

Business Insurance

\$5

November 19, 2007

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EMPLOYER GROUPS IN CANADA LOBBY FOR CHANGES TO LAW ON PENSION WINDUPS / PAGE 3



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In Brief

PBGC deficit falls in 2007

Aided by no major pension plan failures, higher interest rate assumptions and robust investment results, the Pension Benefit Guaranty Corp. narrowed its deficit to \$13.1 billion in fiscal 2007, a \$5 billion reduction from the prior year and a nearly \$10 billion improvement from 2005. During fiscal 2007, the PBGC terminated 110 plans with \$3.8 billion in assets and \$4.97 billion in liabilities, for a funding shortfall of \$1.17 billion. However, all but \$178 million of that was previously booked as probable.

USI appoints new chief executive

David L. Eslick, chairman, president and chief executive officer of USI Holdings Corp., has left the brokerage and has been succeeded by Michael J. Sicard, a

See **IN BRIEF** page 38

SPOTLIGHT CENTERS OF INNOVATION

The Centers of Innovation Spotlight report is *Business Insurance's* look at some of the markets, companies and people who are leading innovation in the commercial insurance industry.

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Senate OKs 7-year backstop

As expiration nears, House and Senate must work to

By **MARK A. HOFMANN**

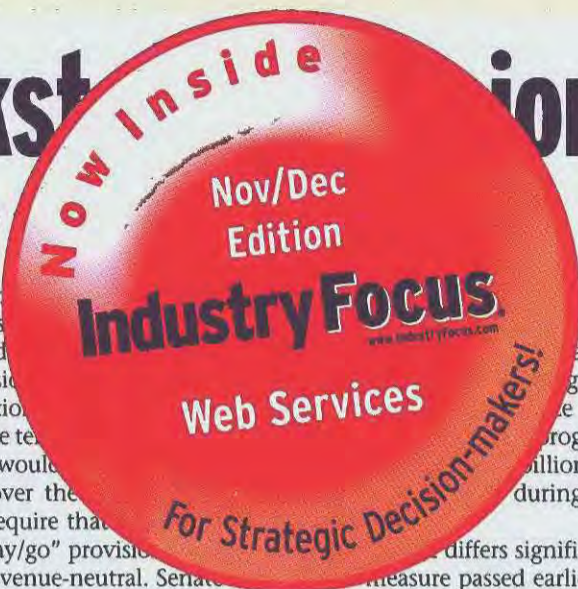
WASHINGTON—Advocates of the federal terrorism insurance backstop are feeling more optimistic that the program will last beyond its scheduled Dec. 31 expiration, thanks to the Senate's approval of a measure to extend the program another seven years.

The vote came Friday shortly before the Senate was scheduled to break for its Thanksgiving recess.

Had the Senate not approved the Terrorism Risk Insurance Program Reauthorization Act last week, action would have stalled until next month, which could have resulted in the program expiring, at least temporarily. Supporters of the backstop said even a temporary expiration could have caused insurance marketplace dislocations, as underwriters might hesitate to issue policies without a guarantee of federal backing to help cover the losses

from a catastrophe.

Senate consideration had been held off until after the Congressional Budget Office's report using assumptions that the measure would cost \$5.1 billion over the next seven years. Senate rules require that any measure passed earlier by the House must be revenue-neutral. Senate Banking, Housing and Urban Affairs Committee leaders and insurers



See **BACKSTOP** page 38

Individual suits likely over subprime losses

Some investors expected to opt out of class actions

By **DAVE LENCKUS**

Financial institutions hit hardest by the subprime mortgage meltdown should expect individual lawsuits in addition to securities class actions as some shareholders gamble they can recover far greater damages on their own, a leading plaintiffs attorney says.

Having to defend individual, or "opt-out," litigation in addition to a class action lawsuit drives up potential losses for any defendant involved in securities fraud litigation, defense and insurer attorneys note. But if investors file individual lawsuits immediately rather than taking the typical course of waiting until after a class action is settled, defendants' losses should be smaller, the attorneys said.

Mortgage lenders, securities brokers and other financial institutions in recent weeks have announced colossal earnings write-downs to

account for losses from their subprime mortgage lending practices and investments in securities backed by subprime mortgages.

Among the largest third-quarter write-downs was \$9.8 billion by Citigroup Inc. and \$7.9 billion by Merrill Lynch. Share prices for both companies' stock have fallen recently, and the losses have cost both companies' chief executive officers their jobs.

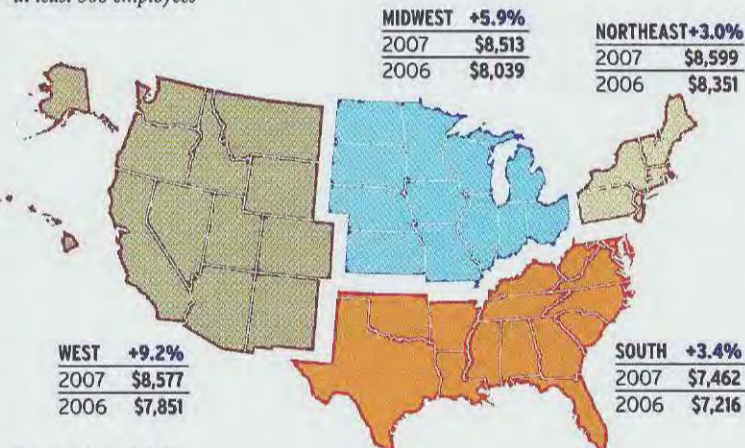
Reinsurance brokerage Guy Carpenter & Co. L.L.C. estimated in a report earlier this month that total losses to directors and officers liability insurers from the subprime crisis could top \$3 billion.

The losses already announced by financial institutions are large enough to make the risky opt-out securities lawsuits worth pursuing for certain investors, said plaintiffs attorney Patrick J. Coughlin of

See **OPT-OUT** page 36

AVERAGE HEALTH CARE COST INCREASES

Increase in per employee health care plan costs by region for employers with at least 500 employees



Source: Mercer L.L.C.

Health plan cost hikes stay at 6.1%: Survey

Cost-control efforts help hold down increases

By **JERRY GEISEL**

Cost increases for U.S. group health care plans continue to hold steady as more employers take steps to keep spending under control.

Group health plan costs increased 6.1% this year to an average of \$7,983 per employee, up from \$7,523 last year, according to a survey of nearly 3,000 employers released today by Mercer L.L.C. in New York.

That marks the third consecutive year that health care plan costs have increased 6.1%. While that is roughly double the rise in the Con-

sumer Price Index, it is a big improvement from just a few years ago, when annual health plan increases were rising by double digits and employers despaired about their seeming inability to bring costs under control. In 2002, for example, costs jumped an average of 14.7%; in 2003, costs climbed an average 10.1% (see chart, page 37).

"The good news is that cost increases are flat and are not going in the wrong direction," said Blaine Bos, a survey author and a partner in Mercer's Minneapolis office.

See **COSTS** page 37

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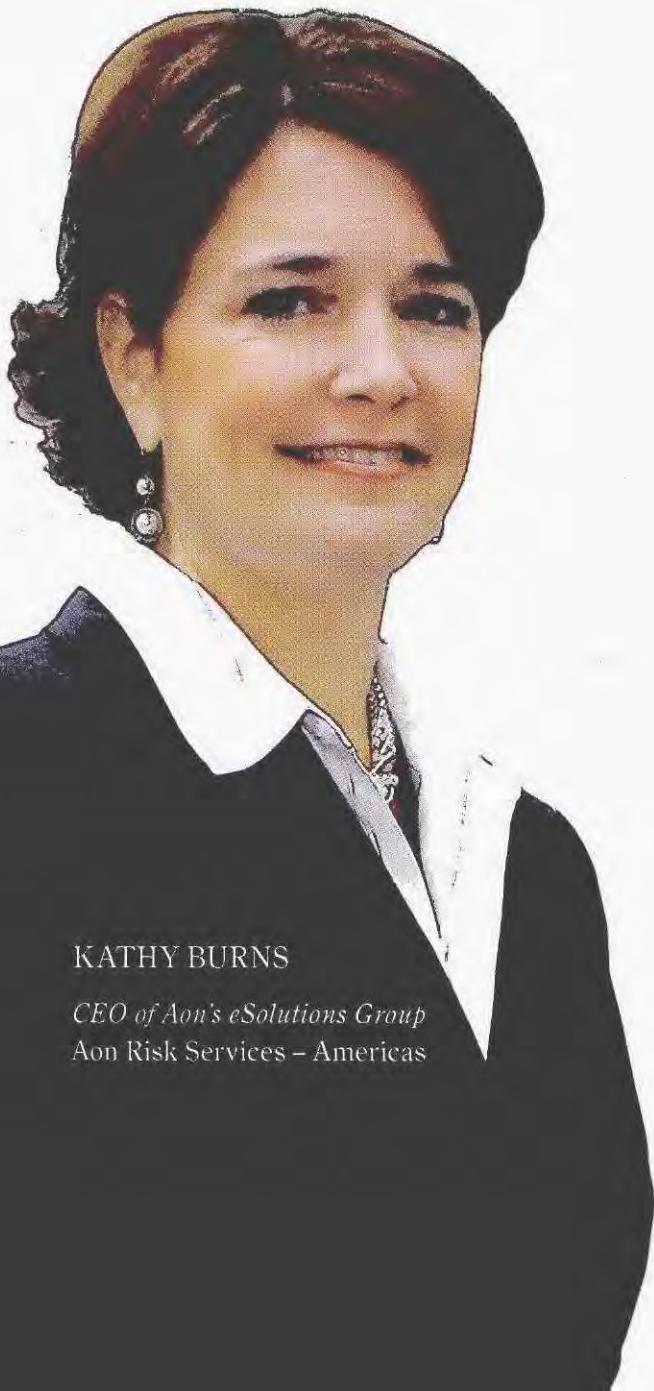
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On the Web

BI VIDEO

Reinsurance trends in new Re Views

Global reinsurance industry leaders discuss market trends in Re Views, a series of video interviews produced by *Business Insurance*. In the latest report, learn about discussions at recent gatherings in Baden-Baden, Germany, as well as the Boston meeting of the Property Casualty Insurers Assn. of America. Go to www.BusinessInsurance.com/video.

QUESTIONS & ANSWERS

Podcast explores product development

Ty R. Sagalow of American International Group discusses the culture of creativity at AIG in print (page 18) and online. To hear an audio podcast and read an expanded interview, visit www.BusinessInsurance.com/QandA. This and other podcasts can be heard at A stand-alone feature is at www.BusinessInsurance.com/audio.



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RISK MANAGER OF THE YEAR®

Deadline for 2008 award extended to Nov. 30

The deadline to nominate someone for the 2008 *Business Insurance* Risk Manager of the Year® award has been extended to Nov. 30. The winner will be profiled in a future issue. Download a nomination form at www.BusinessInsurance.com/RMOY or request a form from BI Editor Regis Coccia at rcoccia@businessinsurance.com.

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Business Insurance

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 41, No. 47, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to *Business Insurance* Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. \$5 a copy and \$97 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2007 by Crain Communications Inc.

Canadian employers lobby for pension reform

Business groups seek end to partial windups, control of excess funds

By GLORIA GONZALEZ

TORONTO—Canadian employer groups are lobbying an Ontario pension task force to encourage plan sponsors to maintain defined benefit plans by eliminating partial plan windups and giving employers exclusive authority to decide the use of surplus funds.

Unions strongly object to such changes in Ontario's Pension Benefits Act, saying partial windups offer critical protections to plan members, who also have a say in using excess funds.

The Ontario Expert Commission

on Pensions was appointed last year to review the law and its rules governing funding, deficits and surpluses of defined benefit pension plans. The commission held public hearings in several Ontario cities over the past month to get comments for its report, which will be filed with the Ontario minister of finance next summer.

While observers agree that defined benefit plans are critical to the Canadian retirement system and changes are needed to encourage employers to establish and maintain them, there is significant disagreement between employers and unions on how to strengthen the defined benefit system.

High on the list of priorities for Canadian plan sponsors is removal of the Ontario law's provision allowing partial plan windups, or

terminating part of a pension plan and distributing assets related to that part of the plan.

Employer groups such as the Ontario Chamber of Commerce and Financial Executives International Canada advocated eliminating partial plan windup provisions from the legislation.

Steve Eadie, chair of the OCC Pension Task Force, cited numerous problems with partial plan terminations, including that sponsors are required to pay out any surplus related to the partially wound-up portion and that members affected by a windup often receive increased benefits at the expense of other members. "The partial plan windup rule is an attempt to provide them more than 100 cents on the dollar," he said.

If the provisions are not eliminat-

ed, employers suggested implementing more restrictive conditions, including eliminating the regulator's discretionary power to order a partial windup when a business restructuring occurs, such as a downsizing program or plant closures.

The issue of partial plan windups was thrust into the spotlight by a controversial Supreme Court of Canada decision in *Monsanto Canada Inc. vs. Ontario (Superintendent of Financial Services)*, which required that surpluses be distributed in partially wound-up pension plans (*BI*, Aug. 9, 2004).

Partial windup provisions, though, provide regulators with flexibility and prevent an employer from keeping a plan active simply

See **ONTARIO** page 35

Illinois judge throws out med mal damage caps

Hospital and doctor will appeal directly to state's high court

By JEFF CASALE

CHICAGO—A Cook County judge's ruling that a key Illinois tort reform measure capping punitive damages in medical malpractice cases is unconstitutional will be appealed to the state's high court, lawyers for a hospital and a doctor say.

The ruling disappointed tort reform advocates who hold that previous high damage awards in the state have led to large increases in insurance rates that have driven physicians out of Illinois.

But representatives of personal-injury attorneys and others welcomed the ruling.

The case, *Abigaile LeBron vs. Gottlieb Memorial Hospital and Dr. Roberto Levi-D'Ancona*, is the first challenge of a 2005 Illinois medical malpractice reform law that capped noneconomic damages at \$500,000 per doctor and \$1 million per hospital.

In the case, the LeBron family sued Gottlieb Memorial Hospital and Dr. Levi-D'Ancona, alleging that the physician failed to respond quickly to complications during their daughter Abigaile's October 2005 birth and, as a result, the child was born with severe brain damage, according to court documents.

Cook County Circuit Judge Diane Larsen in Chicago granted the LeBrons' request and ruled that caps on med mal awards violate the Illinois Constitution's separation of powers clause, which says the legislature cannot interfere with judges and juries in determining fair damages.

Judge Larsen's ruling cited a 1997 decision in *Vernon Best vs. Taylor Machine Works*, in which the Illinois

Supreme Court overturned a 1995 law that introduced caps in personal-injury cases.

Defense lawyers for the Melrose Park, Ill., hospital and doctor said they will appeal directly to the Illinois Supreme Court, as the case involves a constitutional issue.

Tort reform advocates said the ruling was disappointing but not surprising.

"Cook County is a notorious judicial hellhole," said Darren McKinney, spokesman for the Washington-based American Tort Reform Assn. "What goes on there should surprise no one."

Illinois enacted the 2005 law to address an access-to-care crisis that led doctors to flee the state after more than 44 verdicts or settlements in excess of \$5 million in Cook County the previous year, according to the Washington-based American Insurance Assn.

Other states, including Texas and California, have implemented noneconomic damage caps that have worked to reform advocates' advantage, according to ATRA and the Illinois Civil Justice League, a tort reform advocacy group. As a result, they say, physicians have been leaving high litigation states without caps in favor for ones that have them.

"Florida, California and Texas have all had successful reforms in capping noneconomic damages," Mr. McKinney said. "The Texas state office, for example, has a backlog of licensed doctors applying to practice in the state."

Ed Murnane, president of the Illinois Civil Justice League, said after Illinois lawmakers approved the reform, many doctors who'd been considering leaving the state decided to stay and, as a result, more malpractice insurers came to the state to write business.

See **MED MAL** page 37



LANDOV

'Health insurance companies are beginning to realize if they want to implement a doctor ranking program, they should adopt our national model, which is supported not just by insurers, but also by national physician and consumer groups.'

Andrew Cuomo, N.Y. attorney general

More insurers embrace doctor ranking model

Aetna, WellPoint latest to implement Cuomo approach

By GLORIA GONZALEZ

NEW YORK—Employers and consumers will receive necessary and reliable information on physician performance now that three of the nation's largest health insurers have adopted the New York attorney general's model for doctor-ranking programs, observers say.

WellPoint Inc. and Aetna Inc. have joined CIGNA Corp. in agreeing to fully disclose to consumers, physicians and plan sponsors the cost and quality metrics the insurers use to rank doctors.

The agreements "create a foundation for expanding the collection of physician performance information," said Chuck Bell, programs director for Consumers Union in

Yonkers, N.Y. "We're hoping a lot more information about performance is going to get reported to consumers and employers."

Physician ranking programs are critical to knowing the value of health care services, but the agreements also create necessary guidelines for these programs and inform employers where the information is coming from, said Laurel Pickering, executive director of the New York Business Group on Health. "We actually are very pleased with the agreements being signed by the plans and the attorney general," she said.

CIGNA Healthcare, a unit of Philadelphia-based CIGNA Corp., last month became the first insurer to reach an agreement with New York Attorney General Andrew Cuomo to disclose to consumers how much of its physician evaluation process was based on cost effi-

See **DOCTORS** page 36

House panel hears debate on liability for foreign products

Lawyers urge changes to ensure overseas firms are held accountable

By MARK A. HOFMANN

WASHINGTON—Congress can and should make certain that foreign manufacturers that introduce defective products into U.S. commerce be subject to U.S. tort law, witnesses told a House panel last week.

That's despite a 20-year-old Supreme Court decision that appears to place such manufacturers beyond the reach of U.S. law under some circumstances.

In fact, foreign manufacturers should be required to obtain an import license and purchase product liability insurance, post bonds

and agree to be subject to U.S. courts before being permitted to ship their goods to the United States, a product liability attorney told a House panel last week.

Thomas Gowen, a Philadelphia-based partner with Locks Law Firm L.L.C., told the House Judiciary Committee's Subcommittee on Commercial and Administrative Law that the license should require the name, address, product lines and brand names made by the company to make sure that such manufacturers are held accountable. Those that refuse to pay damages levied by U.S. courts for faulty products should be stripped of their license, he said.

