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UPDATES

California files suit to undo Northridge claims settlements

SACRAMENTO, Calif.—California Attorney General Bill Lockyer and the California Insurance Department are asking a state court to set aside settlements reached between insurers and the department in connection with the 1994 Northridge earthquake.

Former Insurance Commissioner Chuck Quackenbush resigned in June after being charged with permitting insurers to pay about $12 million in settlements into a nonprofit foundation instead of paying perhaps bil-

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North Carolina ergonomics fight mirrors nation's

By MARK A. HOFMANN

RALEIGH,. N.C.—The national dispute over a federal ergonomics standard also is being played out in North Carolina.

North Carolina Labor Commissioner Harry Payne decided Nov. 14 to adopt the Occupational Safety and Health Administration's final ergonomics standard as North Carolina's.

OSHA published the standard in the Nov. 14 Federal Register (*BI*, Nov. 20).

It was the latest step in his department's two-year effort to issue an ergonomics standard.

In both cases, a lame-duck administration issued the standard after years of controversy and in the face of strong resistance from employers and legislators. And in both cases, the future of the standard could hinge on who wins undecided elections.

Employer and insurer groups have filed at least four major petitions for review with federal appellate courts, the latest being a National Coalition on Ergonomics-led petition joined by the Alliance of American Insurers and others in the U.S. Circuit Court of Appeals for the District of Columbia on Nov. 20.

That petition will be consolidated with review petitions led by the National Assn. of Manufacturers and the U.S. Chamber of Commerce. In addition, an insurer petition for review coordinated by the American Insurance Assn. has been filed in the 4th U.S. Circuit Court of Appeals, and a number of labor unions have also filed individual petitions seeking review in a number of federal courts of appeal. All of the petitions for review will eventually be consolidated and heard by one appeals court, which will be chosen by lottery.

Employers in North Carolina also are considering whether to seek judicial review of the state standard. In the meantime, they are carefully monitoring the federal actions already filed.

"They could have adopted their own," said Craig R. Senn, an associate in the Atlanta office of Winston-Salem, N.C.-based law firm Womble, Carlyle, Sandridge & Rice, who has discussed with business groups how to deal with a state ergonomics standard. "Their state efforts really had gone awry."

Only a handful of states, California being the most notable and successful, have contemplated setting ergonomics standards that state officials contend would fit their workplace conditions better than any federal mandate could.

North Carolina Commissioner Payne, a Democrat who did not seek re-election this year, issued a proposed draft ergonomics standard in late 1998. Like its federal counterpart, the North Carolina proposal from its beginning drew fire from employer groups, including the local chapter of the Risk & Insurance Management Society Inc. (*BI*, June 14, 1999).

"We were involved in it to the point of opposing it very strongly," said John Toay, chairman government affairs for the Carolina Chapter of RIMS, and president of Loss Prevention Management Inc. in Fort Mill, S.C., a suburb of Charlotte, N.C. Mr. Toay is the retired risk manager of Charlotte-based Family Dollar Stores.

The proposed standard, which was only a page and a

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New rules cut time for handling claims

By JERRY GEISEL

WASHINGTON—Final Labor Department rules setting new deadlines for resolving health care claims are a significant improvement over earlier, roundly criticized proposals, benefit experts say.

The new rules establish one set of deadlines for plans to advise enrollees whether or how they will cover a procedure, and another set for claims filed after a service has been provided. Earlier proposals did not distinguish between pre- and post-service claims—an omission, employers and insurers said, that made them seriously flawed.

For urgent pre-service claims, such as when an enrollee asks a health plan whether it will cover a procedure, a plan would have to notify the enrollee of its benefit determination within 72 hours of receipt of the claim.

In the event the enrollee has not provided sufficient information for a plan to determine if it will cover a procedure, the plan administrator would have 24 hours after the receipt of a claim to notify the enrollee of the specific information needed to complete the claim. The enrollee then would have 48 hours to provide the necessary information. After the needed information is filed, the

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PHOTO: AFP

President Bill Clinton and Labor Secretary Alexis Herman last week issued new health plan claims handling rules.

Partner rule under fire

Suits challenge San Francisco benefit mandate

By JUDY GREENWALD

SAN FRANCISCO—The airline industry and an organization founded by televangelist Pat Robertson are unlikely allies in the continuing battle to challenge San Francisco's domestic partner ordinance.

Attorneys for the Washington-based Air Transport Assn., which represents 28 domestic and international airlines, and the Virginia Beach, Va.-based American Center for Law & Justice, a public interest law firm founded by Mr. Robertson, argued in a federal appellate court last week that the city's 1996 domestic partner ordinance violates federal law.

