inc. as director of professional services for PeopleSoft technology initiatives. Mr. McKinley joins the firm from PeopleSoft Global Services, where he served as client executive specializing in integrated solutions sales and sales strategies management. Buck Harbor Technologies is a San Francisco-based subsidiary of Buck Consultants Inc.

Lorelie S. Masters has joined the law firm of Jenner & Block as a partner in its insurance litigation and counseling practice in Washington. Ms. Masters had been a partner at Beveridge & Diamond P.C. in Washington.

Jay J. Levin has been named to the newly created position of COO of Magellan Health Services Inc., a Columbia, Md.-based behavioral managed care services provider. Mr. Levin most recently served as vp of marketing, e-commerce and strategy for Oxford Health Plans Inc.

Pat Moore has been named director-continuity of operations planning at BELFOR USA. Prior to joining BELFOR, Ms. Moore served as vp of business continuity education for Strohl Systems in King of Prussia, Pa. BELFOR, based in Birmingham, Mich. and Marble Falls, Texas, provides disaster recovery services and education from more than 50 offices across North America.

Jack Gibson has joined Tillinghast-Towers Perrin as the life and financial services sector leader for North America based in New York. Mr. Gibson, the former U.S. leader for life actuarial consulting at PricewaterhouseCoopers L.L.P., specializes in mergers and acquisitions, mutual life insurance demutualizations/conversions and life insurance company rehabilitations.

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More than meets the eye.

Endurance names Cash as CRO

Endurance Specialty Insurance Ltd. has appointed David Cash actuary and chief risk officer.

Mr. Cash, 36, concentrates on managing financial risks for the Bermuda-based insurer's property/casualty insurance and reinsurance portfolio. He reports to Chief Executive Officer Kenneth J. LeStrange.

Before joining Endurance, Mr. Cash was a vp at Centre Solutions in Bermuda, where he focused on structured finance and investment programs as well as the creation of Centre Life Financial.

He holds a bachelor of science in mathematics from the University of Waterloo in Ontario and a master of science degree in statistics and mathematics from St. John's College in Oxford, England, which he attended as a Rhodes Scholar.

Mr. Cash is a Fellow of the Casualty Actuarial Society designation and a member of the American Academy of Actuaries.

Geoffrey T. Smith has been named senior vp of Banknorth Insurance Group's risk management department.

Mr. Smith, 45, will oversee the newly created department, which will provide risk management services to Banknorth as well as to its clients. He reports to Peter L. Sparta, chief executive officer of South Portland, Maine-based Banknorth Insurance.

Before joining Banknorth, Mr. Smith was director of banking and risk management at Brunswick Corp., a recreational products manufacturer in Lake Forest, Ill.

Mr. Smith has a bachelor of arts degree in economics from the University of Connecticut in Storrs and a master of business administration degree from DePaul University in Chicago.

Jeff Adler has been named senior vp of risk management at Apartment Investment Management Co. in Denver.

In the newly created position, Mr. Adler, 40, is responsible for all risk management and loss control operations at the real estate investment trust company.

He reports to Miles Cortez, executive vp, general counsel and secretary at Apartment Investment Management.

Mr. Adler was vp of property and casualty at ChannelPoint Inc. before joining Apartment Investment Management. ChannelPoint is a Colorado Springs, Colo.-based provider of insurer Internet services.

He holds a bachelor of arts degree in economics from Yale University in New Haven, Conn., and a master of business administration from the University of Pennsylvania in Philadelphia.

We'd like to report on staff changes in your risk management, safety and employee benefits departments. Contact Michael Bradford, Business Insurance, 473 Fairfield Ave., Gretna, La. 70056; phone: 504-364-1908; fax: 504-364-1337; e-mail: mbradford@crain.com.

Letters

Continued from page 8

One of your lead stories in the previous week's issue concerned the insolvency of PHICO Insurance Co., to the tune of "at least \$250 million." The regulators are blaming management, while management claims lax regulation accounted for the failure. I don't know whether PHICO was an RRG, but it insured doctors and hospitals and its "sole shareholder" was "a non-profit association of hospital and physician groups." Did PHICO fail because the association provided insurance over time to its members at less than its true cost? This is the same conflict of interest that is a

built-in feature of every risk retention group. The group's success depends on adequate premiums. Its clients/owners want lower premiums.

If RRGs are such a great success and the numbers exist to prove it, then we are wasting a great deal of money on regulation. We should advocate that every insurer of every stripe be allowed to pick the state that will regulate it. Vermont might prove so popular that we could find other work for the insurance commissioners in the other other 49 states.

If, on the other hand, research proves the experiment has not been as successful as claimed, let RRGs write property instead of casualty

business, to limit the damage they can cause.

Charles A. McAlear
New Orleans

Editor's note: PHICO Insurance Co. was not a risk retention group.

Partner benefits story mischaracterized N.Y. law

To the editor: The article in your April 29 issue regarding the workers compensation claims of Lambda Legal's clients, Larry Courtney and Bill Valentine, "Partner Files for Spousal Benefits in WTC Death," incorrectly states that same-sex couples "cannot obtain legal status as spouses" in the state of New York.

On the contrary, the application for the New York State World Trade Center Relief Fund states: "A surviving spouse includes a domestic partner." Lambda Legal has provided the Workers' Compensation Board with numerous additional examples of public and private entities making the same or similar statements.

Nowhere does New York statutory law, much less the workers compensation law, state that a marriage license is a prerequisite to becoming a "legal spouse."

Adam L. Aronson
Attorney
Lambda Legal Defense
& Education Fund Inc.
New York

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ADA: High court puts limits on reach of act

Continued from page 1

demonstrate the arrangement is nonetheless reasonable," Justice Breyer wrote. Elsewhere in the decision, Justice Breyer noted as an example that a plaintiff might be able to demonstrate "the system already contains exceptions such that, in the circumstances, one further exception is unlikely to matter."

The high court remanded Mr. Barnett's case to a lower court.

The decision drew two dissenting opinions. In one, Associate Justices Antonin Scalia and Clarence Thomas argued that the decision did not

give employers enough protection in such cases. The other dissent, filed by Associate Justices David Souter and Ruth Bader Ginsburg, argued that the majority had not given workers enough protection.

Employment law experts view the decision as generally favorable to employers, but they offer caveats.

"The Supreme Court's decision gives employers with collectively bargained seniority systems a presumed trump card to overcome an employee's request to override a seniority system's provisions for pur-

poses of a reasonable accommodation under the ADA," said Gerald L. Maatman Jr., chair of the global employment law practice at the Chicago law firm of Baker & McKenzie.

Such an interpretation is "decidedly employer-friendly," Mr. Maatman said.

"The ruling also has a practical side which allows workers to overcome this presumption: if the facts demonstrate that the employer has made other exceptions to the provisions of the seniority system; thus, it won't eliminate litigation in this

area for employers entirely," he said.

"The 'facts and circumstances' test crafted in *Barnett* may well embolden plaintiffs lawyers in the right case to get past summary judgment and impose trial costs and risks on employers in denial of reasonable accommodation cases brought under the ADA," Mr. Maatman said.

"It's not an out-and-out victory. The court is dancing on the head of a pin. They're trying to satisfy everybody and, as a result, satisfied no one," said Philip M. Berkowitz,

chairman of the American Bar Assn.'s Employment Law Committee's International Law Section.

"They recognized that a bona fide seniority system should have primacy in reaching the difficult decision of whether an employee should get a job, notwithstanding a seniority system," said Mr. Berkowitz, who is also partner in the employment law department in the New York office of the international law firm of Salans Hertzfeld Heilbronn Christy & Viener.

But if an employee can show that the seniority system is not "fulfilling the purpose of a seniority system"—which, according to the Supreme Court, is to provide stability and fair and uniform treatment—the employee may be able to make a case, Mr. Berkowitz said.

"This is where it's a mixed result. Employers need to be very careful that they administer their seniority systems in a way that is consistent, that they don't make exceptions for people and that it's not a willy-nilly process," he said.

If the seniority system has not been consistently administered, then the employee will be able to argue that the employer can make a reasonable accommodation, Mr. Berkowitz said. He predicted that the decision will lead to a tremendous amount of discovery in such litigation, as plaintiffs attempt to find inconsistencies in their employers' application of seniority.

Steven Bokot, executive vp of the National Chamber Litigation Center in Washington, which handles litigation for the U.S. Chamber of Commerce, viewed the decision with greater optimism, calling it a "positive development" for business.