But Victor Schwartz, general counsel for the American Tort Reform Assn. who appeared before the panel on behalf of the U.S.



Many international companies, such as Toyota Motor Corp., do not need to be subject to such a requirement because they already accept the jurisdiction of U.S. courts.

Victor Schwartz, American Tort Reform Assn.

Chamber of Commerce's Institute for Legal Reform, cautioned against imposing such requirements too broadly. In an interview after the hearing, he said many international companies, such as Toyota Motor Corp., do not need to be subject to such a requirement because they already accept the jurisdiction of

U.S. courts.

At the heart of the discussion was the impact of the Supreme Court's 1987 ruling in *Asahi Metal Co. Ltd. vs. Superior Court of California, Solano County*, a case involving an indemnity claim between two foreign companies after a product liability cases involving California citizens

had been settled. Basically, Mr. Schwartz said, the high court ruled the "mere foreseeability" that a product would be sold in the United States was insufficient to subject the defendant to a state court's jurisdiction, an argument foreign manufacturers have made in attempts to get summary judgments in product liability cases.

"I think a lot of people and courts have perhaps over-read the decision and believe that it is impossible to get jurisdiction over a foreign manufacturer who supplies a component part or component process and does not do business in the United States," Mr. Schwartz said in the interview. "But I think the entire panel—including myself—believed that reading of *Asahi* is

See **LIABILITY** page 6



Container ship Cosco Busan suffered hull damage after colliding with San Francisco's Bay Bridge, resulting in 58,000 gallons of oil spilling into San Francisco Bay.

P&I club covers liability for oil spill off California

Steamship Mutual wrote ship's insurance

By JUDY GREENWALD

SAN FRANCISCO—A container ship that collided Nov. 7 with San Francisco's Bay Bridge, spilling 58,000 gallons of oil into San Francisco Bay, is fully insured for the cleanup through its insurer, Steamship Mutual Underwriters Assn. (Bermuda) Ltd., said a spokesman for the ship's owner.

The spokesman for Regal Stone Ltd. of Hong Kong, the owner of the Cosco Busan, could not provide information on liability limits.

Steamship Mutual, a protection and indemnity club, is a member of the International Group of P&I Assns., which provides reinsurance for club members.

According to Dennis L. Bryant, a

Washington-based maritime attorney with Holland & Knight L.L.P., under federal law, the ship would have been required to have \$61.9 million in coverage.

A Steamship Mutual spokesman declined to comment.

Federal authorities have launched a criminal investigation into the spill, which occurred during dense fog when the ship struck the protective fendering system of the Bay Bridge. The National Transportation Board is also investigating the incident.

As of Thursday, about 1,400 people and 45 vessels have been working on the spill response, which has led to the closing of 27 area beaches and endangered area wildlife, according to the U.S. Coast Guard.

Getting OK for benefits in captive easier than many employers think

Low-cost changes to sweeten benefits can satisfy DOL

By JERRY GEISEL

SCOTTSDALE, Ariz.—Concern over a key federal regulatory requirement should not deter employers interested in expanding their captives to fund employee benefit risks, captive experts say.

Under the requirement imposed in 1999 by the Labor Department, which must give its seal of approval before an employer can fund benefit risks

of U.S. employees and their dependents through a domestic captive, the employer has to sweeten plan participants' benefits.

When Sun Microsystems Inc., the Santa Clara, Calif.-based computer network systems company, decided to reinsure life insurance policies through the Vermont branch of its Bermuda-domiciled captive, it examined benefit improvements by other employers that had secured Labor Department approval for

their captive benefits funding programs.

"We benchmarked what others had done," said Suzanne Galie, Sun's senior risk manager in its corporate risk management department in Broomfield, Colo.

To that end, Sun increased life insurance benefits in several ways in launching its captive benefits funding program in 2006. Among other things, Sun reduced coverage premiums, improved an existing accelerated death benefit and added a benefit to pay up to \$20,000 a year for up to four years to cover the educational expenses of dependent

See **BENEFITS** page 24

Use of alternative risk transfer increases despite soft market

Growing comfort with risk retention seen as driving force

By ROBERTO CENICEROS

SCOTTSDALE, Ariz.—Interest in alternative risk transfer mechanisms continues to grow "fairly significantly" despite ongoing softness in insurance prices, an industry economist told the World Captive Forum.

Historically, when insurance prices fall, the use of captives, risk retention groups and other self-insurance practices recede as

premiums flow back to traditional insurance, said Robert P. Hartwig, president and chief economist of the Insurance Information Institute in New York.

"That isn't happening today," Mr. Hartwig said. "That is a little bit different from the past" and reflects corporations' growing comfort with assuming greater amounts of risk.

Property/casualty insurers, meanwhile, are seeing their premium volume shrink. Insurance prices that are "dropping like a stone" account for much of the premium volume decline, Mr. Hartwig told the Nov. 5-7 meet-

ing of the WCF.

Insurers have given back about five years of premium growth in the past three years, he said.

During the third quarter, pricing for an average commercial account fell 13.3%, Mr. Hartwig said. That puts insurance prices at the same level they were in mid- to late 2002.

At the same time, it is becoming easier to understand, manage and afford alternative risk transfer arrangements. Commercial insurers, therefore, also are losing premium volume as cor-

See **RISK TRANSFER** page 28



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Liability: Change urged to ensure overseas firms held accountable

CONTINUED FROM PAGE 4

overstated and that there is room for Congress to extend jurisdiction over such manufacturers in circumstances where the product for which they supplied a component or process is distributed throughout the United States in substantial numbers."

But one question that arose during the hearing was how far the chain of accountability stretches.

If foreign manufacturers cannot be held accountable, then others in the stream of commerce, such as retailers and distributors, must be, said Pamela Gilbert, partner in the

Washington law firm Cuneo Gilbert & LaDuca L.L.P. and former executive director of the U.S. Consumer Product Safety Commission. Such entities must be responsible for notifying the public of the faulty products and carrying out a recall, she said.

"The CPSC, as a last resort, can go after the retailer," she said, adding that the ability to do so is a "very, very critical piece of the puzzle."

The other witness before the committee left no doubt as to his opinion of the root of the problem—supporters of the tort reform movement.

"With singular determination,

they sought to dismantle" a tough, market-oriented civil justice system, said Andrew Popper, a professor at American University's Washington College of Law in Washington.

But "the backbone of the tort system—negligence law—has survived the onslaught," he said.

Congress should step in to hold foreign manufacturers of defective goods accountable, said Mr. Popper. "It is time at last to facilitate justice, not impede it."

"I don't believe people in China who put lead paint in toys that hurt children" were thinking they could do so because of U.S. tort reforms, Mr. Schwartz said later during the

hearing.

During a question-and-answer period after the testimony, Mr. Popper stressed that relieving retailers of responsibility for defective products is a "terrible idea." He said "sellers have an enormous influence on design" of products. "They need to take responsibility for the products they sell."

Both Mr. Schwartz and Ms. Gilbert said after the hearing that Congress may indeed take action.

"The subcommittee may consider legislation, but I do not think it will have anything to do with tort reform. The focus of the hearing was whether there needs to be any change in law to address people who send defective products or parts of defective products into the United States," said Mr. Schwartz.

Ms. Gilbert called the hearing historic in the sense that all the witnesses plus committee members from both parties were "all agreeing that foreign manufacturers should be accountable in the U.S. legal system."



Overseas manufacturers of goods sold in the United States should be accountable to U.S. tort laws, witnesses told a House panel last week.

"I think we may see legislation because there seems to be widespread support. It does look like constitutionally Congress can do something and politically it may be able to act, too," she said.



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Melissa O. Leuck, ARM • Risk Manager, Pharmaceutical Industry

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Workers Compensation:

Protecting People in the Age of Terrorism Risk
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BI webcast discusses comp terrorism risks

Terrorism presents a unique challenge to the workers compensation system, according to a workers comp expert.

"Workers compensation was never intended to cover terrorism," said Mark J. Noonan, managing director and workers compensation practice leader at Marsh Inc. But no state allows a workers comp terrorism exclusion, and underwriters must also contend with a lack of reinsurance and heavy state rate regulation, he said.

Mr. Noonan was one of three panelists discussing "Workers Compensation: Protecting People in the Age of Terrorism Risk" in a Nov. 14 *Business Insurance* Online Executive Forum™, moderated by *BI* Senior Editor and Western Bureau Chief Roberto Cenicerros. The interactive forum occurred only days before the Senate passed a bill that would extend the federal terrorism insurance backstop for seven years beyond its current scheduled Dec. 31 expiration date (see story, page 1). The House had

already approved its own bill to extend the program 15 years and expand it to cover group life insurance and acts of domestic and foreign terrorism.

Dawn Watkins, chief risk officer for the Los Angeles Unified School District, noted that a single act of terrorism could result in millions of dollars of workers comp claims. She noted that enterprises are often grouped together in a downtown area, raising the possibility of high casualties.

Richard L. Thomas, senior vp and chief underwriting officer for American International Group Inc.'s Domestic Brokerage Group, explained how the Sept. 11, 2001, attacks impacted underwriting as insurers faced the question "how do you go about deciding what you're going to insure and how do you price for it?"

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Business Insurance OPINIONS

Employers can win health care cost battle

IS THE GLASS half-full or half-empty?

That's a reasonable question to ask when analyzing the results of the latest Mercer L.L.C. health care cost survey. As we report on page 1, group health care plan costs increased an average 6.1% in 2007, the same percentage increase as in 2006 and 2005.

On one hand, that increase is roughly double the rise in general inflation, a trend that obviously cannot continue to be sustained indefinitely.

On the other hand, the most recent cost increases amplify the progress that employers and insurers have made in controlling costs. Double-digit annual increases were the norm just a few years ago, and employers had little optimism that costs could be controlled.

Today, there is greater optimism. Employers are embracing basic, common-sense approaches, such as introducing programs to better manage costs and new consumer-driven plans that give employees financial incentives to use health care services efficiently.

We think those programs' potential to hold down costs has barely been tapped. Just 5% of employees, for example, currently are enrolled in CDHPs, for which costs are substantially lower than more traditional health care plans.

Imagine what the impact would be if 95% of employees were enrolled in CDHPs.

While there are many reasons—some beyond the control of employers and employees—why health care costs have increased so much in recent years, plenty is within employers' domain.

Evidence is accumulating that CDHPs really can keep cost increases in check. The plans expose employees to big medical bills but also give them accounts, such as health savings accounts, to partially pay uncovered expenses and then allow employees to hold on to the unused balances.

The battle to control rising costs has just begun, but employers should have every reason to believe it is a battle that they can win.

Evidence is accumulating that CDHPs really can keep cost increases in check.

Tort reform victories can turn into memories

A CHICAGO JUDGE'S ruling last week striking down caps on noneconomic damages in medical malpractice liability suits underscores one of the greatest challenges facing those who would reform tort laws.

That challenge is the need to play defense, no matter how impressive an initial victory may seem.

The victory in question was the 2005 enactment of state medical malpractice reform legislation that capped noneconomic damages at \$500,000 per doctor and \$1 million per hospital. But last week, Cook County Circuit Court Judge Diane Joan Larsen ruled that the cap violated the Illinois Constitution's separation-of-powers clause.

Fortunately, the defendants in the case have already indicated they will appeal to the Illinois Supreme Court. While it would have been better had the limits been upheld by the circuit court, at least the law will get another review, opening the possibility that the damage caps will be reinstated.

The malpractice cap ruling should serve as a strong reminder to tort reform advocates that legal reforms are never a done deal. Today's victories—impressive as they may be—can very quickly turn into bitter-sweet memories. Tort reform is a process that never ends, as reform advocates in Illinois learned last week.

No victory is guaranteed forever, and reform proponents must be prepared to make every reasonable effort to defend their triumphs on very short notice.



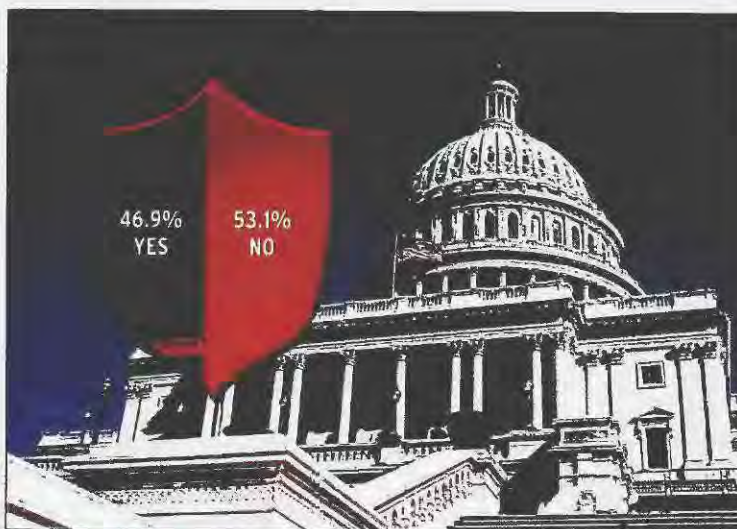
BI beats list

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:

Agents/brokers: Sally Roberts.	legislation—risk management: Mark A. Hofmann.	Regulation of insurance: Meg Fletcher.
Benefits—health care and ancillary benefits: Joanne Wojcik.	Health care industry operations: Gloria Gonzalez.	Reinsurance: Judy Greenwald.
Benefits—retirement savings/pensions: Jerry Geiser.	Industry Focus: Rodd Zolkos, Meg Fletcher.	Risk management profession: Dave Lenckus.
Canada—risk management and benefits: Gloria Gonzalez.	Insurance coverage litigation: Douglas McLeod.	Runoffs/receiverships: Douglas McLeod.
Employment practices: Judy Greenwald.	Insurance fraud: Douglas McLeod.	Safety/ergonomics: Meg Fletcher.
Environmental risk management: Sally Roberts.	Latin American markets: Roberto Cenicerros.	Surplus lines/wholesalers: Roberto Cenicerros.
Federal regulation/legislation—benefits: Jerry Geiser.	Property/casualty industry operations: Judy Greenwald.	Tort reform: Mark A. Hofmann.
Federal regulation/	Professional liability: Dave Lenckus.	Work/life benefits and EAPs: Sally Roberts.
	Property loss control/cat risks: Mark A. Hofmann.	Workers compensation: Roberto Cenicerros.

Online Poll at www.businessinsurance.com

Should Congress pass a 120-day extension of the federal terrorism insurance backstop if lawmakers fail to approve a long-term extension before the program's Dec. 31 expiration?



NEXT WEEK'S POLL: Have you ever used a health care clinic at a retail store?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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SUBSCRIPTIONS: Detroit: 888-446-1422
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Published weekly at 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Fax: 312-280-3174. biveb@crain.com. Offices: 711 Third Ave., New York, N.Y. 10017-5806. Fax: 212-210-0704; Suite 814, National Press Building, Washington, D.C. 20045-1801. Fax: 202-638-3155; 6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif. 90048-4947. Fax: 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750. Fax: 408-774-1155; 21 St. Thomas St., London SE1 9RY, U.K. Fax: +44-(0)20-7457-1440; 7300 N. San Anna Drive, Tucson, Ariz. 85704. Fax: 520-579-3476; 1746 Cole Blvd., Suite 150, Golden, Colo. 80401. Fax: 303-733-9941; 12524 Acuff Court, Olathe, Kan. 66062. Fax: 312-280-3174; 77 Franklin St., Suite 809, Boston, Mass. 02110-1510; Fax: 212-210-0704. \$5 a copy and \$97 a year in the U.S., \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, *Business Insurance*, 711 Third Avenue, New York, N.Y. 10017-5806. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48103. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For reprints or reprint permission: Reprint Management Services, 1808 Colonial Village Lane, Lancaster, PA 17601; 800-290-5460, ext. 160; Businessinsurance@reprintbuyer.com.

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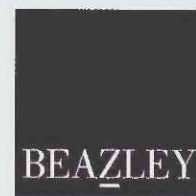
Average
commercial property
policy bound

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commercial property
policy issued

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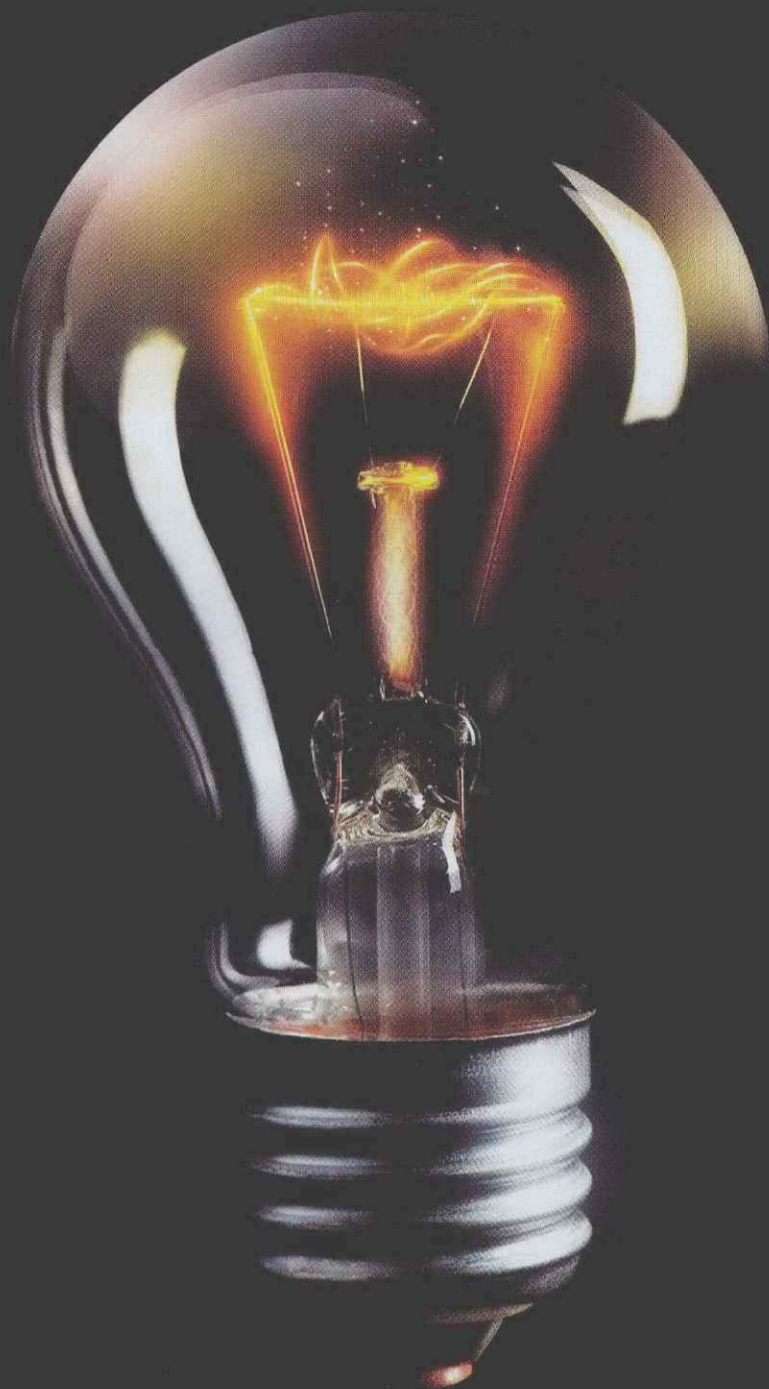
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Bright ideas

Fresh strategies to subdue business risks

Every industry, to stay competitive, must innovate and develop new products and services.