A decision by the three-judge panel of the 9th U.S. Circuit Court of Appeals is expected within six months, according to an ATA spokesman, who said the organizations presented their cases together at the court's request.

The San Francisco ordinance requires companies doing business with the city to provide equal benefits to employees' spouses and long-term partners. Both organizations are appealing decisions issued last May by U.S. District Judge Claudia Wilken. Judge Wilken upheld the domestic partner law in a lawsuit filed by Tallmadge, Ohio-based S.D. Myers. That firm, which is represented by the Robertson organization, had failed to win a city contract to perform maintenance on electric transformers in the city because it refused to comply with the ordinance (*BI*, May 31, 1999).

In a related decision handed down the same day, Judge Wilken ordered airlines at San Francisco International Airport, which the city owns, to provide the partners

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Stocks respond to firmer pricing

Analyst eyes on the future

By JUDY GREENWALD

They're better than they look.

That is the consensus of stock analysts looking at the nine-month financial results for commercial property/casualty insurers.

INSURER RESULTS 9 month

Although the cycle has clearly turned, the change is not yet fully apparent in insurers' results because of an inevitable delay between price hikes and their appearance on the bottom line. Nevertheless, the property/casualty industry is looking forward to a strong year in 2001.

And as earnings begin to improve, insurer stocks should outperform the rest of the market, some analysts say, even though many believe that property/casualty stocks have already reached their peak as Wall Street has anticipated the market's turn.

"I think you're going to see better earnings for a lot of companies in 2001," said Ron Frank, an analyst with Salomon Smith Barney in New York. "I don't think you'll see much bottom-line balance sheet excitement this year, but there never was much reason to expect that.

"I think this has always been viewed as pretty much a transition year, during which the companies have pushed for meaningful rates and continue to re-underwrite books of business," all of which will noticeably affect next year's underwriting results and earnings, said Mr. Frank.

"The outlook is pretty positive," said Michael Lewis, senior insurance analyst with Warburg Dillon Read in New York. Rate hikes "continue to increase both in magnitude as well as expand into a greater portion of the commercial lines arena," he said. In addition, "these rates are being accepted, as measured by retentions

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UPDATES

Northridge settlements under fire

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lions of dollars in fines in connection with mishandled claims stemming from the Northridge quake.

Substantial amounts from that foundation were later used to pay for political consultants and public-service television advertisements featuring the commissioner, according to testimony at legislative hearings.

Mr. Quackenbush, now living in Hawaii, has maintained that the investigations against him were politically motivated.

A complaint originally filed in the spring sought the dissolution of the foundation and addressed issues related to the failure of its board to exercise its fiduciary responsibility, said a spokeswoman for Mr. Lockyer. Among other things, the amended complaint filed Monday asks the state court in Sacramento to declare the settlement agreements "void and unenforceable."

A spokeswoman for Allstate Insurance Co., one of the insurers named in the state's lawsuit, said in a statement: "We believe strongly that the settlement agreement entered into between Allstate and the California Department of Insurance is a valid and enforceable contract under California law, and Allstate has complied fully with the terms and conditions of that contract."

Other insurers named in the suit were units of 21st Century Insurance Group, the State Farm Group and Farmers Insurance Group.

Former Deputy Insurance Commissioner George Grays as well as two directors and officers of the foundation, Ronald Weekley and Eric Givens, are among those also named as defendants in the litigation.

Generali signs Holocaust accord

ROME—An agreement signed last week in Rome formalizes a previously announced settlement that Italian insurer Assicurazioni Generali S.p.A. has reached over payment of Holocaust-era claims.

The $100 million pledged by Trieste, Italy-based Generali comes in addition to amounts the insurer has already paid for claims and other settlements (*BI*, Aug. 28). In addition to paying claims, the settlement also includes financial support for the International Commission on Holocaust Era Insurance Claims as well as an independent fund established by Generali in Israel in 1997, according to a statement.

The agreement calls for Generali to make all of its claims payments through the ICHEIC, which will oversee research, processing of claims and evaluation of payments under insurance policies belonging to victims and their heirs.

The agreement also calls for the names of all Generali policyholders who were Holocaust victims to be made public. To date, nearly 9,000 names have been published by ICHEIC on its Web site, *www.icheic.org*.

"This is a fair and just settlement," said Lawrence Eagleburger, former U.S. secretary of state and chairman of ICHEIC.

The agreement "brings closure to a matter of the highest moral concern," said Giovanni Perissinotto, general manager of the insurer.

In a separate statement, Deputy Secretary Stuart E. Eizenstat of the U.S. Treasury Department encouraged participants to work expeditiously to settle remaining claims.

