

# Business Insurance

May 8, 2006

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\$5

## Late News

### Mass. lawmakers restore employer health fee

The Massachusetts Senate on Thursday voted to override Gov. Mitt Romney's veto of a provision in a landmark universal health care reform law that would impose an assessment on employers that don't provide health insurance. The provision, vetoed by the governor last month, will require employers with at least 11 employees that do not offer health insurance or make a "fair and reasonable" contribution toward that coverage to pay an annual \$295 per employee fee. The House in April voted to overturn the veto.

### Conn. captive bill runs out of time

A bill to allow the formation of captive insurance companies in Connecticut died Wednesday as the legislative session expired before the state House of Representatives could take up the measure that the Senate had unanimously approved. The bill, S.B. 31, was heavily based on Vermont's captive statute, with the same captive capital and

See **LATE NEWS**/page 43

## Liberty Mutual to fight bid-rigging charges

### Spurns settlement offers from Spitzer, Blumenthal

By **RUPAL PAREKH** and **DOUGLAS McLEOD**

**NEW YORK**—Liberty Mutual Group Inc. is gearing up to battle state officials in court, after attorneys general from New York and Connecticut last week filed separate lawsuits accusing the property/casualty insurer of steering and bid rigging as part of an anti-competitive scheme with insurance brokers.

Liberty Mutual previously had not faced any charges related to state officials' investigations of bid rigging and client steering, though it has been cited in related court filings, and a former Liberty International Underwriters employee last year pleaded guilty to criminal charges stemming

from New York Attorney General Eliot Spitzer's investigation of Marsh & McLennan Cos. Inc. Marsh last year paid \$850 million in client restitution to settle Mr. Spitzer's 2004 suit charging the brokerage with fraud and bid rigging.

And while many of the companies implicated in the broker compensation probe have opted to settle, Liberty Mutual's status as a mutual company may have contributed to its decision to fight the suit in court, observers say.

Liberty Mutual participated in the scheme at Marsh in two ways: allowing the New York-based broker to seek noncompetitive bids for excess casualty business from other insurers when it was the incumbent insurer and providing intention-

ally noncompetitive bids—or declining to bid entirely—when it was not the incumbent, Mr. Spitzer and Connecticut Attorney Richard Blumenthal charge in their suits.

The lawsuits further charge Boston-based Liberty Mutual with engaging in paying brokers contingent commissions to steer business to the highest-paying insurers and entering into so-called "reinsurance tying" arrangements.

"In at least one instance, Liberty Mutual agreed to use a producer for the placement of Liberty Mutual's own reinsurance in exchange for a commitment from the producer to steer

See **LIBERTY** / page 43

## Quake coverage firms in California

### Cat model changes drive rates higher

By **ROBERTO CENICEROS**

The market for commercial earthquake coverage in California is hardening rapidly, with some buyers unable to find adequate capacity and paying more for the coverage that is available.

Driving the drastic change, observers say, are several factors stemming from the re-evaluation of catastrophe exposures following Hurricane Katrina. In addition to prompting changes to cat models generally, the storm losses have caused some rating agencies to modify their assessments of insurers' and reinsurers' exposure to catastrophe losses and have led the companies themselves to reduce that exposure.

Favorable market conditions for buyers started shifting about a month ago, several sources said.

Since then, it has been a challenge to keep up with insurers' pricing changes and capacity restrictions announced daily, said Ronda Whaley, a property broker for wholesaler Brown & Riding in Los Angeles.

"It's rare that a soft market moves so quickly into a hard market like this," Ms. Whaley said.

Cat modeler RMS incorporates lessons from Katrina.

**PAGE 42**

See **QUAKE** / page 42



Northrop Grumman Corp. has lobbied Congress to provide the defense contractor with money to cover Hurricane Katrina losses that are being disputed by its insurer, FM Global.

## Firm seeks federal aid amid Katrina claim suit

By **DOUGLAS McLEOD**

**WASHINGTON**—Northrop Grumman Corp. is asking Congress to advance money to cover some of its more than \$1 billion in Hurricane Katrina-related losses as the defense contractor pursues recoveries from its main property insurer, Factory Mutual Insurance Co.

The Senate last week approved a \$109 billion emergency spending bill that includes a provision intended to help Northrop deal with "business disruption" costs at its shipbuilding facilities in Mississippi and Louisiana.

The provision—added to the bill by Senate Appropriations Committee Chairman Thad

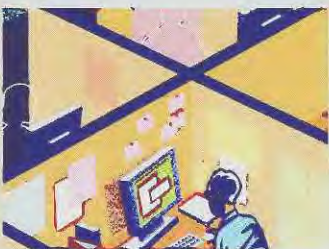
Cochran (R-Miss.)—does not mention Northrop by name, though the defense contractor lobbied for the provision, and does not specify a dollar amount of assistance to be provided. It allows the U.S. Navy, though, to "pay the costs of any business disruption incurred" by ship construction contractors with hurricane-damaged facilities.

Los Angeles-based Northrop would be required under the provision to repay the Navy to the extent that it recovers any of its business interruption losses from insurers.

A Northrop spokesman estimated the

See **NORTHROP** / page 43

## Inside



### FLU FIGHT

Government releases plan to battle pandemics.

**PAGE 3**

### LIMITED LIABILITY

U.K. asbestos ruling favors employers.

**PAGE 3**

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## SPOTLIGHT

### RIMS 2006 TRENDS & DEVELOPMENTS

Adopting enterprise risk management; evolution of risk cultures in Asia; support grows for terrorism coverage backstop.

**PAGE 15**

**AON**

# “HOW CAN WE GET CONTROL OF OUR RISK DATA?”



Kathy Burns is the CEO of Aon's eSolutions Group in Aon Risk Services - Americas. You can reach Kathy at +1.312.381.3092 or [kathleen\\_rn\\_burns@aon.com](mailto:kathleen_rn_burns@aon.com)

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## Inside

### Large companies move away from defined benefit system

Survey finds many employers prefer stability of defined contribution plans. Page 4

### California court dismisses religious rights case

Public employer's ban on proselytizing ruled not to violate employee's rights. Page 4

### Preparation necessary for possible pandemic

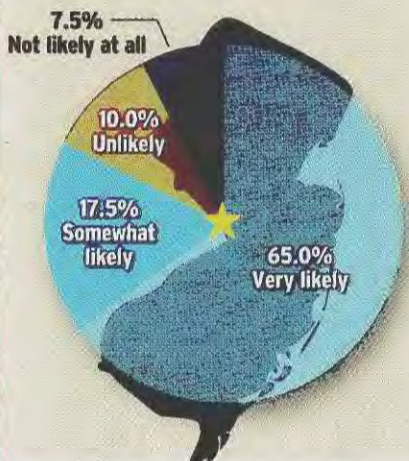
An ounce of preparation is worth a pound of cure, an editorial says. Page 8

### Canadian regulators relax pension funding rules

Experts say more changes needed to regulatory environment. Page 37

### Online poll - [ 5/1 - 5/6 ]

How likely are other states to follow New Jersey's lead in expanding asbestos-related premises liability?



Participate in BI's online polls at [www.businessinsurance.com](http://www.businessinsurance.com).

## Departments

Advertiser Index .....	42
Business Resources .....	30
Commentary .....	36
International .....	37
Opinions .....	8
Product & Services .....	10
Professional MarketPlace .....	38
Ticker .....	43
Paul D. Winston .....	6
World Updates .....	37

### REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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# Government releases pandemic plan

## Employers to play key role in fight against avian flu threat

By MARK A. HOFMANN

**WASHINGTON**—Employers would be among the front line troops under the Bush administration's plan to defend against an influenza epidemic.

The plan, released last week, builds on ideas broached last year by the federal government. It calls on employers to implement such steps as relying more heavily on telecommuting; limiting meetings and having employees stay at least three feet away from each other.

The 200-plus page "Implementation Plan for the National Strategy for Pandemic Influenza" also says that businesses should review and update business continuity plans "as appropriate given the pandemic threat and integrate and coordinate their planning with those on whom they depend for essential services and products, and with those entities that depend on them for essential services and products."

An analysis released last week by Newark, Calif.-based catastrophe modeler Risk Man-



The government's pandemic plan calls for workers to stay at least three feet apart in the event of a flu outbreak.

agement Solutions underscored the potential seriousness of a global flu pandemic, particularly one involving the H5N1 virus associated with avian flu.

The RMS analysis, which was based on a probabilistic model that will be formally unveiled next month, assessed the risk of pandemics across multiple countries and indicated a 20% probability that a future pandemic would be worse than that of 1918, which killed as many as 50 million people worldwide.

The White House report recommends that both private and public entities "plan with the assumption that up to 40% of their staff may be absent for periods of about two weeks at the height of a pandemic wave with lower levels of staff absent for a few weeks on either side of the peak."

According to the report, "over 85% of critical infrastructure is owned and operated by the private sector," which is reason to ap-

See PANDEMIC / page 41

## Mesothelioma liability limited by U.K. court

### Length of exposure to be considered

By SARAH VEYSEY

**LONDON**—The liability of U.K. employers for compensation claims from employees who develop mesothelioma should be based on the length of time they negligently exposed the employees to asbestos, the House of Lords ruled last week.

The ruling by the United Kingdom's highest court will be welcomed by employers that previously could have faced 100% liability for an employee who was exposed to asbestos at multiple employers or during periods of self-employment, especially if one or more of the other employers became insolvent, observers say.

In *Barker vs. Corus U.K. Ltd.*, Sylvia Barker—whose husband, Vernon, died of mesothelioma, a cancer caused by exposure to asbestos—was seeking compensation from her husband's former employer.

London-based Corus—which assumed the liabilities of the dockyard where Mr. Barker formerly worked—argued that it should not have to pay the full £152,000 (\$278,448) compensation awarded to Ms. Barker because her husband had been exposed to asbestos during another job and also during a period of self-employment.

The Law Lords ruled 4 to 1 that the liability of employers be proportional to the period of time they exposed an employee to asbestos, given that it cannot be proved which period of exposure caused the onset of the disease.

The decision clarifies the so-called Fairchild ruling in 2002 (*BI*, July 1, 2002), which found that an employee is entitled to compensation when he or she has been exposed to asbestos at more than one employer and cannot prove

See ASBESTOS / page 39

## Brokerage results stabilize as contingent fees vanish

By SALLY ROBERTS

Financial results from the world's three largest brokerages are beginning to show signs of stability as the absence of contingent commission income plays less and less of a role.

Brokerage revenues for the first quarter of 2006 remained flat at Marsh & McLennan Cos. Inc. and Willis Group Holdings Ltd., while Aon Corp. reported a 2.4% rise.

### First-quarter broker results

Brokerage	Brokerage revenues*	% change from 2005
Marsh & McLennan Cos. Inc.	\$2,625.0	-0.61%
Aon Corp.	\$1,701.0	2.4
Willis Group Holdings Ltd.	\$652.0	0.15

\* Brokerage revenues exclude revenues not related to brokerage and consulting services as well as all corporate and fiduciary investment income. Source: Company filings

Rather than the lack of contingent commission income, though, the brokers point to other negative impacts, such as foreign currency fluctuations and divested businesses, as offsetting new business growth in the quarter. In addition, reinsurance brokerage business took a hit as sharp increases in U.S. property catastrophe rates were offset by higher insurer retentions.

But the effects of industry investigations and the resulting disruption skewed net income comparisons between the latest quarter and the comparable quarter a year ago.

Willis, for example, reported \$140 million in profits for the quarter, up more than 100% over the 2005 period, which was impacted by regulatory and other special charges.

MMC's profits more than tripled in the first quarter, increasing to \$416.0 million, com-

pared with the first quarter of 2005, which included a \$145 million restructuring charge.

And Aon reported a 1% decline in profits for the quarter to \$198 million, reflecting in part \$33 million spent on its restructuring plan in the quarter.

Analysts say the results, which were released last week by the three brokerages, were generally in line with expectations.

Results were "unexciting and predictable," said Gretchen Roetzer, a credit analyst with Fitch Ratings in Chicago said. "From my perspective, that's a good thing."

"With Marsh, you'd like to see it pick up a little bit quicker, but I don't think anyone was expecting miracles. They have a much bigger hole to dig out of," Ms. Roetzer said.

"Organic growth was basically in line with expectations, I think a little lower than some of the more optimistic expectations, particularly at Aon, given the increasing momentum they've talked about over the last couple of quarters," noted Mark Lane, a principal and research analyst with William Blair & Co. in Chicago.

He added, though, that when it comes to organic growth there seems to be a big discrepancy about the flow of business between the three largest brokers.

"Marsh very clearly sent the message that they feel like they've turned the corner," citing improvements in client retention and new business, he said. At the same time, however, "Willis and Aon continue to imply that they're having a very high degree of success in winning new business from their major competitors."

"So it's a little ambiguous," he said.

### MMC

While MMC's brokerage revenues were flat for the quarter, revenues from its risk and insurance services unit declined 6.6% to \$1.47 billion. Marsh Inc. reported a 7% decline in revenues in the quarter to \$1.15 billion, reflecting the jettisoning of unprofitable accounts,

See BROKERS / page 42

# Fortune 100 employers exiting traditional, hybrid pension plans

By JERRY GEISEL

Concerned about financial volatility and legal uncertainties, the nation's largest companies are rapidly moving away from traditional and hybrid defined benefit pension plans in favor of 401(k) and other defined contribution plans, according to a new survey.

Last year, 64% of Fortune 100 companies offered some form of a defined benefit plan to new employees, a sharp decline from 2004, when 75% of large companies offered defined benefit plans to new

employees, Arlington, Va.-based Watson Wyatt Worldwide reported in a survey released last week.

The Watson Wyatt survey, which was based on corporate financial reports and announcements, dramatically illustrates the sea change in pension plan coverage.

In 1985, 89% of the Fortune 100 companies offered a traditional defined benefit plan to new employees, compared with just 37% in 2005.

By contrast, in 1985, just 10% of Fortune 100 companies offered only defined contribution plans to

new employees, compared to 36% in 2005.

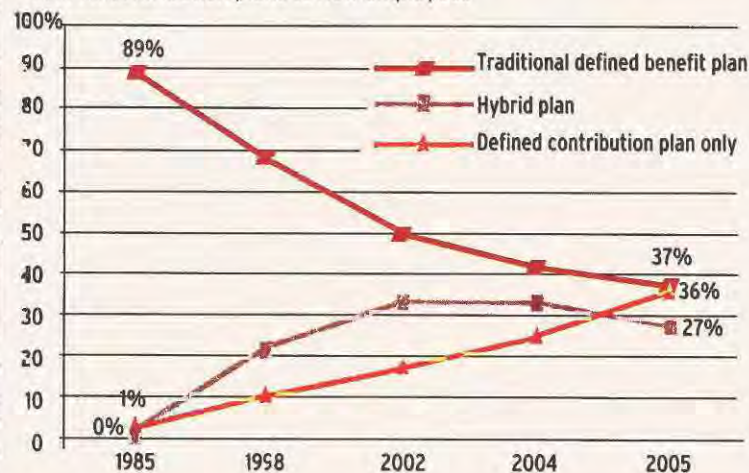
And it isn't just traditional plans that are declining. So are pension hybrids, like cash balance plans, which combine elements of defined benefit and defined contribution plans, but legally are considered defined benefit plans.

Pension hybrids grew rapidly from the late 1980s to the mid-1990s as employers, finding that traditional plans no longer met their or many of their employees'

See SURVEY / page 40

## Traditional, hybrid pensions in decline

Percentage of Fortune 100 companies offering defined benefit and defined contribution plans to new employees



Source: Watson Wyatt Worldwide

## Appeals court outlines an employer's duties in religious bias case

By JUDY GREENWALD

**SAN FRANCISCO**—A public employer appropriately avoided the appearance of endorsing religion and violated neither an employee's First Amendment rights nor his civil rights when it prohibited him from promoting his religion at work, a federal appeals court ruled in dismissing a religious discrimination case.

The Tehama County, Calif., Department of Social Services successfully charted a course between

beliefs "require him to share his faith, when appropriate, and to pray with other Christians," according to the opinion. His job involves helping welfare recipients transition out of the programs.

Mr. Berry filed suit against the department, charging it with violating his rights under the First Amendment and Title VII of the Civil Rights Act of 1964, after he was prohibited from discussing religion with his clients, displaying religious items in his cubicle and using a conference room for prayer meetings.

"The department's concern with an establishment clause violation is well-taken," said the opinion, which upheld a lower court ruling.

"The department's clients seek assistance from Mr. Berry in his capacity as an agent of the state. Accordingly, they may be motivated to seek ways of ingratiating themselves with Mr. Berry.... It follows that any discussion by Mr. Berry of his religion runs a real danger of entangling the department with religion. This danger is heightened by Mr. Berry's admission that unless restricted, he will share his faith with others and pray with them," said the opinion.

The department was also reasonable in prohibiting Mr. Berry from displaying a "Happy Birthday Jesus" sign in his cubicle, or from placing a Bible on his desk. "Mr. Berry is not deprived of his Bible," said the opinion. "He may keep it in his desk drawer and may read it whenever he does not have a client with him in his cubicle."