"In most cases, employers will be able to follow their seniority plans without worrying about ADA obligations. Employees can demonstrate that there are justifications for ignoring the seniority plan, but I think it's going to be a tough burden to meet," Mr. Bokot said.

An advocate for disabled workers had a different view of the decision.

"It didn't completely shut the door," said Jeffrey T. Rosen, general counsel and director of policy for the National Council on Disability, an independent federal agency. "This leaves a little bit of an opening for people with disabilities who are able to argue that there are special circumstances."

Mr. Rosen said that the high court will have to "sort things out" regarding the rights of the disabled, much as it has in other areas of civil rights law.

Meanwhile, in a case of interest to insurers and policyholders in California, the justices refused last Monday to review a California appellate court ruling in *20th Century Insurance Co. vs. Superior Court of California*. That decision upheld a state law extending the period for refiling claims stemming from the 1994 Northridge earthquake.

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US Airways vs. Robert Barnett, U.S. Supreme Court, No. 00-1250. Decided April 29, 2002.

Aviation Insurance Assn. conference

Airports vulnerable despite higher level of security

By DAVE LENCKUS

KANSAS CITY, Mo.—Despite the enhanced security measures that have been implemented at U.S. airports since the Sept. 11 terrorist attacks, airports continue to be vulnerable, according to an airport executive and an underwriter.

And some new federal rules designed to further improve airport security by year end likely will not be as effective as intended, the executive and underwriter warned during a panel discussion at the Aviation Insurance Assn.'s 26th annual conference, held in Kansas City, Mo., last week.

During the question-and-answer portion of the discussion, Lloyd's aviation underwriter Christopher Hancock said, "I am concerned and very alarmed about what I've heard this morning, as an underwriter."

'I am concerned and very alarmed about what I've heard this morning, as an underwriter.'

*Christopher Hancock
Lloyd's of London*

Mr. Hancock, aviation underwriting director at syndicate 435, managed by Faraday Underwriting Ltd., asked the panel for some reassurance about airport security. But the panelists told him only that certain security exposures are being investigated and that any future action would have to be weighed against concerns that travelers may not tolerate much longer delays.

A few months after the terrorist attacks, a new law—the Aviation and Transportation Security Act—federalized security for all forms of transportation in the United States and created the Transportation Security Administration to head that effort.

Russell C. Widmar, the director of aviation at Kansas City International Airport, expressed several concerns about the TSA and its security approach.

At the core of his concerns are doubts about whether the federal government will be able to create an effective security agency with 70,000 employees by the end of the year. Mr. Widmar noted that the management at Southwest Airlines Co., a successful Dallas-based air carrier, has taken decades to grow the airline's employee base to about half that size.

Mr. Widmar raised questions about some specific TSA airport security mandates. He complained that some mandated security measures are difficult and expensive to implement and that they are not sufficiently redundant to prevent a security breach if a security measure fails.

For example, Mr. Widmar said, the TSA requires that about 420 U.S. airports by year end install equipment to examine checked baggage for explosives. But he noted that, through April, only 10% of the required number of machines had

been installed. He questioned whether the two manufacturers producing the equipment would be able to deliver the remaining equipment in time to meet the TSA deadline.

Mr. Widmar also criticized the effort that began last week to federalize all airport security personnel. "We think this is the wrong approach," he said. He asserted that the TSA has not had sufficient time to train officers to take over airport security checkpoints, and he said

that the better approach would be to have federal oversight of private security screeners.

Mr. Widmar said another concern that "airport leadership" has with the TSA is that it is not making allowances in its security approach for the diverse characteristics of the nation's airports—such as the widely varying number of security checkpoints at airports.

He also criticized the TSA for focusing more on potentially threatening objects rather than potential

human security threats.

Mr. Widmar advocated the standard use of automated "fusion biometrics" personal identification systems. Such a system could scan the image and fingerprints of a suspicious individual and generate a score or probability that the individual is a risk.

The problem with some current identification systems is that if either the image or the fingerprint scan does not positively identify the suspicious individual as a risk, the

systems report only that the individual is not a known risk.

Meanwhile, other potential weak links in airport security are not being strengthened in general, said Stephen P. Dinsdale, a senior vp with the Aerospace-Airport & Special Risk Unit of ACE USA in New Orleans.

Mr. Dinsdale complained that the federal government and the TSA are paying too little attention to airport perimeters and parking

See AIRPORTS/next page



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Airports: Still vulnerable despite security measures

Continued from previous page

areas. He said that the individuals who drop off passengers should be subject to tighter security measures, such as vehicle searches.

"We see that as a significant exposure to the airport," if airports are held liable for security problems, Mr. Dinsdale said.

Mr. Widmar said that violations of travelers' civil liberties are potential exposures that airports face as they develop methods to move so-called "premium passengers" through security. He noted that other travelers already have complained about the shorter security lines that are created sometimes for premium passengers.

"I'm not sure I like it, except when I fly first class. Then I like it," Mr. Widmar said.

Meanwhile, insurers and airports are unclear how much liability for



Some aviation underwriters are expressing concerns that airports are not stringent enough on security measures.

security, breakdowns and violations of travelers' civil liberties the airports will retain as the TSA ramps up, Messrs. Dinsdale and Widmar

said.

"We're in complete unknown territory" regarding the underwriting of those risks, Mr. Dinsdale said.

He also noted that many airports are not covered for terrorism losses. Mr. Dinsdale pointed out that efforts are underway to create captive insurance coverage for airports' terrorism risk, but he questioned whether airports could underwrite the risk when insurers cannot. "I don't know," he said.

During a question-and-answer session with the audience, syndicate 435's Mr. Hancock suggested that U.S. airports could impose much more stringent security.

He noted that travelers who embark from the Tel Aviv's Ben Gurion Airport must arrive four hours before their flights to clear security—about double the time that travelers must allow when flying out of U.S.

airports.

Mr. Widmar responded that creating a four-hour wait "would be difficult" for airline and airports. Commercial airlines already have lost customers because of current delays, he said.

Considering that most flights in the United States are short-haul trips, Mr. Widmar predicted that even longer airport delays would compel many travelers to turn to the rail system. A similar trend already has developed in Europe, he said.

Mr. Widmar acknowledged that inspecting automobiles at airports should be considered, "but it will be a while before we have a solid grasp on the situation," he said.

Phil Freeman, deputy underwriter for Lloyd's syndicate 2001, managed by Amlin Underwriting Ltd., moderated the session.

Aviation Insurance Assn. conference

Underwriters say rate hikes critical to profitability

By DAVE LENCKUS

KANSAS CITY, Mo.—The one certainty for commercial aviation insurers as they look at finally generating underwriting profits and for airlines as they await additional and meaningful terrorism coverage is that significant market changes lie ahead, according to a panel of experts.

Worldwide, commercial aviation premiums will have to double to generate satisfactory underwriting profits, and third-party terrorism coverage likely will become avail-

able again, but only through special facilities, according to a London underwriting executive.

The future of commercial aviation insurance costs and third-party terrorism coverage was assessed during a panel discussion at the Aviation Insurance Assn.'s 26th annual conference, held in Kansas City, Mo., last week.

About two weeks after the Sept. 11 terrorism attacks, aviation insurers canceled airlines' third-party terrorism coverage and offered to write back only \$50 million of the coverage—2.5% to 5% of most airlines'

original limits. The once-free coverage, though, now cost each airline \$1.25 per ticketed passenger—or tens of millions of dollars.

Under various airline contracts, however, the coverage was inadequate, so various governments created temporary excess coverage programs for their domestic carriers. Those programs, though, are scheduled to expire within the next several weeks.

There are solutions at hand, but they will reshape the commercial aviation insurance market according to Peter L. Butler, underwriting executive with Global Aerospace Underwriting Managers Ltd. of London.

Mr. Butler acknowledged airlines' complaints that the insurance industry's terrorism coverage surcharge is unfair because it does not distinguish between short-haul and long-haul carriers.

But Mr. Butler defended the surcharge as a necessary capital infusion for insurers and the quickest way to get airlines back in business. If insurers had to negotiate surcharges individually with every airline, "we'd still be grounded," he asserted.

While GAUM is not "not wedded" to maintaining the \$1.25 surcharge, "we are wedded to generat-

ing enough premium to earn a profit in a normal year," Mr. Butler emphasized. Aviation insurers have generated underwriting profits in only three of the past 15 years, he said.

"If in the aftermath of Sept. 11 we don't deliver a return, our shareholders won't understand or forgive us" and will move their money elsewhere, he said.