Groups offer plan to cut uninsured

WASHINGTON—Employers that provide health coverage to low-wage workers would receive a non-refundable tax credit under a new proposal to extend health insurance to the uninsured.

The tax credit plan, unveiled Nov. 20, is part of a three-prong public/private strategy devised by the Health Insurance Assn. of America, the American Hospital Assn., and Families USA.

Under their proposal, the tax credit would be available to employers that pay a larger portion of the health care premium for employees with family incomes between 133% and 200% of the federal poverty level—which in 2000 was $17,050 for a family of four, for example—than they pick up for better-paid workers.

The proposal calls for the tax credit to be made in conjunction with an expansion of Medicaid to cover all individuals whose income is below 133% of the federal poverty level.

The third prong of the strategy is to give states the option to expand Medicaid or the Children's Health Insurance Program to provide coverage for adults with incomes between 133% and 200% of the federal poverty level.

"With the economy in good condition, the federal budget in surplus, and state budgets in good shape as well—there never has been a better time to make such an investment," said the three groups in a joint statement.

The number of people without health insurance declined 3.8% between 1998 and 1999 to 42.6 million, according to the most recent statistics from the U.S. Census Bureau. Similarly, the proportion of the nation's residents without health insurance coverage declined to 15.5% from 16.3%.

The Census Bureau attributed the improvement to an increase in the number of citizens with employment-based coverage.

Briefly noted

Standard & Poor's Corp. has assigned its "R" financial strength rating, which indicates a company is under regulatory supervision due to its financial condition, to INEX Insurance Exchange member **Agora Syndicate Inc.**...Lloyd's of London has promoted **Julian T. James**, managing director of Lloyd's North American unit, to the position of director for Worldwide Markets, a newly created division that will unify the market's United States, Canada and international teams. The Worldwide Markets division will be responsible for developing and enhancing Lloyd's worldwide trading licenses and opening up the market to new brokers....The **Pension Benefit Guaranty Corp.** will guarantee participants in underfunded pension plans that are terminated next year and taken over by the agency a maximum annual benefit of $40,704.60, an increase from the $38,659.08 maximum for plans terminated this year.

London adopts standards to boost market efficiency

By SARAH VEYSEY

LONDON—Buying insurance in the London market could become simpler and more cost-effective if new service standards are widely adopted and succeed in eliminating inefficiencies and extra expenses.

Lloyd's of London, the London-based International Underwriting Assn., and the Lloyd's Insurance Brokers Committee last week unveiled their joint program aimed at streamlining business processes in the London market.

"Ownership of the reforms extends widely across the market, with the common aim to improve customer service, speed up the way the market operates and create long-term cost savings," the three groups said in a joint statement.

The LMP2001 document, also known as the "Green Book," is based on proposed changes first published in May and circulated to London market participants for comment. The document will now be circulated to London insurance and reinsurance companies, Lloyd's syndicates and brokers, all of which will be asked to sign up indicating their support for the voluntary LMP2001 program.

The main goals of the voluntary program are to provide the market with:

- Clarity at the point of contract, so that all concerned know who is doing what and when. It is envisaged that this will speed up the claims process, which has often been complicated and drawn out where several underwriters are involved.
- A single underwriter or predetermined number of underwriters responsible for all the admin-

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Rates in most lines rising

CIAB's third-quarter study sees hardening continuing

By MARK A. HOFMANN

WASHINGTON—Commercial property/casualty insurance rates continue to harden virtually across the board, according to the Council of Insurance Agents & Brokers' third-quarter Commercial Insurance Market Index.

This finding is in line with a firming trend evident since the CIAB released its first market index earlier this year. While the index indicates that market conditions continue to harden for five out of six lines studied, a violent market contraction similar to that of the mid-1980s is not expected to occur.

The quarterly index is based on the responses of the Washington-based CIAB's member agencies and brokerages. According to Coletta Kemper, the CIAB's vp-industry relations, the group sends questionnaires to 1,000 of its members' offices in each survey, and it has gotten varying response rates. The most recent survey, which was the fourth the CIAB has conduct-

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Firming in market

The Council of Insurance Agents & Brokers asked members to comment on pricing trends for the following lines.

Compared to three months ago, the market is:

	Very soft	Somewhat soft	No change	Somewhat hard	Very hard
Auto	0%	0%	10%	74%	16%
Workers comp	1%	1%	18%	53%	27%
Property	0%	1%	16%	65%	18%
General liability	0%	3%	30%	63%	4%
Umbrella*	1%	2%	54%	38%	4%

*Does not total 100% due to no response from 1%.
Source: Council of Insurance Agents & Brokers.