However, "Displaying the Bible implicitly endorses a religious message, and it is precisely that

### Steps to avoid bias

The 9th U.S. Circuit Court of Appeals ruled that a California employer could bar an employee from:

- Discussing religion with clients
- Displaying religious items in an office cubicle
- Using a conference room for prayer meetings.

respecting its employee's right to the free exercise of religion and not violating the establishment clause in the First Amendment to the U.S. Constitution, which prohibits government from establishing a religion, according to a unanimous three-judge panel of the 9th U.S. Circuit Court of Appeals in its May 1 decision in *Berry vs. Department of Social Services*.

A defense attorney in the case says the opinion is one of the few to clearly delineate the discretion of government agencies regarding restrictions on employees' religious expression.

The case was filed by Daniel M. Berry, who describes himself as an evangelical Christian whose be-

See SUIT / page 40

## Judge restrains R.I. governor from firing insurer's execs

**PROVIDENCE, R.I.**—A Rhode Island Superior Court judge last Thursday issued a temporary restraining order, hampering Gov. Donald L. Carcieri's efforts to fire two members of the Beacon Mutual Insurance Co. board.

On April 20, the governor had termination letters delivered to Beacon board members George Nee and Henry Boeniger. The attempted firings followed an April 10 audit report commissioned by the insurer that found several improper business practices, which included providing favorable pricing for companies owned by board members.

But Judge Steven Fortunato issued the restraining order delaying the governor's action. The judge scheduled a May 12 hearing on the matter.

The governor, in a statement, said the restraining order puts Beacon's future on hold just when he

was attempting to reconstitute the nine-member board so the insurer could move forward untainted by its past.

"The decision is bad news for Beacon Mutual, its policyholders and the people of Rhode Island," the governor said.

Beacon is Rhode Island's largest workers compensation insurer, created by state legislators in 1991. Four of its members are appointed by the governor, who says the insurer's bylaws permit him to remove for cause board members appointed by his office.

Among other problems, the 116-page audit report found that a business owned by a board member misclassified its payroll. The business therefore received preferential pricing for insurance despite an unfavorable loss history.

It was also widely known within Beacon the report states, that a

company owned by a former board member denied premium auditors access to his company's payroll records, resulting in low premiums. Additionally, favored agents were paid more than their contracts called for, according to the report.

The governor has stated that Messrs. Nee and Boeniger presided over the mismanagement of Beacon Mutual for more than a decade and were either complicit or incompetent for not discovering the mismanagement.

But Messrs. Nee and Boeniger are attempting to stay on the board. An attorney representing both men could not be reached for comment.

In a related matter, the insurer late last month turned over 19 computer hard drives to investigators at the Rhode Island Department of Business Regulation, a company spokesman said.

—By Roberto Cenicerros

## Vote your choice for best companies

What companies are the best in the industry? Who's tops in terms of service, value, reputation and innovation? If you read *Business Insurance*, we want to know what you think.

With our second annual Readers Choice Awards, *Business Insurance* will let our readers again choose the top industry companies in 11 different categories relating to risk management and employee benefits. The winners will be announced and profiled in the Aug. 21 issue.

The categories are:

- Best overall commercial lines retail insurance brokerage.
- Best overall commercial property/casualty insurer.
- Best employee benefit consulting firm
- Best managed health care organization.
- Best property/casualty reinsurer.
- Best reinsurance intermediary.
- Best surplus lines insurance



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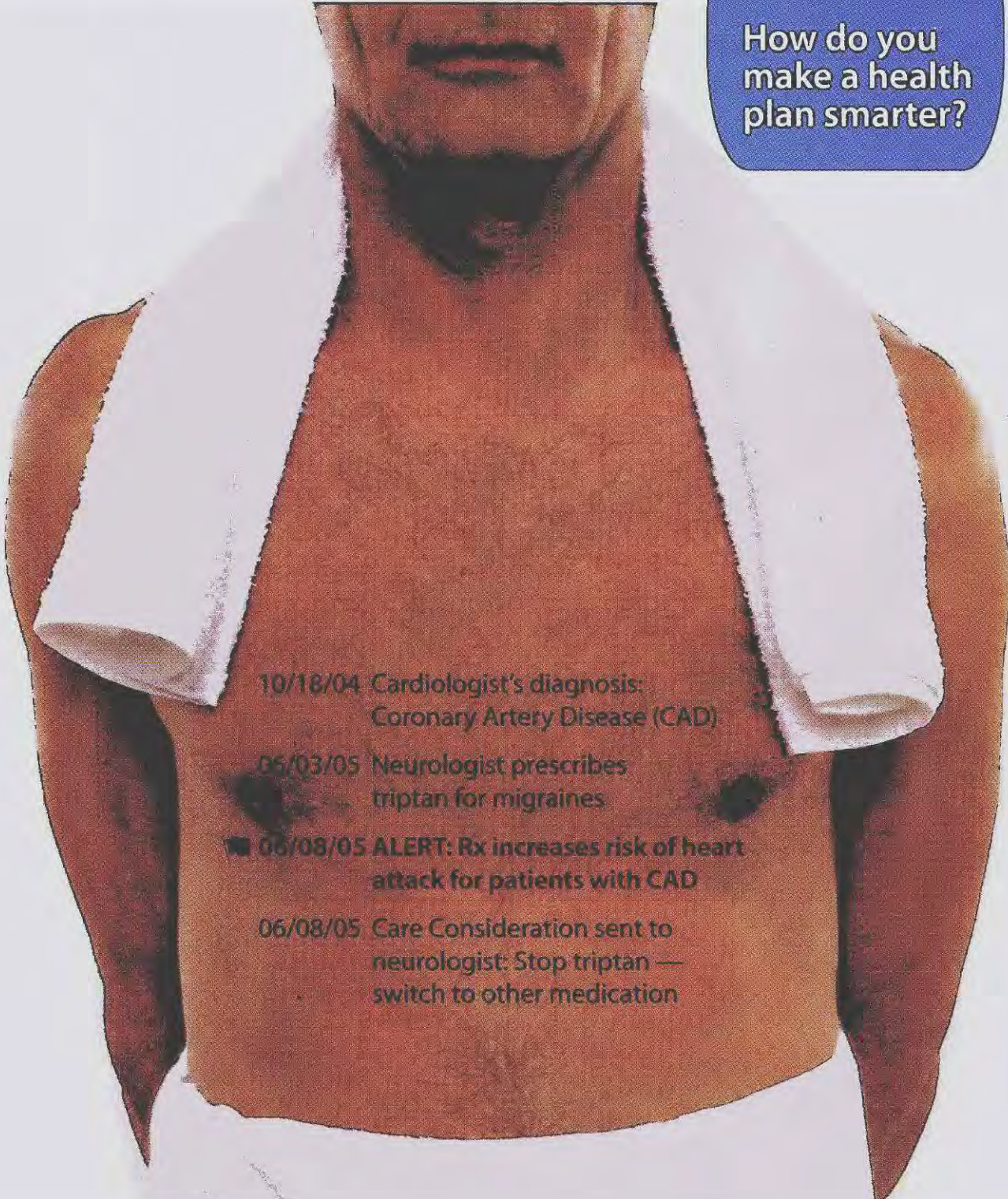
- Best insurance wholesaler.
- Best risk management consulting firm.
- Best employee assistance program provider.
- Best third-party claims administrator.

The 2005 Readers Choice winners were identified through confidential balloting by subscribers of the magazine. While *Business Insur-*

ance provided alphabetical lists of the 10 largest companies in each category for convenience, voters were able to write in candidates if their top choice was not on the lists. Companies receiving the highest vote totals were declared the winners in each category, and profiles appeared in the Oct. 10, 2005, issue.

This year, voters will have the opportunity to explain why they consider a company to be the best in its field. Voting for the 2006 Readers Choice Awards will again be confidential but must be completed by the end of Friday, July 27.

To see a list of the 2005 winners and cast your vote this year, please visit [www.BusinessInsurance.com/ReaderAwards](http://www.BusinessInsurance.com/ReaderAwards), where registered subscribers also have access to a wealth of daily news and resources from the leading weekly magazine covering risk management, insurance and employee benefits.



How do you  
make a health  
plan smarter?

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Coronary Artery Disease (CAD)

05/03/05 Neurologist prescribes  
triptan for migraines

06/08/05 ALERT: Rx increases risk of heart  
attack for patients with CAD

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**PAUL WINSTON**

Associate Publisher and Editorial Director

## Sports anguish cover potential unlimited

Throughout the insurance industry there are signs of creative new coverage solutions for unusual and challenging risks.

Like you, the marketing gnomes of the Republic of Winstonia are always on the lookout for a new opportunity to make money from...I mean to serve...the risk managers of the world.

Several new coverages recently have captured the imagination:

- ACE USA last month launched a new package policy for companies conducting clinical trials overseas of drugs, biotechnology or noninvasive medical procedures, in response to the trend of U.S. companies to use foreign patients for such tests rather than litigation-happy Americans.

The timing is auspicious, given that in March, several British men were hospitalized with multiple-organ failure after using an experimental drug produced by TeGenero A.G. of Germany for treating arthritis, leukemia and multiple sclerosis. That trial was halted and the drug and testing procedure are under investigation.

- Also in April, a policy providing contagion insurance was unveiled by a U.K. unit of Markel International. The policy, which was launched in Canada, provides business interruption coverage for losses arising from an avian flu outbreak.

Given that Canadian tourism and commerce were hard-hit by disruptions stemming from SARS fears in 2003, this is a niche product that might spread wings. If successful, no doubt the coverage will migrate to Western Europe and other regions that are more immediately at risk of avian flu than Canada.

- And just last week it was announced that a long-suffering English soccer fan has purchased a £1 million policy covering the risk of mental anguish should England be prematurely eliminated from this summer's World Cup.

The policy, which cost £100, plus a 5% tax, will be triggered if England is knocked out in the early rounds and a panel of sports experts deems the team's exit from the World Cup competition "premature." Plus, the fan must provide medical evidence of mental anguish. Tear-soaked pint glasses will not suffice.

It's a fascinating and innovat-

ing policy and in this line, more than the others, Winstonia smells an opportunity.

After all, clinical trials are fairly specialized, infrequent and the fact that most drugs carry some side effects that could give rise to a claim make it unlikely Winstonia could compete with ACE on this coverage.

And while an avian flu pandemic is terrible to contemplate, for the moment the risk to humans and therefore human activity is fairly isolated, meaning that take-up of the policy could be slow for some time. Let Markel test these waters for a bit on its own.

But the risk of mental anguish over the fortunes of favorite sports teams? Wow. This risk is nearly universal, meaning demand for this coverage could be enormous.

It should be noted that the domicile of Winstonia is located about a dozen miles from the friendly confines of Wrigley Field in Chicago, where the sports team with perhaps the greatest number and longest-suffering fans of any sport wring their hands, gnash their teeth and weep uncontrollably. Yes, I believe that such a policy offered to mentally anguished Cubs fans alone could generate billions of dollars in premium—in perpetuity. Of course there would be an exclusion for any loss deemed—by a panel of experts at the Billy Goat Tavern—to be the result of a curse on the team.

While Cubs fans will be a perennial money maker for this coverage, it could also be marketed effectively to baseball fans in Boston and Toronto for decades.

The gnomes of Winstonia are positively drooling at the potential.

Best to act now, while the market is ripe. After all, while Winstonia and its brethren in the insurance industry are certainly capable of creative underwriting, these bursts of innovation only occur when cash is flush and companies are looking for new ways to boost flagging premiums while prices soften for more routine property and casualty policies.

But wait! Maybe when the market hardens again, Winstonia can offer coverage for the mental anguish that will ensue when prices rise and capacity dwindles. The gnomes are smiling.

Associate Publisher and Editorial Director Paul Winston's commentary appears fortnightly. He can be reached at [pwinston@businessinsurance.com](mailto:pwinston@businessinsurance.com).



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## Editorial

# Congressional action needed to save defined benefit system

WHILE NOT a surprise, a new survey dramatically illustrates the decline of the once robust employer-sponsored defined benefit pension plan system.

Just two decades ago, it was almost a given that a large corporation offered a traditional pension plan to employees.

As we report on page 4, nearly nine out of 10 of Fortune 100 companies in 1985 offered a traditional plan to new employees, according to a survey by Watson Wyatt Worldwide.

It was at about that time, though, that employers, aware of how their workforces were changing, began questioning whether traditional plans still made sense for them and their employees.

With employee tenure decreasing, more employers realized that pension plan designs that paid hefty benefits to long-service employees and very little to shorter-service employees were out-dated.

Out of that recognition arose new designs, such as cash balance plans, which paid more benefits to shorter-service employees and less to longer-service workers compared with traditional plans.

Such plans proliferated in the mid- to late 1990s as hundreds of employers converted traditional plans to cash balance and other hybrids.

But now both traditional and hybrid plans are in free fall. In 2002, half of the Fortune 100 offered traditional plans to new employees; last year only 37 did, while in the same

period of time, the number of big companies offering hybrids to new employees declined to 27 from 33.

Some of the reason for the decline goes beyond plan design issues. More companies, rightly or wrongly, just don't want the exposure to contribution volatility that is part and parcel of any defined benefit plan. More companies prefer the cost predictability of defined contribution plans.

But the decline of defined benefit plans goes, we think, beyond changing corporate tolerance of risk. A good part of the blame belongs to federal legislators.

Congress, for example, has yet to resolve the cash balance plan issue. The first such plan appeared more than 20 years ago, yet legislators have not provided definitive guidance on the legality of their basic design. The trial bar, not surprisingly, has taken advantage of that vacuum, and has filed a barrage of lawsuits against employers, charging that the plans are age discriminatory.

Fearful of litigation and possible damages and tired of waiting for Congress to provide guidance, a growing number of employers are phasing out these plans.

Certainly, it is not too late to save the defined benefit plan system. Fair, reasonable and definitive rules from Congress for cash balance plans would be a good start, as would a final agreement on pension funding rules. But legislators had better move fast or soon there won't be much left to save.

# Preparation can ease pandemic

THE ADAGE that an ounce of prevention is worth a pound of cure should easily be edited to read that an ounce of preparation is worth a pound of cure where the possibility of a pandemic is involved.

After all, during a pandemic, cure is hard to come by. Vaccines for new viruses can't be crafted overnight.

Fortunately, there are steps that employers can take to prepare for the next pandemic, which are outlined in a newly released federal plan for implementing a national strategy to deal with an influenza pandemic. Not surprisingly, the report stresses the role of the private sector in meeting the challenge of a pandemic, and sections of the plan should be of great interest to risk managers, benefit managers and human resources managers alike.

Some of the recommendations literally involve an ounce or less of matter or effort. Making sure soap and water are available for employees to wash their hands and having plans in place for telecommuting shouldn't be big deals.

Reviewing and updating a business continuity plan should be part of the response strategy as well, as both the government and sound risk management practice urge. Life is full of uncertainties, and how and when a pandemic will strike is one of them.

What is not uncertain is that someday, whether the current strain of avian flu is involved or not, a pandemic will strike the nation's workplaces. Taking the time to prepare for it now is not time wasted, but rather time put to among the best of possible uses.

## Schillerstrom



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

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**Runoffs/receiverships:** Douglas McLeod.  
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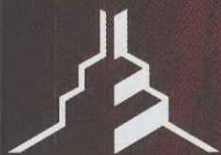


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## PRODUCTS & SERVICES

Continued from page 10

The OCP 5.0 enhancements are designed to help risk managers better manage their loss costs programs in a global environment. Some of the features include claim search options based on the organization description, organization code and claim status; customizable claim and legal alerts; and new reports that assist in tracking trends, among others features.

For more information, visit the company's Web site at [www.cambridgesolutionsita.com](http://www.cambridgesolutionsita.com).

### Lighthouse adds products to elder care program

**ANNANDALE, Va.**—Lighthouse Underwriters, a program underwriting division of U.S. Risk Insurance Group, has added four products to its ElderCare insurance program.

The additions include coverage for free-standing adult day care centers, free-standing and facility-based providers, hospice service providers and residential developmentally disabled care providers. The program is designed specifically for



independent living, assisted living, skilled care and nursing homes and continuing care retirement communities.

For more information, visit the company's Web site at [www.lighthouseunderwriters.com](http://www.lighthouseunderwriters.com).

### CSC releases enhanced RMIS

**EL SEGUNDO, Calif.**—Computer Sciences Corp. has released a new version of its claims and risk management information system, RISKMASTER.

The latest edition, RISKMASTER X, is designed to streamline workflow and case management for users. It also features new architecture and a Web portal model for the self-insured marketplace. The Web portal provides centralized access online for all claims-related functions.

To obtain more information, visit [www.csc.com](http://www.csc.com).

### Betterley publishes intellectual property report

**STERLING, Mass.**—Betterley Risk Consultants Inc. has published its 2006 evaluation of intellectual property insurance products.

The "Intellectual Property Insurance Market Survey 2006" reviews intellectual property insurance coverages and services, including first- and third-party coverage and enforcement and defense coverages. Some of the topics discussed include target markets, coverage terms and exclusions and capacity and retentions.