GAUM estimates that aviation underwriters' annual premium volume must increase by approximately 167%, to \$4 billion, to cover losses and provide the underwriters a 10-point underwriting profit margin.

With the \$50 million third-party terrorism coverage sublimit in place and if aviation insurers maintain solid pricing discipline, insurers likely would not have to disrupt policyholders' coverage if terrorists targeted airlines again, Mr. Butler said.

He suggested, however, that underwriters may have to modify their standard war and allied perils exclusion, which is "becoming outdated," to bar coverage for biological and other perils that the exclusion does not address.

As airlines look for excess terrorism coverage to replace the government programs that are set to ex-

pire soon, GAUM likely will not offer any additional coverage, Mr. Butler said. Noting GAUM shareholders' concerns, he observed, "The world is not any safer" than it was in September.

But, Mr. Butler assured airlines that various market initiatives are being developed.

For example, the 33-member board of the Montreal-based International Civil Aviation Organization later this month is scheduled to unveil its proposal, Mr. Butler noted.

Under the International Civil Aviation Organization's preliminary premise, the organization would create an initial \$850 million fund to cover airlines' third-party terrorism losses by charging each member country 50 cents per ticketed passenger flown by airlines based within the member's borders.

ICAO still has to determine how such a fund would dovetail with other excess facilities and how much coverage would be available to airlines.

The proposal has drawn wide support from among the organization's 187 member countries, an ICAO spokesman said.

David Binks, a director with Heath Lambert Group of London, moderated the session.

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Aviation Insurance Assn. conference

Association altering membership structure

The Aviation Insurance Assn. is realigning itself as an individual membership association, though it is not dropping corporate membership. Annual corporate membership dues will drop to \$150 from \$250, but those dues will cover only one individual, compared with nine previously. Annual dues for the new individual membership will be \$95.

The AIA also announced it would be conducting classes that members

could attend to complete the courses necessary to earn the Certified Aviation Insurance Professional designation. The first session is scheduled for Chicago June 7-9. Members still will be able to earn the designation through self-directed study. At the AIA's 26th annual conference, held in Kansas City, Mo., last week, 12 members received the CAIP designation.

Conference planners had anticipated a 20% drop-off in attendance

from last year's conference, due to the Sept. 11 terrorist attacks, but attendance held steady at around 447. The next annual conference is scheduled in Orlando, Fla., at the Hilton in the Walt Disney World Resort April 26-29, 2003.

Additional information on memberships, the CAIP designation and future meetings is available from Pat Lacy in AIA member services, 812-323-7955; fax: 812-323-7956; or online at www.aiaweb.org.

Australia arranges stopgap med mal coverage

By DAMIEN TOMLINSON

SYDNEY, Australia—Australia's federal government appears to have at least temporarily averted a national medical crisis after the collapse of the country's largest medical indemnity insurer.

In a meeting last week with insurers and doctors, the government hammered out a compromise agreement that would provide limited coverage for

doctors currently covered for malpractice risks by mutual insurer Australian Medical Insurance Ltd., the main operating unit of United Medical Protection Ltd.

The meeting was called after Sydney-based UMP announced on April 29 that it would file for provisional liquidation. That announcement followed unsuccessful attempts to secure a government bailout that would restore AMIL's diminished capital to levels required by Australia's insurance regulator.

Following UMP's announcement, many doctors threatened to close their doors and to refuse to perform surgery. UMP provided medical indemnity coverage for 32,000 Australian doctors—roughly 60% of the country's providers—through AMIL.

But last week, Senator Helen Coonan, the federal assistant treasurer and revenue minister, announced several measures designed to ensure the long-term availability of medical indemnity insurance. The announcement came after a government meeting with several unnamed insurers, the Australian Medical Assn.—the professional organization for doctors in Australia—and UMP.

In a statement, Ms. Coonan said the nonlife insurers had agreed to offer medical indemnity coverage on the condition that the coverage be provided on a claims-made basis, that coverage be capped and that state governments initiate major legislative reform to make "future claims more sustainable." No further details were available.

Ms. Coonan said the federal government will guarantee claims filed against AMIL-insured doctors until June 30. The government would also work with the provisional liquidator to determine AMIL's long-tail claims, assets and liabilities; the best method for claims payment; and whether UMP and AMIL are vi-

See UMP/next page

Directors in hot seat

D&O litigation highlighting exposure, inadequate cover of non-executive directors

By CAROLYN ALDRED

LONDON—Several high-profile corporate collapses in Europe and increased litigation aimed at boards of directors will make it more difficult for companies to find non-executive directors, some executive advisers say.

Many non-executive directors are inadequately insured by the companies on whose boards they sit, and they will demand that those companies increase their level of directors and officers insurance at a time when the D&O market in Europe is hardening dramatically, these observers say.

"There have been significant changes with the U.K. and European D&O arena. The legal and corporate governance environment globally has awoken to and focused on the duty of care that directors and officers owe to shareholders, employees and third parties," said Chris Hewitt, a D&O underwriter for Lloyd's of London managing agency Brit Insurance P.L.C. "Non-executive directors, therefore, are very much in the spotlight, as they are the independent policemen."

Among the well-publicized cases is a £3 billion (\$4.37 billion) lawsuit filed last month against 15 former directors, including nine non-executive directors, of Equitable Life As-



urance Society (*BI*, April 29).

One underwriting source knows of a U.K.-based non-executive director who is resigning from several publicly traded companies, describing the risks now as "too hairy."

Peter Brown, the chairman of Independent Remuneration Solutions, which advises companies on payment and benefits for executive and non-executive directors, said that before accepting a non-executive directorship, an applicant should check the company's D&O coverage. If it is inadequate, Mr. Brown said, the applicant should

ask for it to be increased or refuse the position.

John Taylor is the Birmingham-based D&O product development manager for the United Kingdom and Ireland for Brussels-based Chubb Insurance Co. of Europe S.A. Mr. Taylor noted that several of Chubb's clients have increased their D&O limits at the request of their non-executive directors.

The growing number of high-profile corporate collapses, increasing litigation against directors and a greater focus on corporate gover-

See D&O/page 23

Law Lords reinstate time limit on negligence suits

Professionals get liability relief

By CAROLYN ALDRED

LONDON—Professional service firms and other service providers are breathing a sigh of relief following a long-awaited House of Lords ruling that reinstates time limits on negligence cases, U.K. lawyers say.

The ruling by the United Kingdom's highest court "will prevent a dramatic increase in legal cases against professional service firms," London law firm Reynolds Porter Chamberlain said in a statement.

On April 25, the Law Lords overturned the February 2001 Court of Appeal decision in *Cave vs. Robinson*, which had lifted the time limit on professional negligence claims. In the original case, a law firm client, Martin William Cave, sued the firm, Robinson Jarvis & Rolf, for failing to procure mooring rights (*BI*, March 12, 2001).

The House of Lords' decision "has restored the limitation defense in professional negligence cases and will come as a great relief to all professional firms, including solicitors, surveyors, architects and accountants, retired professionals and their insurers," said Helen Staines, professional negligence partner at Beachcroft Wansbrough, who took the case to the House of Lords.

The decision is of "particular significance to all professional advisers, construction professionals and

their professional indemnity insurers because it removes the specter of exposure to an indeterminately long tail of claims," London law firm CMS Cameron McKenna said in a statement.

The ruling means that professionals will no longer need to keep records indefinitely, 'in case they are sued for some long-unappreciated mistake.'

Helen Staines
Beachcroft Wansbrough

Nick Bird, solicitor-advocate at Reynolds Porter Chamberlain, said that, before the Law Lords' decision, "the courts had started to interpret the Limitation Act in a way that was never intended and that would have placed a crushing financial and administrative burden on professional services firms in the U.K."

Beachcroft Wansbrough estimates that "many hundreds of cases had been stayed, in anticipation of the outcome" of the case.

For almost anyone who has been involved in professional work, Ms. Staines said, the decision means

that "they will not now have to ensure they keep all their records and files indefinitely, in case they are sued for some long-unappreciated mistake."

Had the Court of Appeal decision been upheld, insurance would have to be purchased to continue until a professional's death, and insurers would have had to increase reserves and reassess how far back they investigate a firm seeking coverage, Mr. Bird said.

Under the Limitation Act 1980, all professional negligence claims must generally be brought within six years of the negligent act. Section 32 of the Act provides for the limitation period to be extended, if there has been a mistake of if the professional has been fraudulent or deliberately concealed a claimant's potential right of action.