Key differences with NAIC model

NCOIL drafts own privacy rule

By MEG FLETCHER

ALBANY, N.Y.—The stage is set for heated discussions in some state legislatures over which proposals to follow in implementing privacy rules that insurers must adopt to comply with the federal financial modernization law.

Earlier this month, the National Conference of Insurance Legislators adopted a proposed model privacy regulation for state lawmakers to consider.

That comes two months after the National Assn. of Insurance Commissioners adopted its own model privacy regulation for insurers (*BI*, Sept. 18).

Both proposals are designed to guide state lawmakers and regulators in implementing Title V of the federal Gramm-Leach-Bliley Act governing insurers' treatment of consumers' non-public financial and health information, especially for marketing purposes.

Overall, "the two models are very close," said Susan Nolan, deputy executive director of Albany, N.Y.-based NCOIL. Extensive discussions with representatives of the insurance industry and the NAIC resulted in NCOIL adopting many definitions and clarifications that are similar to those found in the NAIC model, she said.

However, she said there are two notable differences in the NCOIL proposals that are considered favorable by employers and some property/casualty insurance trade associations:

- The NCOIL model would exempt insurance beneficiaries and claimants, while the NAIC includes them in its definition of "consumer."

Therefore, the NCOIL model excludes workers compensation claimants and reduces the number of notices that must be mailed to employers. The NAIC model, on the other hand, appears to include that coverage, though it has in-

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INSIDE

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- It is becoming more common for prosecutors to take legal action against corporate executives, Steven Gladstone writes in Perspectives. **PAGE 13**
- A recent string of fatal rail accidents in the United Kingdom is prompting increasing calls for a change in U.K. manslaughter laws. **PAGE 15**
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New syndicate has eye on U.S. business

By EDWIN UNSWORTH

LONDON—A new Lloyd's of London syndicate, syndicate 2010, began operations last week with underwriting capacity for 2001 of more than £80 million ($113.9 million) and ambitions to generate about one-third of its premium volume from U.S. reinsurance business, mainly non-marine risks.

The syndicate's managing agency, London-based Cathedral Capital P.L.C., owns 25% of the operation and is contributing £20 million ($28.5 million) of the syndicate's underwriting capacity. The syndicate also has significant U.S. backing, with PMA Re Corp. and New York Marine & General Insurance Co. Inc. together providing £25 million ($35.6 million) of capacity.

Most of the remaining £35 million ($49.8 million) of capacity has been provided by individual investors at Lloyd's.

Robert W. Bailey, chairman and chief executive officer of NYMAGIC, said the insurer's decision to sell its Lloyd's agency, MMO Underwriting Agency Ltd., to Cathedral Capital in exchange for the shareholding "demonstrates our confidence in the ongoing opportunities presented by underwriting and investing in the Lloyd's market."

Syndicate 1265, formerly managed by MMO Underwriting, has ceased underwriting and will be placed in runoff.

Cathedral expects around 85% to 90% of syndicate 2010's premium volume in 2001 to come from aviation and worldwide non-marine treaty reinsurance. Approximately half of the non-marine volume will be U.S. property business, amounting to some 20%

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Marriott covered for fire losses

By JOANNE WOJCIK

PHOTO: AP/ WIDE WORLD

The Vail Marriott Mountain Resort lost 120 rooms in a Nov. 19 fire.

VAIL, Colo.—Damage from a weekend fire at the Vail Marriott Mountain Resort is still being assessed by Marriott International Inc., which is insured for property and business interruption losses from the blaze.

Local fire officials have estimated property damage at $20 million, but "that's way high," according to Bradley Wood, vp-risk management for the Bethesda, Md.-based company.

In addition to property damage, Marriott is likely to file a claim for business interruption losses since the 120 rooms lost in the blaze will not be available for this year's ski season, he said. To calculate business interruption losses, Marriott and its insurer will consider such factors as other area hotel occupancy levels, historical patterns and projections. The damaged rooms will be lost for at least six months.

Both the property and business interruption insurance are written by Factory Mutual Insurance Co. doing business as FM Global.

The blaze in the 22-year-old section of the hotel raged for six hours before it was brought under control at 2:45 a.m. Nov. 19. It took 78 firefighters from nine agencies to put out the fire. Two Vail firefighters suffered minor injuries, but no hotel guests were hurt.

The 350-room, three-building hotel was about 50% full, with the Vail ski slopes just opening for the season on Nov. 15.