The report can be obtained by contacting the company at 877-422-3366 or by visiting [www.betterley.com](http://www.betterley.com). A free executive summary can be accessed at [www.betterley.com/products.html](http://www.betterley.com/products.html).



### HR Classroom adds employee training module

**DES MOINES, Iowa**—HR Classroom, a provider of online compliance training by Curtis Communications Inc., has enhanced its training offering.

The enhancement includes the addition of the Personal Protective Equipment module, which covers hazard assessment, equipment selection and the primary types of personal protective equipment—such as eye, face, hearing and respiratory protection. The offering is designed to help employers train key personnel on how to protect themselves in hazardous work environments.

For more information, contact Jeff Dickey-Chasins, director of sales and marketing for Curtis Communications at [info@hrclassroom.com](mailto:info@hrclassroom.com). More information can also be obtained by visiting [www.hrclassroom.com](http://www.hrclassroom.com).



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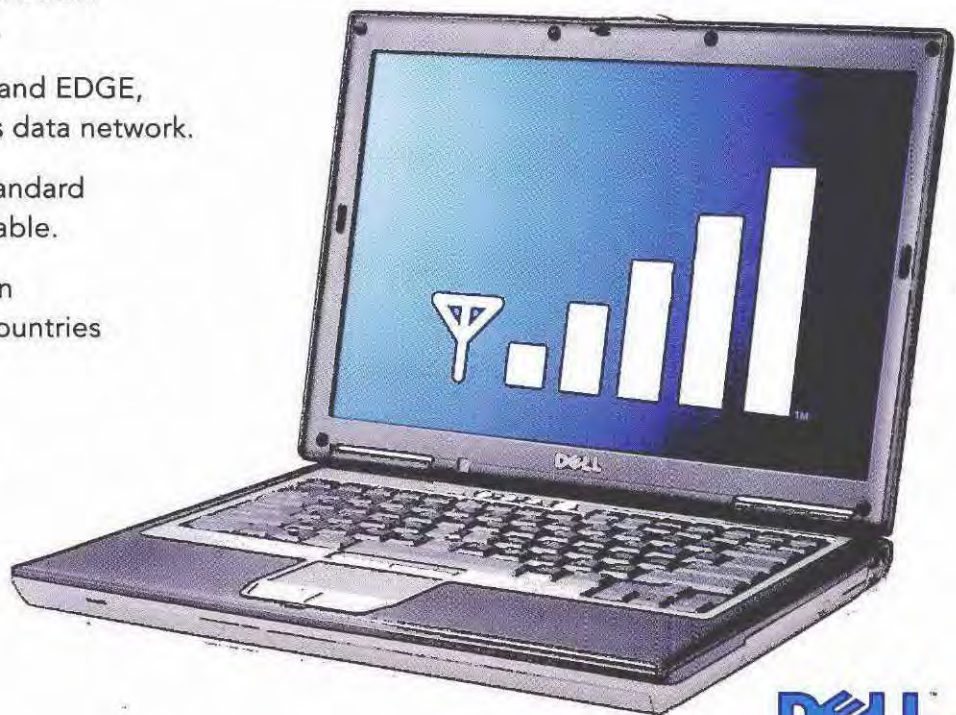
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# Spotlight

## RIMS 2006 TRENDS & DEVELOPMENTS

Legwork needed  
to choose TPA / 30

Strategies for dealing  
with network risks / 32

Baseball hits home run  
with comp plan / 34

Hawaii assembles  
tsunami plan / 36

## No two approaches to ERM the same Practitioners target all, or select number of risks

By **DAVE LENCKUS**

**HONOLULU**—If there were a dictionary entry for “enterprise risk management,” it would need nearly as many definitions as there are practitioners.

Some organizations have turned to ERM to help control all corporate risks—hazard, operational, compliance, financial and strategic—on a consistent basis.

At others, management is counting on ERM to help better control a select number of risks.

Rather than mitigate risk, some organizations have turned to ERM to help pinpoint where they can afford to take on more risk that holds

a reasonable promise of generating additional profit.

And no one is implementing the process the same way, risk managers and consultants say. Some are not even calling it ERM, they say.

“I haven’t see two companies yet that have the same ERM approach,” said Chris Duncan, a managing director with Marsh Inc. in Atlanta and the former chief risk officer for Delta Air Lines Inc. and director of risk management for Frito-Lay Inc.

There are a couple reasons for that.

One is that the portfolio of risk from organization to organization varies, as does the gap between risk and an organization’s ability to

Defining ERM / 16

ERM success stories / 18

manage it, Mr. Duncan said.

The other reason is that, although some observers assert that ERM has been around in some form since the 1980s, the process has not matured and continues to evolve.

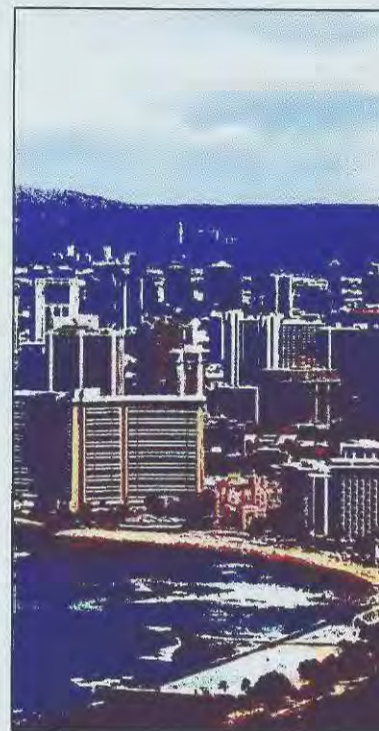
“This is going to be evolutionary” for some time, predicted Michelle N. Fincher, a Whitehouse Station, N.J.-based senior vp and the worldwide risk management practice leader at Chubb & Son, a Chubb Corp. unit. Many risk managers are

not disclosing how far along they are because of their uncertainty about their efforts, and that prevents risk managers from benchmarking and adopting best practices, Ms. Fincher said.

Regardless of how it is implemented or what it is called, ERM would be valuable for organizations of all types and sizes for a few reasons, according to not only those who have implemented it but also the independent consultants, brokers and insurers who advise them.

Consultants, though, like to define the process broadly as the proactive and consistent measure-

See ERM / next page



## Risk management evolving in Asia Risk attitudes mirror cultures

By **MICHAEL BRADFORD**

**HONOLULU**—Risk management in Asia is being shaped by the exposures in a global marketplace and the influence of companies in nations where the discipline was developed.

While many foreign multinationals in Asian countries have long practiced a sophisticated

More in Japan  
buying earthquake  
coverage / 26

brand of loss control to protect their assets, the evolution of risk management for local companies has begun to speed up only in recent years.

Domestic companies in Asia have come to see the value of risk management as their operations have grown beyond their countries’ borders and exposed them to new risks in an international market. Many are adopting the

risk management techniques introduced to them by trading partners in the United States and Europe, experts point out.

How deeply risk management is rooted in Asia depends on where its seeds were planted.

Much of the attitude a company takes toward risk mirrors the way society as a whole views it, “which can be quite different than in the U.S.,” said Ruth Taplin, London-based director of the Center for Japanese & East Asia Studies. “The Japanese have traditionally been risk averse,” Ms. Taplin said, while “Koreans take risks readily, and the Chinese are somewhere in between.”

“You do have to differentiate from country to country,” said Ray Mattholie, group risk manager with Jardine Matheson Ltd. in Hong Kong. Singapore, Taiwan and Japan are among the countries where a sophisticated approach to risk management is likely to be found, he noted.

See ASIA / page 28

## Solution sought to terror risks Risk managers see need for government involvement

By **GLORIA GONZALEZ**

**HONOLULU**—A practical, long-term solution to handling terrorism risks must include continued federal government involvement in any type of reinsurance program, risk managers say.

While the exact form of that involvement may not need to mirror the current backstop under the Terrorism Risk Insurance Extension Act of 2005, terrorism is not a risk that the private insurance market can effectively handle on its own, they say.

For most risk managers, the priority is to have a workable solution in place before the expiration of TRIEA so that they can avoid the same market uncertainty they encountered during last year’s protracted debate on the renewal of the original measure, the Terrorism Risk Insurance Act of 2002.

If a permanent solution is not in place prior to expiration, insurers will have little or no appetite for terrorism coverage for workers compensation and property exposures, said several risk managers gathered at the Risk & Insurance Management Society Inc.’s annual conference in Honolulu last month.

“With the renewal of TRIA, we have a market that is flowing well,” said Janice Ochenkowski, director of global risk management for Jones Lang LaSalle Inc. in Chicago and treasurer of New York-based RIMS.

TRIA has served its purpose, by helping to stabilize a terrorism insurance market that was characterized by limited capacity and unaffordable pricing before the passage of the measure, risk managers say.

“Without TRIA, there are many workers comp carriers that will just perceive the risk as too great to write that business,” said Michael Fenlon, director of external affairs for RIMS. “I don’t have a crystal ball, but I’m really concerned that coverage may not be available to some of those large employers that need it. I think it would also be a problem for small employers.”

“There will not be a market for coverage on the property side in my opinion,” added Mr. Fenlon, who is also the risk manager for the United Parcel Service Inc. in Atlanta. “Companies can be self-insured, but that means they’re exposed. If there’s an event, it could put a company out of business.”

Terry Fleming, director of the division of risk management for

Montgomery County, Md., said he buys TRIA coverage for his \$4.5 billion in property assets in the Washington area, but self-insures his workers comp risk—a major exposure for his organization, which has 50,000 employees. “I’m hoping that the extension or a permanent solution will allow me to get some excess workers comp coverage and get that exposure off the table for me,” he said.

Risk managers got a glimpse of the market reaction to a world without TRIA last year. Mr. Fleming noted that his property terrorism insurer had a clause in its contract stating that if TRIA was not extended, it would not guarantee that it would offer the coverage, an issue many of his fellow risk managers encountered. “That’s a significant problem for anybody with a large property portfolio like we have,” he said.

Michael Liebowitz, director, risk management, for Bridgeport Hospital & Healthcare Services Inc. in Bridgeport, Conn., and president of RIMS, said he buys TRIA-supported coverage on some lines where it’s offered, but some insurers said that

See TRIA / page 24

Coming May 22: Risk Management Technology & Online Solutions

## ERM: No two companies approach enterprise risk management the same way

Continued from previous page

ment and the strategic management of all risks that organizations face.

"How that's interpreted and done from one organization to another may be less important than it is being done and that decision makers and stakeholders are getting important information to make decisions," said Charles R. Lee, a managing principal in Dallas for Towers Perrin.

Stakeholders, including shareholders, rating agencies and securities regulators, "expect that kind of thing," Mr. Lee said. "Certainly, Sar-

banes-Oxley is demanding that as well," he said, referring to the 2002 federal corporate financial responsibility law that was enacted in the wake of a series of corporate failures that unveiled widespread accounting fraud.

Not only the promise of "knowledge management" but also a consistent approach to managing risk is a key promise of ERM, Mr. Lee said.

"The frustrating thing for many of those decision-makers is that risk has been managed in disparate ways," Mr. Lee said.

Observers blame that on the silo mentality in corporations. If imple-

mented properly, ERM builds bridges among those silos, experts say.

Managers of property, finance, interest rate and commodity risks, for example, "don't want to be the reasons the CEO is surprised," Mr. Lee said. "So without a consistent platform for measuring risk, the silo manager typically tends to be more conservative than need be. The problem is they're overmanaging and overprotecting risk," rather than managing risk globally and strategically, and the organization suffers financially as a result, he said.

On top of that, organizations in recent years have been hit with an array of emerging risks, including terrorism, pandemics, spiking oil prices and regulators who are far more aggressive, experts note. Because of their potential material financial impact, all of those risks must be managed strategically through the ERM process, observers assert.

A recent survey of risk managers suggests that those risks—in combination—are fueling the adoption of ERM, according to representatives for Marsh and the Risk & Insurance Management Society Inc., which

sponsored the survey (BI, April 24). "The message I'm seeing here is no one risk is driving the continuum" of the profession from traditional to strategic risk management, said Jackie Hair, a RIMS board director and the corporate director of risk management for Ingram Micro Inc. of Santa Ana, Calif.

Still, from one organization to another, what is called ERM, or passes for the process without the official tagline, varies as much as those organizations' cultures and management styles.

At Atlanta-based First Data Corp., a leading credit card transaction company, one of the two key areas where management is using ERM is in integrating mergers and acquisitions, according to Mike Eremchuk, vp-risk, control and audit. The other area is strategic planning.

Cisco Systems of San Jose, Calif., does not use ERM so much to help

See ERM / page 18

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## Different views of ERM

Every organization that implements enterprise risk management defines the process and implements it differently, ERM experts say.

But consultants tend to define ERM broadly.

For example, Bruce Kaechele, president and chief executive officer of San Diego-based Advanced Risk Systems, which offers a suite of ERM tools, prefers the definition developed by ERM expert James Lam. Mr. Lam, who runs his own ERM consulting practice, Wellesley, Mass.-based James Lam & Associates, previously served as the chief risk officer for mutual fund giant Fidelity Investments and for FGIC Capital Markets Services Inc., a GE Capital Corp. subsidiary.

Mr. Lam views ERM as the integrated management of business risk, or the risk of inadequate cash flow; operational risk, or the risk of loss due to external events or poor internal processes, people or systems; and risk transfer. That single view of risk allows executive management to strategically deal with those risks in a way that optimizes the organization's performance, according to Mr. Lam.

John R. Billingham, a vp with Merit Risk Services Inc. in Frisco, Texas, and a loss consultant for the city of Plano, Texas, contrasts ERM to traditional risk management. Unlike traditional risk management, ERM is proactive, holistic and requires lateral communication across corporate silos, he said. It is financially focused, extensively reported, internally audited and intensively benchmarked, he said.

# HIGHLIGHTS FROM 2006

# Risk Manager OF THE YEAR™

# Risk Management HONOR ROLL™

On April 25th at the Halekulani Hotel in Oahu, Hawaii, *Business Insurance* presented its prestigious Risk Manager of the Year™ and Risk Management Honor Roll™ awards. Leaders in the risk management community, including many past recipients of the industry's top awards and past RIMS presidents, gathered to honor this year's winners.



The 2006 Risk Manager of the Year™, Debra Griffith, Boy Scouts of America (center) with 2006 Risk Management Honor Roll™ winners Dennis Bennice, Dana Corp. (left) and Ryan Brown, Raben Tire Co., Inc.

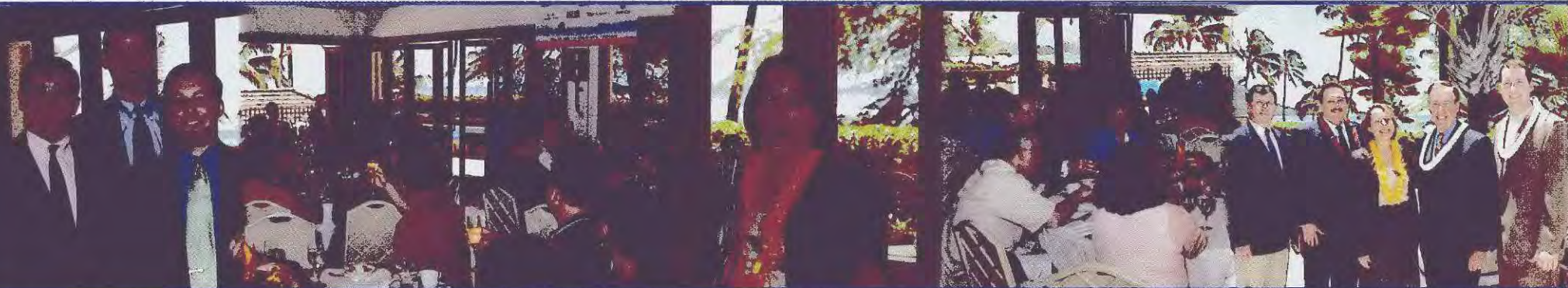


Jeff Jones, CMO, USI Holdings Corporation welcomes guests and honorees.

Gerry Alonso, Sr. VP Claims, FM Global; Sarah German, VP Marketing, XL Insurance; John Kelm, Head of Global Corporate, Zurich; Martin J. Ross, VP, Publisher, *Business Insurance*; Jeff Jones, CMO, USI Holdings Corp.; Debra Griffith, Boy Scouts of America; Joe Boures, President, SRS Specialty Risk Services, LLC; Dennis Bennice, Dana Corp.; Ryan Brown, Raben Tire Co. Inc.; John Dempsey, Managing Partner, Dempsey, Myers & Co. LLP; Neil Wernick, Sr. VP Marketing & Communications, XL Insurance; Regis Coccia, Editor, *Business Insurance*; John S. Edack, Executive VP Western Region, Arch Insurance Group.

Martin J. Ross, VP & Publisher, *Business Insurance*, addresses attendees.

Neil Wernick, Sr. VP Marketing & Communications, and Sarah German, VP Marketing, XL Insurance; Gerry Alonso, Sr. VP Claims, FM Global; Martin J. Ross, Publisher, *Business Insurance*; John S. Edack, Executive VP, Western Region, Arch Insurance Group; John Kelm, Head of Global Corporate, Zurich.