Under the subsequent Latent Damage Act 1986, all claims are barred 15 years after the relevant events happened, unless any fact relating to the claim had been "deliberately concealed" by the allegedly negligent professional, Reynolds Porter Chamberlain said.

In overruling three prior decisions that had lifted the time bar on all acts that cause a breach of a professional's duty of care, the House of Lords ruled that Section 32 in the Limitation Act applied to a deliberate breach of duty.

World Updates

Generali makes Guty non-executive chairman

Assicurazioni Generali S.p.A. has removed the executive powers of Chairman Gianfranco Guty, amid several changes to the Italian insurer's management board. At the insurer's annual general meeting April 27, Giovanni Perissinotto, chief executive with responsibility for finance, and Serge Balbinot, general director for international activities, were named managing directors of Trieste, Italy-based Generali. Mr. Guty, who previously was Generali's chief executive officer, was named chairman last May. He replaced the ousted Alfonso Desiata in what was the third change in Generali's chairman in three years. Mr. Guty will retain his seat on the board and his responsibilities for external communication and legal affairs, Generali said.

Lloyd's forming online information exchange

Lloyd's of London is developing an electronic information exchange designed to increase efficiency and reduce costs for insurance buyers, brokers and underwriters operating in the Lloyd's market. Through the system, which has the working name Blue Mountain, retail brokers will enter information on risks, which will be made available to wholesalers and underwriters. The information will be keyed in only once—eliminating errors and costs associated with multiple data entries—and will be securely tracked, said Ashok Gupta, the chief executive officer of Lloyd's online operation, Lloyds.com, which is developing the tool. He said the system will be used only to transmit data, not to bind policies. Trials of the system are expected to begin before year end.

Absence down in U.K., but related costs up

Although employee absence in the United Kingdom in 2001 fell to its lowest level in 14 years, the cost to business of absence rose by more than £1 billion (\$1.46 billion) because more high-level employees were absent, according to a survey conducted by the Confederation of British Industry. The CBI's survey of 746 businesses in the United Kingdom revealed that the number of workdays lost to absence fell to 176 million in 2001 from 192 million in 2000. The average absence of 7.1 days per employee—or 3.1% of working time—is the lowest since the survey began in 1987, the CBI said. But the total cost of employee absence climbed to £11.8 billion (\$17.2 billion) in 2001, from £10.7 billion (\$15.6 billion) the year before.

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and
EL PASO INSURANCE COMPANY LIMITED
and
LIME STREET INSURANCE COMPANY LIMITED
(formerly Louisville Insurance Company Limited)
and
MUTUAL REINSURANCE COMPANY LIMITED
(the KWELM companies')

	Existing Percentage	Increase	Revised Percentage
Kingscroft	36%	7%	43%
Walbrook	26%	8%	34%
El Paso	41%	7%	48%
Lime Street	40%	7%	47%
Mutual	25%	7%	32%

The payment percentages have been revised as follows:
30 April 2002

C J HUGHES and I D B BOND
Scheme Administrators
KWELM companies

Address for correspondence:
KWELM Management Services Limited,
John Stow House,
18 Bevis Marks,
London EC3A 7JB,
United Kingdom
Tel: + 44 (0) 20 7645 4700
Fax: + 44 (0) 20 7645 4777
E-mail: kwelm@kmsl.co.uk

LEGAL NOTICE

Notice of meeting

KINGSCROFT INSURANCE COMPANY LIMITED
(formerly Kraft Insurance Company Limited,
Dart and Kraft Insurance Company Limited and
Dart Insurance Company Limited)

and

WALBROOK INSURANCE COMPANY LIMITED

and

EL PASO INSURANCE COMPANY LIMITED

and

LIME STREET INSURANCE COMPANY LIMITED
(formerly Louisville Insurance Company Limited)

and

MUTUAL REINSURANCE COMPANY LIMITED

(the KWELM companies')

Notice is hereby given that the eighth ANNUAL MEETING of the Scheme Creditors of the KWELM companies convened pursuant to clause 8.1 of the Scheme of Arrangement (the Arrangement) will be held at 2.00 pm Pacific Daylight Time on Wednesday 10 July 2002 at Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102, United States of America.

The Scheme Administrators' report on the conduct of the affairs of the KWELM companies for the year to 31 December 2001 shall be laid before the meeting.

Scheme Creditors may attend in person (or, if a corporation, by a duly authorised representative) or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend in their place. Forms of representation for use at the said meeting, copies of the Scheme Administrators' report and the Arrangement documents incorporating the terms of the Arrangement are available on request to the Scheme Administrators at the address set out below or electronically through the internet at www.kwelms.com.

Dated this day 30 April 2002

C J HUGHES and I D B BOND

Scheme Administrators
of the KWELM companies

Address for correspondence

John Stow House,
18 Bevis Marks,
London EC3A 7JB
Tel: + 44 (0) 20 7645 4700
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MARILYN SHANNON MCGONAGHY,
Director of Business Regulation of the
State of Rhode Island

MARILYN SHANNON MCGONAGHY,
Director of Business Regulation of the
State of Rhode Island

-v-

AMERICAN UNIVERSAL INSURANCE
COMPANY, a Rhode Island domiciliary
insurance company, and CANADIAN
UNIVERSAL INSURANCE COMPANY, INC.

CANADIAN UNIVERSAL INSURANCE
COMPANY, LTD., a Newfoundland,
Canada insurance company

NOTICE OF HEARING

PLEASE TAKE NOTICE that Marilyn Shannon McConaghy, Receiver of American Universal Insurance Company, Canadian Universal Insurance Company, Inc., and Canadian Universal Insurance Company, Ltd., has filed Petitions for Instructions to establish a Final and Absolute Bar Date for new claims and to finalize contingent and unliquidated claims previously filed. The Petitions are on file with the Providence, Rhode Island, Superior Court. Said Court has ordered that the Petitions shall come on for Hearing at 9:30 AM, on the 31st day of May, 2002, before the Honorable Ronald R. Gagnon, sitting in the Washington County Superior Court, 4800 Tower Hill Road, Wakefield, Rhode Island. Copies of the Petitions are on file with the Clerk's Office of the Washington County Superior Court. Creditors, holders of claims, and all other parties in interest in this proceeding are hereby given notice that they are entitled, but not required, to attend the hearing.

MARILYN SHANNON MCGONAGHY,
RECEIVER OF AMERICAN UNIVERSAL
INSURANCE COMPANY, CANADIAN
UNIVERSAL INSURANCE COMPANY,
INC., and CANADIAN UNIVERSAL
INSURANCE COMPANY, LTD.

By her attorneys,

Robert D. Fine, Esq. (#2447)
Annie Talbot, Esq. (#4385)
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UMP: Coverage crisis averted

Continued from previous page

able businesses. The government also agreed to develop a national care and rehabilitation program for the severely injured, in an effort to reduce court-ordered payouts.

"These outcomes were the results of negotiations with commercial insurers and the AMA. All parties have been working in the best interests of patients and doctors to ensure consistency of care, with minimal disruptions," Ms. Coonan said.

'All parties have been working in the best interests of patients and doctors to ensure consistency of care, with minimal disruptions.'

Helen Coonan

Despite the government's assurances, AMA President Dr. Kerryn Phelps said some doctors are still skeptical about the agreement.

"Some of the doctors' groups are being given legal advice that they have to see it in writing before they are safe to go back to work without the risk of losing everything they've ever worked for," Dr. Phelps said.

Dr. Phelps said she had reservations about stock insurers' commitment to the medical indemnity market, given its history of poor results and long-tail exposures. Under Australian law, patients have 21 years to file malpractice claims against practitioners.

Dr. Phelps also questioned whether the \$500 million Australian (\$271.9 million) that UMP is estimated to have in claims "sitting on the books" would be paid. "Insurers are not just going to pick that up and pay for it," she said.

The collapse of UMP followed attempts to seek a government bailout after it revealed in March that its capital had fallen to \$38 million Australian (\$20.7 million) by Dec. 31, 2001, from \$118 million Australian (\$64.2 million) on June 30 of that year. UMP cited several reasons for the decline, including rising reinsurance costs, investment losses and increased claims due to legislative changes (BI, April 1).

The government agreed to provide \$30 million Australian (\$16.3 million) in capital guarantees until June 30 after the insurance regulator, the Sydney-based Australian Prudential Regulation Authority, notified AMIL that it did not meet insurer capital requirements. But the government refused to supply the additional \$100 million Australian (\$54.4 million) that APRA said AMIL would need to raise by 2004.