A business as old as insurance tends to ingrain habits that sometimes are hard to break. Yet commercial insurers strive to serve the needs of businesses that face changing conditions on a global scale. The Centers of Innovation Spotlight report is *Business Insurance's* look at some of the markets, companies and people who are leading innovation in the commercial insurance industry.

Over the years, *Business Insurance* has reported on trends in the Lon-

don and Bermuda markets, which remain the world's two most important centers for insurance and reinsurance. The Centers of Innovation feature explores London and Bermuda but also looks at innovation happening in other markets.

Among the stories in this section are:

- Why Lloyd's of London continues to be a key market for U.S. risk managers to find coverage for difficult risks. The flexibility, underwriting expertise and breadth of coverage at the world's oldest insurance marketplace offer one-stop shopping, some buyers say.

- How risk managers and brokers help drive product innovation in underwriting. Finding gaps and unmet needs help identify new opportunities to craft coverage, buyers and brokers say.

- What Bermuda's regulatory environment does to foster the development of new kinds of insurance entities and coverages. Bermuda remains the market of choice to set up companies quickly, as evidenced by the waves of startups following major catastrophes and market disruptions.

- How some insurers are able to deliver complete policies much

faster than the industry average—in some cases, even before coverage starts. Policy issuance still lags, as buyers have grown accustomed to waiting weeks or months to get complete documents.

- The people and processes that help American International Group Inc. to launch new property/casualty products very quickly. How quick is quick? AIG Product Development is launching a new product every 14.7 days, on average.

What will be the next innovation in the commercial insurance industry? Read this report and you'll get some good ideas.

Centers of
Innovation

SPOTLIGHT

'ALL ROADS
LEAD TO LONDON
AND LLOYD'S'

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MANY COOKS
BUILD COVERAGE
'SMORGASBORD'

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Q&A WITH AIG'S
TY R. SAGALOW
ON CREATIVITY

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SPEEDY VS. U.S.
'FEUDAL SYSTEM'

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NEXT SPOTLIGHT Dec. 3: Environmental Risk Management

U.S. buyers flock to Lloyd's in search of broader coverage

Market's efficiency draws U.S. business as Lloyd's underwriters are the sole decision-makers

By **TONY DOWDING**

It is the oldest insurance market in the world and perhaps the most famous name in the industry. But what makes Lloyd's of London an attractive proposition for U.S. risk managers, especially in such a competitive marketplace?

Lloyd's is highly rated, has a broad global reach, is highly innovative and can provide a broad range of coverage. But this is true of many domestic U.S. insurers.

Joe Restoule, senior risk consul-

tant at NOVA Chemicals Corp. in Calgary, Alberta, has been placing business at Lloyd's since 1992, mostly traditional property and casualty risks as well as political, project and various construction risks, and he visits Lloyd's four or five times a year.

"All roads lead to London and Lloyd's, even if you are dealing with domestic carriers, because Lloyd's will be associated with the placement in some fashion, perhaps through facultative or treaty reinsurance. So if you want to work direct-

ly with the risk taker, you want to head to London and speak with them," Mr. Restoule said.

"Also, Lloyd's is a one-stop shop. Unlike Bermuda and other markets," he said, "Lloyd's offers you more variety, primary coverages, umbrella coverage, first excess, and you can build a whole tower. So for a consumer, it makes it easy because you can conduct your transaction in a single location."

One of Lloyd's main advantages, said Julian Ball, senior vp, global placement for the North American

property group at Marsh Inc. in London, is that the underwriter makes the decision.

"There is no funnel of management that they have to go through in order to get the sign-off to write a piece of business," Mr. Ball said. "Clients like to know that when they are trading business with these underwriters that they are dealing with people that actually understand their business, and can deal directly with them, in the sense that they are the ones that make the decision on what they can offer as a

product. In addition, from an efficiency, time scale point of view, it can be quicker because the underwriters will make the decision there and then."

Ian McCallister, North American property underwriter at London-based Chaucer Syndicates Ltd., agreed.

"Large U.S. carriers have a multitude of regional offices and the service they get from one may be completely different from another and they may have to refer back to head office," Mr. McCallister said. "When a risk manager, or the broker, comes in to Lloyd's, the decision is made straight away."

Three reasons

"In our experience, U.S. risk managers use Lloyd's for three specific reasons," said Charles Franks, chief executive officer of London-based R.J. Kiln & Co. Ltd., which manages four Lloyd's syndicates. "Firstly, for cover that they have difficulty placing in the U.S. market. Secondly, for innovative insurance products or for new products that aim to cover new or emerging risks; for example, we often get interest from U.S. risk managers in trade disruption insurance. And thirdly, for additional capacity to complete insurance programs where, for whatever reason, this is scarce in the U.S."

Nicolas Burkinshaw, active underwriter of Catlin Syndicate 2003, said Lloyd's "has long been regarded as a center of innovation and expertise in the insurance industry and remains so today. For example, following the 9/11 tragedy, Lloyd's took the lead in developing stand-alone terrorism coverage that was widely sought by U.S. businesses."

Mr. Burkinshaw added that Lloyd's is the pre-eminent market for risks such as aviation and energy. In other cases, "the local market may not offer the available capacity, so U.S. risk managers seek to fill the gap at Lloyd's. Because Lloyd's is a subscription market, it can deliver large amounts of capacity quickly for major risks."

Lloyd's brokers often create facilities involving a consortium of syndicates that provide considerable capacity. Mr. Ball pointed to Marsh's new property facility that provides up to \$425 million of non-catastrophe capacity for U.S. and Canadian companies. The facility can also be adapted to provide up to \$262.5 million of noncritical catastrophe capacity and up to \$111.75 million of critical catastrophe capacity, or capacity for catastrophe-prone areas.

Beaumont Vance, senior enterprise risk manager at Sun Microsystems Inc. in Broomfield, Colo., said he places cargo business with Lloyd's.

"Their chief advantage on that line is price. But Lloyd's also has a highly professional staff in general, and they can be far more flexible in considering a risk than some other carriers," Mr. Vance said.

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FM Global, Beazley trim delay for policy issuance

By REGIS COCCIA

One innovation many U.S. insurance buyers would like to see is timely delivery of policies, instead of typical waits of weeks or months.

Two insurers have reduced that time frame considerably. They're delivering most of their property policies by the time coverage takes effect—in some cases, even earlier.

A study last year by the Risk & Insurance Management Society Inc. showed only 5% of policyholders got their policy documents within 30 days of inception, with the majority waiting 90 to 120 days (*BI*, May 1,

2006). Until complete documents are delivered, what policyholders and underwriters agree to is not always clear, market sources note.

Factory Mutual Insurance Co., which does business as FM Global, and Beazley USA have made big strides in contract certainty by delivering complete policies quickly.

Beazley USA, an admitted-market division of London-based Beazley Group P.L.C., is trying to raise the bar for the industry through faster policy issuance to U.S. middle-market commercial property customers.

"We saw an opportunity to increase service expectations and

lessen our brokers' errors and omissions exposure if we could deliver our policies immediately on binding," said Mark Bernacki, head of commercial property at Beazley USA, based in suburban Chicago.

"Policy issuance is key for this segment. They're used to dealing with other vendors where they pay for a product and receive it" right away, he said. "The middle market demands results."

About 94% of Beazley's commercial property policies have been issued upon binding, and about 83% have been issued before coverage took effect, said Mr. Bernacki. Rea-

sons that Beazley has not yet been able to reach 100% include receiving orders late in the trading day and regulations by some states, such as Nevada, that require a physical signature on documents, he said.

How does Beazley deliver complete property policies by inception? It spent about a year rebuilding its underwriting system, called Beazley-Trade, so that it doesn't just capture data but aims to deliver finished policies. Specialty casualty lines operate under a different underwriting system and can be complex, but

See **DELIVERY** page 16

Lloyd's: Attracts U.S. buyers

CONTINUED FROM PAGE 12

"As far as terms are concerned, everything is up for trade, and the pricing is reasonable," Mr. Restoule said.

Karen Beier, vp, risk management at Shaklee Corp. in Pleasanton, Calif., said she "found Lloyd's to be an excellent market for quota share property programs for difficult exposures such as California earthquake and underground cold storage, as well as crop insurance. Additionally, I've placed our special events insurance with Lloyd's in the past to obtain coverage for recreational activities in conjunction with conventions, more flexible reporting provisions and better pricing."

Mr. Ball said how Lloyd's attracts U.S. business is changing over time.

"In the past, brokers were very much the source of business, and while brokers continue to feed that business to Lloyd's, certain syndicates now have individuals that are new business development leaders or producers and they will work in tandem with brokers, while some corporate syndicates are establishing operations in the U.S. with offices and/or representatives locally," he said.

Face-to-face

But whether they have a U.S. office or work through brokers, Lloyd's underwriters stress the importance of face-to-face meetings.

"Wherever it is possible, we take the opportunity to meet with U.S. risk managers and, in particular, to exchange views on current and new risk management issues," said Mr. Franks of R.J. Kiln.

"A lot of risk managers are incredibly well-educated, but there is still a bit of a cultural divide, which is an ongoing issue that needs to be broken down," said Mr. McCallister. "And this involves not just the Lloyd's broker, but also the underwriter traveling out to the U.S. to have a face-to-face relationship with the risk manager. The fact that they can sit down with an underwriter face-to-face whenever they like is a huge advantage for any risk manager."

NOVA's Mr. Restoule agreed. "The reason I trade at Lloyd's is that they want to understand the risk profile, the philosophy of the company, the risk tolerance, the risk management programs and, more importantly, once they have an understanding of that, they are willing to transact the risk transfer with a great degree of open-mindedness," he said.

He pointed out the importance of a long-term relationship. "They really do make an effort to keep a relationship going," he said. "And over the years, I have needed a favor, I've needed a tough placement, and it is a market I can go to and ask for help, and ask for a favor."

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Delivery: Speeding up policy issuance

CONTINUED FROM PAGE 14

Beazley is working to simplify the process in those areas too, he said.

Contract certainty is part of Beazley Group's culture, Mr. Bernacki said. At Lloyd's of London, Beazley operates syndicates 623 and 2623, and was the first to develop "a broker queuing system, so we introduced efficiency in the market. Then we were the first to add Web cams," allowing site visitors to see at a given time which underwriters were available in the box at Lloyd's, he said.

Johnston, R.I.-based FM Global began making contract certainty a goal "years before it was chic," said

Randy Schreitmueller, vp of market relations and product and service innovation.

Four pillars support FM Global's ability to deliver more than 90% of its policies within 30 days of inception: goals for policy production, a common system to generate policies, customizable policy forms that can be delivered quickly and processes that enable the first three. Affiliated FM, a unit of FM Global that insures smaller and midsize accounts, is closer to "100% policy delivery at inception," he said.

"Contract certainty is broader than policy issuance. It's making sure you have a common concep-

tion of terms and conditions" at the time of binding, Mr. Schreitmueller said. Improving policy delivery is also "a two-way street," requiring policyholders to provide information on their risks in ample time prior to binding or renewal, he noted.

The problem of insurance contracts not being certain at policy inception was illustrated in horrific fashion after the Sept. 11 terrorist attacks. While coverage on the World Trade Center had been bound in July 2001, complete policies had not been delivered by the time of the attacks. That uncertainty resulted in a nearly six-year, multibillion-dollar dispute, settled earlier this year.

Many sources kindle product innovations

Buyers, brokers often drive coverage changes

By LOUISE ESOLA

Commercial insurers worldwide utilize a smorgasbord of methods to create, launch and market new products, according to product developers at top insurers and brokers.

Some rely on teams of developers that focus solely on bringing new products to the market by way of broker focus groups or actuarial

research. Others work with their own front-line underwriters, brokers and clients to tweak existing products and repackage them for different business sectors.

Other insurers scour their existing policy exclusions to look for holes that can be filled with new products. Yet others look to current events and big losses to craft new products.

"It varies dramatically how insurers come up with their products," said Kevin Kalinich, Chicago-based co-national managing director for Aon Professional Risk Solutions, a unit of Aon Corp.

One of the few common denominators when it comes to innovation among those in the insurance industry is to identify gaps in insured coverage and exposures, said Mr. Kalinich.

Input from both brokers and clients drives innovation, experts say.

Q&A:
Ty Sagalow of AIG discusses how the insurer develops and launches new products.
Page 18

"The broker is the one who has the most intimate relationship with the client," said Norman Brown,

New York-based managing director and head of product development at Marsh Inc.

"We're the ones that aggregate the views of what the clients' needs are and what their frustrations are, and from there we link up with insurers to help develop products," Mr. Brown said.

According to Eric Joost, New York-based global director of middle markets with Willis Group Holdings Ltd., the most successful products are those that are client-driven.

It's why companies such as ACE USA doesn't have a formal product development department, said Brad Gow, Philadelphia-based vp of ACE Professional Risks, the professional lines division of ACE USA. "With constant contact with our biggest (clients), the underwriters are always crafting new products," he said. "Product development is imbedded with our team of underwriters."

Sleepless night solutions

"We have to put together products that people are going to buy," he said. "We have to have an understanding of what is keeping our customers awake at night."

XL Insurance is on the cusp of change. It formed its product development team this fall after relying mostly on product line managers to create new products, said Nigel Mortimer, Hamilton, Bermuda-based director of the newly formed product development team.

XL plans to provide its underwriters with proposal forms that would require the signatures of product line heads to be considered by the

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By the end of 2005, Bermuda was home to 1,312 insurers that generated \$100.7 billion in gross premiums and reported \$110 billion in capital and surplus.

Bermuda's regulatory regime drives innovative insurance ideas

By DOUGLAS McLEOD

HAMILTON, Bermuda—Innovative insurance ideas have found fertile ground in Bermuda, and their growth was made possible by an innovation that preceded them: Bermuda's regulatory regime.

Unlike the crazy-quilt of state regulation that prevails in the United States, the Bermuda regime has always emphasized efficiency and sought to accommodate the needs of sophisticated policyholders,

while also supervising insurer licensing and solvency, those familiar with the domicile say.

The relative speed with which new companies can be licensed and the absence of rate or form regulation has allowed Bermuda insurers and reinsurers to respond quickly to buyers' needs, from the early days of captive insurers in the 1970s to the recent creation of vehicles like sidecars and insurance derivatives.

"What makes Bermuda so valuable is the American regulatory sys-

tem," said Jon Harkavy, vp and general counsel for captive manager Risk Services L.L.C. in Washington.

Many Bermuda-born innovations would not have been possible in the United States, which has a "feudal system" of state regulation "that makes it very hard to address nationwide problems," Mr. Harkavy said.

Robert Clements, chairman of Integro Insurance Brokers, agreed. Mr. Clements launched a new phase of Bermuda's growth in the mid-1980s with the creation of ACE Ltd. and XL Capital Ltd. in the midst of a capacity crisis in the commercial casualty market.

While Bermuda was well established as a tax-free jurisdiction, tax

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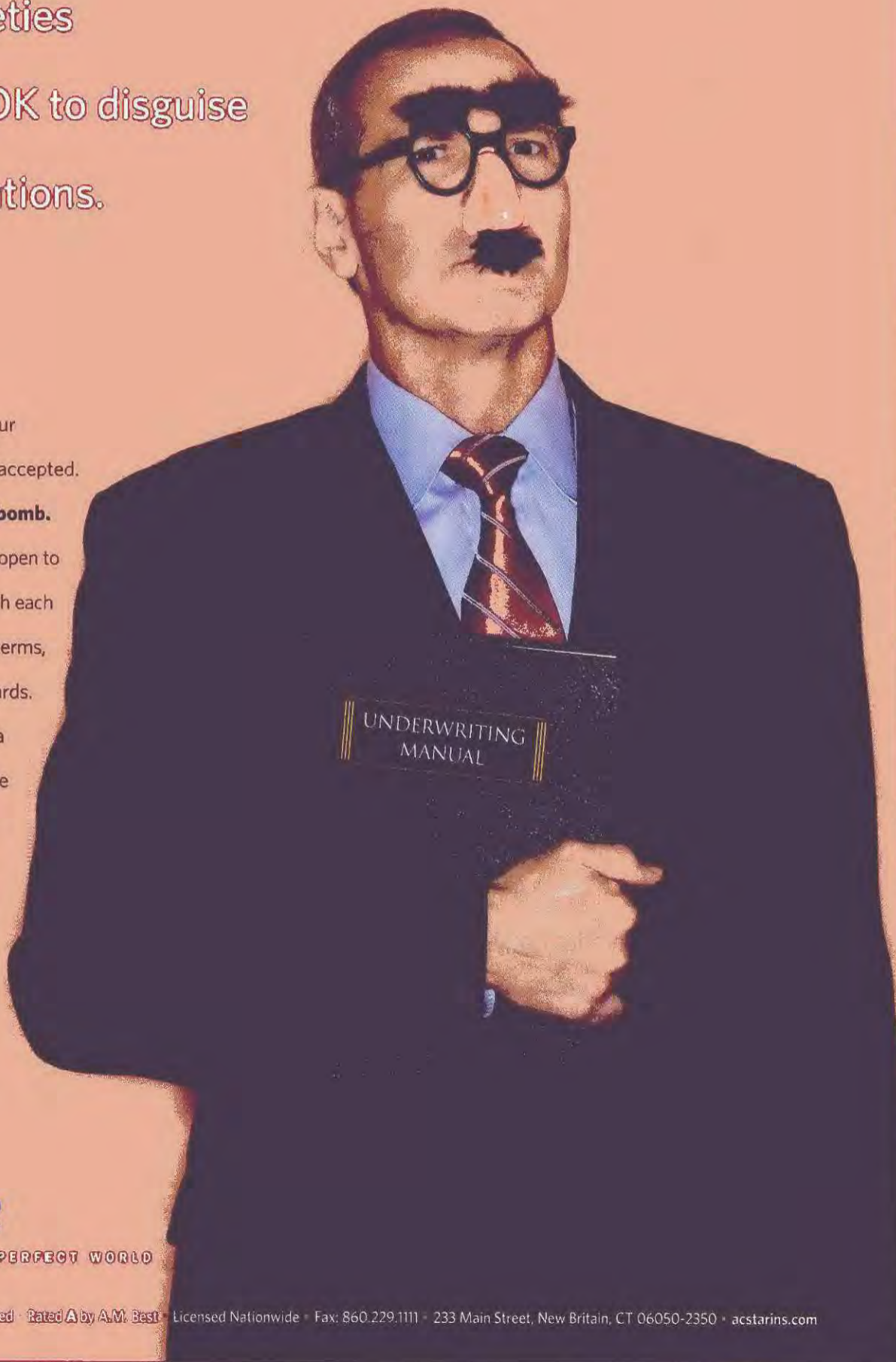
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Robert Clements,
Integro Insurance Brokers

"was not all by itself a rationale" for basing the insurers there, he said. "The rationale was it was the only place you could get into business in three months."