Martin J. Ross, VP & Publisher, Paul Winston, Associate Publisher & Editorial Director, and Regis Coccia, Editor, *Business Insurance*, join guests and Awards Luncheon sponsors on the Hau Terrace in a salute to this year's honorees.

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## ERM: Adopting approach benefits companies on different levels

Continued from page 16

it mitigate risks, said Christina S. Kite, senior director, global risk management. Instead, ERM spotlights where the company is not taking enough strategic risk and is therefore missing some earnings opportunities, she said.

The risk manager for Naples, Fla.-based Health Management Associates Inc., which operates hospitals in small towns and rural locations across the South, defines ERM much more narrowly for the organization. To protect its hospitals' reputations as well as their bottom lines, HMA focuses its ERM efforts on strategi-

cally managing litigation, according to Andrew H. Bate, senior director of risk management and counsel for the company.

Meanwhile, at some organizations, ERM is informal and is not implemented as a unique process, Marsh's Mr. Duncan said.

But even though ERM proponents say any attempt at implementing the process is necessary and would be worthwhile, they also expect that some organizations and risk managers will not embrace the process.

For example, Mr. Duncan said: "Some companies may have simple

loss portfolios. Some could be happy doing traditional risk management."

Public entities, in general, will adopt only a hybrid of ERM and traditional risk management because there is "no impetus for them to subject themselves" to the long and slow ERM process for all risks, predicted John R. Billingham, a vp with Merit Risk Services Inc. in Frisco, Texas, and a loss consultant for the city of Plano, Texas. However, new government accounting standards on recognizing pension liabilities might push some municipalities toward ERM, Mr. Billingham said.

Other financial risks also should compel public entities to adopt ERM, said Richard G.M. Marko, a senior vp in the national market administration at Boston-based Liberty Mutual Group. For example, Orange County, Calif., might have been able to avoid the huge investment losses it suffered several years ago if it had had an effective ERM program, Mr. Marko said.

And while ERM can benefit privately held as well as publicly traded companies, they may not adopt the process if they expect that the costs would outweigh the benefits, he said.

## Industries continue to apply ERM plans successfully

By DAVE LENCKUS

Even though risk managers and consultants concur that enterprise risk management is evolving and likely will continue to for awhile, success stories are emerging from organizations that have embraced the process.

And those stories are seen industrywide. While the financial services industry was the first to seriously adopt ERM, organizations in other industries also are adopting the process.

That is happening in large measure because of a series of emerging risks in recent years and the requirements of the Sarbanes-Oxley Act, which raises transparency and accountability standards for publicly held corporations, according to consultants, brokers and insurers who are providing organizations ERM advice.

But, risk managers assert that the process also is invaluable in their organizations' strategic planning.

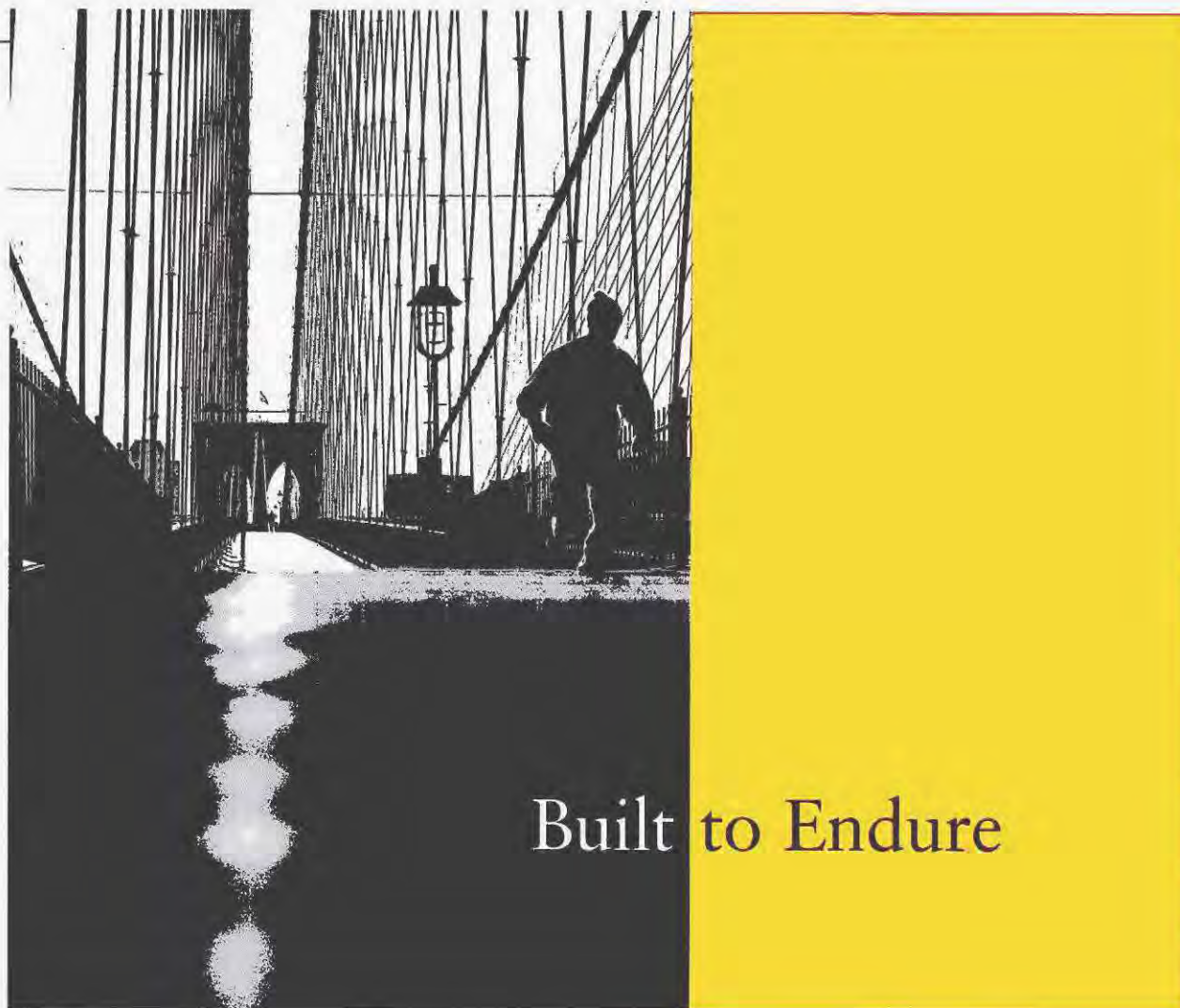
In practice, ERM is different and is uniquely applied at every organization, according to risk managers and consultants.

For example, credit card transaction vendor First Data Corp. of Atlanta is using ERM to help the company improve the integration of its mergers and acquisitions and to bolster its strategic planning, noted Mike Eremchuk, vp-risk, control and audit.

M&A transactions are an important area for First Data because they fuel revenue growth for the company, Mr. Eremchuk said during a session at the Risk & Insurance Management Society Inc. conference last month. First Data has not done well in achieving its pre-acquisition goals, has used an immature integration process and has not recognized foreseeable "value-killers" in the transactions, Mr. Eremchuk said.

Under the ERM process the company built over the past four years, all employees understand the company's objectives, and they have the capabilities to identify and assess risks, define risk thresholds and determine how to handle risk, according to Mr. Eremchuk. Along with that greater awareness, employees assumed greater accountability, he said.

Among the important steps along the way for the company were building risk assessments into M&A transactions and rechanneling corporate audit functions and making the corporate audit depart-



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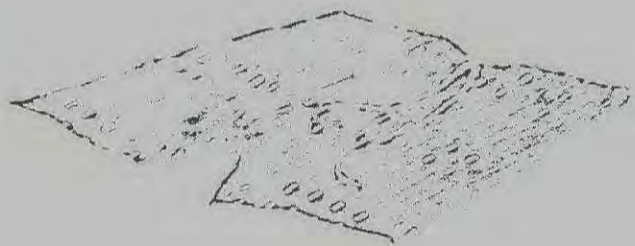
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## Success: Implementing ERM methods resolve companies' risk management

Continued from page 18

ment responsible for corporate risk, control and audit. The realigned department has completed comprehensive risk assessments of First Data's business segments and strategic plans.

The process highlighted some systemic problems for First Data that became evident as the company was integrating an acquisition that brought along some credit risk through its customer contracts.

A notable problem was that control processes were taking a life of their own. Even though First Data had rated the acquisition's credit

losses as a low priority, the company devoted significant resources to mitigating the credit risk. That effort alienated the acquisition's sales force, which First Data had rated as a high priority to keep intact to prevent customer attrition, noted Mr. Eremchuk and Walter N. Coleman, senior vp-risk, control and audit.

"We took big-company thinking and put it in an entrepreneurial scenario," which did not work, he said. "We eventually rectified it, but we tried real hard to kill it."

Whirlpool Corp. of Benton Harbor, Mich., has used ERM for two years to "embed risk management

thinking" throughout its operations and provide risk measurement tools to business units to improve their risk-adjusted decisions, according to Gary F. Kilburg, assistant treasurer, risk management.

The Whirlpool risk management department began the process by mapping corporate risks enterprise-wide, he told RIMS attendees. It then met with senior management to review risks "at the 50,000-foot level" and set priorities based on risk mitigation needs and management plans, Mr. Kilburg said.

One area in which Whirlpool management wanted to see better

risk decisions was procurement. The company's procurement leader was enlisted to identify two business units responsible for critical components—electrical and cooling systems—to work with risk management, which identified a broad set of business unit risks and set expectations around those risks.

The units' challenge was to extend Whirlpool's supply chain using risk tools to balance various factors and risks, including cost, quality, potential supply interruptions and product liability and recall.

The risk-measurement tools allowed Whirlpool to assess whether

the \$7-per-unit savings that the company could realize by purchasing electronic transistors from a foreign supplier was sufficient to outweigh the higher risks the supplier posed compared to a domestic supplier, said Ryan Ralston, senior manager, global risk.

By evaluating the value of the various factors and risks associated with each supplier, Whirlpool determined that the true savings the foreign supplier offered was \$2.65 per unit, Mr. Ralston said. With that truer risk/reward analysis, Whirlpool was able to structure its pricing appropriately to account for the risk it took, he said.

Now, he said, the company is not walking away from transactions that could produce exceptional returns just because the deals would require assuming a little more risk.

At Cisco Systems of San Jose, Calif., ERM is not designed to protect the organization, "though that's important," said Christina S. Kite, senior director, global risk management.

Instead ERM spotlights where the company is not taking enough strategic risk and is therefore missing some earnings opportunities, Ms. Kite told RIMS attendees.

"We were starting to believe Cisco was being too risk averse," Ms. Kite said. Cisco wanted to either assume more business risk, given the billions of dollars it has spent on research and development, or understand better why it was not taking that risk, she explained.

### RIMS attendance falls in Honolulu



Sunny skies and island breezes formed the backdrop for more than 140 educational sessions at the Risk & Insurance Management Society Inc.'s annual conference and exhibition, held April 23 through April 27 in Honolulu. The theme of the conference—designated an official event of The International Federation of Risk & Insurance Management Assns.—was "Expanding the Power of Risk Management." A total of 6,460 attendees, exhibitors and speakers gathered in Hawaii's capital city for the event—a drop from a total of 10,704 who converged for RIMS 2005 in Philadelphia, and the 10,008 who attended the RIMS 2004 conference in San Diego.

Next year's conference is slated for April 29 through May 3 in New Orleans, with sessions planned around the theme of "Illuminating the Strength of Risk Management."

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## TRIA: Need for government role in terror coverage will remain after expiration date

Continued from page 15

they would sunset their terrorism coverage if TRIA was not extended. Mr. Liebowitz then began grading the insurers in terms of price and overall property coverage on a grid and the absence of TRIA coverage lowered the scores of several insurers, he said.

Going forward, there is widespread agreement among risk managers that the federal government needs to be involved in a long-term solution to the terrorism exposure.

RIMS advocates a list of nine key principles for a long-term solution

and two of its key points are that the private market will not provide adequate coverage for acts of terrorism without TRIA and the federal government must act as a reinsurer.

"The private insurance market is not going to be able to do this alone," Mr. Fenlon said. "The government is going to have to be involved. This is a societal risk. We definitely think it's going to have to be some type of joint effort."

"To think that the federal government would not be involved in a large event is to be ignorant," Mr. Fleming said.

While most risk managers might

prefer to have a completely private market solution to the terrorism risk, this is not feasible because in order for the risk to be insurable, insurers must be able to reasonably estimate losses and that is virtually impossible in the case with terrorism, Mr. Fenlon said. There is no way to predict the frequency or severity of such events so there is no way to price the product appropriately, he added.

"With the federal government acting as a reinsurer under the current approach, there is at least some level of certainty that is brought into the equation that allows private carriers to at least somewhat predict their

maximum exposures," Mr. Fenlon said.

If Congress refuses to provide a backstop beyond the expiration of TRIA, it should provide financial and tax incentives to encourage the capital markets to help insurers build the capacity to write terrorism coverage, Mr. Fleming said.

A possible solution to covering terrorism risks could be the creation of a pool to handle the risk similar to pools in other countries, some observers say. In particular, the United Kingdom's Pool Re is often cited as a possible model for a permanent solution in the United States.

A government-backed mutual reinsurance company in which membership is optional, Pool Re provides insurance company members with reinsurance cover on an all-perils basis for U.K. terrorism losses related to commercial property and business interruption.

"Certainly, we think there are probably some very good components of these pools that may be part of a workable solution here," Mr. Fenlon said, adding, though, that RIMS has not reached the point of identifying which components would work best in the U.S. system.

From what he knows of the U.K. pool, it seems to work well as the pool is fully funded and has not paid out a lot of claims, Mr. Liebowitz said. "That seems to be the method of financing this exposure that seems to work the best," he said.

Ms. Ochenkowski, though, is skeptical about whether the U.K. pool would be a good model for the United States. "I think Pool Re does-

**"Whatever the mechanism is, we have to make sure that we push to work on that now."**

**Ellen Vinck**  
BAE Systems Ship Repair Inc.

n't fit the American view of the way to handle the problem," she said. "I think the purely subsidized pool would probably take a lot more time than we have."

Widespread agreement exists on other features of a permanent solution for the terrorism exposure, including the need for inclusion of coverage for nuclear, chemical, biological and radiological risks. "There's really not a market for that coverage—there's not a market on the property side. In the workers comp area, carriers cannot exclude these risks, so while there technically is a market, the question is if TRIA goes away, will the carriers continue to write workers comp," Mr. Fenlon said.

There is also consensus among risk managers on the need to eliminate the distinction between foreign and domestic terrorism, particularly because of the need to certify the source of a terrorist attack in order to trigger the TRIA provisions. "If that's ever tested, it might be extraordinarily difficult to make that determination or to make that determination in a manner which is reasonable to everyone," Ms. Ochenkowski said.

Risk managers all agree that a permanent solution needs to materialize sooner rather than later. "Whatever the mechanism is, we have to make sure that we push to work on that now, and not get to the 11th hour again like we kind of got before with TRIA's extension and encourage that market vehicle to be in place in whatever shape or form it takes," said Ellen Vinck, vp of risk management and benefits at BAE Systems Ship Repair Inc. in San Diego.



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## Asia: Risk management in region influenced by international trading partners

Continued from page 15

Companies in countries that have openly traded with others throughout the world are more familiar with Western-style risk management than those in China, for example, where free trade has not been as easy, sources note.

"Countries that are key parts of the supply chain of North American companies" are learning risk management practices through their relationships with those partners, said Ken Davey, managing director and senior vp in the international division at FM Insurance Co. Ltd., which does business as FM

Global, in Windsor, England.

"When you talk about local Chinese companies, you're talking about a different world," said Mr. Davey. Some Chinese companies "that want to be global" are adopting risk management best practices, he noted, but for many others, the discipline is "in its infancy."

Chinese companies, though, are being prodded to pay more attention to risk management as the economy there moves from the model of state-owned enterprises to one that allows private businesses.

"That sort of economic change is

driving a lot of changes in risk profile," said David Batchelor, Hong Kong-based chairman and chief executive, Asia, for Marsh Inc. Exposures such as directors and officers liability, for example, are among the newest risks in China as corporate governance issues arise during the economic transition, he said.

Mr. Davey said he expects the response in China to such risk management challenges will be swift. Risk management moved to Europe from America and took around 30 years to become as sophisticated as it now is, he pointed out. "In Chi-

na, it is much more rapid; I think that 30 years will become five years," he said.

Risk management in Japan, while further along than in many other Asian countries, still is evolving, experts point out.

"Most U.S. corporations hire risk managers and put them into superior positions to execute risk management strategies," said Masami Hishinuma, senior risk management specialist with ACE Insurance in Tokyo. "On the other hand, most Japanese corporations hire few risk managers" and do not regard their positions as senior

level, he said in an e-mail.

Risk management in Japanese corporations generally focuses on compliance, crisis management and business continuity planning, according to Eiji Kasuya, director of risk management at ORIX Corp. in Tokyo. Risk managers rarely handle insurance purchasing, he said.