UMP did not return calls seeking comment.

D&O: Market complicates finding board members

Continued from page 21

nance will lead to increased reluctance by many competent people to assume non-executive directorships, particularly those for high-risk companies, Mr. Brown predicted.

David Gamble, the executive director of the Assn. of Insurance & Risk Managers, predicted that many non-executive directors would opt for fewer board appointments.

Barry Dinan, a director of Hanson Green, a London-based recruitment agency for non-executive directors, said that "companies need access to the best pool of talent, and a full understanding of how the risks of being a non-executive director can be mitigated is crucial to expanding the talent pool."

'People are becoming a lot more aware the directors can be taken to the cleaners.'

Patrick White
Markel International Ltd.

According to Mr. Dinan, many companies, including publicly listed companies, do not carry D&O insurance. He warned that, even when companies do insure, "directors may find that the levels of indemnity purchased under a D&O insurance policy have been eroded by claims elsewhere in their company."

Hanson Green recently published a guide, "Boardroom Insurance," and helped develop a personal D&O insurance policy for non-executive directors with Lloyd's of London broker Glenrand Ltd.

Continuing hardening of the D&O market for European companies, with much tighter terms and conditions and more exclusions, could further erode the D&O protection provided for directors under corporate policies, said Kurt Rothman, director of Lloyd's of London broker Glenrand Ltd.

Premiums are increasing anywhere from 30% to 300%, said Chubb's Mr. Taylor. He added that insurers also are reducing limits and introducing more restrictive terms.

The average increase for D&O cover is 25% to 30%, with many companies paying a lot more, said Lloyd's of London underwriter Patrick White, D&O underwriter for Lloyd's of London syndicate

3000, managed by Markel International Ltd.

"People are becoming a lot more aware that directors can be taken to the cleaners," Mr. White said. He pointed out that several spectacular corporate collapses, particularly in Germany and the United Kingdom, have highlighted the risks directors face.

Mr. White said that while premiums are increasing, capacity is drying up. Consequently, he said, those companies that are seeking more than £150 million (\$218.6 million) in D&O liability coverage

will not find it easily.

Martin Beagley, executive director of Willis Global Financial and Executive Risks, agreed that there is increasing wariness among underwriters to write coverage of more than about £100 million (\$145.8 million) to £150 million (\$218.6 million), particularly for companies with shares of high-tech companies or for shares traded in the United States.

Mr. Beagley noted, though, that for some large companies, capacity of about £300 million (\$437.3 million) still is available in London. He

said that many companies now are seeking more capacity.

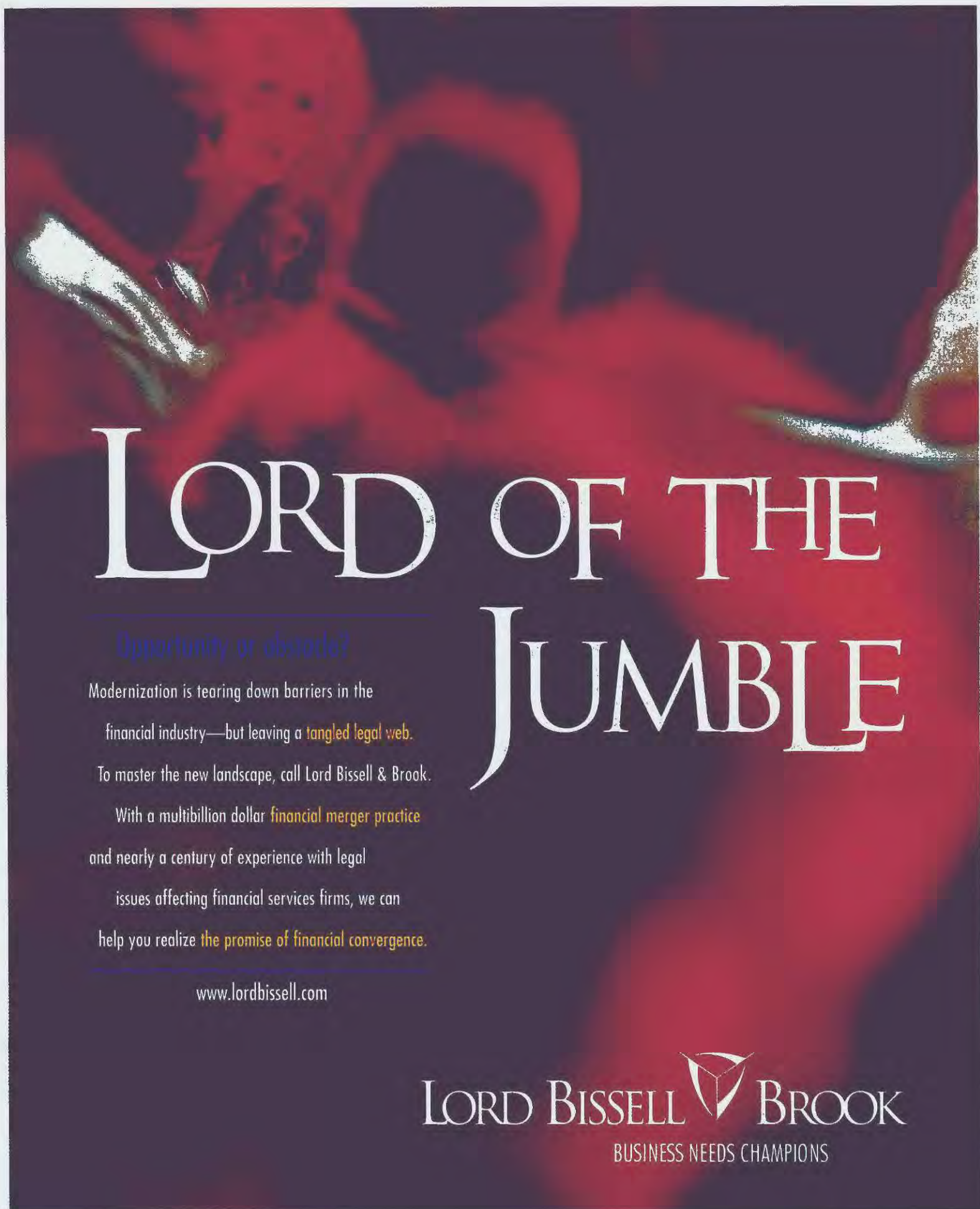
Meanwhile, underwriters agree that the increasing number of U.S.-based shareholder claims is having a huge impact on the European D&O market.

Many more European companies now have an exposure to U.S. shareholder litigation, increasing their D&O liability exposure, said Janet Edey, corporate manager, financial lines for AIG Europe (UK) Ltd.

Directors' risks in Europe also have increased due to increased

shareholder action in Europe; increased action by regulatory authorities, including health and safety prosecutions; and increasing corporate insolvencies, she said.

A statement from Munich Re confirmed that rates for European D&O risks have gone up across the board, with typical increases of more than 100% for European companies with U.S. listings. D&O claims continue to increase steadily, with U.S. shareholder action claims causing European insurers the most concern, according to Munich Re.



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AIG: Management restructured

Continued from page 1

Smith, AIG's chief financial officer.

The COO post has been vacant since Evan Greenberg, Mr. Greenberg's son and a former heir apparent at AIG, resigned in September 2000.

The newly formed office of the chairman, meanwhile, will consist of Messrs. Greenberg, Sullivan, Tse and Smith; Donald P. Kanak, AIG executive vp and president of insurance units in Japan and Korea; Kristian Moor, executive vp of domestic general insurance; and Win J. Neuger, executive vp and chief investment officer.

"AIG is a very different and more broadly based company today than it was only a few years ago," Mr. Greenberg said in a statement. "The new management structure responds to these changes and will help ensure that AIG has the strongest possible organization to carry out our strategies and business plans for the future."

Mr. Greenberg, who turned 77 last weekend, has said AIG would reorganize its top management to put several people in positions to take over the top job at some point in the future while maintaining Mr. Greenberg's role as AIG's leader. He has reiterated that he has no plans to retire.

The insurer also appointed Frank G. Zarb, a director since last year, as chairman of the board's executive committee. In addition, Jay S. Wintrob and John A. Graf, the top officers of AIG's SunAmerica Inc. unit, have been named AIG executive

vps for retirement savings; Rodney O. Martin Jr., CEO of the merged life insurance operations of AIG and American General Corp., was named executive vp for life insurance; and Richard W. Scott, another former American General official, was named senior vp for investments.