"We couldn't have done ACE or XL in the States," Mr. Clements said.

Since the adoption of its initial insurance statute, the Insurance Act 1978, Bermuda has experienced several growth spurts on its way to becoming one of the world's leading insurance centers.

A captive boom in the 1970s was followed by the groundbreaking formation of ACE, XL and other policyholder-owned facilities responding to the 1980s liability crisis. Catastrophes, natural and man-made, brought new phases of growth: 1992's Hurricane Andrew, the Sept. 11, 2001, terrorist attacks and 2005's Hurricane Katrina all attracted billions of dollars of new capital to existing and startup insurers and reinsurers, sidecar facilities and cat bond issuers.

By the end of 2005, Bermuda was home to 1,312 insurers—869 captives and 443 professional insurers

See **BERMUDA** page 22



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Bermuda: Regulators focus on solvency

CONTINUED FROM PAGE 20

and reinsurers—that generated \$100.7 billion in gross premiums and reported \$110 billion in capital and surplus, according to the Bermuda Monetary Authority.

Those insurers enjoy a relatively cooperative relationship with regulators, one that is reflected in the island's Insurance Act itself: the act created the Insurance Advisory Committee, a panel with private and public sector members that advises the country's Minister of Finance on insurance issues. A subcommittee, the Insurers' Admissions Committee, advises the BMA

on new license applications.

The "light touch" of the country's regulators is partly a function of the nature of Bermuda's policyholders, generally sophisticated corporate insurance buyers.

"This is not a place for policyholders that are not sophisticated, large corporate entities," said Kenneth R. Wylie, a partner with Sidley Austin L.L.P. in Chicago and a regulatory law specialist.

Bermuda regulators "understand their purpose, in a captive environment, is not to protect policyholders from themselves," Mr. Harkavy said. "Their concern is solvency, solvency, solvency."

In 1995, the Bermuda government amended the Insurance Act to create the current four classes of license, ranging from Class 1—single parent captives—to Class 4, commercial insurers and reinsurers with more than \$100 million in capital.

This has contributed to the island's risk-based framework for solvency oversight, said Jeremy Cox, Bermuda's supervisor of insurance.

"We assess the nature, scale and complexity of the entities seeking to be based in Bermuda, their related risk and the level of sophistication of the clients involved, and then

supervise them accordingly," Mr. Cox said. This means that "regulatory focus and resources can be applied appropriately and at progressively higher levels when an insurer transacts material amounts of third-party business."

The focus on solvency—rather than regulating the terms of individual transactions—has given Bermuda companies room to innovate.

"That attitude counts when you are trying to do something new," Mr. Wylie said.

Bermuda's regulatory system hasn't always been free of controversy, at least as it involves insolvent companies.

In 1995, a General Electric Co. insurance unit, Electric Mutual Liability Insurance Co., was allowed to

redomesticate from Massachusetts to Bermuda, where it soon afterwards revealed that it was massively underreserved for GE pollution and asbestos liabilities and declared itself insolvent.

Reinsurers charged that EMLICO concealed its insolvency to take advantage of Bermuda liquidation law, which they said would accelerate reinsurance recoveries, and Massachusetts regulators sought unsuccessfully to reverse EMLICO's move. Most of the reinsurers eventually settled with EMLICO's Bermuda liquidators.

While the episode proved an embarrassment for GE and the Massachusetts Insurance Division, the insolvency provisions of Bermuda law are normally another advantage for companies doing business there, observers say.

Not commenting on EMLICO specifically, Mr. Clements noted that Bermuda law allows schemes of arrangement, under which an insolvent insurer and its creditors can work out their own agreement for handling liabilities under court supervision. For commercial policy-

Bermuda regulators 'understand their purpose, in a captive environment, is not to protect policyholders from themselves. Their concern is solvency, solvency, solvency.'

Jon Harkavy, Risk Services L.L.C.

holders, he suggested, this system is preferable to U.S. liquidation proceedings, which can run for decades and where creditors have relatively little control.

Bermuda policies, he added, can also provide for arbitration under U.K. law to settle disputes, often a faster and cheaper alternative to litigation.

Over the years, Bermuda has faced increasing competition from other domiciles, both offshore and in the United States, that aim for a similar cooperative regulatory approach.

In the United States, Vermont has been particularly responsive to captive owners, amending captive laws to allow reciprocals, not-for-profit companies and other variations on the captive form, said Thomas Jones, a partner with McDermott Will & Emery L.L.P. in Chicago and a captive specialist.

Bermuda also faces challenges arising from its growth, including government restrictions on work permits that would allow non-Bermudian employees to move to the island, several observers say.

Nevertheless, Bermuda remains the preeminent destination for companies interested in alternative risk transfer, and its innovative regulatory style has been a template for other jurisdictions.

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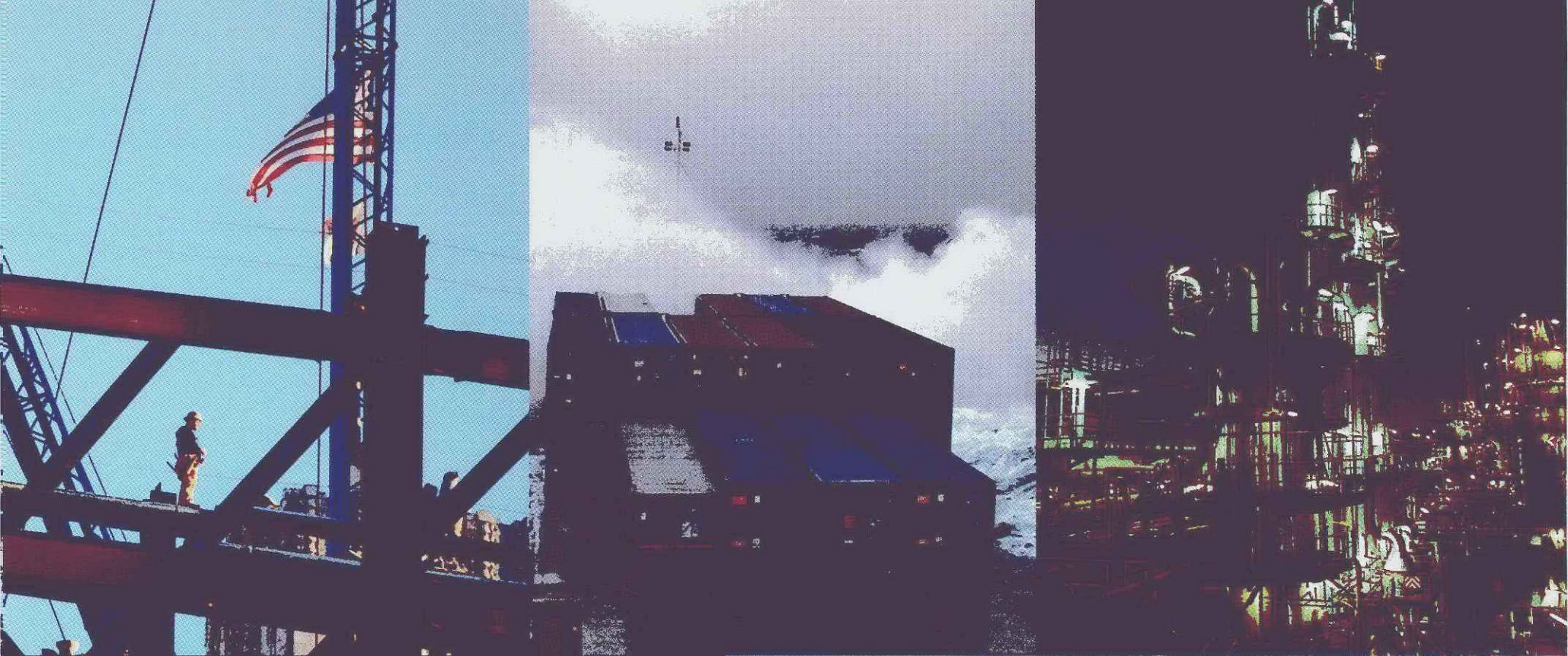
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Benefits: Setting up captive insurer less difficult, costly than many fear

CONTINUED FROM PAGE 4

children who are full-time students at the time of a covered employee's death.

Speaking earlier this month at the 17th annual World Captive Forum in Scottsdale, Ariz., Ms. Gallie said there is a corporate perception that winning the Labor Department's approval for a captive benefits funding program is difficult, when, in fact, it is relatively easy.

"Look at what has been done before. The government loves precedent," said Mitch Cole, a principal with Towers Perrin in Stamford, Conn., who also spoke at the conference.

And the benefit improvements do not have to be expensive, the speakers said.

"The DOL is pretty flexible on what it considers to be an adequate enhancement. You don't have to spend a ton of money," Ms. Gallie said.

Still, while winning Labor Department approval for a captive benefits funding program may be easier than many employers realize, the application process does involve work that may require external resources.

Sun, for example, used an outside law firm to write its request for Labor Department approval—called a prohibited transaction exemp-



Officials at Sun Microsystems say—unlike many organizations—its risk management and human resources departments worked closely in setting up a captive insurer to cover certain benefit risks.

tion—as well as provide prompt answers to department regulators' questions.

One practical concern in putting together a captive benefits funding

program is getting corporate risk management and human resources departments to cooperate with each other. In fact, the lack of such cooperation may be a major reason why

more employers haven't expanded their captives to cover benefit risks, Ms. Gallie said.

Less than a dozen employers have applied and received Labor Department approval to fund benefit risks since regulators somewhat eased the rules.

"The numbers aren't what was expected. HR and risk management can't seem to get together," Ms. Gallie said, noting, though, that the departments worked well together at Sun.

"HR sees us as being able to provide a solution," Ms. Gallie said.

Financial advantages

For employers that decide to go the captive benefits funding route, there can be significant financial advantages, compared with insuring the risks in the traditional market.

In the first year of the program, Sun reduced costs by 35%. While savings of that magnitude are unlikely over the long term—indeed this year Sun does not expect to save any money—Ms. Gallie said Sun should reduce life insurance costs by more than 5%.

Funding benefits through a captive can generate other financial advantages. Under a 1992 Internal Revenue Service ruling, the IRS considers benefit risks to be third party,

reasoning that such risks are that of the employee and not of the employer, said Bruce Wright, a partner with Dewey & LeBoeuf L.L.P. in New York.

As a result, putting benefit risks into a captive can generate enough unrelated business for the sponsor to comfortably take a tax deduction on all the premiums paid to the captive.

Federal courts have ruled that if at least 30% of the captive's business is unrelated, the parent can take a tax deduction for the premiums.

Some employers, such as the Coca-Cola Co. in Atlanta and sporting goods and apparel manufacturer Adidas Group of Herzogenaurach, Germany, have utilized their captives to fund benefits in a different way: The captives are tapped to reinsure multinational insurance pools covering employees outside the United States.

One advantage of such an arrangement compared with buying coverage in the traditional market is that an employer will have far more leverage in dealing with insurers in countries where an employer may have only a handful of employees, said Stacy Apter, a senior benefits manager at Coca-Cola, which currently uses its South Carolina-based captive for reinsuring benefit risks of employees outside the United States.

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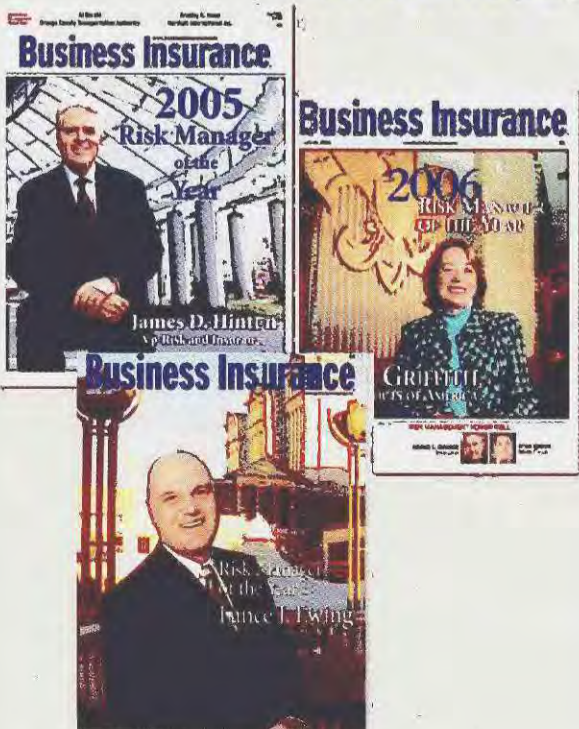
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Domestic captive domiciles maintain steady growth

Regulators tweak legislation to attract more captives

By JERRY GEISEL

SCOTTSDALE, Ariz.—Even as competition increases in the traditional market, captive insurance company formations are maintaining their pace, captive regulators say.

The Arizona Department of Insurance, which recently licensed its 100th captive, is on track to license about 25 captives this year, said Captive Insurance Administrator Rod Morris. That would top 2006 when 23 captives were formed.

In Vermont—the largest U.S. domicile, with 565 captives—has licensed 22 captives so far this year, 12 applications are pending and several more are expected. By the end of the year, about 37 new licenses will have been issued, which would equal 2006's total, said Derick White, director of captive insurance at the Vermont Department of Banking, Insurance, Securities & Health Care Administration.

Messrs. Morris and White delivered their tallies during a session at the 17th annual World Captive Forum this month in Scottsdale, Ariz.

Other domestic domiciles including Delaware, Nevada and South Carolina, whose captive officials also were at the WCF and reported continuing captive growth.

Regardless of the domicile, regulators said captive growth is diverse but dominated by single parents rather than groups forming captives.

As their captive rosters swell, state captive officials continue to look to fine-tune state laws to increase the appeal of their domiciles.

For example, Arizona amended its captive law this year to allow employers to set up branch captives to fund employee benefit risks. The branch concept is appealing to employers that want to fund benefit risks through captives, but want to continue to sponsor captives outside the United States. U.S. Department of Labor rules stipulate that captives used to fund benefit risks of U.S. employees, must, among other things, be licensed in a domestic state.

Several major employers, including AGL Resources Inc., an Atlanta-based natural gas distributor; Svenska Cellulosa AB, a Swedish paper, packaging and consumer products company; and Sun Microsystems Inc., the Santa Clara, Calif.-based computer network company, have taken the branch captive approach and more employers are expected to

World Captive Forum draws more than 350 attendees

SCOTTSDALE, Ariz.—The 17th annual World Captive Forum, held Nov. 5-7, attracted more than 350 attendees from around the world to the Fairmont Scottsdale Princess Hotel in Scottsdale, Ariz.

The annual conference is produced jointly by *Business Insurance*, the Quest Group of Cos. and Towers Perrin.

Session topics included the use of cell captives, captive tax

issues, regulatory developments and funding employee benefit risks through captives.

Next year's conference is scheduled Nov. 17-19 at the Renaissance Esmeralda Resort and Spa in Palm Springs, Calif. For more information, contact the World Captive Conference by e-mail at info@worldcaptiveforum.com or by telephone at 952-928-4659.

—By Jerry Geisel

follow.

"We try to keep the legislation up to date. We never had the capability of doing a branch" for employee benefits, Arizona's Mr. Morris said.

Regulators say while captives should not be regulated like commercial insurers because they are not writing business for the general public, they do require regulatory scrutiny.

"There is a need for the regulator to see that the (captives) are regulated in a bona fide manner," said Michael Oliver, director of insurance

at the Financial Services Commission for the British Virgin Islands, which has about 400 captives.

Without regulation, captives could become vehicles to facilitate financial crime, Mr. Oliver noted. Additionally, while captives generally don't write business for consumers, consumers can be adversely affected if, for example, a hospital with an inadequately funded captive should fail and leave malpractice victims without a means to recover damages.

"We need to ensure that con-

sumers are protected," Mr. Oliver said.

Still, the extent to which a captive is regulated depends on its structure and size.

Regulation "does need to be relative to the size and type of captive," said Alan Fleming, acting director of the Assn. of Insurance & Risk Managers in the United Kingdom and a former insurance director of the Guernsey Financial Services Commission.

Arizona's Mr. Morris said a captive sponsored by a financially strong parent would not require the same level of regulation as a group captive comprised of many policyholder owners that have varying sizes and financial strengths.

Mr. Morris noted that a key difference between a captive and a traditional insurer is that captives are administered by captive managers, who have an obligation to ensure that the captive is properly run.