But risk management at publicly traded companies is getting a higher profile because of regulatory changes in Japan.

New legislation requires public companies to make more detailed disclosures regarding their risks, and the Japanese government is considering legislation that would implement new corporate governance regulations next year, according to Yoshi Hamaji, executive director of the Assn. of Risk Management-Japan.

The changes mean Japanese companies will have to implement an enterprise risk management approach as their liabilities broaden, said Mr. Hamaji.

"There are maybe 20 or 30 professional risk managers in Japan," said Hirofumi Shimoyama, president and representative director at Marsh Japan Inc. in Tokyo. But that may change, he acknowledged, as risk management responsibilities evolve with changing regulatory requirements.

Broker relationships also are changing for Asian companies.

Until the late 1990s, most Japanese companies handled insurance placements with in-house brokerages, said Greg Myers, executive managing director with Beecher Carlson in New York. Then, legislative changes made it easier for brokers to establish operations in Japan, he said.

And while there still are internal agencies within Japanese businesses that handle insurance placements, "we are seeing more brokerage business" placed by brokers not affiliated with the insurance buyer, Mr. Myers said.

A risk manager for a global electronics company who asked not to be identified said by e-mail that his company "does not rely on brokers" but handles that function in-house. "We make our best choice by doing business with several insurance companies," he noted. Some of the company's subsidiaries do use outside brokers, the risk manager said.

Mr. Hamaji pointed out that most intermediaries in Japan serve as agencies for insurers, and U.S. brokers who have established offices in Japan have a hard time competing with such arrangements. Many of those U.S. brokers spend much of their time providing consulting services to clients rather than handling coverage placements, he noted.

"It's quite difficult to characterize the whole of Asia" when examining broker relationships, said Mr. Davey of FM Global. In Hong Kong, for example, "there is a strong broker presence," he said, while in China, "historically that has not been present, but it is growing more rapidly."

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# Legwork needed to choose a third-party administrator

By RUPAL PAREKH

**HONOLULU**—Conducting adequate internal and external research is the key to a company's successful selection of a third-party claims administrator according to a group of panelists.

Finding the most-compatible TPA partner requires considerable legwork prior to writing and preparing a TPA market submission, emphasized the panelists—who made their comments during a session at the Risk & Insurance Management Society Inc.'s conference, held in

Hawaii last week.

First, a company should collect as much data about itself as possible in order to accurately convey its specific claims processing needs to potential TPA partners, said Mark A. Kania, vp, liability practice lead, Sedgwick Claims Management Services Inc. in Troy, Mich.

Among other things, a business should communicate: its overall corporate and risk management structure; the reason why it is seeking a TPA partnership; detailed claims frequency information; and the intended deadline for the im-

plementation of the claims program, Mr. Kania said.

If the new service provider will have to assume any takeover claims, that too should be communicated so the TPA can prepare.

"At the same time, you need to be gathering information about the marketplace," Mr. Kania noted.

"There are a lot of TPAs out there," and a company must draw upon a variety of resources—including brokers, claims consultants and independent research—to "narrow that universe of TPAs down to a number that's a lot easier to handle," Mr.

Kania said.

Mr. Kania suggested a company develop a personalized scorecard to compare and rank the various TPA candidates depending upon how they have responded to the claims issues identified as important by the company.

A larger company may want to hold a so-called "bidder's conference," in which the risk manager invites the various service providers to attend a formal presentation about the company.

Lastly, onsite visits for "semifinalists" can be useful to verify whether

the TPAs' office cultures and claims handling philosophies are consistent with what they have promised. As part of such a visit, the risk manager should speak directly to the TPAs' claims teams and evaluate their risk management information systems, Mr. Kania said.

According to Judie Tsanopoulos, Orange, Calif.-based director of workers compensation and loss prevention for St. Joseph Health System, who also spoke as part of the panel, researching the TPAs' affiliations—including whether or not they are owned by insurers or own and operate any other business units—is also important in order to avoid any conflicts of interest.

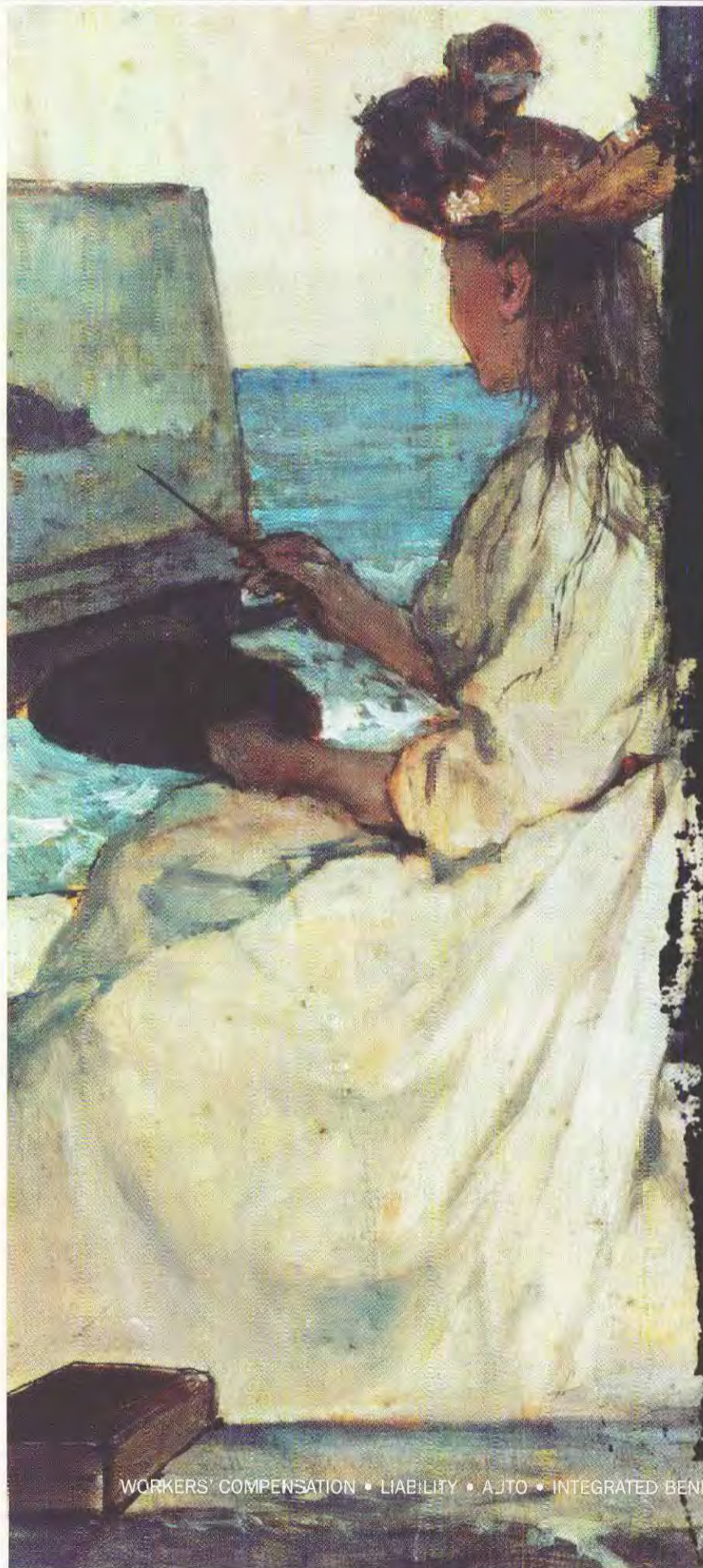
Whether or not the TPAs own their own RMIS systems is also a major factor in the decision making process, Ms. Tsanopoulos said, because proprietary systems are often more customizable than off-the-shelf computer systems.

She also suggested asking the TPAs detailed questions about their claims staffs—including questions regarding the employees' average length of employment, the level of their experience, the geographic closeness of claims staff to company locations and the caseload of each claims adjuster.

Knowing about TPA "turnover is critical," Ms. Tsanopoulos added, "because you want a dedicated claims professional" on your account.

Arden K. Young, senior corporate risk manager of Georgia-Pacific Corp. in Atlanta—which recently underwent a request for proposal process after deciding to use a TPA rather than self-administering the claims for its workers compensation program—stressed that even when a service provider has been selected, the process is not complete. A company should always consider "tweaking" its program, Mr. Young said, to improve upon the initial program design.

And although the market submission process can be lengthy and time-consuming, sending out an RFP every three years is a good idea, suggested Ms. Tsanopoulos, "just to see what's out there."



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"Expanding the Power of Risk Management" was this year's theme at the Risk & Insurance Management Society Inc.'s conference in Honolulu.

# Implementing and enabling network risk insurance strategies

By JUDY GREENWALD

**HONOLULU**—Be prepared, if necessary, to get your own outside counsel should a network risk claim lead to litigation, advises a risk manager.

"As Franklin D. Roosevelt once said, 'When you come to the end of your rope, tie a knot and hang on,'" said Carol A. Fox, senior director, risk management, at Cincinnati-based Convergys Corp., which is an outsourcer of customer care, human

resource services, billing and business support services.

Ms. Fox was among the speakers at a session called "Network Risk Insurance: A Layman's Overview" at the Risk & Insurance Management Society Inc.'s annual conference held late last month in Honolulu.

Discussing insureds' relationships with insurers, Ms. Fox said, "Get an agreement at the outset on choice of defense counsel." It is "important they know whom you want to use as counsel," she said. Furthermore, establish midyear meetings with the insurer's claims management team and inside counsel.

"Expect a reservation of rights letter if you do put a claim before a company," warned Ms. Fox, also.

And "do control the scope of the claims investigation," Ms. Fox said. She related one instance in which her company was asked by the insurer to provide very extensive information after a claim. The response was, "I don't think so," she said. "Make sure that you're not revealing more than you need to just for the claims investigation," she suggested.

Ms. Fox also told of one instance where, after an insurer's investigative counsel conducted an investigation, not only was the claim denied but the insured received a hefty bill for the investigation as well.

Joint defense agreements can help avoid problems, Ms. Fox said.

Try to resolve issues using internal counsel, she said. Once there is litigation, the insured is "pretty much out of it," she said, and it is outside counsel that controls what happens with a claim. If all else fails, the insured should hire its own insurance counsel, she said.

Moira Mooney, associate director, risk management, at New York-based IAS/InterActiveCorp, spoke on network risk management integration and implementation at her company, which has about 60 specialized and global brands, including Home Shopping Network, Ticketmaster, Match.com and Ask.com. "There is no one magic policy to put in place" that covers diverse network and professional liability risks, Ms. Mooney said.

The steps her company took to implement a strategy included conducting an overview of its professional and network risk liability; meeting with key departments and developing a formal risk report and gap analysis.

The rewards and benefits of such a strategy, Ms. Mooney said, include "opening the communicator, vertically and externally," sharing best practices horizontally across businesses, promoting greater transparency for both the company and its underwriters, good loss experience and enhanced communications with underwriters.

Ms. Mooney recommended that a risk manager get to know the mergers and acquisitions team when integrating new ventures. "Be involved in the due diligence process early," she said. With acquisitions,

ask for financials, current insurance programs, limits and deductibles, loss runs, sample contracts and policies and procedures. When a new product is being launched, ask for the business plan, estimated financials, sample contracts and policies and procedures.

And once the deal closes or the product is launched, conduct risk assessment interviews, Ms. Mooney said. Ongoing practices should include internal training, a big picture vs. a "silo" approach, quarterly claims reviews, quarterly meetings with the legal department and better communications with the underwriters. "The big message I can give is communication," she said.

Discussing network risks from an insurer's perspective, Clinton Johnson, senior vp, professional risk, at ACE USA in New York, said that when a company makes a coverage submission, "we look at a general profile of the company," including its third-party vendors.

Among the factors his company examines is how the information technology group is structured. "Do you have senior management support?" and is there a senior person dedicated to security? he asked.

ACE also looks at "current events," said Mr. Johnson, including system changes, acquisitions and whether there have been any layoffs of information people. It also looks at the company's security policies. "Do you have written security policies, and do you take it seriously?" he asked.

"We look at information assets" in the system as well, said Mr. Johnson. In one recent case, he said, a company did not even know it had certain data in its system.

Physical and environmental security are among the important factors as well, he said. "Who has physical access to your systems?" Mr. Johnson asked.

Also speaking at the session and serving as its moderator was Kevin P. Kalinich, co-national managing director for the financial services group, professional risk solutions, at Aon Risk Services Inc. of Illinois in Chicago.

Mr. Kalinich said key coverage issues that should be addressed by insureds in their network policies include the definitions of "computer systems" and "network." Unless an insured addresses this issue in its policy, for instance, the company could find it has no coverage for a stolen laptop even if it contains the same information found on its network, said Mr. Kalinich.

A company could also find it is covered for outside hackers but not for inside hackers, Mr. Kalinich said. "All of them should be covered."

Some insureds may also find they are denied coverage if they are hit with a worldwide virus, as opposed to one directed just at them, said Mr. Kalinich. He also recommended extending coverage for off-line identity theft and privacy matters, as well as for statutory fines and penalties imposed by regulators.

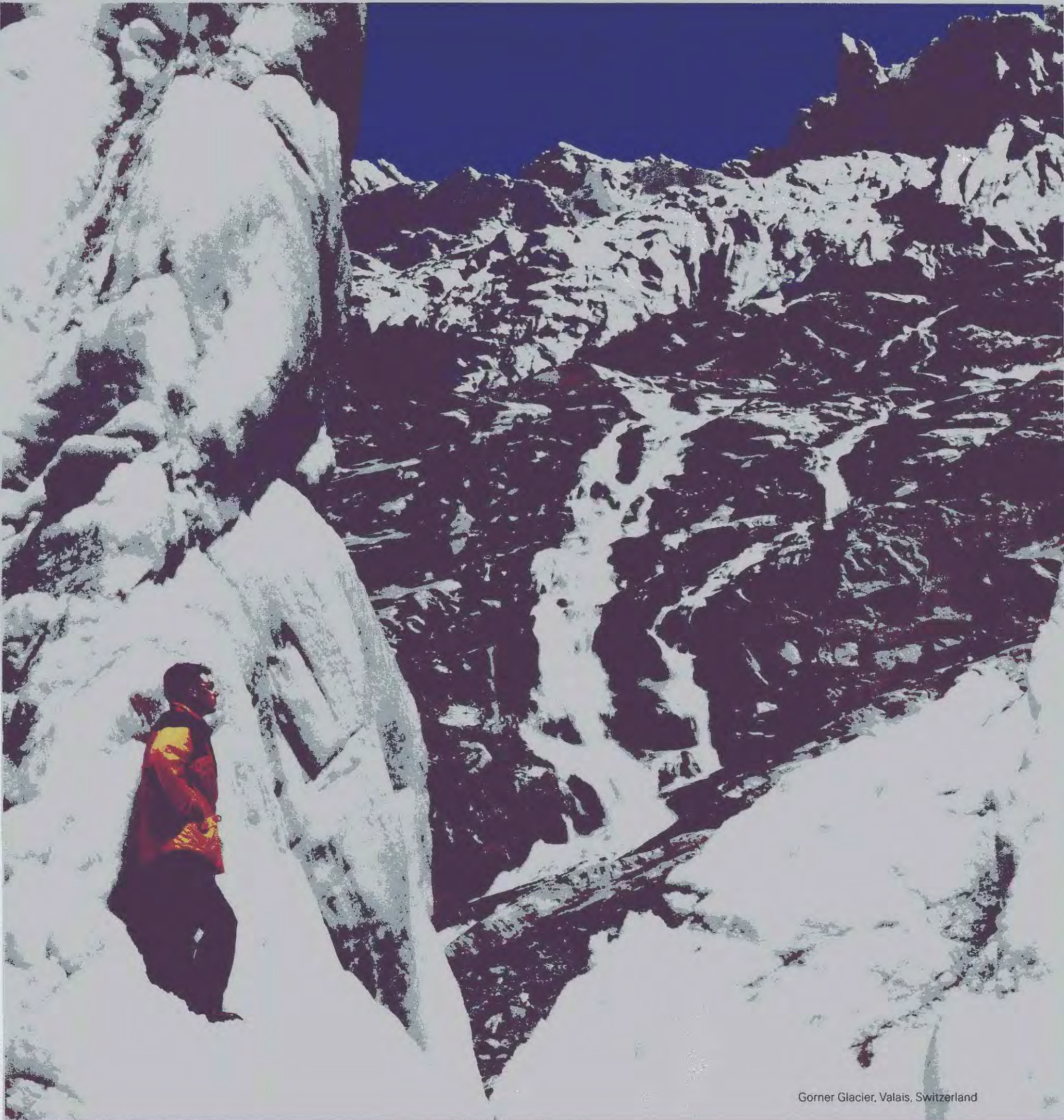
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## COMMENTARY

Senior Editor Mark A. Hofmann

# Trivial suits leading tort system awry

It was the kind of thing I usually toss in the wastebasket without reading—a generic missive with presorted postage mailed from an outfit I've never heard of. But since whoever sent it managed to spell my last name correctly, I felt obligated to open it before I tossed it.