'The new management structure...will help ensure that AIG has the strongest possible organization to carry out our strategies and business plans for the future.'

Maurice R. Greenberg
American International Group Inc.

Mr. Greenberg's succession plans have been closely followed by AIG shareholders and insurance industry observers for several years. Likely successors who left AIG included not only Evan Greenberg—now vice chairman of ACE Ltd.—but another of Mr. Greenberg's sons, Jeffrey Greenberg, now chairman of Marsh & McLennan Cos. Inc.

Interest in the succession issue intensified earlier this year, after Mr. Greenberg missed a meeting with analysts because of the flu and skipped a Bermuda conference at which he was scheduled to speak. He later said that he had simply changed his mind about attending

the conference and that concerns about his health are unfounded.

Mr. Sullivan, 47, is a 30-year veteran of AIG's international property/casualty operations but is relatively little known among Wall Street investors, analysts say. Mr. Tse, 64, rose through the ranks of AIG's Asian life insurance operations and is somewhat more widely known.

AIG's future CEO could be any of the executives named to the new office of the chairman, though, and these officials will likely assume a higher public profile in coming months as their abilities to communicate and gain investors' confidence are weighed, analysts say.

While Mr. Greenberg has said he does not intend to create a "horse race" in which executives passed over for the top spot will leave AIG, the management reorganization will put new pressure on top officials in contention, an industry observer familiar with AIG noted.

Mr. Greenberg "didn't put names in a hat and pull them out. This was very, very carefully done," the observer said. "The level of competition is now heightened."

Not mentioned in AIG's announcement of the management changes was Thomas R. Tizzio, 64, senior vice chairman of AIG's general insurance operations and a veteran of the insurer's upper management. Several industry observers have expressed doubts in the past that Mr. Tizzio was a likely candidate for the CEO's job. An AIG spokesman declined to comment.

AIG RESTRUCTURES MANAGEMENT

Six executives join Chairman and CEO Maurice R. Greenberg in the newly formed office of the chairman:



Mr. Sullivan



Mr. Tse



Mr. Smith



Mr. Neuger



Mr. Kanak



Mr. Moor

At the same time, AIG also promoted three to executive vps:



Mr. Graf



Mr. Martin



Mr. Wintrob

Anthem: Purchasing Trigon

Continued from page 3

"It provides Anthem with a market position in the Southeast, which they didn't have before," said Marc Bilodeau, associate principal in the Atlanta office of Buck Consultants Inc. The deal also is "kind of a defensive posture," because Thousand Oaks, Calif.-based WellPoint Health Networks Inc.—

are expected for employers, though some observers say it could lead to lower rates for Anthem's clients.

"Over the next year or two, I can't imagine that employers are going to face much change at either company," said Sheryl Skolnick, vp at Fulcrum Global Partners, a securities firm in New York.

Dave Morgan, managing director

Bankers Assn. that provides employee benefits to member banks, including group medical coverage through Trigon.

"It looks like Anthem's a very strong company and that, ultimately, this will be a good match in terms of cultures," she said.

Dave Frick, Anthem's chief legal and administrative officer, said he expects employers to welcome the deal. Fixed costs go down on a per-unit basis when they are spread over more lives, and, "in this era of increasing pressure with health care costs, any time you can help ameliorate those premium increases by controlling your administrative costs is a good thing, so I imagine our customers would applaud" the deal.

Christopher Swift, national industry director for the insurance and managed care practice at KPMG L.L.P. in Chicago, said that "long term, hopefully, with size and scale, there's efficiencies, innovation (that employers) can expect from the pricing side" as developmental and administrative costs are spread over a larger base.

There may be other long-range benefits to the deal.

Employers need more national multistate networks, said Ed Kaplan, national practice leader for health care at The Segal Co. in New York. "There are only four or five as

we speak, so if Anthem can truly be a national, multiregional network and health plan, it would increase the competition" among the largest players, Mr. Kaplan said. This deal, he added, is a step in that direction.

Observers note that, because of consolidation, there are 43 independent member Blues plans today, down from dozens more in earlier years.

Mike Taylor, a principal with

Towers Perrin in Valhalla, N.Y., said that "there's going to emerge three or four Super Blues," and, clearly, Anthem and WellPoint are announcing they're going to be among them. Those companies, Mr. Taylor said, "have size and scale," noting that they can compete with such companies as Aetna Inc., United HealthCare and CIGNA Corp., particularly in the large-employer market.

A TALE OF TWO BLUES PLANS

At year-end 2001, in millions

	Anthem	Trigon
Assets:	\$6,276.6	\$2,582.5
Operating revenues:	\$10,120.3	\$2,975.0
Net income:	\$342.2	\$116.1

another Blues licensee—is in the process of acquiring Owings Mills, Md.-based CareFirst BlueCross BlueShield.

Brian Klepper, executive director of the Jacksonville, Fla.-based Center for Practical Health Reform, said the acquisition "allows Anthem to re-establish itself as a very formidable peer" to WellPoint. Among other effects, the deal also "further asserts that Anthem is one of the big, long-term players," said Mr. Klepper.

No immediate, dramatic changes

at the Richmond office of Palmer & Cay, a risk management and employee benefits firm, said, "I would hope, for our clients' sake, that by joining with Anthem, they'll have some additional capabilities to bring to the clients' problems that they didn't have before."

Roxanne Sheppard, chief administrative officer of Richmond-based VBA Benefits Corp., said she is optimistic about the deal based on what she has learned about Anthem since the announcement. VBA Benefits is a subsidiary of the Virginia

USI: Brokerage unveils IPO plans

Continued from page 2

tion in 1994, mostly through acquisition—USI made 103 acquisitions in seven years—it has posted a net loss in each of the last three years: \$90.9 million in 2001; \$18.2 million in 2000; and \$30.1 million in 1999, according to the SEC filing.

A significant part of these losses is attributable to the writedown of the broker's investment in USI Administrators, which was sold last month to CBCA Inc., Mr. Newborn explained.

"We've been looking at our company ex of USIA for some time," he said. "It was no longer core to our mission, vision or strategy."

USIA is the 10th-largest third-party administrator and the fifth-largest employee benefits TPA, ac-

ording to BI's annual rankings.

Targeting mostly middle-market employers, USI has approximately 60,000 small and midsize business clients nationally, which it services from offices in 20 states. USI expects this market to grow, based on census data that there are about 1.1 million businesses employing between 20 and 999 employees.

Investment banks Merrill Lynch & Co. and J.P. Morgan Securities Inc. have been hired to underwrite the sale, with Credit Suisse First Boston Corp., Credit Lyonnais Securities Inc. and Fox-Pit: Kelton Inc., the company said in its SEC filing.

USI will trade on the New York Stock Exchange under the symbol USH.

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Pain: Big component in comp costs

Continued from page 1

condition," making it difficult to determine the scope of the problem and how to deal with it.

A disturbing trend is the policy of some employers to simply get rid of the injured workers, said Gwen Farmer, Dallas-based Texas regulatory compliance manager for third-party administrator Crawford & Co.

"Unfortunately, what I see more and more are employers who have a corporate policy that a worker is terminated after a certain length of time off the job," Ms. Farmer said. That policy passes legal muster as long as it treats all workers—regardless of why they are off the job—the same, she said.

That doesn't end a workers comp claim, though, she said, and it puts out of work an employee who may have a tough time getting another job.

Risk managers agree that pain is expensive and complicated to treat.

"It's a difficult problem," said John B. Hughes, director of risk management at Alex Lee Inc., a food warehousing and distribution company in Hickory, N.C. Pain management programs, prescription drugs and other pain care cost his compa-

ny around \$500,000 per year, he said. Alex Lee self-insures its workers comp exposure.

International Paper Co.'s frequency of pain cases is in line with that of other large employers, but "we have too many employees who end up with chronic pain complaints," said Paul Stasz, the manager of workers compensation and unemployment at the Stamford, Conn.-based company.

Chronic pain expenses show up in around 30% to 40% of all International Paper's workers comp claims when soft-tissue injuries and other serious injuries such as burns are included, Mr. Stasz noted.

International Paper uses transitional duty and modified work programs to help injured workers recover, he said. Those with severe injuries are offered psychological counseling as they recuperate.

During counseling, "we don't get into a discussion of how much pain they are in," Mr. Stasz said, "because it's so subjective. The discussions are most helpful when they focus on issues such as range of motion and other objective problems."