Captive managers are state regulators' "first line of defense," Mr. Morris said. If something is not being done properly, "we expect them to blow the whistle." If they don't, the captive manager won't be approved as a manager for very long, he said.

Captive managers "are the front-line regulators," concurred Mr. Oliver of the British Virgin Islands.

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Mexican company exploring captive role in funding pensions

Proposal intended to enhance flexibility in managing returns

By ROBERTO CENICEROS

SCOTTSDALE, Ariz.—Multinational building products giant CEMEX S.A.B. de C.V. is exploring how it might use its Bermuda-based captive to reinsure its defined benefit pension plans in several countries, the Monterrey, Mexico-based company's risk manager says.

It would be an unusual use of a captive, but it could provide a company with greater control over returns flowing from investments used to fund pension liabilities, said Mitchell J. Cole, a principal at Towers Perrin in Stamford, Conn., who spoke this month at the 17th World Captive Forum in Scottsdale, Ariz.

Attorneys in a number of countries, along with regulators, have already reviewed Towers Perrin's plan and given their thumbs up, added Mr. Cole. Towers Perrin advises CEMEX and Mr. Cole stressed that CEMEX currently is not implementing a plan.

CEMEX is one of the largest building materials suppliers in the world with operations in 50 countries, said Rene A. Martinez, CEMEX's director of risk management. The company, known for its production of cement, recently generated \$24 billion in revenues and has 55,000 employees.

CEMEX also has a 22-member risk management department.



Officials with Mexico-based building product provider CEMEX say they may use a Bermuda captive to fund benefits and other corporate risks.

Although those risk managers are spread worldwide, the company's management is very centralized, Mr. Martinez said. The centralization smoothes the way if CEMEX wants to expand the use of its captive to insure new property/casualty or employee benefit programs globally, Mr. Martinez added.

CEMEX's captive, Sunbelt Re Ltd., has \$324 million in assets and currently funds workers compensation, general liability, auto, marine hull & machinery as well as cargo and other coverages, Mr. Martinez said. CEMEX also uses Sunbelt Re for multinational life insurance pooling and a benefits program for its expatriates.

According to Messrs. Martinez

and Cole, CEMEX's various acquisitions of companies worldwide have left it with multiple defined benefit plans, each with their own cultural influences and funding levels. So it would be an advantage for a company such as CEMEX to be able to use a captive to meet its defined pension obligations across several countries, the speakers said.

But as in the United States, most countries highly regulate pensions and the investments used to fund pension liabilities, Mr. Cole said. Regulations and pension plan trustees often prohibit plan sponsors from tapping investment returns even when investments are made prudently and would likely produce greater capital than neces-

sary to meet pension liabilities.

"It's a stranded asset, so it's really not in the shareholders' interest," Mr. Cole said of the investment returns that can't be tapped.

But using CEMEX's captive to reinsure its defined pension obligations could give the company "enormous degrees of flexibility" over use of its pension investment income, Mr. Cole said.

Such a strategy could work because defined benefit plans are somewhat similar to annuities in that they pay certain benefits over a participant's retirement period. "So think of a pension plan as a miniature annuity insurance company," Mr. Cole explained.

The pension trust would purchase an annuity, either for each individual plan participant or for an entire group. The annuity would then be reinsured by the captive. In a technical sense, it amounts to a retrocession because the annuity reinsures the trust, which retrocedes the annuity to the captive, Mr. Cole said.

The annuity could be viewed as an investment with the annuity

insurance company similar to an AA-rated bond, Mr. Cole said. The plan would purchase an annuity that, similar to a bond, promises to make certain payments over time. Those payments include interest and principal.

The strategy also has a risk management element, Mr. Cole said. Trustees overseeing a pension plan or trust could have a different perspective than the plan sponsor over the degree of volatility that is appropriate for investments.

For examples, trustees might desire a more volatile investment in hopes of a higher return than plan sponsors might think is prudent. Reinsuring pension benefits through the captive, in the manner described by Mr. Cole, could provide the captive owner "a greater ability to exercise their own level of risk management" over the investments, he said.

Plan participants, trustees and regulators, however, would have to be educated and agree to the plan, which would require that the captive be financially sound, the speakers said.

Risk transfer: Usage grows

CONTINUED FROM PAGE 4

porations find it easier to assume greater amounts of their own risk, Mr. Hartwig said.

'Bucket' has lots of holes

"If you look at the P/C industry as a bucket of premium, it's got a lot of holes in it—at the bottom, on the sides and up at the top," said Mr. Hartwig, who was opening keynote speaker for the 17th WCF held in Scottsdale, Ariz.

During the first half of 2007, insurer premium volume grew only 0.1%, meaning growth has stalled and is shrinking relative to the overall economy in inflation-adjusted terms.

"Property/casualty today is a rapidly shrinking business, where it was rapidly growing just a few years ago, in 2002 and 2003," he said.

Even smaller risks continue to form captives or RRGs. Physician groups, for example, do so to finance their medical malpractice risks.

But Mr. Hartwig said he believes medical malpractice is a line that insurers are increasingly eager to write. But it remains to be seen whether insurers will be successful and whether the growing amount premium volume now flowing from physicians into alternative mechanisms will slow.

For now, insurers are "hemorrhaging" as companies take on larger retentions and turn to alternative risk funding mechanisms, Mr. Hartwig said.

Alternative mechanisms used in the United States during 2004 accounted for about 30%, or \$98 billion, of the total commercial

insurance market's \$326 billion in premiums, he said in citing data from Conning & Co. in Hartford, Conn. Alternate funding mechanisms have continued growing since then, he said.

While traditional insurers are feeling the pressure from alternative market arrangements, they are squeezing excess insurers and reinsurers by retaining more of their own risks.

"So everywhere you look there has been some squeezing out of the system," Mr. Hartwig said.

The global glut of capital and "money chasing ever lower yields" is driving the phenomena, Mr. Hartwig said.

One way for corporations to put their capital to work is to retain more risks, he said. That can produce a relatively high rate of return, whether a company retains the risk

informally or tries a more formal approach such as forming a captive.

Despite stalled premium growth, however, commercial lines insurers will turn in excellent results for 2007 and have good momentum going into 2008, Mr. Hartwig said. The industry is poised to generate an underwriting profit.

Meanwhile, several factors, such as increasing capacity, falling reinsurance prices and limited growth opportunities suggest traditional insurers will try to get back some premiums lost to the alternative market, Mr. Hartwig said.

But because of the increased ease of entering into alternative arrangements and corporations' growing comfort with retaining risk, "this may be more difficult than many assume," Mr. Hartwig said.



Mr. Hartwig

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Local focus essential to builders risk strategies

Capacity only now starting to rebound from squeeze that followed 2005 hurricanes



Rick Girden is construction managing director of Mercator Risk Services in Chicago.

By Rick Girden

When assessing construction risks, understanding construction exposures and the current insurance climate in your particular state is paramount.

While many builders may think they have secured adequate coverage, often this does not go far enough to protect their financial exposure when a project sustains insurable damage.

For the most part, the builders risk market during the first two quarters of 2007 experienced the same lack of capacity that was seen throughout 2006.

The market has only recently started to bounce back as capacity returns to pre-hurricane levels. This downward turn has its origins in the record-setting hurricane activity of 2005, which made the builders risk market extremely expensive and, for some, unobtainable in disaster-prone areas of the United States.

Owners and contractors need to be

well-educated on the limits they purchase and how they structure their programs.

The first step toward a more stable builders risk market is for insurers to familiarize themselves with their catastrophe exposures nationwide. Catastrophe modeling has dramatically changed insurers' and reinsurers' aggregates by making the assumption of greater loss during a catastrophic event. However, interpreting change in catastrophe accumulations will take some time.

In addition, insurers also will need to work in partnership with their reinsurers to understand the catastrophe exposure they have, and to properly negotiate terms and conditions that will allow them to continue to write or expand writing.

To illustrate the lack of capacity, a single insurer may have underwritten a \$100 million policy to insure an entire project before 2005. Today, however, that same risk has to be structured in many layers and spread

among eight to 10 insurers to reach the same level of coverage.

This requires brokers to be specialized and involved in the builders risk marketplace. Along with capacity, the broker must understand market appetites and underwriting requirements, guidelines and pricing. Being prepared and ensuring that you have the adequate insurance to cover any unforeseeable incident is imperative.

With the high cost of builders risk insurance causing many owners and contractors not to build, these strategies, if properly implemented, can ensure the proper coverage one needs to move forward with a construction project. Considerations include:

- Carrying only a percentage of the probable maximum loss. This requires a thorough analysis of the risk with modeling.
- Keeping hurricane season in mind when planning a project time line. If a builder can show a time line that includes work through only one wind season, a better rate can be

secured. Also, plan projects so the core structure is complete and all window and door openings are closed before the start of hurricane season.

- Strategize with your broker. Ensure that the broker has the knowledge and expertise to develop an individual strategy for your unique risk. In the past, builders risk insurance was approached on a cookie-cutter basis. It is now apparent that success depends on not only knowing the risk exposure, but also knowing the marketplace in order to choose the best possible players with the most available limits.

To best meet the challenge faced by many builders, agents and brokers will need to rely on the marketplace knowledge and underwriting expertise of excess and surplus lines brokers who can serve clients best by involving them in the decision-making process. Their services give the policyholder a competitive advantage in procuring builders risk coverage for their projects.

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How to submit an article for BI's Perspective section

Business Insurance accepts articles from experts in commercial insurance, risk management and employee benefits management for publication in its Perspective section.

The section is intended to be a forum for readers' opinions and a forum for the discussion of technical topics that do not lend themselves to a news story. Therefore, Perspectives articles should take a point of view, offer advice and/or explain a technical subject. They should not present case studies or promotional information.

All articles for the Perspectives page should address the concerns of the corporate buyer of insurance; i.e., the risk management or employee benefits manager. Material written only for the concerns of brokers or underwriters is not appropriate.

To submit an article for the Perspective section:

- Send us a letter describing the topic you would like to address. You might want to suggest alternative topics. For each topic, briefly describe what you want to say and

accomplish in the article.

- You will receive from us an acceptance or declination of your article idea.

- If accepted, we will respond with comments and request the full article, which generally should be 800-900 words in length.

- All articles are to be accompanied by color photograph of the author and a brief biography.

- We will notify you of any questions we have about your article or any substantial editing we think is necessary.

All authors must assign the copyright on the article to *Business Insurance*.

Because of the volume of Perspective submissions we receive, we cannot guarantee a date in which an article will appear.

For the same reason, we will not run more than one article in a calendar year from the same author.

To submit a Perspective article query or for more information, send a note to biweb@crain.com.

ERM push gaining ground but not yet business as usual: Studies

By JEFF CASALE and BEN NORRIS

The push for enterprise risk management has made some progress, but ERM has yet to become part of day-to-day business operations, according to two studies released last week.

The number of companies with boards that are leading ERM efforts has increased, according to a study by the Conference Board and risk management consultant Oliver Wyman, a unit of Marsh & McLennan Cos. Inc., both based in New York.

The report surveyed 271 companies, of which 70% are based in North America. Of those companies, 55% said their corporate boards are

leading their ERM programs, up from 49% last year. The study also found that non-U.S. companies have developed processes at a faster pace.

Most of the ERM progress has been in early-stage efforts, such as creating a risk inventory and assessment process, the study found.

"The goal is to create greater awareness of risk and reward trade-offs, and to drive risk thinking and appropriate risk management throughout businesses," Ellen Hexter, head of the Conference Board Enterprise Risk Management Center and co-author of the report, said in a statement. "When risks are identified and assigned to individuals,

there is likely to be greater accountability for each risk and greater understanding of how any specific risk impacts a business."

The report surveyed risk, audit and finance executives of companies with at least \$1 billion in annual revenue. Companies included those involved in manufacturing, financial services, health care, energy, and business and professional services.

Meanwhile, a study by Aon Global Risk Consulting, a unit of Chicago-based Aon Corp., found only one in ten companies in Europe and the Americas has fully integrated an enterprise risk management strategy.

Aon surveyed 103 risk managers,

chief risk officers and other senior executives in the Americas and Europe, the Middle East and Africa. Of the companies surveyed, 83% said that they are reasonably familiar or very familiar with ERM and its implementation and purpose, but only one in four organizations said that developing ERM programs is part of their strategic plan.

The survey concluded that most organizations overly focus on top management when implementing ERM and have not taken steps to reach out to employees, which is where many risks occur.

"For business to appropriately deal with the risks they face, it is impera-

tive that they communicate the ERM message through all levels of their organizations," said Andrew Tunnicliffe, head of global business development at the Aon consulting unit in London. "Our survey suggests companies are behind; just one in seven say their ERM function is good at communicating that message."

But pressure from rating agencies, among other drivers for ERM, is set to increase with ratings agency Standard & Poor's Corp. likely to start rating nonfinancial organizations' ERM performance at the end of 2007 or early 2008, noted Corey Gooch, head of business development for the Americas at Aon Ltd. in London.

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Submit a resume and cover letter that includes salary history and salary requirements to: NC Health Insurance Risk Pool, c/o Lisa Howell, NC Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201 or lhowell@ncdoi.net. Executive Director position is not a state job.

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SPHERE DRAKE INSURANCE LIMITED AS PART OF THE WFUM POOLS IN THE HIGH COURT OF JUSTICE, CHANCERY DIVISION, COMPANIES COURT IN THE MATTER OF SPHERE DRAKE INSURANCE LIMITED ("SPHERE DRAKE") AND IN THE MATTER OF THE COMPANIES ACT 1985

Notice is hereby given that by an Order dated 5 November 2007 the High Court of Justice of England and Wales sanctioned the scheme of arrangement proposed to be made between Sphere Drake and its Scheme Creditors (the "Sphere Drake Scheme"). A copy of the Order was delivered to the Registrar of Companies in England and Wales for registration on 06 November 2007, and the Sphere Drake Scheme became effective on that date (the "Effective Date"). Sphere Drake participated in the WFUM Pools and the Sphere Drake Scheme is the same in its terms to the schemes of 14 other WFUM Pools companies, which became effective on 10 October 2007 (the "WFUM Pools Schemes").

Please note that all Scheme Creditors are now bound by the provisions of the Sphere Drake Scheme.

A full copy of the Scheme Document is available to download from the WFUM Pools Website at www.wfumools.com but should you require a copy of the Scheme Document on CD-ROM or paper, please contact the Scheme Manager, PRO Insurance Solutions Limited ("PRO").

Return of Claim Form

Scheme Creditors wishing to submit a Scheme Claim must submit their Claim Form via the WFUM Pools Website or return their manual Claim Form to PRO by 11.59 pm (UK time) on 06 May 2008 (the "Bar Date").

Sphere Drake will accept any Claim Form submitted in relation to the WFUM Pools Schemes (assuming it is submitted in accordance with the terms of those schemes and contains details of Scheme Claims in respect of policies on which Sphere Drake participated) as having also been submitted in relation to the Sphere Drake Scheme. Therefore if Scheme Creditors have entered amounts on the Claim Form in the WFUM Pools Schemes in respect of policies on which Sphere Drake participated, they do not need to submit a separate Claim Form to claim in the Sphere Drake Scheme, unless they wish to submit additional and/or amended claims.

If a Scheme Creditor does not submit a Claim Form via the Website or return a manual Claim Form, together with appropriate supporting documentation in accordance with the instructions accompanying the Claim Form, by 11.59 pm (UK time) on the Bar Date, the information on the Website at that point in time concerning its claim values shall be deemed to have been submitted immediately before the Bar Date. In such circumstances the Scheme Creditor will lose its entitlement to assert any Scheme Claims additional to those present on the Website.

Scheme Creditors should contact PRO to request their Website username and password if they have not already done so, which will enable them to access the secure area of the Website containing their Claim Form as prepared by PRO. Alternatively, Scheme Creditors may request a paper, CD-ROM or e-mail copy of their Claim Form from PRO.

Further information and guidance regarding the action which Scheme Creditors need to take is available on the Website at www.wfumools.com or upon request from PRO; the contact details are as follows:

WFUM Pools, c/o PRO Insurance Solutions Limited, Bruton Court, Bruton Way, Gloucester, GL1 1DA, United Kingdom.

By E-mail: pro_wfumools@pro-ld.co.uk (marked for the attention of Toby Wooldridge)

By Fax: +44 (0)1452 523 437 (marked for the attention of Toby Wooldridge)

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This is an important announcement concerning Sphere Drake Insurance Limited and the WFUM Pools.

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International NEWS



SAS A.B. has grounded all 27 of its Dash 8-400 aircraft after three accidents that involved the planes' landing gear.

Airline grounds planes amid equipment woes

Landing gear suspected in trio of accidents

By STACY SHAPIRO

KHOLM, Sweden—The unprecedented decision by airline SAS A.B. to ground all 27 of its Dash 8-400 aircraft after three serious accidents that involved the aircrafts' landing gear, could lead to a significant aircraft manufacturers product liability claim, experts say.

In September, Stockholm, Sweden-based Scandinavian Airlines System, a subsidiary of SAS A.B., had two accidents that involved emergency landings because of problems with the landing gear on the Dash 8-400 turboprop aircraft. No one was injured. After temporarily grounding its Dash 8-400 fleet, SAS put the aircraft back into operation. Then, on Oct. 27 there was another emergency landing with the same aircraft type that involved the landing gear, although there was a different cause.

"Taking into consideration our customers, our employees and our brand, which is characterized by a focus on safety, punctuality and regularity, the management and board of directors decided to immediately discontinue all operations using this type of aircraft. The decision is unique and severe, but nec-

essary," SAS said in its third-quarter results announced earlier this month.

The direct effect on SAS' earnings for the full year is estimated at between 600 million Swedish kronor and 700 million Swedish kronor (\$94.9 million and \$110.7 million), the airline said in its third-quarter results.

Damage to SAS aircraft and passenger liability would be covered by the major aviation hull and liability insurance program known as SAFIT, which is led by Hamilton, Bermuda-based ACE Ltd. SAFIT writes coverage for several European airlines.