It was a legal notice informing me of my rights in a possible class action settlement involving a lawsuit of which I was not aware. It seems certain hotels, which included a couple that I stayed at over a nine-year period, had failed to inform guests of some sort of added "resort fee." The resort fee in question ranged on average anywhere from \$3 to \$18.

So far so good, I guess. I wouldn't notice a resort fee tacked on to all the other surcharges that festoon hotel bills—this and that occupancy tax, maybe a stray energy use charge and whatever else some creative accountant can conjure.

Truthfully, I didn't even realize that I had stayed at a "resort" as opposed to a hotel in a resort area, in large part because I rarely, if ever, avail myself of resort amenities when I'm traveling on business. Under those circumstances, my wants are fairly simple—a clean, quiet room with a comfortable bed, a TV that receives at least one cable news channel, some version of ESPN and preferably Comedy Central as well, and some place on site where I can grab a sandwich and a beer. The golf clubs stay home.

Now, despite my feelings about frivolous lawsuits, I confess that I have profited from a class settlement. The settlement in question involved the recording industry, which a while ago settled allegations of price fixing by sending checks—in an amount suspiciously close to the price of a CD—to those consumers who took the time to visit a Web site and fill out a form. I did so, albeit as much out of pique over the shabby way the recording industry treated the late, great Warren Zevon while he was still alive than outrage over any alleged price fixing. An industry that ignores genius and foists the likes of Britney Spears upon us instead deserves to pay out something to its disgruntled customers.

Although I didn't consider myself to be a disgruntled customer of the hotel industry, I did continue reading the official court settlement mailing with interest. Like I said, so far, so good. Then I got to the part that informed me that if I happened to be "A Member of the Resort Subclass and if the Court grants final approval to the proposed Settlement, you may use each of the Certificates attached to this notice (the 'Certificates') for a discount off one single night's stay at any" of the participating properties.

I've rarely seen the allure of coupon settlements for wronged consumers. Basically, such settlements are win-win situations for the defendants, once you take into account that the attorneys involved get paid in cash rather than pieces of paper of limited redemption value. After all, to use the coupon the class members have to purchase the goods or services that allegedly injured them. If they decline to do so, the defendant doesn't have to redeem the coupon. If the class members do present the coupons, they have to pay the difference between the cost of said goods or services and the amount covered by the coupon, thereby adding to the defendant's bottom line.

Well, that was a moral question about which I needn't have worried. My notice contained no certificates—or perhaps I should write "Certificates" capped since that's the way it appears in the notice. Seems I was part of a group that had some sort of contractual arrangement with the hotels and such prearranged group arrangements "expressly provided for the payment of the Resort Fee." As a result, I was not part of the settlement, and there would be no certificates for me.

Still, the whole experience provided me with a few minutes of bemused amusement. And it provided me with yet another example of a tort system somehow gone awry as someone had taken the time, energy and postage, not to mention the lawyerly hours required to draft such a notice and the extra gallons of ink necessary to capitalize otherwise common nouns, to inform me that I was not entitled to compensation for an injury I never sustained.

Senior editor Mark A. Hofmann can be reached at [mhofmann@businessinsurance.com](mailto:mhofmann@businessinsurance.com)

# Island assembles disaster plan

## Hawaiian companies prepare for catastrophic flooding

By ROBERTO CENICEROS

**HONOLULU**—The deadly Indian Ocean tsunami in 2004 and the flooding following Hurricane Katrina last year reinforced the need for areas, such as Hawaii, that could be vulnerable to catastrophic flooding risks to prepare for such disasters, say risk managers and emergency planners in the state.

Hawaii's isolation makes it particularly important for local services and companies to be able to respond to disasters and makes emergency planning vital for organizations in the state, they say.

As a result, several organizations have stepped up their emergency preparedness efforts to deal with tsunamis and other flooding-related disasters in Hawaii.

In early April, for example, the Kapiolani Medical Center for Women & Children in Honolulu conducted an exercise to review a worst-case scenario should the hospital face flooding brought on by a tsunami.

The hospital has some protection against floodwaters, because it is located behind other buildings that would block it from the direct path of a tsunami. It also sits above a freeway that could act as a moat or drainage system for any floodwaters.

The hospital previously conducted annual hazard vulnerability exercises to prepare for other types of incidents, such as hurricanes or fires that might strike it and the surrounding community, explained Christine Swartz, the hospital's emergency management coordinator.

Then the hospital conducted its first tsunami training a year ago. This April's table-top drill included discussions on hospital equipment that might be lost, the potential for disease outbreak following a tsunami, and the possible loss of power and telephone services, Ms. Swartz said.

The hospital also recognized that,

as part of its preparations, it had to ensure that its workers could make it to work, so recently it sent home tsunami education materials for employees and their families.

The hospital conducts similar preparations for hurricane season, which runs from June to December. Beginning around May, employees will start receiving information about making hurricane supply kit preparations at home and having emergency plans that address concerns such as how their children would be cared for.

**"Even in the middle of 200 mph winds, we have to consider continuum of care. We don't have the convenience of running to the civil defense shelter."**

Fego Alconcel  
Kapiolani Medical Center  
for Women & Children

In cases of potential hurricanes, employees would also need to bring extra clothing and personal supplies to work in case it might be necessary to stay at the hospital for as long as 48 hours.

"Even in the middle of 200 mph winds, we have to consider continuum of care," said Fego Alconcel, the hospital's manager of security and safety officer. "We don't have the convenience of running to the civil defense shelter."

Tsunamis and direct hits from hurricanes, though, are rare in Hawaii, said Bruce E. McEwan, vp, administration and risk manager for Hawaiian Tug & Barge and Young Brothers Ltd. in Honolulu.

Additionally, while hurricane frequency and severity have been on the upswing in the Atlantic Ocean, the Pacific Ocean is currently experiencing a period of decreasing hurricane activity, Paul VanderMark,

executive vp products for catastrophe modeling firm Risk Management Solutions in Newark, Calif., pointed out during a session at the Risk & Insurance Management Society Inc. conference in Honolulu last month.

Still, should a tsunami or hurricane damage Hawaiian infrastructure, the tugs and barges owned by the company would be an even more important lifeline in the delivery of supplies between islands, Mr. McEwan said.

That gives added significance to hurricane and tsunami preparations, he said. The company's emergency response plan calls for reducing employee numbers to just those necessary to move certain equipment to safer locations. The giant forklifts used to move shipping containers, for example, would get moved behind buildings that would provide some protection.

The containers themselves would be shifted from stacks to single levels, which would provide a bigger, flatter mass. "Our standard procedure is like pulling the wagons together," Mr. McEwan said.

But his company's biggest exposure is its tugs and barges.

The Honolulu Harbor is well protected, Mr. McEwan said. And barges on the open sea could ride out large waves or flee to the protected side of an island. Tugs and barges are most exposed when they can wash against rocks as they move in and out of port. They can also cause pier damage in a similar situation, he said.

The catastrophe plan for the City and County of Honolulu includes moving personnel and equipment such as fire engines, ambulances and road repair equipment to higher ground, said Beverly J. Braun, risk manager for the city and county.

"Because of our geography, it's inherent that we are going to have employees and other assets in potential tsunami inundation areas," Ms. Braun said. "You can't avoid that."

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# Canadian pension reform embraced

## Government proposal intends to relax plan funding rules

By GLORIA GONZALEZ

**OTTAWA**—Canadian pension experts are praising a government proposal to temporarily relax pension funding rules, but more changes are needed to improve the regulatory environment for defined benefit plans in Canada, they say.

The move to relax pension funding rules at the federal level will alleviate some of the pressures on defined benefit plan sponsors, a move that observers hope the provinces—which have jurisdiction over pensions provided by companies within their borders—will emulate.

The proposal, though, does not address more important pension issues, namely the ownership of pension surpluses and the possibility of a federal pension guaranty fund similar to the Pension Benefit Guaranty Corp. in the United States, observers say.

The Canadian federal government has proposed revamping pension funding rules temporarily to give sponsors of the defined benefit plans it regulates more time and flexibility in funding pension deficits.

Under the proposal, the schedule for funding deficits would be extended from five years to 10 years on the condition that plan members are fully informed and that no more than one-third of current plan members or retirees object to the change. In addition, plan sponsors could extend



the funding period to 10 years if the difference between the five-year and 10-year payments is secured by a letter of credit.

"It strikes a balance between recognizing that companies have rather large deficits to address while at the same time still protecting the interests of plan members," said Stephen Pibworth, legal consultant for Hewitt Associates Canada in Toronto. "I think there's going to be a lot of federally regulated pension plans that are going to take advantage of these temporary funding measures."

Plan sponsors praised the proposal to allow the use of letters of credit to meet funding require-

ments. "We think it's a positive step," said Scott Perkin, president of the Toronto-based Assn. of Canadian Pension Management, which represents plan sponsors in Canada.

Utilization of letters of credit, despite the costs involved, is likely to be the more popular option among plan sponsors because they may have difficulty obtaining the required level of member consent to extend the funding schedule, Mr. Pibworth said.

The funding relief measures will only be available to plan sponsors whose funding payments are up-to-date and only available for the first valuation report filed with the Office of the Superintendent of Financial Institutions—Canada's federal pension regulator—before 2008. OSFI has statutory jurisdiction over pension plans in major financial sectors, such as banking, insurance and transportation, and estimates that about 72% of the roughly 1,200 pension plans it regulates were underfunded last year.

While the federal government regulates only 10% of the pension plans in Canada, observers say they are hopeful that its decision to relax funding rules will encourage some of the provinces—which have jurisdiction over pension plans outside of the major financial sectors—to take similar actions. Quebec has made such

See PENSIONS / page 39

## Updates

### Goshawk shares halted on results delay

Trading in shares of Goshawk Insurance Holdings P.L.C. was suspended temporarily Tuesday because the company failed to meet a regulatory deadline for filing its 2005 results. London-based Goshawk, which operates Bermuda-based reinsurer Rosemont Reinsurance Ltd., in April, warned that the preparation of results would take longer than normal because the operation was put into runoff in October after suffering large hurricane losses and being downgraded to B from A- by A.M. Best Co. Inc. Under U.K. stock market listing rules, Goshawk should have announced preliminary results for the year ended Dec. 31, 2005, on Tuesday. Goshawk said in a statement that it anticipated being able to publish the results by May 19.

### Pension buy-out firm secures backing

Synesis Life Ltd., which has been set up to buy out life insurance annuities and pension fund liabilities, said it had secured financial backing that will enable it to accept between £7 billion and £10 billion (\$12.91 billion and \$18.45 billion) of liabilities over "the medium term." London-based Synesis has been set up by three former executives of London-based life insurer Prudential P.L.C. The company said it has applied to the London-based Financial Services Authority, the United Kingdom's insurance regulator, for approval.

### European insurers content with Solvency II

Most European insurers believe that the Solvency II legislation, slated for introduction in 2008, will improve their companies' risk and capital management, according to a survey by management consulting firm Accenture. The survey found that 78% of European insurers believe the rules—intended to harmonize national solvency requirements for insurers across Europe and set common capital levels—will improve transparency and controls in managing risk and capital. Almost half, 49%, of the 37 companies studied said they already had a formal program in place to ready themselves for Solvency II.

### Allianz sees profits increase

Munich, Germany-based Allianz A.G. said its net income for the first quarter of 2006 likely would be about €1.8 billion (\$2.19 billion), compared with a restated net income of €1.3 billion (\$1.69 billion) for the same period last year. Allianz said its profit had been boosted in part by the absence of any large natural catastrophe claims in the first three months of the year. Allianz restated its 2005 first quarter profit figure for comparability under new accounting treatment.

## FSA to probe brokers' handling of client funds

By SARAH VEYSEY

**LONDON**—The United Kingdom's insurance regulator has announced it will conduct a "large-scale review" into the way nonlife insurance intermediaries handle client money.

The Financial Services Authority, which began regulating insurance brokers in January 2005, said it would make visits to more than 200 brokers later this year as part of the review.

The London-based FSA said the planned review follows a pilot study on how general insurance brokers handle client money, which it said revealed a "worrying level of failure by both wholesale and retail intermediaries to comply with FSA rules on client money."

The FSA said that study, undertaken in mid-2005, showed that some brokers were failing to keep track of money held by third parties, observe trust law and inform customers of how their money was being handled.

Those breaches of the FSA rules were found "right across the spectrum" at firms of all sizes and types, according to a spokesman for the FSA.

The FSA said that while some of the results from its study were positive, it found, among other things, that some brokers had shortfalls in their client accounts, some were keeping commissions in their bank account to act as a "buffer," and some were failing to put in place agreements that clarify clients' rights to claim money ahead of in-

surers in the event of broker bankruptcy.

Last week, the regulator published a "Guide to Client Money for General Insurance Intermediaries" to offer guidance to brokers on its money-handling rules.

Under FSA rules, a broker must obtain a written agreement from an insurer if it wishes to hold money on behalf of that insurer in the same account as money held on behalf of clients—so-called "co-mingling." Without such an agreement, insurers' money cannot be co-mingled with client money in a client trust fund account.

In addition, among other things, a broker can only allow a third party, such as another insurance broker, to hold client money if that money is being held by the third party as part of a transaction being undertaken on the client's behalf.

Other rules state that when a broker receives money for a client—in the instance of a claim payment or premium refund, for example—that money must be transferred back to the client as quickly as possible.

Steve White, head of compliance and training at the British Insurance Brokers' Assn., said that the BIBA had been very active in trying to assist its members in complying with FSA rules on client money.

In a letter to members last week, BIBA said it strongly encouraged all members to read the FSA's new guide on client money, to review their client money procedures in light of the guide's content and to notify the regulator of any breaches of client money rules.



PHOTOS: SERGEI KARPUKHIN/REUTERS/LANDOV

A crane lifts the tail of an Armenian airliner recovered from the Black Sea after a crash that killed all 113 on board.

## Deadly crash of Armenian jet insured by Lloyd's syndicates

**SOCHI, Russia**—An Armenian Airbus A-320 that crashed into the Black Sea last week, killing all 113 on board, was insured in the London market, sources said.

The lead underwriter for the plane was Lloyd's of London syndicate 318—known as the MSF Pritchard syndicate—which is managed by London-based Beaufort Underwriting Agency Ltd.

The plane's hull was insured for \$25 million, aviation market sources said. The cover includes a combined liability limit of \$750 million.

The broker for the policy was London-based United Insurance Brokers, sources noted.

The plane, operated by Yerevan, Armenia-based Armavia Airline Co. Ltd., was en route from Yerevan, the Armenian capital, to the Russian resort of Sochi when it crashed into the Black Sea, according to reports.

The plane was carrying mostly Armenian passengers, with about 26 Russians thought to have been on board, according to reports; eight of those who died were crew, sources said.

—By Sarah Veysey

# Survey: Defined benefit pension plans fall further out of favor

Continued from page 4

needs, converted their plans to hybrids.

In 1985, just one Fortune 100 company offered a hybrid plan to new employees. In 1998, 22% of Fortune 100 companies offered hybrid plans to new employees, while 33% in 2002 offered such plans to new employees.

But last year, the percentage of Fortune 100 companies offering hybrid plans to new employees fell to 27%, according to the survey.

Defined benefit plans have fallen out of favor as companies have become more concerned about the volatility of contributions, said Kevin Wagner, a consultant in the Southfield, Mich., office of Watson Wyatt. Required contributions can swing widely as interest rates and the equities markets move up and down.

In recent years, the volatility has

been extreme. In the mid- and late 1990s, many companies did not have to make annual contributions to their pension plans because the plans—due to high interest rates and hefty investment results—had become significantly overfunded.

But in more recent years, as interest rates, which are used to value liabilities, fell and investment returns were subpar due to a slump in the equities markets, employers have had to pump tens of billions of dollars of new contributions into their pension plans.

"A decade of no contributions" followed by massive cash calls was too much volatility for some companies, Mr. Wagner said.

Contribution requirements are less volatile for hybrid plans, but those plans have faced legal uncertainty. In 1999, the Internal Revenue Service stopped issuing determination letters for cash balance

plans—a kind of seal of approval—leaving it to Congress to come up with rules. Legislators so far have failed to do so.

Courts, though, have tried to fill in the regulatory and legislative vacuum and their rulings have helped to chill employer interest in moving to hybrids in some cases. For example, in 2003, a federal judge in Illinois said IBM Corp.'s cash balance plan discriminated against older employees. Judge G. Patrick Murphy's ruling, which shocked the employer community, was so broad that experts said it would invalidate virtually all cash balance plans if upheld. IBM has appealed the ruling.

With hybrid plans under attack, employers have begun to move away from them, Mr. Wagner said. IBM itself stopped offering its cash balance plan to employees hired since Jan. 1, 2005, with those indi-

viduals receiving retirement benefits through an enhanced 401(k) plan. Starting in 2008, new employees will earn all pension benefits through a 401(k) plan.

While financial reasons and legal concerns are major drivers behind the shift away from defined benefit plans, corporate psychology also may be a factor, Mr. Wagner said. There is a kind of a "follow the leader mentality" among employers, Mr. Wagner said, noting that when well-known, highly regarded employers announce that they are phasing out their plans, others often follow.