While the fire activated all of the sprinklers in the hotel, some were overwhelmed by the intensity of the blaze, according to Vail Fire Chief John Gulick. And when firefighters tried to hook up to a water pipe on the east side of the building, they found it frozen in the below-freezing temperatures,

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World Captive Forum

Seeing insurance as capital rather than cost

By PAUL D. WINSTON

PALM BEACH GARDENS, Fla.—For Swiss Reinsurance Co., the process of moving to providing capital management solutions from traditional risk transfer services was an "emancipation," says an executive of the reinsurer.

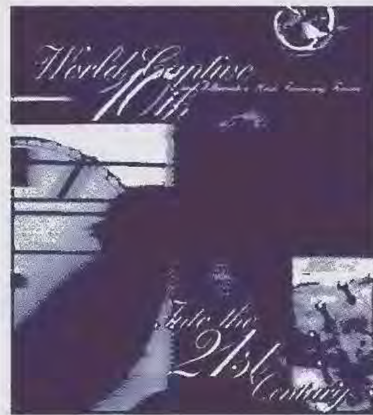
This new approach has allowed the company to bring clients sophisticated new solutions for their risks and capital needs, while moving beyond the competitive and costly market for commodity-type insurance solutions, he says.

The change in Swiss Re's approach occurred as a result of the growth of alternative risk transfer, which initially was driven by changes in the supply of traditional insurance capacity and was accelerated by the development of sophisticated financial reinsurance tools and risk securitization, according to Erwin Zimmermann, divisional chief executive of Swiss Re New Markets in Zurich, Switzerland.

This change in approach is client-driven, Mr. Zimmermann said in a keynote speech at the 10th annual World Captive and Alternative Risk Financing Forum held in Palm Beach Gardens, Fla., Nov. 12-15.

"We pride ourselves on developing solutions and new markets, but change comes from the demand side. Our clients are the real drivers of change," he said.

These drivers include, for example, globalization, technological advancement, and what he called financial engineering, or the creation of new financial management tools.



Because of these developments, companies face greater volatility, which can have a detrimental impact on their capital in the form of shareholder and analyst dissatisfaction.

"Companies that don't manage their volatility and capital efficiently are penalized by their investors," Mr. Zimmermann said.

The role that insurance solutions can play, therefore, is by helping to minimize that volatility and providing a source of contingent capital, which unlike debt or equity, is not reflected on a client company's balance sheet, he said.

Recognizing this benefit, however, requires changing how insurance is perceived, Mr. Zimmermann said.

"The problem is, our industry has never succeeded in selling insurance as a financial instrument," he said. Rather than seeing it as a financial product that can provide a value, it instead is seen as a cost, he said.

A key attraction of using insurance as a source of contingent capital is that it can lower a company's cost of capital, he said. An unconditional source of capital, such as debt, likely will cost more than capital provided by insurance, which is contingent upon some sort of trigger, he noted.

Also, by meeting capital needs with insurance, a company may not need to carry as much debt,

See **Change** *on next page*

Role of captives changes with market

By RODD ZOLKOS

PALM BEACH GARDENS, Fla.—As business evolves, so too do the reasons for having a captive, with the focus now turning more toward financial efficiency and the most effective use of capital.

"In the virtual world, do you actually need a captive? Is it something you absolutely need to go forward into the future?" asked Robert C. Golden, president-global business at Zurich Corporate Solutions in Zurich, Switzerland.

"The captive is really an extension of the risk appetite of the parent company," Mr. Golden said, adding that while there are certain reasons for having a captive, there also are reasons not to have one.

Speaking as part of a panel on new captive uses at the annual World Captive and Alternative Risk Financing Forum earlier this month in Palm Beach Gardens, Fla., Mr. Golden noted that, traditionally, "What you believed was it made financial sense to the enterprise to manage your risk through a subsidiary."

Now, though, the focus should be on financial efficiency, and if a company chooses to form a captive, "At the end of the day, all this should give you financial efficiency for your enterprise," Mr. Golden said.

A question that must be asked is whether the organization requires actual control to have an efficient risk financing vehicle. "Do you have to own it?" Mr. Golden asked.

Another question is whether an existing captive operation can be made more financially attractive to the parent. As part of that consideration, it's necessary to ask whether other exposures were considered when creating the risk protection program, and to think of financial protection more than event protection.

"You might have contractual obligations that create more exposure than all of the catastrophic events that you've included in the scenario," Mr. Golden said.

To provide the financial efficiency he suggested is needed in today's business world, Mr. Golden described what he re-

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Interest in captives not limited to buyers

By MICHAEL BRADFORD

PALM BEACH GARDENS, Fla.—Agents and brokers have followed buyers in turning to captives as a way to reclaim some of what market forces have taken away.