But SAS, like airlines generally, is not insured for such voluntary grounding, said a spokesman for SAS in Stockholm. That is why the airline announced that it is seeking compensation for the permanent grounding from the Dash 8-400's Canadian manufacturer, Bombardier Inc., he said. So far, SAS is seeking 500 million Swedish kronor (\$79.1 million) in damages from the first two incidents, but more could be sought for the anticipated future losses, he said.

No litigation has been filed as yet,

See **PLANES** page 35

Avian flu discovered at English poultry farm

By BEN NORRIS

DISS, England—The deadly H5N1 strain of avian influenza has been discovered in turkeys on a farm near Diss, England.

All of the birds, including ducks and geese, on the premises near the Norfolk/Suffolk border, have been slaughtered.

Further characterization of the virus is in progress, which may give an indication of the origin of the strain, according to the

London-based Department for Food and Rural Affairs, in a statement.

"We have faced H5N1 once already this year, but there is still significant uncertainty surrounding this outbreak. Swift reporting of disease and stringent biosecurity is essential to controlling this disease and we are working to our established contingency plans," said Fred Landeg, acting chief veterinary officer of the VLA.



The H5N1 strain of avian influenza was discovered on a poultry farm near Diss, England.

Allianz places windstorm cat bond

By RICHARD MILLER

MUNICH, Germany—Allianz S.E. has closed its first catastrophe bond transaction related to windstorm risks in seven European countries.

Issued through Blue Fin Ltd., a Cayman Islands based special-purpose entity, the cat bond transfers to investors the risks of windstorms in Austria, Belgium, France, Germany, Ireland, the Netherlands and the United Kingdom.

The bond has two tranches

with an aggregate volume of €200 million (\$291.3 million) and represents the first series under a program with an initial maximum size of €1 billion (\$1.46 billion), Allianz said.

The Munich, Germany-based insurance company said that the "successful placement" of the cat bond was a sign that investor demand for these type of securities "continues to be strong and that this market segment has been largely unaffected by the

recent turmoil in the financial markets."

Blue Fin is the largest single placement of European windstorm risk in the market for insurance-linked securities and is the second cat bond program sponsored by Allianz.

In April, Allianz Global Corporate & Specialty sponsored a transaction in which Blue Wings Ltd. raised \$150 million to cover the risk of U.K. flood and North American earthquake, excluding California.



A 7.7 magnitude earthquake in Chile last week killed at least two people and injured scores.

REUTERS

Quake damage unlikely to top \$80M: AIR

SANTIAGO Chile—Insured losses from a major earthquake that rocked the northern coast of Chile last week likely will not exceed \$80 million, according to risk modeler AIR Worldwide Corp.

Boston-based AIR said the area in northern Chile where the quake struck is sparsely populated, though shockwaves could be felt in Santiago, the country's capital, 780 miles away.

The U.S. Geological Survey estimated the magni-

tude of the quake at 7.7, with an estimated depth of 36.7 miles. Early reports stated that at least two people were killed and 100 injured. Power was cut to surrounding cities, including Tocopilla and Antofagasta.

The damage may be more extensive in more remote towns and villages near the earthquake's origin, AIR said in a statement. The company added that structures in these areas are unlikely to be insured.

—By Jeff Casale

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Commentary

How do risk managers inspire a quality focus?

Watching the news the other evening, I wondered something as I was bombarded by report after report on product safety and outsourced American jobs.

How frustrated must a good risk manager with a social conscience feel these days?

Often with little internal appreciation, risk managers work hard to ensure the safety of their organizations' employees and assets, prevent any harm to the general public and, generally, stop their organizations from doing something really stupid that could threaten their reputations and, therefore, their existence.

But some things are just out of risk managers' control—like inept senior management decisions.

Unfortunately, there seems to be no shortage of that.

Americans cannot get through a day without getting sucker punched by some segment of corporate America.

Look at the deteriorating quality of products. To pinch a few pennies, corporations are outsourcing their production and quality control, which has subjected American consumers to contaminated food and lead-tainted goods.

The latest reports now warn consumers that Christmas decorations are tainted with lead.

Do corporate executives have so little regard for the public's welfare that they don't consider the possibility that the garbage they throw into the market might be purchased by one of their own loved ones or friends?

Or, do relatives and friends get advance warnings?

Another report highlighted the delays the Boeing Co. is facing in delivering its 787 Dreamliner, a midsize passenger jet constructed largely of carbon composite materials to maximize fuel efficiency and increase passenger comfort. Boeing has blamed the delays largely on its overseas suppliers.

Meanwhile, to pinch a few more pennies, companies want to take more jobs away from U.S. workers. Indeed, a congressional subcommittee recently fretted that 30% to 40% of American jobs eventually could be outsourced.

These aren't the menial jobs that supporters of illegal immigration say no American would accept and therefore must be filled by workers who are in the country illegally. Many are science and engineering jobs.

Companies, especially high-tech firms—with Microsoft Chairman Bill Gates leading their crusade before Congress—want to substantially raise or outright eliminate the cap on H-1B temporary visas issued to for-



DAVE LENCKUS

Senior Editor Dave Lenckus can be reached at: dlenckus@businessinsurance.com

eign-born technology workers. Without that help, companies will not be able to fill the positions that require such high-tech skills, Mr. Gates told Congress earlier this year.

To be more accurate, Mr. Gates should have told lawmakers that companies were looking for help to "cheaply fill" those jobs, because there are plenty of quali-

If the job outsourcing spigot were cranked fully open, what kind of market would be left here?

fied job candidates here. Indeed, several studies, including research by the Urban Institute and Duke University, show our nation produces more science and engineering graduates annually than the market demands.

Obviously, in a global economy, companies have a tougher task than ever to produce quality products at competitive prices that still generate enough profit to satisfy investors. That requires being efficient—keeping costs down.

But what we're seeing so far from many companies is that they are meeting their pricing and profit goals but failing on product quality. Meanwhile, if the job outsourcing spigot were cranked fully open, what kind of market would be left here?

How much can a risk manager, even a chief risk officer, with enterprise risk responsibilities do about any of this? In the near term, probably nothing.

But that shouldn't stop them from discussing these issues—even casually—with senior management. While he wasn't known for his business acumen, Mahatma Gandhi made a fitting observation about this: "You must be the change you wish to see in the world."

Market Moves

Hub continues 2007 expansion

CHICAGO—Chicago-based brokerage Hub International Ltd. has completed three acquisitions that add about \$15 million in annual revenue and expand its capabilities in California and Massachusetts as well as the elevator industry.

Hub has made at least 11 acquisitions this year, according to its Web site. Earlier, Apax Partners and Morgan Stanley Principal Investments paid \$1.9 billion to acquire Hub and take it private (*BI*, June 25).

Hub's latest purchases include FLF Inc., which does business as Risk Insurance Brokers Inc.

The Emeryville, Calif., operation with about \$11 million in revenue and 50 employees will move to Hub's Pleasant Hill, Calif., office early next year, Hub said in a statement.

Hub also acquired the assets of JM Associates Ltd., a Fort Lee, N.J.-based agency serving the elevator industry, and substantially all the assets of Rome Insurance Agency Inc. of Fitchburg, Mass.

Brown & Brown adds trio of units

DAYTONA BEACH, Fla.—Brokerage Brown & Brown Inc. has purchased an employee benefits specialist serving Florida and two insurance agencies serving Louisiana and Georgia.

The operations have combined annual revenue of about \$8.6 million and bring the number of acquisitions Brown & Brown has made this year to at least 19, according to its Web site.

Brown & Brown said the operations of employee benefits specialist Wittner National Group Inc. would be combined with its existing Pinellas County, Fla., operation.

In separate purchases, Brown & Brown acquired Independent Insurance Associates Inc. of New Orleans and Lloyd Bennett & Co. Inc. of Duluth, Ga. Bennett executives and staff will join Brown & Brown's existing office in the Atlanta area, Brown & Brown said.

Montpelier Re opens U.S. treaty business

HAMILTON, Bermuda—Montpelier Re Holdings Ltd. has announced a new U.S. property treaty underwriting business.

Montpelier's Lloyd's of London syndicate 5151 has granted binding authority to managing general agent Montpelier Underwriting Inc. in Hartford, Conn., to provide proportional and excess of loss protection for property and multiline programs in the United States, Montpelier Re said in a statement.

All other U.S. property treaty business will continue to be written through Montpelier Re Ltd. in Bermuda, the company said.

Separately, Montpelier completed the purchase of General Agents

Insurance Co. of America Inc. following regulatory approval from Oklahoma and renamed it Montpelier U.S. Insurance Co. MUSIC, for which Montpelier paid a \$4.75 million premium over book value to Gainsco Inc., will be based in Scottsdale, Ariz., and write primarily excess and surplus lines business, the company said.

AIG opens transportation unit

NEW YORK—American International Group Inc. has launched AIG Transportation Solutions, a New York-based unit that will target U.S. trucking operations, including workers compensation, general liability, automobile liability, environmental/pollution, excess casualty and occupational accident insurance. It also will offer property, infrastructure and mobile property coverage.

The unit opened with underwriting teams in Atlanta, Chicago, Dallas, Los Angeles and Philadelphia.

HRH wraps BACIA purchase; names exec

CRANFORD, N.J.—Hilb Rogal & Hobbs Co. has completed the acquisition of the corporate business of Banc of America Corporate Insurance Agency L.L.C. based in Cranford, N.J.

The previously announced purchase from Bank of America N.A. prompted Richmond, Va.-based HRH to establish a new division headed by former BACIA President and Chief Executive Officer Stanley Jablonowski.

Mr. Jablonowski now is vp, regional director of HRH's northeast metro region, a spokeswoman said.

Arthur J. Gallagher buys Arizona agency

SCOTTSDALE, Ariz.—Arthur J. Gallagher & Co. has acquired Scottsdale, Ariz.-based Cedar Hill Insurance Agency Inc. for an undisclosed sum.

Cedar Hill—primarily a property/casualty insurance administrator and business process outsourcing firm—will continue operations in Arizona as well as Smyrna, Ga., with existing executives and staff, Gallagher said.

Hartford sets up office in London

LONDON—Hartford Financial Services Group Inc. has set up a London office and unit, approved by the U.K. Financial Services Authority, to expand its international professional liability underwriting capabilities.

Hartford Financial Products International Ltd. is located at 55 Mark Lane, London, England, EC3R 7NE. It is headed by Managing Director Stephen P. Minihan, who can be reached at 44-207-481-7764 or sminihan@thehartford.com.

Construction the focus of international ACE unit

LONDON—ACE Group of Cos. has formed a new practice, ACE International Construction, to serve private and public construction risks.

David Walters, a London-based vp, is leading the unit that aligns existing ACE underwriting capabilities. Offices will be in Europe, Asia, the Mideast and Latin America, ACE said in a statement.

Guy Carpenter units take new names

NEW YORK—Two units of Guy Carpenter & Co. L.L.C. have changed their names, the New York-based reinsurance brokerage said.

U.S. subsidiary Reinsurance Solutions International has changed its name to Reinsurance Solutions L.L.C. and U.K. affiliate ReSolutions International Ltd. has changed its name to Reinsurance Solutions Ltd.

The integrated brand will make sure "clients have a clear vision of the breadth of our organization and expertise," said Theresa Zlotnik, president of Reinsurance Solutions L.L.C., in a statement.

Disaster Kleenup on the move

WOOD DALE, Ill.—Disaster Kleenup International Inc. has moved to a new Chicago area location.

Its offices are at 1555 Mittel Blvd., Suite S, Wood Dale, Ill. 60191. The phone number, 888-735-0800, remains the same.

Joint venture targets energy industry

DENVER—Van Gilder Insurance Corp. of Denver and EnRisk Services Inc. of Fort Worth, Tex., have formed vangilder | enrisk, a Denver-based provider of risk mitigation and insurance for the energy industry in the western United States.

Vangilder | enrisk will focus on the oil and gas industry as well as alternative energy providers, the companies said in a statement.

Ironshore launches construction division

HAMILTON, Bermuda—Ironshore Inc. is offering specialty construction insurance coverage through its new IronBuilt division.

IronBuilt, which plans to set up its headquarters near Boston, offers construction risk protection with an emphasis on residential wrap-up liability insurance and liability insurance for subcontractors involved in residential construction.

The wrap-up liability insurance limit is \$3 million while the subcontractor liability insurance limit is \$1 million per occurrence, according to a spokesman for Ironshore.

Joe George, who most recently was a program administrator with Glencoe/Lantana Insurance Cos., has been named president of the IronBuilt division. He can be reached at 508-395-3862 or joe.george@ironshore.com.

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Employers prefer solution coming from private market

OTTAWA—Canadian employers are likely to resist a union's proposal to amend the government pension program—to require employers not offering workplace pensions to pay increased premiums—because of the greater cost and general objections to expanding the program.

Currently, employers pay the same premiums to the Canada Pension Plan regardless of whether they provide pension plans.

"There's no economic incentive" to establish workplace plans, said Larry Brown, secretary-treasurer of the Nepean, Ontario-based National Union of Public and General Employees.

The Canada Pension Plan is a social insurance program that provides monthly pension benefits to residents in all Canadian jurisdictions except Quebec, which has a separate program. The CPP is funded by contributions from employers and employees.

NUPGE is not proposing a specific contribution increase, although doubling current premium levels for employers without workplace pensions would provide substantial funds to pay additional benefits

to retired workers who did not have a workplace pension plan, Mr. Brown said.

Many employers, though, may not have plans because of the costs or administrative burdens, although they could save on administrative costs simply by paying additional CPP premiums to give their employees increased pension coverage, said Scott Perkin, president of the Toronto-based Assn. of Canadian Pension Management, which represents plan sponsors in Canada. "It may mean better coverage for the employees, which is a good thing, but it may mean more costs for employers," he said.

While employers support full pension coverage for their employees, they would prefer a private market solution that can provide plenty of access to workplace pensions on a cost-effective basis rather than compelling increased participation in the government program, said Steve Eadie, chair of the Ontario Chamber of Commerce Pension Task Force.

"I think where you would have resistance from a lot of employers is a mandatory, CPP solution vs. a voluntary, private solution," Mr. Eadie said.

—By Gloria Gonzalez

Ontario: Pension law changes suggested

CONTINUED FROM PAGE 3

to avoid windup responsibilities, according to the International Assn. of Machinists and Aerospace Workers, which has more than 10,000 active members in Ontario.

"I think it's safe to say that we won at the Supreme Court and we're not likely to change our mind" on partial windups, said Wayne Samuelson, president of the Ontario Federation of Labor, the umbrella organization for Ontario trade unions, which intervened in the Monsanto case.

The *Monsanto* decision highlighted what Canadian employers refer to as the asymmetry of pension surplus/deficit ownership—in which sponsors must pay off plan deficits but may not be entitled to surpluses, which is widely seen by employers as a disincentive to adequately fund their plans.

"Plan sponsors should have the same right to own pension surplus to the extent they own plan deficits," said William Hewitt, a member of the issues and policy advisory committee of FEI Canada.

The Ontario Federation of Labor, though, proposed that the PBA be amended to allow no employer contribution holidays unless a plan has a surplus margin of at least 10%. In addition, any use of surplus should be approved either by plan members or their unions, the organization said, citing a 2005 Shareholder Assn. for Research and Education report that concluded that employer contribution holidays contributed to pension deficits.

Contribution holidays, employ-

ers argue, are often beyond their control, citing federal tax law that disallows contributions to plans beyond 110% of funding levels.

Another top priority for plan sponsors is eliminating grow-in provisions from Ontario's pension legislation. Grow-in rights entitle certain employees of woundup plans to any early retirement benefits they would have been eligible for had the plan and their employment continued.

Ontario and Nova Scotia currently are the only Canadian jurisdictions with grow-in rights, although Nova Scotia recently removed a requirement to prefund grow-in benefits.

There is a "very strong possibility" that the Ontario commission will recommend changing grow-in provisions because of their absence in other jurisdictions, Mr. Eadie said. "It creates a very unequal playing field."

Union officials, meanwhile, advocate amendments to Ontario's pension law they say will enhance the value of pension benefits for employees. The Ontario Federation of Labor wants to mandate full indexing of pension benefits, citing a study that found 83% of private defined benefit plans have no inflation protection. "Without indexing, inflation will continue to erode retiree pension benefits," the OFL said in its submission to the com-

mission.

Indexing pension benefits should be left up to the sponsor, subject to collective bargaining, according to the Assn. of Canadian Pension Management, which represents plan sponsors in Canada.

Several unions propose raising the maximum payout of Ontario's Pension Benefits Guarantee Fund from about \$1,000 Canadian per month to at least \$2,500 (\$1,076 to \$2,689). They also promote increasing the mandatory cap on employer premiums, currently between \$4 million Canadian to \$5 million Canadian (\$4.3 million to \$5.4 million) per year, while employer groups support revamping premiums to reflect risk factors such as an organization's asset profile or creditworthiness. Ontario is the only Canadian jurisdiction with a guarantee fund.

One issue employers and unions agree on is amending Ontario's pension law to encourage adoption of multiemployer pension plans. These arrangements have numerous advantages for smaller employers, including efficient plan administration and pooling of risk, said Scott Perkin, president of the ACPM. "We believe the legislation itself needs to be more flexible, more accommodating of different arrangements," he said.

Planes: Airline grounds entire Dash 8-400 fleet

CONTINUED FROM PAGE 33

however, said the SAS spokesman. The airline is in discussions with Toronto-based Bombardier in the hope that the manufacturer could replace the Dash 8-400s with safer aircraft, he said. To avoid litigation by replacing the aircraft "is a strong incentive for the manufacturers," he said.

Bombardier's product liability insurance is placed by New York-based brokerage Marsh Inc. and is believed to be led by London-based Global Aerospace Underwriting Managers Ltd., sources say.

Aviation brokers and underwriters say they will be watching the situation carefully to see whether the entire Dash 8-400 fleet of 160 aircraft is grounded by civil aviation authorities.

The last major temporary groundings of the McDonnell Douglas DC-10 in 1979 and Concorde in 2000 stemmed from the decisions of civil aviation authorities to stop all flights worldwide until inspections took place and problems were rectified.

Cause for concern

"Of course we are concerned, and we are in conversation with the manufacturer and airlines about this situation," said Tony Medniuk, chief executive officer at GAUM, who would not confirm whether his company led the Bombardier product liability program.