Mr. Wagner and other Watson Wyatt consultants, though, urge employers to consider all angles before making a decision on whether to phase out their defined benefit plans.

It is possible, Mr. Wagner said, that Congress may provide protec-

tion against age discrimination suits for cash balance plans as part of a broad pension funding reform bill.

"We may know what will happen in about a month," he said.

Additionally, employers eager to move away from defined benefit plans to eliminate their exposure to contribution volatility, may incur a kind of employment volatility if they only offer defined contribution plans. Employees, for example, who don't save enough through their defined contribution plan may stay longer than their employers want, while those who achieve stellar investment results may quit sooner, depriving employers of needed talent, Mr. Wagner said.

"Decisions made simply because of what others are doing are apt to be the wrong ones," said Syl Schieber, Watson Wyatt's director of U.S. benefits consulting in Arlington, Va.

## Suit: Court finds for employer on religious bias allegation

Continued from page 4

message which the department reasonably seeks to avoid," said the opinion.

The department was also reasonable in prohibiting the use of a conference room for prayer meetings, although it permits the room's use for birthday parties or baby showers, the opinion said. These celebrations are "arguably less likely to challenge employees' religious beliefs," said the decision.

**"The government can enact restrictions so long as they are reasonable" and do not infringe on individual's religious sensibilities.**

**J. Scott Smith**  
Angelo, Kilday & Kilduff

In addition, the department "was not required to further accommodate Mr. Berry's religious views" under the Civil Rights Act.

Plaintiff attorney Brad Dacus said while the opinion was disappointing, "it's very fact specific, and therefore, we believe, has very little in the way of precedence. It in no way invalidated or reversed existing case law, which protects the rights of workers to share their faith with other workers and employees in the workplace, to have prayer meetings in the workplace and to have their faith reasonably accommodated." It only addresses the issue of proselytizing to clients during work hours, said Mr. Dacus.

Mr. Dacus is president of the Sacramento-based Pacific Justice Institute, which describes itself as a legal defense organization that specializes in the defense of religious freedom, among other things.

However, defense attorney J. Scott Smith, of Angelo, Kilday &

Kilduff in Sacramento, believes the decision may have wider implications for government entities. It reaffirms there does not have to be a violation of the establishment clause for a government agency to place restrictions on religious expression, said Mr. Smith.

The court said a government agency "has to be given some flexibility within which to exercise reasonable discretion so we don't come close to that problem," said Mr. Smith. It establishes "the government can enact restrictions so long as they are reasonable" and do not infringe on individual's religious sensibilities, he said.

"There are not many cases out there that define for us what it's okay for a government agency to do," said Mr. Smith.

The decision with respect to the First Amendment issue applies only to government workers, though, said Brian T. Ashe, an employer attorney with Seyfarth Shaw L.L.C. in San Francisco. A private employee "can't say, 'You can't tell me to stop proselytizing. I've got my First Amendment rights,'" said Mr. Ashe.

The establishment clause mandates the separation of church and state. "That whole analysis would not even take place in the private sector," said Mr. Ashe.

But James McDonald Jr., an employer attorney with Fisher & Phillips in Irvine, Calif., said the issue of proselytizing does apply to private employers and the ruling is "another of several cases that have been decided over the last few years in which courts have held that employees generally do not have the right to proselytize other employees at work, and I anticipate that this trend will continue."

*Daniel M. Berry, plaintiff-appellant, vs. Department of Social Services, Tehama County; Bill Snelson, director, defendants-appellees. 9th U.S. Circuit Court of Appeals, No. 04-15566.*

## Northrop: Contractor suing for flood coverage

Continued from page 1

amount the company may receive under the bill at \$140 million to \$200 million.

"The supplemental funding will mitigate delays in our shipbuilding programs," the spokesman said in a statement, noting that Northrop lost eight million workforce hours of production time because of the hurricane. The money "will help return our shipbuilding program capabilities to pre-Katrina levels."

The government aid to Northrop is still uncertain, though. The Senate last week narrowly defeated an effort by Sen. Tom Coburn (R-Okla.) to drop the provision from the spending bill, which provides supplemental funding for the war in Iraq and Gulf Coast hurricane recovery. Sen. Coburn and other critics argued that the government should not cover losses of a private contractor with insurance, and that the aid would discourage insurers from paying claims quickly.

House leaders have vowed to cut any spending above the \$92 billion ceiling set for the bill by President Bush, and Mr. Bush has threatened to veto the bill if it exceeds the ceiling.

Northrop, meanwhile, is locked in litigation with lead property insurer Factory Mutual, which does business as FM Global, over the extent of its coverage for massive flood damages at its shipyards at Pascagoula, Miss.; Avondale, La.; and other Gulf Coast locations.

The contractor, Mississippi's largest private employer with 10,000 workers in the state, has estimated hurricane damage at its shipyards at \$1.26 billion. Most of that—\$1.17 billion—occurred at the Pascagoula yard, where Katrina damaged 1.75 million square feet of buildings and destroyed 301 vehicles, 81 pieces of heavy equipment and 26 cranes, according to Northrop.

Flooding caused a large part of the losses at Pascagoula, where much of Northrop's damaged equipment was submerged in salt

water "for an extended period," according to FM Global court filings.

Northrop also says that business interruption losses at the facilities cut its 2005 revenues by \$500 million and that it may suffer added "time element" losses in 2006.

For several years, FM Global has led a huge property insurance program covering all of Northrop's worldwide operations, court filings show.

**Northrop Grumman Corp. has sued FM Global seeking coverage under an excess policy for flood damage it sustained as a result of Hurricane Katrina.**

Working with broker Aon Risk Services Inc., a unit of Chicago-based Aon Corp., Northrop renewed the all-risk program in April 2005, structuring it in two layers. The first layer of \$500 million is written by a consortium of insurers that issued a total of 30 policies, most on an Aon form. Johnston, R.I.-based FM Global provided 15% of the first \$100 million per occurrence of this layer, court filings say.

FM Global also issued an excess policy with a blanket limit of \$19.84 billion.

The primary policies included a "named windstorm" clause covering wind and flood damages from any storm named by the U.S. National Weather Service or National Hurricane Center.

The excess policy does not include the named windstorm clause, though, and Northrop and Factory Mutual quickly fell into a dispute over whether the excess policy covers flood losses.

Two months after Katrina came ashore last August, Northrop filed

suit against the insurer in Los Angeles County Superior Court, charging breach of contract, bad faith and fraud. The suit has since been transferred to U.S. District Court in Los Angeles.

Northrop argues that the all-risk excess policy was "understood and intended" to provide the same coverage as the primary policies and effectively adopts the primary policies' named windstorm clause.

While FM Global notes that the excess policy actually contains a flood exclusion, Northrop argues that the policy's definition of "flood" does not include storm surges or wind-driven water.

In addition, the primary policies' definition of "occurrence" specifically includes named windstorms, while the excess policy does not define occurrence at all, Northrop maintains, suggesting that excess policy was intended to follow the primary's definition.

In negotiating the property program's renewal, FM Global never told Northrop that it would treat hurricane losses as separate wind and flood risks, the contractor says.

Northrop's suit seeks either a declaratory judgment that the excess policy covers flood or a court order reforming the terms of the policy to reflect what Northrop says was its intention in binding the coverage.

FM Global, meanwhile, denies the allegations and has filed a counterclaim for a declaratory judgment in its favor.

The insurer argues that Northrop's \$500 million primary layer contains a \$400 million sub-limit for flood losses and that that is the extent of its coverage for Katrina-related flood damages.

The excess policy's flood exclusion is consistent with Northrop's understanding that flood coverage was limited to the primary layer, FM Global argues. The excess policy defines flood to include "tide and tidal water" and "the rising of... natural or man-made bodies of water," the insurer's court filings note.

# Pandemic: Employers given key role in White House plans to fight flu outbreak

Continued from page 3

plaud "the fact that the U.S. government is targeting private companies" in its pandemic preparedness efforts, said Rosaline Chow Koo, the Singapore-based Asia Pacific leader for health and benefits for Mercer Health & Benefits L.L.C.

"On the face of it, I think it's helpful that they're laying out this guidance encouraging businesses to

enhance their continuity plans, which we are also doing," said Ann Beauchesne, executive director-homeland security for the U.S. Chamber of Commerce in Washington.

"There's some good information here about protecting personnel during pandemic," which, Ms. Beauchesne said, is of particular value to small and midsize companies.

Gisele Norris, an epidemiologist and senior consultant with Aon Healthcare in San Francisco, called the recommendations "significant." She noted that "if we were to experience a pandemic soon, there is no vaccine that's specific to a pandemic strain of the virus for four to six months" until after the virus is identified. There is also a "very limited supply" of antivirals, which "leaves us really with prevention."

Prevention involves infection control, which is most effective on a local level, she said. "So you think about where people are every day and they're at work or school. To prevent the spread of infection "do you close down or modify people's behavior?" she asked.

"One of the distinguishing elements of a pandemic versus other types of business interruption is that pandemics will result in the temporary—and in some cases permanent—loss of human capital," said Ms. Norris. "Businesses need to consider this eventuality, identify what impacts it may have on their revenue and operations and plan accordingly."

Employers had already begun stepping up efforts to deal with a possible pandemic, said Robert Wesselkamper, practice director-international consulting for Watson Wyatt Worldwide in Chicago. Employers have been discovering what the best practices are or how to deal with gaps in their current practices, he said.

The federal plan is simply "one of many points of reference that em-

ployers are collecting," and that spurs them on to document their own preparedness more formally, said Mr. Wesselkamper.

Many of the federal recommendations involve simple common sense, said Ms. Beauchesne. This includes performing routine hygiene like washing hands, she said.

But some of the recommendations might cause complications of their own, said Ms. Koo.

For example, telling employees to remain at least three feet apart may simply encourage people to stay at home, she said, "They're not going to ride the elevator."

The emphasis on telecommuting is "very realistic," said Dr. James Reynolds, principal in the Denver office of Mercer Health & Benefits. But business travelers trapped outside the country might have problems getting access to the Internet, he said.

In addition, network providers would be impacted by illness among their own workers at a time when demand would be increasing. There could also be an issue of capacity if demand for Internet services skyrocketed, he said.

Another issue is that of supply chain disruptions, said both Ms. Koo and Dr. Reynolds.

"When we talk to U.S. companies, two thirds of them actually expect a pandemic to damage the supply chain" because most of their supply chain now actually is in Asia," said Ms. Koo.

And that isn't just manufactured goods, said Dr. Reynolds. Service providers such as call centers are be-

ing located in India and elsewhere in Asia, he pointed out. A pandemic there could have an impact on U.S. operations even if there was no outbreak in the United States, he said.

"My concern would more so be related to business income in the hospitality and convention industries rather than in the corporate office environment," said David Adler, managing director of Portman Risk Management for Portman Holdings, an Atlanta-based international real estate development company with a small home office staff.

"I'm looking at it from the standpoint of our income stream would be guests staying in a hotel or attending a convention or conference that the hotel supports. I think it's safe to say that we are having discussions with our hotel management companies and we have confidence in the professional management firms that we have retained," he said.

There's no certainty about the exposure employers face, noted Dr. Reynolds. He said it's "an absolute unknown" whether the current strain of avian flu will mutate into a form that can be transmitted from human to human, and there's no way to know how virulent a mutated virus might be. The only thing that is certain is that pandemics are cyclical and "we will have another one" whether or not it arises from the current avian flu, he said.

"The preparedness that goes on now is not wasted. It is definitely something that companies need to do," said Dr. Reynolds.

## Advice to mitigate spread of avian flu

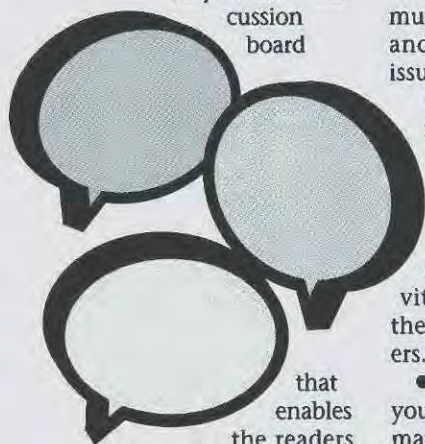
Some recommendations for employers from the federal government's Implementation Plan for the National Strategy for Pandemic Influenza:

- Review and update business continuity plans
- Encourage telecommuting by employees
- Allow unscheduled and non-punitive leave for employees with ill household contacts
- Institute "social distancing measures," such as maintaining a distance of three feet between employees, if necessary
- Restrict travel, if necessary

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## Quake: Insurers scale back exposures

Continued from page 1

"This has been the biggest crash I have seen overnight," said Joseph Messina, chief executive officer for excess and specialty broker Maximum Independent Brokerage L.L.C. in Chicago, which places significant amount of California property coverage. "It's going to be a major problem."

Brokers are already finding it impossible to place coverage for some clients, Mr. Messina said. And those that can find coverage are paying more for it, he said.

"It is certainly bad and getting worse," said Mark Zwickel, executive vp for Lockton Insurance Brokers in Los Angeles.

Smaller and midsize accounts, which often include older buildings, are feeling the market crunch the hardest, while some larger buyers can still find standard primary insurers providing earthquake sublimits with their all-risk property policies, Mr. Zwickel said. Those sublimits, however, are shrinking, while retentions are rising, he added.

As a result, one of his large clients recently decided to self-insure rather than renew its quake coverage, while others are buying less coverage, Mr. Zwickel said. About 75% of his clients purchased quake coverage when the market was softer, but Mr. Zwickel said he now expects that percentage to shrink.

Insurers that until recently provided \$15 million in limits for earthquake coverage are now only offering \$2.5 million or \$5 million, said Ms. Whaley.

Coverage arrangements have become most difficult for older buildings, while modern steel buildings are seeing less of an impact, Ms. Whaley said.

Pricing has gone up as much as 30% to 50% for accounts that can find coverage, Maximum's Mr. Messina said.

One San Francisco hotel that Maximum recently renewed coverage for saw its premium for earthquake insurance jump from



The 1989 San Francisco earthquake crumbled buildings. Amid current market conditions, coverage is more difficult to place for older buildings.

\$400,000 to \$560,000 for the same amount of coverage, he added.

While some commercial buyers have seen 50% rate increases, the average hike is about 25% to 35%, said Melissa Forbes, assistant vp at Los Angeles-based Western Re/Managers Insurance Services Inc., a managing general agent that specializes in writing specialty quake coverage.

The MGA is now seeing increased opportunity to write larger accounts as some standard insurers cut back their quake offerings, according to Ms. Forbes. While most of the insurers the MGA writes for are still providing some capacity, one Lloyd's syndicate, though, has put further quake business on hold as it evaluates its portfolio, Ms. Forbes said.

Observers agree there are several forces driving insurers to reduce their aggregate exposures, including the rising cost of cat-exposed reinsurance treaties and changes to cat modeling to reflect lessons learned from Hurricane Katrina.

As their models begin to show the potential for greater losses than previously thought, insurers are adjusting their exposures, several sources say.

Rating agencies have also increased their scrutiny of insurers and reinsurers' catastrophe exposures and the relationship between their capital reserves and probable maximum loss estimates, sources

explained.

For example, Oldwick, N.J.-based A.M. Best Co. Inc.'s "catastrophe stress test" has set more stringent capital requirements for insurers since November 2005, said John Andre, Best's vp of property casualty ratings.

New York-based Standard & Poor's Corp., in April, upgraded its capital requirement for primary insurers.

Meanwhile, adding to the tightening market, Great American Custom Services in Los Angeles announced that, effective April 10, it would cease writing primary and excess quake coverage.

The insurer considered its combined workers compensation and quake exposure in the California and decided the premium collected for its quake coverage was not worth the risk it was assuming, said a spokeswoman for Great American Insurance Group.

The insurer was also concerned about blowing through its reinsurance limits, should it face a large quake loss, the spokeswoman added.

Richmond, Va.-based Essex Insurance Co., a unit of Markel Corp., is significantly reducing its quake capacity, said Letha Heaton, vp of sales and marketing for Shand Morahan & Co. Inc., a unit of Markel. However, there still is ample capacity for other earthquake-exposed regions.

pricing before the product is formally released, he added.

The latest version of the RMS' model, which contains a 15% projected increase in insured losses following a California earthquake, reflects at least three post-Hurricane Katrina lessons and realizations, which are mostly applicable to future hurricane losses. For example, it considers the Atlantic Basin to be experiencing an ongoing period of heightened hurricane frequency.

Through claims analysis, RMS has also found that older commercial buildings are much more vulnerable to wind damage than previously thought, although construction methods using building codes mandated since 1994 have proven better than previously expected.

Finally, a potential for greater

insured losses than previously thought stems from new knowledge about "loss amplification" following a large catastrophe. "Demand surge," an increase in costs for labor and building materials after a catastrophe, can greatly increase insured losses, as Hurricane Katrina demonstrated.

Where RMS previously modeled maximum demand-surge costs at 26% of building losses resulting from earthquakes and windstorms, it will account for as much as 40% of total building costs in its new model version, Mr. VanderMarck said.