The development of agency-owned captives is "something that is evolving as we speak," said Robert S. Cubbin, president and chief operating officer of Southfield, Mich.-based Meadowbrook Insurance Group, which manages group and association captives.

Speaking as a panelist at the World Captive and Alternative Risk Financing Forum, held earlier this month in Palm Beach Gardens, Fla., Mr. Cubbin explained that agency captive owners often have experience with the alternative market. "During the soft market of the '90s, a lot of agents and producers got into producer-controlled reinsurance companies," which were rent-a-captives and group captives, as a way to compensate for shrinking commissions, he said.

After developing expertise in certain classes of business, many of those agencies and brokerages began setting up their own captives as a way to participate in underwriting profits and investment income. Many have been formed over the past 10 years, and "they've done pretty well," said Mr. Cubbin.

The latest twist, he noted, is that agents now are looking to involve other partners in ownership of the captives. For example, association policyholders and third-party administrators are being asked to participate, and a segregated cell is established that allows those parties to become a part of the company while isolating those liabilities from the rest of the captive, Mr. Cubbin said.

"They want everyone to have the same stake in the outcome," he said of the captive's owners. "By bringing in all the partners in the equation into one hybrid captive, they feel like they can align everybody's financial interests. Everybody participates in the long-term viability of the captive, the prosperity of the captive, producing and selecting good solid business and really holding the market together as the hard market comes."

If prior hard markets are any indication of what could be coming in terms of insurance pricing and availability, there will be increasing interest from buyers in belonging to a group captive, Mr. Cubbin suggest-

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which lowers its costs, he said.

Ideally, a company's capital management strategy entails using these various building blocks—debt, equity and insurance—in an optimized structure, Mr. Zimmermann said.

And doing so, he suggested, can increase the role a risk manager plays within his or her organization.

"This makes the risk manager a member of the finance team of the company," he said. "This shift in view means the risk manager is no longer the ruler of sprinklers and loss control, but also the owner of this financial area."

Bringing insurance solutions to address an organization's capital-management needs can make the risk manager more of a partner with financial officers, he said.

Currently, there is an increasing amount of "blurring of the lines" between the various segments of the financial services industry, with investment banks, retail banks, insurers and reinsurers all encroaching on each other's areas, Mr. Zimmermann noted. "It is a confusing landscape," he said.

Insurers and investment banks essentially are tackling the same issue—optimizing the client's capital structure—but through different approaches, he noted.

By using both insurance and capital markets tools, insurers and risk managers 'can together play a much more sophisticated game that is good for both of us,' says Erwin Zimmermann.

Within insurance alone, there are different approaches to providing this service.

Traditionally, the industry has been divided into traditional risk transfer vs. alternative risk transfer, Mr. Zimmermann said. But he sees the insurance industry divided more along the lines of commodity-type products vs. more convergent financial and insurance solutions.

On the commodity end, insurers provide diverse products and are under pressure to deliver them at the lowest cost, which can be volatile and costly for an insurer competing in this area, he said. On the other end, he said, are much more customized solutions for the individual client's needs, which require insurers to provide more modeling, a more complex structure and capital markets innovation.

"A company can't provide custom-built solutions like these at commodity prices," he noted.

Either of these approaches can help with a company's contingent capital needs, but they offer different solutions with different costs. Both insurers and clients need to determine which approach is better for them, Mr. Zimmermann said.

Swiss Re New Markets' goal is to create insurance-based corporate finance solutions for clients. The company aims to leverage the best of insurance and capital markets tools to help clients manage their risks and capital structure.

"We as insurers and you as risk managers, if we embrace this approach, can together play a much more sophisticated game that is good for both of us," Mr. Zimmermann said.

Risk managers were asked to remark on the convergent approach offered by Swiss Re.

Allison O'Sullivan, director-risk management for The Coca-Cola Co. in Atlanta, said that while she agrees that insurance can be a capital management tool, "I am unsure of when and why to use it."

She explained that she views debt as a means of raising capital to invest in an asset, whereas buying insurance is a means of replacing an asset, which may not make them necessarily interchangeable financial tools.

Paul F. Buckley, treasury director-risk management for Lucent Technologies Inc. in Murray Hill, N.J., agreed that insurance and derivatives perform a similar function—providing the company with a hedge.

But he questioned whether risk managers in the future will be responsible for using them to provide a capital management function within their company.

The reliability of insurance as a source of contingent capital was raised by a member of the audience.

"It depends on the insurer," Mr. Buckley said. Contingent capital should come into play when there's a well-defined and indisputable trigger, but that's not always the case with insurance, he noted.