Bombardier, however, has defended the reliability of the Dash

8-400 turboprop and continues to maintain that the aircraft is safe and reliable. This, says the manufacturer, is borne out by the conclusions of the Dutch, European and Canadian aviation safety agencies on the three incidents involving SAS aircraft. Indeed, on Nov. 6 at its headquarters in Cologne, the European Aviation Safety Agency called a meeting of the airworthiness authorities of Denmark, Sweden, Norway and Canada with representatives of Bombardier and landing gear manufacturer Goodrich Corp. of Charlotte, N.C., to review the reliability of the Dash 8-400 aircraft.

"All participants concluded that the incident of an SAS Dash 8-400 on Oct. 27 at Copenhagen was not due to a design error and that the airworthiness of the aircraft is maintained," stated EASA after the meeting. The meeting also confirmed that the incidents with the SAS aircraft on Sept. 9 and Sept. 12 were not related to the incident on Oct. 27.

Preliminary findings by the Dutch aviation authorities just prior to the EASA meeting "clearly support Bombardier's position that the (Dash 8-400) is a safe and reliable aircraft," stated Steven Ridolfi, president of Bombardier Regional Aircraft.

"Airlines and other operators around the world continue to express their complete confidence in the (Dash 8-400) turboprop, and I thank them for their strong support," Mr. Ridolfi said.



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Opt-out: Trend 'alarming' for defendants

CONTINUED FROM PAGE 1

Coughlin Stoja Geller Rudman & Robbins L.L.P. in San Diego.

The resolve of those investors to strike out alone should not be doubted, Mr. Coughlin told attendees at a session during the Professional Liability Underwriting Society's 20th annual international conference, held Nov. 7-9 in Washington.

The number of opt-out lawsuits in securities fraud cases to date has been small, but they are becoming more attractive to shareholders facing huge losses, because recoveries typically are greater when those investors pursue individual suits, said Mr. Coughlin as well as defense and insurer attorneys.

For example, Mr. Coughlin said, investors that opted out of the \$2.65 billion settlement in the AOL Time Warner Inc. securities litigation recovered settlements that were 20 times the amount of damages they would have received by remaining in the class action.

Investors opting out of the \$6 billion WorldCom Inc. class action settlement received four to five times what they would have under the settlement, he said.

"Big overseas funds" with 30% to 40% of their portfolios invested in U.S. securities are the biggest voice in opt-outs, "because they don't like class actions," Mr. Coughlin said.

And there are many foreign investors in the companies with the biggest subprime mortgage-related losses, he said.

"I know they're going to bring those cases," he said. "This is happening really right now." Potential plaintiffs already have approached him and said they are not interested in being a part of any class action, Mr. Coughlin said.

Another force driving up the number of opt-out cases is the plaintiffs bar, said securities class action defense attorney Peter Casey in an interview.

"Those who can't get the lead counsel appointment in class actions try to stay in the game by picking up an individual shareholder who'd want to file its own suit,"

said Mr. Casey, a partner with Greenberg Traurig L.L.P. in Boston.

"We're only going to see more of that, I think," because large investors can leverage their individual lawsuits, which are "a thorn in the side of defendants," to recover greater damages, said insurer and defense attorney Dan A. Bailey, who was not at the session.

"It's an alarming trend from the standpoint of defendants and insur-

'Those who can't get the lead counsel appointment in class actions try to stay in the game by picking up an individual shareholder who'd want to file its own suit.'

Peter Casey, Greenberg Traurig L.L.P.

ers," said Mr. Bailey, a partner with Bailey Cavaleri L.L.C. of Columbus, Ohio.

While opt-outs pose greater losses for defendants, they would rather see those cases filed early in the litigation process than enter a class action settlement has been reached, defense and insurer attorneys said.

"It's somewhat helpful; you at least know what's out there," Mr. Bailey said.

"Early opt-outs are better, no question," Mr. Casey said.

By knowing about opt-outs sooner a defendant would have a better idea of what size settlement to offer in each lawsuit it faces.

In previous cases when opt-out lawsuits were filed late defendants often found they committed more to a class action settlement than they would have had they known sooner about the opt-out cases, defense and insurer attorneys said.

If the plaintiff opting out of the class is a very big investor, a defendant may be able to scuttle the class action settlement. But then class action settlement negotiations would have to begin anew.

"But there are tremendous risks" for investors that opt out of a class action, Mr. Coughlin told PLUS attendees.

Defense and insurer attorneys agree.

For example, judges often are antagonistic to plaintiffs that opt out, because those cases create more work for the court, Mr. Coughlin said.

In addition, an individual plaintiff faces legal fees even if it loses, unlike class actions.

And, there is no guarantee an individual plaintiff will win its case or recover as much as it would as part of a class, said insurer attorney Richard J. Bortnick in an interview. Mr. Bortnick, a partner with Cozen O'Connor P.C. in Philadelphia, moderated the PLUS session.

For example, in the shareholder securities litigation over the 1998 merger of Daimler-Benz and Chrysler Corp., Chrysler shareholders settled their class action lawsuit for \$300 million. But two courts have ruled that leading Chrysler shareholder Kirk Kerkorian is not entitled to any of the \$1 billion of damages he sought.

Opt-out cases also are expensive for plaintiffs attorneys, who have to front much of the expense of the case, Mr. Coughlin said.

Because of the risks and costs associated with opt-out litigation, Mr. Coughlin will take those cases only against companies reporting multibillion-dollar losses. "A \$700 million loss isn't big enough" for plaintiffs to opt out of a class action case, he said.

But insurer attorney Arthur Washington, who attended the session, said he took that comment "with a grain of salt." Mr. Washington, a partner with Mendes & Mount L.L.P. in New York, said he could not see a plaintiffs attorney "turning up his nose at a \$1 billion case."

While Mr. Bortnick said he also expects to see opt-out litigation filed mainly in "the megacase," he did not rule out a majority shareholder filing an individual lawsuit in a smaller case if the investor "wants to get every pound of flesh it can."

Doctors: To be ranked on publicly disclosed measures

CONTINUED FROM PAGE 3

ciency and how much on quality measures. The insurer also agreed to retain an oversight monitor to oversee compliance with all aspects of the agreement and report to the attorney general every six months. The agreement initially focused on the insurer's programs in New York, but the company announced last week that it would expand the program nationwide.

Also last week, Hartford, Conn.-based Aetna agreed to implement Mr. Cuomo's model on a nationwide basis. Its physician ranking program, known as Aetna Aexcel, lists physicians in 12 specialty categories who have passed certain clinical quality and cost-efficiency measures.

Empire Blue Cross Blue Shield, a unit of Indianapolis-based WellPoint, also agreed to implement the

'Patients and physicians throughout the country deserve to be protected from inaccurate ratings, which undermine the physician-patient relationship.'

Nancy Nielsen, American Medical Assn.

attorney general's model in its physician ranking program. Empire is the largest health insurer in New York, with about 5 million members. The agreement applies to New York, but the company plans to implement the principles of the agreement in other states.

"Choosing a doctor is obviously a very important decision and the information health care companies provide to consumers must be fair and complete," Mr. Cuomo said in

a statement. "Health insurance companies are beginning to realize if they want to implement a doctor ranking program, they should adopt our national model, which is supported not just by insurers, but also by national physician and consumer groups."

Letters expressed concern

The agreement arose out of Mr. Cuomo's investigation of physician ranking programs. Mr. Cuomo sent letters to Aetna and CIGNA as well as a unit of Minnetonka, Minn.-based UnitedHealth Group Inc. and several New York-based insurers. The letters expressed concern that decisions were based on cost rather than quality, and asked for information from the insurers on metrics they used to evaluate physicians.

Before Mr. Cuomo's involvement, there was tremendous anxiety among some of the stakeholders involved with physician ranking programs, the Consumer Union's Mr. Bell said.

The development of the attorney general's framework and its adoption by the health plans should help with the confidence of consumers and physicians as to the accuracy and fairness of the criteria for the programs, he said.

The Chicago-based American Medical Assn. supports the attorney general's model and praised insurers who have adopted the framework.

"Patients and physicians throughout the country deserve to be protected from inaccurate ratings, which undermine the physician-patient relationship," AMA President-elect Nancy Nielsen said in a statement.

Observers said they hope other insurers adopt the model so all provide critical information at the same level. "I don't think the attorney general's office would stand for anything else," Ms. Pickering said.

"I think it's going to be stronger if there's even more buy-in, so I'm hopeful that more insurers will join the program," Mr. Bell said.

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Costs: Health care again posts 6.1% rise: Study

CONTINUED FROM PAGE 1

And the easing of health care inflation is likely to continue. In 2008, survey respondents expect costs to increase an average of 5.8% after taking into account changes they will make, among other factors, in plan designs.

One factor checking cost increases is greater use of health management programs, such as wellness programs that give employees incentives to improve their health and disease management programs that aim to reduce costs for employees with chronic conditions.

'Even a 6% increase, year after year, makes providing health care coverage unaffordable' for smaller employers.

Blaine Bos, Mercer L.L.C.

Indeed, 80% of employers with at least 500 employees have put health management programs in place, with just under two-thirds saying their programs have helped to control costs, according to Mercer.

Some employers are going beyond health management programs to offer consumer-driven health care plans, which expose employees to big health care costs through high deductibles.

The plans, though, do more than raise deductibles. The plans are linked to accounts—either health savings accounts or health reimbursement arrangements—that employees can tap to pay uncovered health care expenses, including deductibles. In both accounts, unused amounts roll over to pay

expenses in succeeding years, and employees can keep HSA balances, even after they leave a company, and apply them to future medical expenses, including during retirement.

CDHPs are strikingly less expensive than other health care plan designs, according to the Mercer survey. In 2007, HSA-based plans cost an average \$5,679 per employee while HRA-based plans cost an average of \$6,224.

By contrast, preferred provider organization plans cost an average \$7,352 per employee, making them \$1,673 more expensive compared with HSA-based plans and \$1,128 more expensive than HRA-based plans.

It's not only the high-deductible in CDHPs that encourages employees to use services more carefully, according to the survey.

The per-employee cost of PPOs with deductibles of at least \$1,000 averaged \$6,644, \$965 less than an HSA-based plan and \$420 less than an HRA-based plan.

That cost difference "lends support to the theory that the account feature encourages more careful employee spending," according to the survey.

Those cost differences have gotten employers' attention, especially the nation's largest companies. This year, 29% of respondents with at least 20,000 employees offered an HSA, up from 22% last year; 31% of the largest employers say it is likely they will offer an HSA-based CDHP next year.

Employee enrollment in CDHPs, while still low, also is growing. In 2005, just 1% of employees were enrolled in CDHPs, 3% were enrolled in 2006 and the percentage climbed to 5% in 2007.

If enrollment in CDHPs continues to climb, that could positively affect health plan costs. "As employees shift from more expensive plans into less expensive plans, employers' overall cost per employee drops. This is what we saw happen in a big way when employees moved out of traditional indemnity plans and into managed care plans in the mid-1990s," Mr. Bos said.

Still, even if increases are remaining steady, the cost of providing coverage is more than a growing number of smaller employers can afford. Last year, 61% of employers with fewer than 200 employees offered health care coverage, down from 66% in 2003 and 69% in 2001.

"Even a 6% increase, year after year, makes providing health care coverage unaffordable" for smaller employers, Mr. Bos said.

Requiring employers to offer a health care plan or pay a fee—one way to reduce the number of uninsured—is not an idea broadly embraced by employers. Fifty percent of respondents said they disapproved of the so-called "play or pay" approach to expanding coverage.

Other approaches to expanding coverage were less controversial. For example, the survey found that 48% of employers approved of legis-

GROUP HEALTH PLAN BREAKDOWN

COSTS AT A GLANCE
Average health plan costs and increases per employee

YEAR	COST PER EMPLOYEE	CHANGE
2003	\$6,215	10.1%
2004	\$6,679	7.5%
2005	\$7,089	6.1%
2006	\$7,523	6.1%
2007	\$7,983	6.1%

MEDICAL COSTS PER EMPLOYEE BY PLAN TYPE

POINT OF SERVICE	2006	2007	CHANGE
	\$6,937	\$7,714	11.2%
PREFERRED PROVIDER ORGANIZATION			
	\$6,932	\$7,352	6.1%
HEALTH MAINTENANCE ORGANIZATION			
	\$6,616	\$7,120	7.6%
CONSUMER-DRIVEN HEALTH PLAN			
	\$5,770	\$5,970	3.5%

HOW HSAs AND HRAs STACK UP AMONG LARGE EMPLOYERS*

	HSA	HRA
Average deductible	\$1,769	\$1,457
Percent of employers contributing to account	65%	100%
Average employer account contribution	\$626**	\$621
Annual cost per employee	\$5,479	\$6,110

*For employers with at least 500 employees
**For employers making contributions
Source: Mercer L.L.C.

lation requiring plans to lengthen the time that dependent children can be covered by a parent's health insurance plan.

Additionally, 61% of respondents approved of proposals that would require health plans to allow all employees—including those not eligible for coverage—to make pretax contributions to the plans.

Copies of the Mercer "National Survey of Employer Sponsored Health Plans 2007" will be available in March 2008 from Tara Lewis, Mercer L.L.C., 1166 Avenue of the Americas, 29th Floor, New York, N.Y. 10036; 212-345-2451. Copies also will be available at www.mercer.com/ushealthplansurvey. The report costs \$500, and the report and tables cost \$1,000.

Terrorism model now includes urban blast

By JEFF CASALE

BOSTON—Risk modeler AIR Worldwide Corp. released its updated U.S. terrorism model last week, with this latest version providing an up-to-date property exposure database and detailing the effects of an urban bomb blast.

Boston-based AIR, developer of risk modeling software and consulting services, spent more than two years researching the latest version of its terrorism model, originally released in 2002. This latest edition, said Jack Seaquist, senior manager with AIR, will allow insurers to get a full loss analysis that includes a range of likely attack locations, weapons combinations and estimates on those losses while assigning an estimated probability to each level of loss.

"We looked at how bomb (blasts) affect the original composite of a city in a range of environments from a dense one like Manhattan, to an open environment like those

with just single buildings," Mr. Seaquist said.

Additionally, AIR updated its injury-loss distributions model to reflect the latest research from the medical community regarding trauma from terrorist blasts. The distributions take into account injuries that may result from damage to buildings, including people who would be injured by flying or falling debris.

Injury-loss data in the updated model uses state average claim costs by injury type based on the latest three policy periods of historical claims as reported to the Boca Raton, Fla.-based National Council on Compensation Insurance Inc.

Mr. Seaquist said this latest terrorism model also includes an enhanced industry property exposure database. The updated database features more accurate building locations and building-specific characteristics for commercial prop-

Med mal: Damage cap law ruled unconstitutional

CONTINUED FROM PAGE 3

"The trend has been exactly what tort reform and malpractice reform supporters said it would be," Mr. Murnane said.

However, Bruce M. Kohen, president of the Illinois Trial Lawyers Assn., said the decision upholds the constitution.

"One thing is clear," he said in a statement, "our state constitution does not allow those who have been most seriously injured as a result of medical negligence to have their rights taken away in order to give bonuses to insurance companies."

Jason Held, a Chicago-based staff director for the Center for Justice and Democracy, an anti-tort reform group, said capping noneconomic damages is unconstitutional, adding that such caps are "anti-family, anti-patient and anti-Illinois."

"If you look at the Illinois data from the (Illinois Department of Financial and Professional Regulation Division of Insurance), you will

see that there isn't a doctor crisis in Illinois anymore, that there has been a steady increase of them (in the state) over the past 20 years," said Mr. Held. "There are counter arguments to this, but I don't see this mass exodus of doctors."

According to the Illinois State Medical Society, the number of licensed doctors in the state may be inaccurate. A spokeswoman in Chicago said some high-risk specialists—neurosurgeons and obstetricians, for example—may be based in Illinois but also practice in Indiana. This can make it difficult to find proper care for patients, particularly in rural areas, the society said.

"This is only 'round one' in the battle to uphold these reforms," said Dr. Rodney C. Osborn, president of the Illinois State Medical Society in a statement. "Getting rid of the 2005 medical litigation reforms now would be like benching your entire lineup in the toughest game of the season. We can't afford to forfeit patients' access to care."

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Backstop: Senate passes seven-year extension

CONTINUED FROM PAGE 1

the House. While the Senate bill basically extends the existing backstop program, the House bill would extend the backstop for 15 years, allow the program to respond to group life insurance claims, and permit the program to respond to catastrophic acts of domestic as well as foreign terrorism.

Senior Bush administration officials have said they will recommend President Bush veto the House bill if it reaches his desk. House and Senate negotiators will have to work out differences between the two bills before anything goes to the president.

Banking Committee Chairman Chris Dodd, D-Conn., the Senate bill's chief sponsor, said during a Friday teleconference that he is "very confident" that the differences can be worked out, resulting in a bill that can win the approval of both houses of Congress before lawmakers adjourn next month for the rest of the year. He called extension of the backstop "critically important" for the economy.

Risk managers and industry figures alike praised the Senate action.

"This has been a long-traveled road, particularly with the recent pay/go issue. Risk managers cannot understand the science behind the numbers," said Bradley R. Wood, senior vp-risk management for Bethesda, Md.-based Marriott International Inc. "Obviously, we're

thrilled with the steps taken by the Senate to get an amicable solution and get passage of the bill. Success will not be final until the House and Senate resolve their differences. The good news is that we are well-positioned to achieve our primary goal—

'I think that's a positive sign that we will have something in place, but of course it is the legislative process and anything can happen.'

Ben McKay, Property Casualty Insurers Assn. of America

obtaining a longer duration so that the risk management community can take a well-deserved rest on the legislative front and focus on our business at hand."

"RIMS is delighted that the Senate has worked through a number of issues to bring this legislation to the floor for a vote," said Janice Ochenkowski, president of the New York-based Risk & Insurance Management Society Inc. "The leadership of the Senate Banking Committee has done a terrific job in moving this bill forward. We are excited about the prospect of a bill to be

passed before year-end and are optimistic that can be done with the cooperation of key leadership in the House and Senate. RIMS is, of course, ready to work with anyone to make this happen."

"I think it's very encouraging that the Senate acted expeditiously rather than waiting to the last minute," said Ben McKay, senior vp in the Property Casualty Insurers Assn. of America's Washington office. "I think that's a positive sign that we will have something in place, but of course it is the legislative process and anything can happen. There are a lot of moving parts and the more parts there are, the more that can break."