Other loss amplification factors include evacuation of an area and massive infrastructure disruptions that amplify business interruption losses.

—By Roberto Cenicerros

## Brokers: Organic growth steady

Continued from page 3

MMC said. Excluding the impact of foreign currency, acquisitions and dispositions, Marsh's revenues declined just 2%.

After reeling from New York Attorney General Eliot Spitzer's 2004 fraud and bid-rigging suit, Marsh executives say they continue to see signs of Marsh's recovery.

Excluding nonrecurring revenue from the unprofitable accounts and recognizing the reduction of \$27 million of market service revenue, for example, Marsh's underlying revenue was flat in the quarter, Brian Storms, chairman and chief executive officer of Marsh, told analysts on a conference call last week. He attributed Marsh's top line results to improved revenue retention in the quarter.

"While we are not yet back to where we want to be vis-à-vis our historical retention rate, we are seeing increased stability in our business," Mr. Storms said.

In addition to improved client retention levels, Marsh executives say the broker also is experiencing increased new business opportunities, a high win rate in competitive situations and a return of previously lost business.

But Jay Cohen, a research analyst with Merrill Lynch in New York, notes in a research report that while management points to a number of positive underlying issues in the brokerage operations, the issues were not quantified.

"The company's undue optimism over the past year suggests to us that some caution is still appropriate in (forecasting) the revenues and earnings of this segment," he said.

"The insurance broking business was a bit better than we had modeled, while reinsurance broking came in shy of our expectations." Revenues from Guy Carpenter & Co. Inc. remained flat in the quarter decreasing less than 1% to \$281 million, MMC said.

### Aon

Brokerage revenues rose 2.4% in the quarter to \$1.70 billion at Chicago-based Aon. Revenues from its risk and insurance brokerage services unit rose 3% to \$1.39 billion, with a 2% organic growth, Aon said.

Organic revenue in its brokerage-Americas unit rose 5%, primarily driven by U.S. retail business and growth in affinity and Latin American business, Aon said. Organic revenue in its brokerage-international unit grew 1%, reflecting new business generation particularly in France, the Middle East and Africa.

Organic revenue growth in its reinsurance brokerage unit, Aon Re, was flat in the quarter compared with 2005, Aon said.

On a conference call with analysts last week, Aon President and CEO Greg Case noted that the flow of sales opportunities continues to rise at Aon and its "win rates" are increasing. He noted "industry disruptions" over the past two years have worked in Aon's favor, especially in its global large account business where "doors are opening that were previously closed to us."

Due to "newly identified IT initiatives," Aon's previously announced

three-year restructuring plan is now expected to result in cumulative pre-tax charges of \$290 million through 2007, with annualized cost savings now targeted at about \$190 million by 2008. The brokerage previously estimated the cost of the plan at \$262 million with annualized savings of about \$180 million.

### Willis

Willis' first-quarter revenues remained essentially flat in the quarter increasing less than 1% to \$671 million.

While new business resulted in 6% organic growth in commissions and fees in the quarter, the effect of foreign exchange decreased reported revenues by 5% and the net disposal of operations reduced first-quarter revenues by 1%, Willis said.

While Willis' margins beat Merrill Lynch's Mr. Cohen's expectations, top line growth was below his 10% organic growth and 8% revenue rise expectations.

Up until the fourth quarter of 2005, "organic growth has been steadily accelerating and this quarter represents a reversal of that trend," he noted in a research brief.

Donovan Fraser, a credit analyst with Standard & Poor's Corp. in New York, on the other hand, described Willis' organic growth rate as "strong" and said that as long as the margins hold up and the brokerage sees continued benefits from all of its producer hires over the last several years, "there is the potential for us to upgrade the company."

S&P currently has a positive outlook on the brokerage.

## ADVERTISER

# INDEX

### Issue of May 8

ADVERTISER	PAGE #
Ace	27
ACSTAR	10
ActiveHealth	5
Adrian's Bordereaux	36
Aetna Corporate	11
AIG Corporate	44
American Re-Insurance	29
Aon Corporation	2
Broadspire	25
Burnham System	36
Business Insurance	17, 35
Capitol Insurance Companies	35A
Chubb Group	31
Cingular Wireless	14
CNA Insurance	21
Dickstein, Shapiro, Morin & Oshinsky LLP	6
Endurance Re	18
First State Management	26
Flexible Benefit Service Corp.	17A
Genex	32
Lexington Insurance	22/23
Liberty International Underwriters	19
Mercator Risk	7
National Alliance	41
The Navigators Group	20
Prudential	16
RiskMeter	36
RLI Corp.	28
Scottsdale Insurance Co.	9
Specialty Risk Services, LLP	30
St. Paul Travelers	24
Swiss Re	33
Wausau Insurance Companies	12
Westrope & Associates, Inc.	34
WLT Software of Florida, Inc.	34
XL Insurance	13

# Liberty: Insurer vows to fight state officials' bid-rigging charges in court

Continued from page 1

business to Liberty Mutual," Mr. Spitzer's suit states, referring to a 2002 agreement between Aon Corp. and Liberty Mutual whereby the broker charged reduced reinsurance brokerage fees in exchange for being allowed to "claw back" the lost revenue "based on the volume or profitability of retail property business steered to Liberty Mutual."

Both lawsuits seek disgorgement of allegedly illegal profits, restitution for harmed policyholder clients, as well as damages for the company's deceptive business practices, among other things.

"We have not been able to structure a settlement with Liberty Mutual," a spokesman for Mr. Spitzer said. "In cases where we are unable to structure a settlement, we are prepared to litigate, and we are doing so with Liberty Mutual," the spokesman said.

In response to the lawsuits, Liberty Mutual in a statement said: "We are disappointed that the Attorneys General of New York and Connecticut decided to file suit today against Liberty Mutual over alleged conduct associated with quotations, commission payments and reinsurance brokering."

According to the insurer, "We have tried to reach resolution and can only describe their settlement demands as excessive and unreasonable; both in terms of magnitude and in their demands that we change legitimate business practices in states outside their legal jurisdictions. We have declined these demands and are preparing to resolve these issues in court."

Liberty Mutual denied any wrongdoing and said that its business practices with regard to commission payments are "appropriate and lawful."

Several insurers cited in Mr. Spitzer's suit against Marsh as participating in the bid-rigging scheme have settled, including American International Group Inc., Zurich Financial Services Group and, most recently, ACE Ltd. (BI, May 1). Liberty Mutual is the first to take the matter to court.

As part of the agreements reached with those other compa-



Mr. Spitzer



Mr. Blumenthal

nies, the insurers have been required to implement reforms to business practices, including ceasing to pay contingents on U.S. excess casualty coverage through 2008 and on any line where insurers representing 65% of overall gross premiums written in that line do not pay such commissions.

Mr. Spitzer's spokesman noted that if Liberty Mutual eventually decides to pursue a settlement, the attorney general's offices "doors will be open." But, he said, "a blueprint" exists for settlements reached with insurance companies regarding this matter, "and the contingent commission component is part of that."

### Some differences

Unlike Mr. Spitzer's lawsuits and settlements with brokers and other insurers, the suit against Liberty Mutual contains no charges under New York's Martin Act, a securities law, because the mutual insurer is not publicly traded.

Liberty Mutual may have felt less pressure to settle with officials because of this, several observers say.

"Particularly in the Sarbanes-Oxley world, publicly traded companies approach settlements and settlement discussions a little differently, with a little less flexibility, than non-publicly traded companies," said James M. Burns, a lawyer with Vorys, Sater, Seymour & Pease in Washington and chairman of the antitrust section of the Ameri-

can Bar Assn.'s insurance industry committee.

"They don't have the Sarbanes-Oxley implications and they don't have the potential ire of shareholders" to deal with, agreed Anthony M. Sabino, professor of law at the Peter J. Tobin College of Business at St. John's University in New York.

Liberty Mutual may also have simply decided that a handful of regulators were pushing too far in trying to dictate its nationwide business practices, said John Wicher, principal with John Wicher & Associates in San Francisco.

An example of Mr. Spitzer's broad attack, some say, is that his previous settlements with other insurers have limited contingent commissions paid to "producers." The settlements define producers to include both brokers and independent agents.

While brokers represent policyholders and thus face a potential conflict of interest in accepting contingents, independent agents represent the insurer, and any compensation agreement between the insurer and its agent arguably should not be subject to the same limitations, a person familiar with the settlements contended.

A Liberty Mutual spokesman declined to comment on whether this issue was a sticking point in negotiations with the attorneys general.

Even with Liberty Mutual taking a tough stand, a settlement is still possible, Mr. Sabino observed.

Referring to the insurer's state-

ment, he noted that "the hidden message is that they were willing to settle at a reasonable amount," and that a "chasm" still existed between what the two sides consider reasonable.

Liberty Mutual's position in the property/casualty market, meanwhile, is not likely to be drastically affected by the litigation, said Mark Rouck, senior insurance analyst with Fitch Ratings in Chicago.

"There may be a little fallout from it, but I don't think there is going to be anything material," he said. The client-steering and bid-rigging allegations that began with Mr. Spitzer's lawsuit against Marsh Inc. are now more than 18 months old, and "therefore it might lack some of the punch that it might have had from a business perspective previously."

### Who's next?

Two other insurers were cited in Mr. Spitzer's 2004 suit against Marsh—Hartford, Conn.-based Hartford Financial Services Group Inc. and the Princeton, N.J.-based

Munich-American RiskPartners unit of American Re Corp.

A spokeswoman for Hartford declined to comment, while a spokeswoman for American Re in an e-mailed statement said: "American Re Munich-American RiskPartners...was mentioned in the complaint by Attorney General Eliot Spitzer against (Marsh) but was not a defendant in that action. American Re prefers not to comment other than to state that we have cooperated to the fullest extent with the New York Attorney General's office."

Mr. Spitzer's spokesman would say only that the attorney general's office continues to seek "to resolve our issues with companies involved in bid-rigging with Marsh."

Meanwhile, Ohio Attorney General Jim Petro has notified Chubb Corp. that he intends to sue Chubb and several other insurance industry participants over contingent commission payments and the use of finite reinsurance contracts, Chubb disclosed in its first quarter report filed with the Securities and Exchange Commission.

UnitedHealth Group Inc.'s board last week enacted reforms to the insurer's corporate governance procedures, including halting equity-based awards for senior executives such as William W. McGuire, chairman and chief executive officer, and Stephen J. Hemsley, president and chief operating officer. UnitedHealth of Minnetonka, Minn., currently faces a federal securities lawsuit filed by shareholders and backed by Minnesota Attorney General Mike Hatch, which alleges harm caused by backdated stock option granted to 11 company executives, including Messrs. McGuire and Hemsley.

### Treasury issues TRIA final rule

The U.S. Treasury Department last week issued an interim final rule regarding amendments to the Terrorism Risk Insurance Act passed as part of the law's extension last year. The interim final rule generally follows guidance that was issued by the department in January, but is more specific, according to Howard Leikin, deputy director. The rule becomes effective 30 days after being published in the Federal Register.

### At BusinessInsurance.com

**New Online Poll:** If your retiree prescription drug benefit plan currently qualifies for the Medicare Part D claim subsidy, for 2007 will you: retain coverage; switch to a plan that supplements Part D but does not qualify for the subsidy; terminate coverage; or take another approach?

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

## Late News

Continued from page 1

surplus requirements and premium schedule. State observers expect that the measure will be introduced again next year.

### PXRE faces suit from shareholders

PXRE Group Ltd. is facing a shareholder securities lawsuit filed on behalf of investors claiming the company and certain top managers concealed the magnitude of losses to its business stemming from the 2005 hurricanes. The complaint—filed Wednesday by the law firms of Murray, Frank & Sailer L.L.P. and Schiffrin & Barroway L.L.P. in U.S. District Court in Manhattan—names Hamilton, Bermuda-based PXRE itself, along with President and Chief Executive Officer Jeffrey L. Radke and John M. Modin, PXRE's former chief financial officer, who resigned from the company in January.

### Congoleum, insurers settle on asbestos

Units of St. Paul Travelers Cos. Inc. have agreed to pay \$25 million to Congoleum Corp. to settle a coverage dispute over the flooring manufacturer's asbestos-related liabilities, according to the St. Paul, Minn.-based insurer. A bankruptcy court hearing on the settlement is scheduled for May 30. Congoleum, which filed for bankruptcy in 2003, previously announced settlements for its asbestos-related claims with American International Group Inc., Liberty Mutual Insurance Co. and Equitas Ltd., among others.

### UnitedHealth changes compensation rules

Faced with growing scrutiny over the timing of stock-option grants,

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**BI Stock Index** **2967.01** **-0.04**

**Dow Jones** **11577.74** **1.85**

**S&P 500** **1325.76** **1.16**

### Largest gains

Tower Group Inc.	11.29%
RenaissanceRe Holdings	11.27%
EMC Insurance Group	9.64%
Meadowbrook Insurance	8.67%
SAFECO Corp.	8.07%

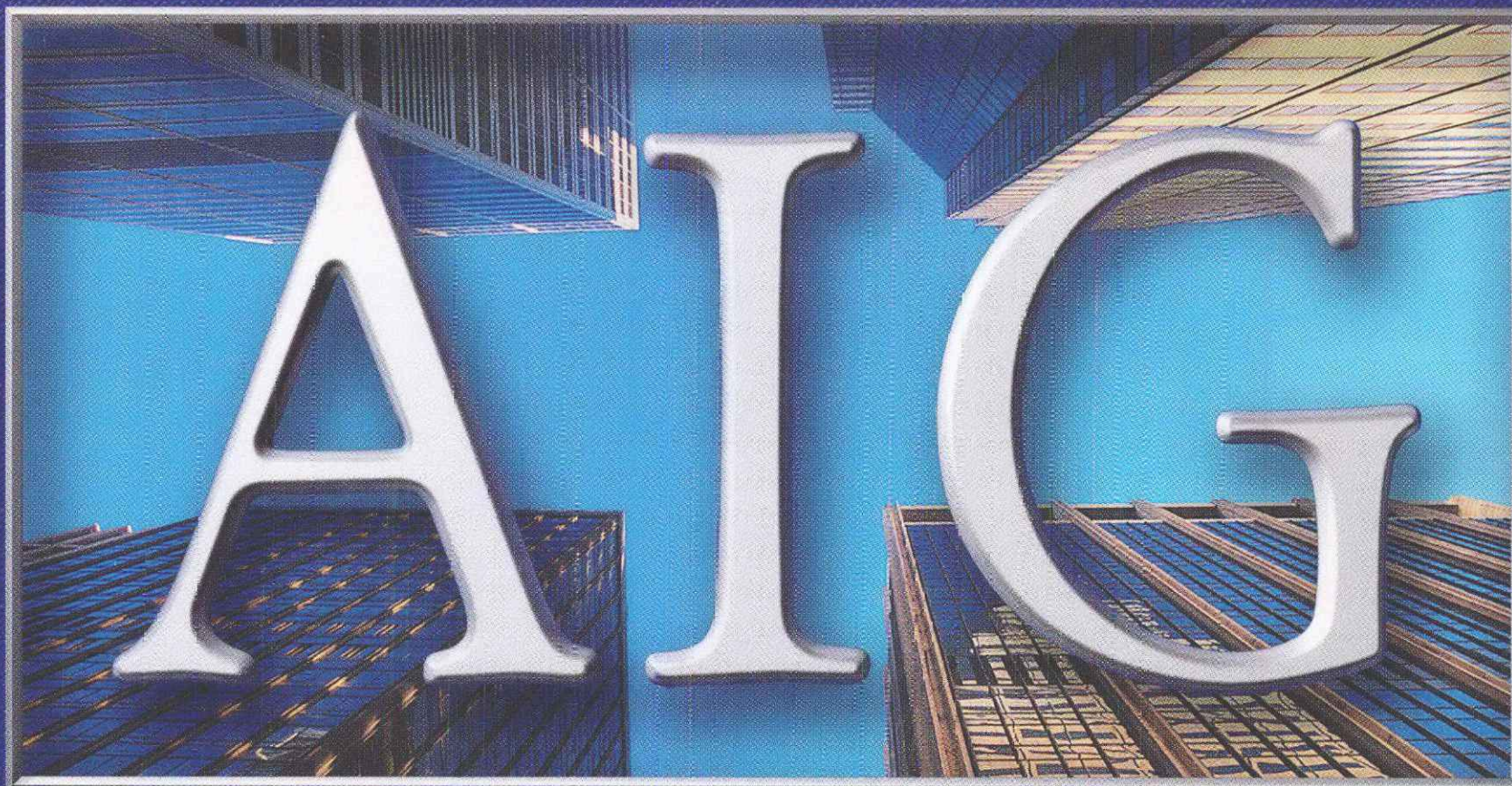
### Largest losses

CIGNA Corp.	-14.13%
Vesta Insurance Group	-10.26%
Aon Corp.	-9.71%
UnumProvident Corp.	-7.48%
Humana Inc.	-7.48%

### Weekly change by market segment

Brokers	-1.69%
Insurers/Reinsurers	0.93%
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