Ms. O'Sullivan said the question comes down to one of cash flow. While an investment bank will provide capital upfront, insurance would provide capital after an event occurs. And, she added, insurers might not provide that capital without lengthy negotiation and delay.

The session was moderated by Kathryn J. McIntyre, publisher and editorial director of *Business Insurance*, which, along with SINSER Management Services and Tillinghast-Towers Perrin, co-sponsors the forum. BI

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What can we do to help you?

Captives

Continued from page 3

ed. "And I really think that the opportunity in these hybrid, producer-controlled reinsurance companies is extremely good and positive for the industry."

Panelists in another session at the forum confirmed that agency-controlled rent-a-captives are seeing a lot of interest.

"This has been a real hotbed lately," said Charles F. Holdren, founder of Cornerstone Risk Management & Insurance Services L.L.C. in Huntington Beach, Calif. "A lot of agencies have realized that with the market hardening and commissions shrinking," they can increase their income by taking some risk and moving their books of business into a rent-a-captive, he explained.

"Rental captives really aren't new; they've been around for some time," said Nicholas Dove, president of SINSER Management Services (Bermuda) Ltd. "We first began putting rental captives together in the late '70s for our European clients."

Mr. Dove, who was a session moderator, agreed that since those early days of rent-a-captive formations, "one of the areas of growth has been the agency- or broker-controlled captives."

He said the facilities have become viable for most companies that pay insurance premiums of more than $500,000.

While many rent-a-captive participants go in with the intention of getting a toe in the captive waters and later moving to a wholly owned captive, many never make the switch, according to Mr. Holdren. "Once they get into it, few leave," he said, because the rent-a-captive provides many of the same advantages as a wholly owned company though at much less expense.

"They are very easy to get into," Mr. Holdren said of rent-a-captives.

One of the main advantages of joining a rent-a-captive is the flexibility it affords its members, according to F. Michael Heffernan, president of Heffernan Petersen Insurance Brokers, which operates rent-a-captives from its base in Walnut Creek, Calif. A rent-a-captive "allows us to tailor the product to fit the client's needs."

> **'We've found that with rental captives, we've tied our producers into us with our product,' says Charles F. Holdren.**

Heffernan Petersen's rent-a-captive clients are mostly associations, he said, and the structure allows the brokerage to use different partners, such as fronting companies, loss control consultants and others to provide specific services fitted to each policyholder.

Mr. Holdren pointed out that agency-owned rent-a-captives are being formed to overcome some of the problems producers face in the California workers compensation insurance market. A rent-a-captive can allow producers to avoid some of the market forces that affect their business, Mr. Holdren noted. "We offer them a lot more control," he said of producers who join rent-a-captives put together by Cornerstone.

"Commissions are being cut in California," Mr. Holdren said, and "terms are always changing." Agents face the uncertainty of insurer layoffs of underwriters that handle the agents' accounts. "An agency captive program can change a lot of that," he said.

The captive allows agents to consolidate their profitable business in the vehicle, Mr. Holdren noted. They are able to share in the underwriting profits, and investment income is returned to the owners. Agents get their commissions up front and are able to "provide a stable marketplace," he remarked.

Mr. Heffernan said operating a rent-a-captive with an exclusive product and top-notch services also can help a brokerage to hang on to its producers and to attract new ones. "We've found that with rental captives, we've tied our producers into us with our product."

He also pointed out that if a producer does leave, the business that the producer handled cannot follow. "The business is owned by the agency.... If they want to go over to XYZ Brokerage Firm, they can't take the business; it's the rental captive's."

Other participants in the sessions were James W. Blankenship, tax partner with KPMG in Bermuda; Steven C. Blackburn, president of Telecom Insurance Group in Greenbelt, Md.; and James R. Cameron, a partner with Baker & McKenzie in New York. Robert J. Rosser, senior vp at SINSER Management Services (Bermuda) Ltd., was a session moderator. BI

Control

Continued from page 3

ferred to as a "virtual captive."

A virtual captive would have a balance sheet and income statement, be domiciled somewhere and be authorized to write insurance or reinsurance. "Beyond that, I would be thinking about financial leverage," Mr. Golden said.

In such an arrangement, if it proves more financially efficient to keep risk at the captive, do so, Mr. Golden said. If not, transfer the risk into the market through aggregate reinsurance agreements.

In her discussion of the evolving role of captives, Kathryn A. Westover, director with Winterthur International's Strategic Risk Solutions unit in Colchester, Vt., noted that in real estate, it is said that value is a function of "location, location, location."

"Similarly, there are three things that add value to a captive: control, control, control," Ms. Westover said.