"I believe that the seven years in the Senate bill is an outstanding result and hope the House leaders will accept this basic approach, due to the fact that Jan. 1 (insurance) renewals are actively being negotiated and passage of the legislation would ease any potential market disruption," said Joel Wood, senior vp at the Council of Insurance Agents & Brokers in Washington.

"I'm optimistic but not bullish," he added. Mr. Wood said the Banking Committee leaders who drafted the Senate bill—Sens. Dodd and Richard Shelby, R-Ala.—"have little to no wiggle room with respect to their negotiated deal and this is a bill now that enjoys unanimous support of the Senate, support of the Bush administration and apparently support of the House Republicans. We've been down this road twice

before, and even though there are elements of the House bill that we greatly like, (but) when Dodd and Shelby reach a deal that's pretty much as good as it gets. We think this is a good opportunity for everyone to take a win."

He added, though, if House Financial Services Committee Chairman Barney Frank, D-Mass., "had not passed as expansive a bill as he did, we would not be in the position of looking at this outstanding Senate product."

"By supporting a seven-year extension, the Senate has unanimously voiced their support for a continued, vibrant federal program," said Marc Racicot, president of the Washington-based American Insurance Assn. in a statement. "A seven-year extension will provide more stability and certainty in the market and will foster long-term investment and economic growth."

"The next step is just as critical, said Mr. Racicot. "It's absolutely necessary that the Congress continue their work and reauthorize this program by year's end."

"We commend the Senate for taking quick action on this important legislation," said Jimi Grande, vp in the National Assn. of Mutual Insurance Cos.' Washington office in a statement. "By approving this legislation before leaving for the Thanksgiving break, members of the Senate have demonstrated their commitment to continuing this vital public-private partnership."

chairman, president and CEO in January 2002 when USI founder Bernard H. Mizel retired. He took the brokerage public in 2002.

Hilb Rogal & Hobbs founder Rogal dies

Alvin Rogal, one of the three founders of what is now Hilb Rogal & Hobbs Co., died Nov. 6 at the age of 84, HRH said last week. Mr. Rogal joined Robert Hilb and David Hamilton to form Glen Allen, Va.-based HRH in 1982. He retired in July of this year.

Oregon taps La. official for top regulator post

The Oregon Department of Consumer and Business Services is hiring a Louisiana regulator to administer Oregon's Insurance Division. Scott Kipper, who is deputy commissioner of the Louisiana Insurance Department's Office of

Health Insurance, will take over the Oregon post effective Dec. 27. He replaces Joel Ario, who left in July to become Pennsylvania's insurance commissioner.

Canadian comp rates to decrease in 2008

Several Canadian provinces plan to reduce employer premiums for workers compensation coverage next year, including Alberta, which already has the lowest premiums in Canada. The Workers' Compensation Board of Alberta will lower employer premiums for the fourth year in a row as injury rates and claim costs have continued to decline. The average rate will be \$1.32 Canadian (\$1.40) per \$100 Canadian (\$106.07) of insurable earnings, a nearly 8% drop from current rates, the WCB announced last week. Meanwhile, the Saskatchewan Workers' Compensation Board said it plans to reduce its 2008 average premium

rate by 8.2% to \$1.69 Canadian (\$1.79) per \$100 Canadian of insurable earnings. Premium rates for employers in the province have dropped 17.6% since 2005. Other provinces previously reported decreases as well.

Pa. court affirms award against Gallagher Bassett

A Pennsylvania appellate court has affirmed its order that third-party administrator Gallagher Bassett Services Inc. pay \$2.9 million to the Catholic Diocese of Greensburg, Pa., and has directed a trial court to sanction the subsidiary of Itasca, Ill.-based Arthur J. Gallagher & Co. for filing a second, frivolous appeal in the case. The diocese alleged that Gallagher Bassett impeded its ability to recover from its property insurers after one of its school buildings was condemned because of soil problems that destabilized the building's foundation.

News In Brief

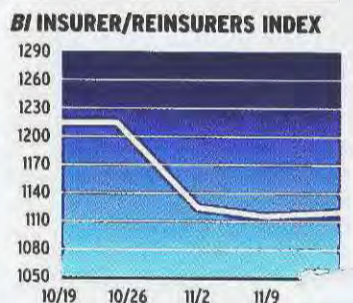
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USI board member. No reason was given for Mr. Eslick's departure. A spokeswoman could not be reached. Mr. Sicard joined the board of Barcliff Manor, N.Y.-based USI following the \$1.4 billion private equity buyout of USI earlier this year by GS Capital Partners. Before that, he was with Willis Group Holdings Ltd. where he helped lead the brokerage's turnaround after its 1998 acquisition by Kohlberg Kravis & Roberts & Co. and resulting 2001 initial public offering. Mr. Eslick joined USI in January 1997, three years after its inception, and became

Stock Index

[11/12 - 11/16]

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Indicator	Value	Change
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DOW JONES	13176.79	1.03%
S&P 500	1458.74	0.35%

LARGEST GAINS

MBIA Inc.	7.83%
Meadowbrook Insurance	7.82%
Aspen Insurance Holdings	5.36%
Tower Group Inc.	5.18%
Ambac Financial Group	4.97%

LARGEST LOSSES

NYMAGIC Inc.	-7.63%
UNICO American Corp.	-6.67%
Berkley Corp.	-5.97%
Markel Corp.	-3.80%
Allmerica Financial Corp.	-3.50%

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Contributing: Louise Esola, Sally Roberts, Judy Greenwald, Jeff Casale

Business Insurance END PAGE



REUTERS/TOMY CO. LTD.

A Japanese toy maker has designed a savings bank that 'explodes' when kids fail to make deposits.

Toy bank goes boom when kids go bust

A Japanese toy maker has come up with an inventive way to encourage savings. Portrayed as a "savings bomb" or a "savings box that explodes," the battery-operated device bearing a skull and crossbones takes the piggy bank and adds a twist.

When users fail to insert coins in the cartoon bomb-shaped mechanism every day, it goes through a series of warnings that start with lights and progress to sounds and vibrations.

After five days of no fresh entries, the gadget takes all the coins that were previously deposited and spits them out.

"This is a piggy bank where you have no way but to save," a spokeswoman for Tokyo-based TOMY Co. Ltd. said in a news report.

Picking up the pieces of the device, which costs approximately \$27, will allow users to "reflect on their laziness," the company reportedly said.

Court ices NHL player's comp claim for bar fight

Joe Murphy, a former right winger for National Hockey League teams in Chicago, Boston, Edmonton and Washington, recently learned that getting into a bar fight after work is not covered by workers compensation benefits.

The District of Columbia Court of Appeals upheld an administrative law judge's ruling in favor of Mr. Murphy's former employer, the Washington Capitals, and Warren, N.J.-based Chubb Corp.

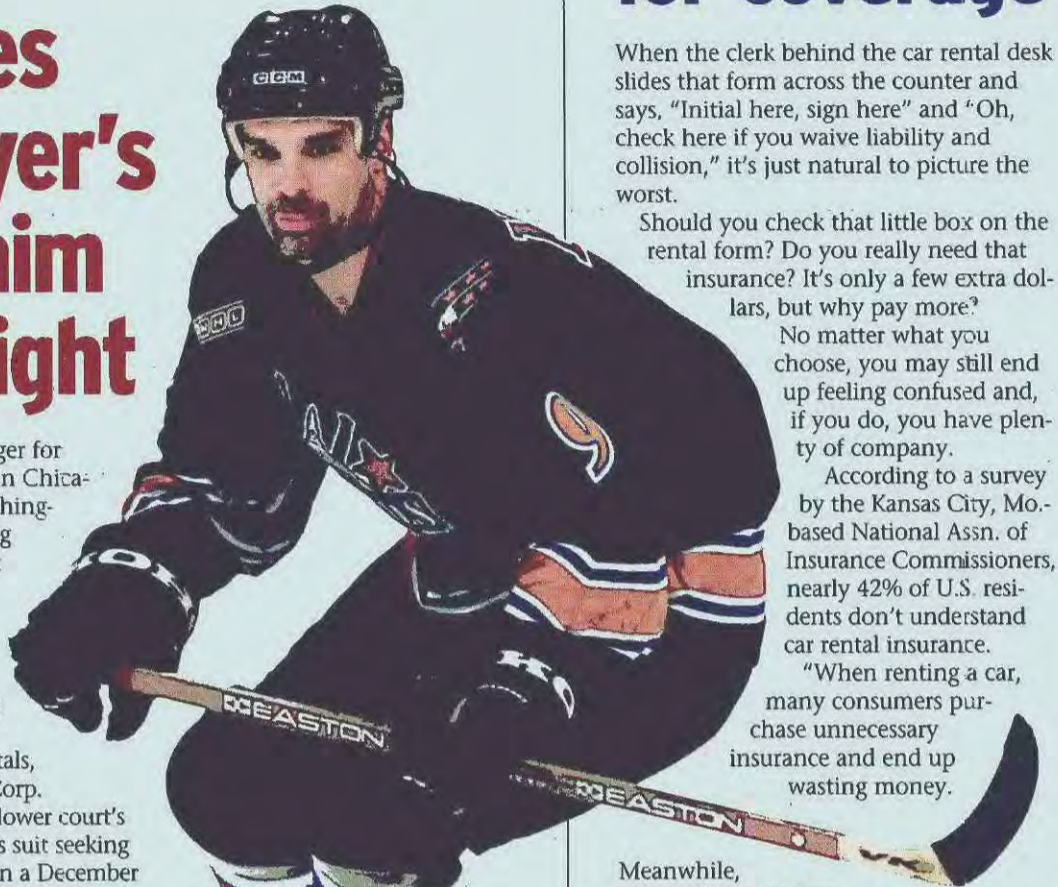
The appeals court upheld the lower court's ruling and rejected Mr. Murphy's suit seeking benefits for injuries he received in a December 2000 fight outside a New York nightclub.

According to court documents, the Capitals had gone to New York to play the Rangers. Mr. Murphy, who was injured and not playing in the game, went out for a team-paid dinner with his teammates, where he and others "drank a substantial amount of beer and vodka." They "drank more beer and vodka" at a subsequent nightclub visit.

At closing time outside the club, Mr. Murphy was hit over the head by a bottle-wielding man who knew a woman the hockey player was trying to persuade to get in his limousine, court records state.

Mr. Murphy, who required medical treatment, filed for workers comp benefits that he asserted "arose out of and in the course of his employment."

However, an administrative law judge blocked the claim. While the dinner "was an activity related to employment," the "venture to the Lower East Side to patronize a bar" afterward "was not an activity incidental to his employment, nor would have it been foreseeable by employer," the judge ruled.



GETTY IMAGES SPORT

Joe Murphy playing for the Washington Capitals in 2000.

Car renters confused about need for coverage

When the clerk behind the car rental desk slides that form across the counter and says, "Initial here, sign here" and "Oh, check here if you waive liability and collision," it's just natural to picture the worst.

Should you check that little box on the rental form? Do you really need that insurance? It's only a few extra dollars, but why pay more?

No matter what you choose, you may still end up feeling confused and, if you do, you have plenty of company.

According to a survey by the Kansas City, Mo.-based National Assn. of Insurance Commissioners, nearly 42% of U.S. residents don't understand car rental insurance.

"When renting a car, many consumers purchase unnecessary insurance and end up wasting money."

Meanwhile, other drivers inadvertently underinsure their rental car, placing themselves at risk," NAIC President and Alabama Insurance Commissioner Walter Bell said in a statement.

Of the 632 people surveyed in September, 34% of respondents said they purchased the rental company's insurance just to make sure they were covered, and 24% were not sure whether their credit card provided coverage when renting a car, the NAIC said.

The NAIC recommends consumers contact their car insurance and credit card companies before renting a vehicle, to inquire about specific coverage needs. The NAIC noted that company travel is not covered by personal car insurance and rentals of longer than a week might have different conditions.

Policy lets grandma send pennies from heaven

Worried that your grandchildren might forget about you after you walk through the pearly gates?

With "AfterThoughts Birthday Insurance" there's no need—your grandchildren will receive a personalized birthday card from you with a check for at least \$100 every year for the rest of their lives.

The guaranteed birthday gift is funded through a whole life insurance policy underwritten by Lincoln, Neb.-based Assurity Life Insurance Co. and distributed through Laguna Hills, Calif.-based Commemorative Life Insurance Services Inc.

"At the end of the day, everybody just really wants to be remembered," said Martin Andelman, founder and chief executive officer of Commemorative, who came up with the concept after his grandmother, who sent him a birthday card and check every year,

passed away and after seeing his own parents become grandparents.

"The relationship between grandparent and grandchild is really immeasurably special. It's something totally unique, and I wanted to come up with a way...where someone could arrange that upon their death they could have their named grandchild receive a birthday card and check every year for life," Mr. Andelman said.

Premiums for the birthday insurance policy depend on several factors, including age, sex, smoking status, number of grandchildren and the desired annual gift amount per grandchild.

For a 65-year old woman who is in good health and a nonsmoker, the cost to pur-

The Greeting Card

With AfterThoughts Birthday Insurance™, each of your grandchildren will receive a birthday card and check from you on their birthday for the rest of their lives. So, every time you hear from your grandchild on their birthday, they'll tell you how much they love you and how much they miss you.

Each card is personalized with your grandchild's name and your name to make it special. The value of the card is \$100.

Happy Birthday Grandma! Wish Love, Grandma and Grandpa Taylor

1. To qualify for this policy, you must be at least 18 years old, have a life expectancy of at least 10 years, and be a U.S. resident.

2. A limit on the amount of this policy is \$100,000. The actual amount of the policy is determined by the policyholder.

3. The actual amount of the policy is determined by the policyholder.

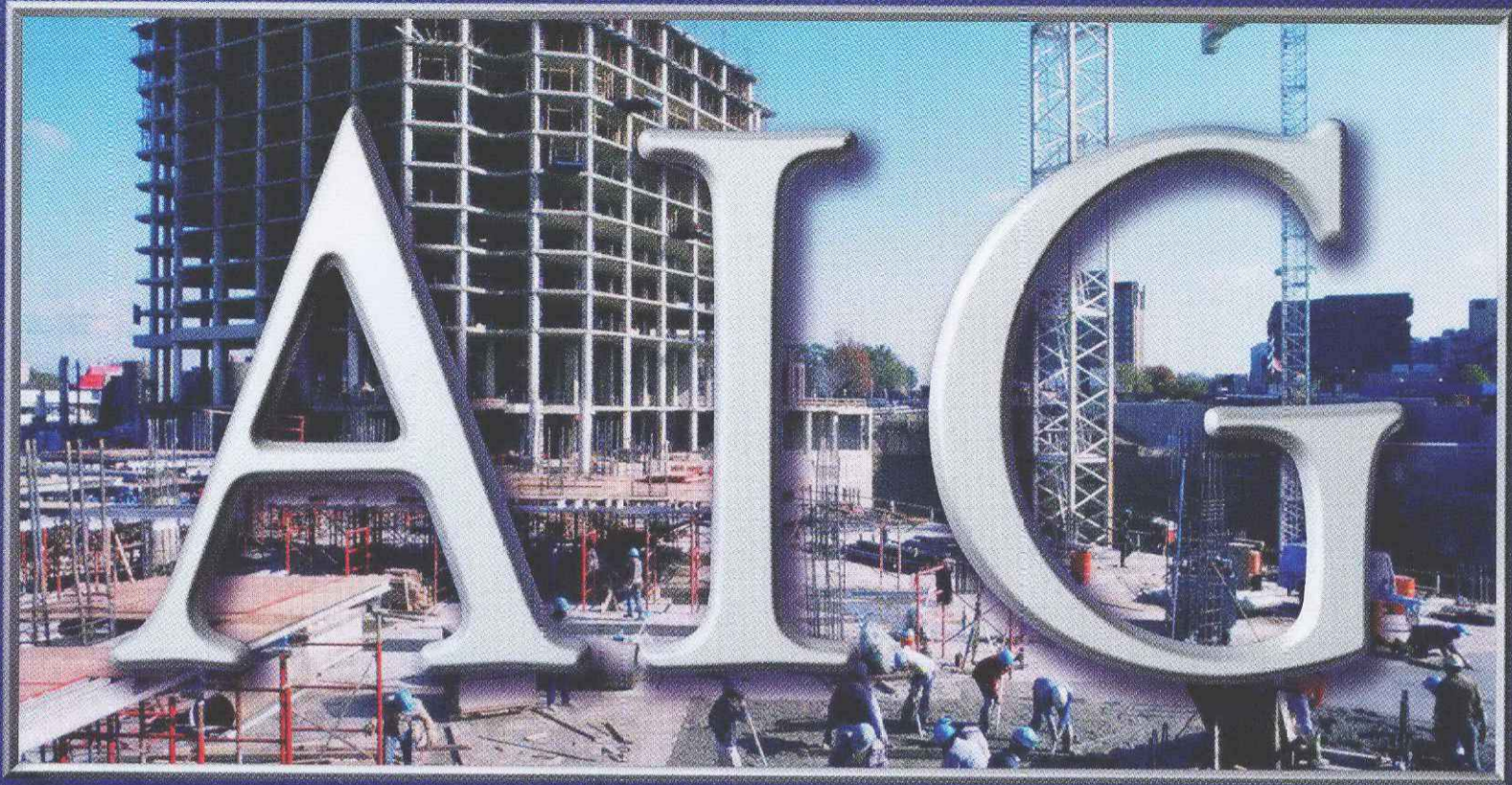
A life insurance policy distributed by Commemorative Life Insurance Services Inc. allows the buyer to ensure that a designated recipient will receive a greeting card and at least \$100 on each birthday.

grandchildren totals \$44.67 a month, according to Commemorative's Web site. Policyholders are responsible for paying the premium every year for the remainder of their lives.

The birthday policy was launched in April and so far the response has been positive, according to Mike Struhs, Commemorative's president.

"We're hearing a lot of heart-warming stories from agents" selling the policy, he said.

chase a policy that provides a \$100 lifetime annual gift and card for each of her three



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— Richard Nigro, Executive Vice President, Kajima Construction Services

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