Corey D. Fox, principal with Healthcare Consulting Associates in

West Hartford, Conn., agreed that "Finding out how much pain someone is in is a waste of time," he said. He suggested that employers should spend more time on transitional work services, early identification of injuries and communication with employees who are having pain problems.

'Although there are a lot of people who seem to specialize in chronic pain management, the results are not as uniformly successful as business would like.'

Paul Stasz
International Paper Co.

"We've tried pain management programs over the years," Mr. Stasz said, without consistent results. "Although there are a lot of people who seem to specialize in chronic pain management, the results of their efforts are not as uniformly successful as business would like," he said.

Identification of a good pain management program is critical, Mr.

Fox said. "And that is a hard thing to do," he said. He suggested that employers turn first to the Accreditation Commission of Rehabilitation Facilities, based in Tucson, Ariz., if they decide to seek out such a program.

Among the programs LWCC uses to treat workers is one offered by the Touro Rehabilitation Center in New Orleans. The program provides detoxification, if needed, and combines physical therapy with psychological counseling.

Used appropriately, multidisciplinary pain programs are effective, said Mark Donlevie, Dover, N.H.-based vp of commercial claims services for Liberty Mutual. He acknowledged that the costs of these pain management programs are high but said they pay off.

A key to effective treatment is a collaborative effort between the insurer and physician to return the worker to gainful employment, Mr. Donlevie said. Liberty Mutual works closely with health care providers in pain management programs to "make sure treatment is appropriate," he said.

There are "physician-to-physician" peer reviews that help deter-

mine if a candidate is appropriate for such care, he said, and once a worker is approved for a program, the insurer and the physician begin collaborating.

Part of the employer's role in such cases is to work with the insurer and physician to make sure everyone understands the physical demands of the injured employee's job, Mr. Donlevie said. Modified-duty and work-hardening programs also help in the rehabilitation effort, he said.

Liberty Mutual also makes sure each worker's ability to function in the workplace is assessed before going back on the job, Mr. Sheehy said. "We don't want them going back unprepared," he said.

Some are optimistic that the costs of chronic pain can be controlled.

"We've seen cycles in other conditions which have looked very disturbing," such as carpal tunnel syndrome, said Mr. Rousmaniere, yet he noted that responses to those injuries have helped control costs.

Mr. Sheehy said physicians are getting better at identifying symptoms of pain and technological advances are helping with treatment.

International Paper's Mr. Stasz noted that "some of the diagnostic tools that are coming out are better at finding problems before they get so bad that it takes heroic efforts to correct them."

Parity: Bush support expected to help bill's chances

Continued from page 3

sure by a congressional conference committee amid strong opposition from conservative House Republican leaders, who said they were concerned about the cost of the parity mandate on group health plans at a time of rising expenses.

Instead, Congress passed a one-year extension—through Dec. 31, 2002—of a limited 1996 parity law. Under that law, group plans cannot set annual or lifetime dollar limits for care for mental disorders that are lower than those they set for other health conditions.

But plans can—and many do—set higher copayments and de-

ductibles for mental disorders than for other medical conditions. Many also limit the number of covered outpatient visits to therapists and inpatient days at hospitals without imposing comparable limits for other health conditions.

After the Domenici-Wellstone bill was stripped from the spending bill last year and the 1996 law extended by one year, Sen. Domenici said he had assurances from the White House that it would work with him and with Sen. Wellstone to pass a parity bill.

Last week, Sen. Domenici, who was present when President Bush made his remarks, said he wel-

comed President Bush's support. Sen. Domenici said he and the administration are working together to reach an agreement on new legislation "to improve the ability of those who suffer from severe mental illnesses to access the care they need."

Observers say public presidential support increases the chances of Congress acting on parity legislation.

"It tends to make a difference when a president weighs in on an issue," said Helen Darling, the president of the Washington Business Group on Health and a former congressional committee staffer.

"When a president supports an issue, passage is more likely," concurred Nell Hennessy, a senior vp with Aon Consulting in Washington.

Some observers say, though, that the Domenici-Wellstone bill would have to be pared back in order to be passed, such as by limiting the mandate to apply only to severe, biologically based disorders.

"I cannot see the Senate bill being passed by the House," said the American Benefit Council's Mr. Dennett.

Indeed, President Bush, while advocating parity, is not doing so "at any price," said Hewitt Associates

L.L.C. consultant Frank McArdle. Mr. McArdle noted Mr. Bush's statement that parity must be achieved without significantly increasing costs.

The question now, Mr. McArdle said, is whether a compromise can be reached. House Republicans, he said, would be more likely to agree to legislation that limited equal coverage to severe, biologically based mental disorders.

Mr. McArdle said that it remains questionable whether advocates of total parity would accept such limited legislation, Mr. McArdle said.

But Russ Newman, the executive director for the professional practice of the American Psychological Assn. in Washington, said he hopes President Bush will support the current Domenici-Wellstone bill.

Aon: Dispute may be heard in London

Continued from page 3

indicated in announcing its first-quarter accounting move last week.

"Accounting rules require that we be able to reasonably estimate the probable recovery under our claim to maintain a receivable, which we are precluded from doing at this time given the recent ruling," Patrick G. Ryan, chairman and chief executive officer of Aon Corp., said in a statement in late April announcing the \$90 million allowance.

Mr. Ryan also said the accounting move would have no impact on Aon's "vigorous pursuit" of its reinsurance claim.

In its suit, Combined contends the federal court in New York has jurisdiction over the dispute under last year's Air Transportation Safety and System Stabilization Act, which specified that the federal court in

Manhattan have jurisdiction "over all actions brought for any claim...resulting from or relating to the terrorist-related aircraft crashes of Sept. 11, 2001."

The suit also contends the Southern District of New York is the proper venue for the case because "a substantial part of the events giving rise to the claim occurred in this District."

But the Lloyd's syndicates have sought dismissal of Combined's New York action in favor of hearing the case in the U.K., and a ruling last month in a similar case brought by Canada Life Assurance Co. against Converium Ruckversicherung A.G. may have an impact on where the case is heard.

In that case, a federal district court judge in New York held that a retrocession dispute between Canada Life and Converium over losses

Canada Life experienced related to the World Trade Center attack did not fall under the jurisdictional mandate of the Air Transportation and System Stabilization Act.

Canada Life had argued the dispute did fall under the act and, therefore, should be heard in the Southern District of New York. But the court held that Congress did not intend that the act apply to actions such as reinsurance disputes, instead meaning for it to apply to claims brought by individual victims of the Sept. 11 attack.

In an affidavit supporting Combined's U.S. District Court suit and its effort to block the Lloyd's underwriters' U.K. action, Dennis Mahoney, chairman and CEO of Aon's London-based Aon Ltd. unit, said that he was "taken aback" at hearing news of the syndicates' U.K. suit and their intention not to pay

Combined's claim.

Mr. Mahoney said in his affidavit that he became involved in discussions relating to Combined's claim at the request of Aon senior management in Chicago. Over the course of numerous conversations with Kiln executives in late October and early November, he was given no reason to believe the syndicates were going to deny coverage, he said.

"In fact, quite the opposite," Mr. Mahoney said, "because all of our discussions had been on friendly terms and had led me to believe that we were on track to resolve any differences there may have been by commercial negotiations, as is the normal course in the London insurance market."

Attorneys for both Combined and the Lloyd's syndicates did not respond to requests for comment.

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This roundup of news from the previous week is generated by *BI's* daily news reporting. To get breaking news as it occurs, log on to www.businessinsurance.com, or sign up online for free *BI Daily News* by e-mail.

Chubb seeking successor to retiring O'Hare

Chubb Corp. Chairman and Chief Executive Officer Dean O'Hare plans to retire within a year. Mr. O'Hare, a 39-year Chubb employee and its CEO for the past 14 years, said the insurer would begin searching for a successor immediately. "I'm turning 60 in June, and I'd like to retire while I'm still healthy and young enough to enjoy it," Mr. O'Hare said. Meanwhile, Chubb's net premium volume rose to \$2.19 billion in the first quarter of 2002, a 26.4% increase over the same period last year, while net income rose 13.3% to \$198.2 million.



Mr. O'Hare

Swiss Re unit completes securitization deal

Swiss Re unit completes securitization deal

Swiss Re Capital Markets Corp., a unit of Swiss Reinsurance Co., has completed a \$40 million transaction using a collateralized debt obligation approach commonly seen in the mortgage markets to transfer a pool of insurance risks.

The insurance risks underlying the deal included industry loss warranties, index-linked insurance contracts for global natural

catastrophe risks. The deal also divided the pool into four tranches of various levels of catastrophe risk to allow some investors to take a higher risk profile at a higher yield than has generally been available with other securitizations.

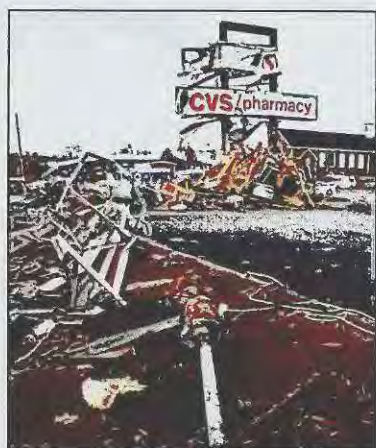


PHOTO: GETTY IMAGES

Storms that pounded parts of the United States caused as much as \$200 million in damages.

Losses from recent storms tallied

Extremely violent weather, including tornadoes, that pounded parts of the United States from the Midwest to Maryland on April 27-May 2 may have caused as much as \$200 million in insured property damage, according to preliminary estimates released by the Property Claim Services unit of the Insurance Services Office Inc. A spokesman for Jersey City, N.J.-based ISO said that its insured loss estimates currently run between \$100 million and \$200 million and could change as the extent of the damage becomes better known.

Generali setting up U.S. life reinsurer

Italian insurer Assicurazioni Generali S.p.A. is setting up a stand-alone U.S. life reinsurer out of the reinsurance operations of its Business Men's Assurance Co. of America unit. In a related move, Generali will sell the remaining operations of BMA—its direct life and mutual fund business—to Royal Bank of Canada for \$220 million. BMA wrote \$200 million in net life reinsurance premiums in 2001. Generali plans to move its current life reinsurance clients to the new company, Generali Reassurance.

Aon profits, revenues rise in quarter

Aon Corp. has reported first-quarter net income of \$104 million, up from profits of \$19 million for the first quarter of 2001. Aon's gross revenues for the quarter were \$2.09 billion, up 15.3% over the year-earlier period. Revenues from brokerage commissions and fees rose 12.7% to \$1.44 billion.

Willis' revenues up 20% in first quarter

New business and rate increases contributed to a 20.3% rise in first-quarter revenues to \$451 million at Willis Group Holdings Ltd. Brokerage revenues, which exclude interest income, were \$436 million, a 21.4% increase over the comparable period in 2001. Net income at the London-based brokerage rose 74.4% to \$68 million.

XL sees rise in revenues, drop in profits

XL Capital Ltd.'s first-quarter profits fell well below last year's level, even as acquisitions boosted XL's revenues for the quarter. The Hamilton, Bermuda-

based insurance group reported net income of \$89.5 million in this year's first quarter, compared with profits of \$218.9 million for the comparable period in 2001. Hampering XL's profits was a \$119.2 million loss on investments and derivatives during this year's first quarter. XL reported \$2.9 billion in gross premiums for the first quarter, an increase of 141.7% over the year-earlier period.

ACE quarterly profits rise nearly 68%

ACE Ltd.'s first-quarter profits rose 67.8%, to \$198 million, in part because of increased underwriting in the hard market, ACE said. ACE's gross premiums in the first quarter were \$3.1 billion, up 22% over the comparable period in 2001.

Briefly noted

Three more states have adopted legislation to bring their laws in line with retirement plan catch-up provisions of a 2001 federal tax law. In recent weeks, Georgia, Kentucky and South Carolina all enacted such conformity legislation....A.M. Best Co. has withdrawn its financial strength rating of California's State Compensation Insurance Fund at the fund's request. On Tuesday, Best downgraded SCIF to B- from B+, citing concerns that SCIF's workers comp premium growth after four

years of operating losses would pressure the fund's capitalization....Factory Mutual Insurance Co., which does business as FM Global, has begun building a new \$70 million research and test facility in West Gloucester, R.I. The facility, which will include a natural-hazards laboratory, should be in operation by late 2003....A ballot initiative has been filed with the office of the Colorado secretary of state to make the Colorado insurance commissioner post an elected position. The initiative would ban insurance industry campaign contributions to commissioner candidates and would limit the commissioner's employment in the industry after completing his or her term of office. The initiative must be signed by 80,571 registered voters to be included on the November 2002 ballot....Near North National Group has named three more members to its new board of directors, bringing the total membership to six. The new board members are: Joe L. Stinnette, the recently retired president and chief executive officer of Fireman's Fund Insurance Co.; Walter B. Stowe, who is director of compliance for Las Vegas-based gaming manufacturing company Konami Gaming Inc. and a former FBI agent; and William C. Bartholomay, president of Near North National Group, chairman of Major League Baseball's Atlanta Braves and vice chairman of Turner Broadcasting System Inc.

Online Poll [4/29 - 5/3]

Should state workers compensation laws be changed to allow same-sex domestic partners to claim spousal death benefits?

Yes

49.4%

No

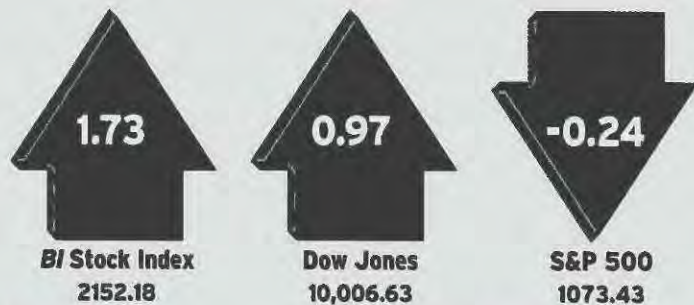
50.6%

Take part in our weekly poll at www.businessinsurance.com

BI Stock Index [4/29 - 5/3]

Up-to-the-minute data for all 87 companies that comprise the BI Stock Index can be found at www.businessinsurance.com

Percentage change of BI Stock Index vs. key indicators



Largest gains

Sierra Health Services	28.76%
Argonaut Group	12.58%
Willis Group Holdings	10.09%
Allmerica Financial Co.	9.04%
Navigators Group	8.34%

Largest losses

Seibels Bruce Group	-34.71%
Vesta Insurance Co.	-21.37%
ACE Ltd.	-12.76%
Trenwick Group Ltd.	-10.15%
Odyssey Re Holdings	-7.59%

Weekly change by market segment

Brokers	2.12%
Insurers/Reinsurers	0.59%
Managed Care Organizations	3.50%

Source: CNET Investor (investor.cnet.com)

Privacy: Rule change urged

Continued from page 3

tant general counsel of the American Insurance Assn., and Eric Oxfeld, the president of UWC Inc., a national business association that lobbies on workers comp and related issues. The letter was signed by both their Washington-based organizations and 58 other employer and insurance industry organizations, including the Risk & Insurance Management Society Inc., the National Assn. of Manufacturers, the National Council of Self-Insurers and the U.S. Chamber of Commerce.

If the proposed rule is adopted without these recommended changes, "it could be disastrous," said Robert Steggert, Washington-based vp-casualty claims for Marriott International; Marriott was a signatory to the letter. "It could drive a wedge between management and labor, driving litigation

and undermining the entire state (workers comp) system," Mr. Steggert said.

Members of the New York-based

'Hopefully, the voice of risk managers and their organizations, as consumers of this important coverage, will be heard by HHS.'

Michael D. Phillipus
Pennzoil-Quaker State Co.

RIMS, another signatory, "are very concerned over the limitations created under the 'minimum necessary' standard on the important, relevant and required information that insurers need to handle workers' compensation claims and effectively manage any associated dis-

ability. This same concern has been raised by members of our society who self-insure their workers compensation exposures," said Michael D. Phillipus, RIMS' vp-external affairs. Mr. Phillipus is the risk manager for Houston-based Pennzoil-Quaker State Co. "Hopefully," he said, "the voice of risk managers and their organizations, as consumers of this important coverage, will be heard by HHS as they consider revisions to the rule."

To bolster its case, the authors describe Hawaii's negative experience with a state privacy law that contained an "unworkable" provision based on physicians' "minimum necessary" disclosures. That law was repealed, Mr. Oxfeld said.

HHS is expected to respond to comments on its latest draft by early autumn, Mr. Wood said. The privacy law is scheduled to go into effect April 14, 2003.

I'm always in the right place at the wrong time.

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