The focus of alternative risk transfer has traditionally been the income statement, Ms. Westover noted.

"A lot of captives these days are going into what I think we can call a chrysalis stage," she said. As they begin that metamorphosis, having built up considerable surplus, their focus is no longer only on the income statement but also on the parent's balance sheet.

In that context, the captive becomes not just a way to control costs, but also a way to mobilize assets and control liabilities, Ms. Westover said. "The captive has to be used not just as a risk transferor but as a risk transformer," she said.

Ultimately, that approach involves looking at the total impact of risk on the organization's balance sheet and managing the impact of that risk.

"So we're going to say that we're using our captive to create alternative risk capacity," Ms. Westover suggested. To create that capacity, illiquid assets and short-term liabilities can be assigned to the captive, with lending and borrowing between the captive and its parent creating cash flow and the interest payments from that lending helping limit the impact of losses.

But, she noted, to engage in such an approach, the captive must be in a domicile conducive to such activities.

"You can't engage in creating alternative risk capacity if you're dealing with a domicile that is not sufficiently flexible to allow you to invest your assets in certain ways," Ms. Westover said. "That's the name of the game in risk financing—to use all of the existing tax and accounting standards that we are constrained to work with to our advantage."

D. Hugh Rosenbaum, principal at Tillinghast-Towers Perrin in London, was the moderator of the session.

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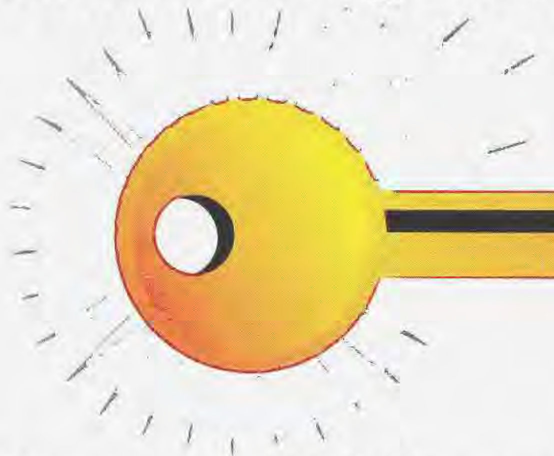

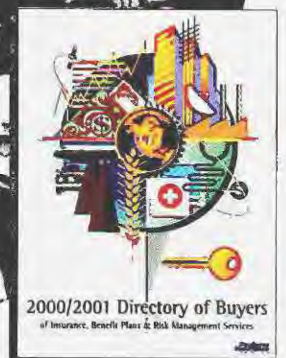

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OPINIONS

Employers use clout wisely

A GROUP OF THE nation's largest employers is putting its money where its mouth is. For years, employers have argued that the point of managed care is to improve health care quality and reduce unnecessary procedures and expenses, rather than simply denying care to cut costs, as critics have charged.

Now, a coalition of 60 U.S. companies is unveiling a plan that makes that crystal clear. As we reported earlier this year and again last week as its plan was officially unveiled, The Leapfrog Group is planning to use its joint purchasing clout to pressure health care providers to raise the quality of care they provide (*BI*, Nov. 20; March 27). Simply put, providers that want a share of the tens of billions of dollars that these employers spend annually on group health care services will have to demonstrate, and in some cases improve, their quality of care to meet the standards the group establishes.

The immediate goal of the group is to eliminate medical safety problems that result in treatment errors and deaths.

For example, the group will call on hospitals and providers to:

• Computerize physician prescription orders, which will allow a database to check for drug interaction errors and minimize mistakes from handwritten prescriptions.

• Direct employees to obtain high-risk procedures at facilities with expertise and experience in the same.

• Require physicians trained in critical care medicine to manage the intensive care units at major network hospitals.

In its drive to improve patient safety, we expect that the group's ambitious initiative will go a long way toward changing provider behavior.

The Leapfrog Group says it recognizes that higher quality care is not necessarily the lowest cost care. Its members are standing behind that assertion and are willing to put their money where their mouth is. That should go a long way toward silencing critics in the medical community and elsewhere who contend that employers simply want the cheapest health care.

The Leapfrog Group's plan may cost its members more upfront, but it will pay off in the end. This investment will reduce the number of deaths caused by medical accidents and it may reduce employers' potential fiduciary liability from allegations that plan decisions are not in the best interests of employees. That charge has been a common criticism of managed care and is a central tenet of controversial federal patient protection legislation that would allow, in certain situations, lawsuits against employers.

The Leapfrog Group's efforts will benefit employees in obvious ways. Less obviously, it could also give employees new and better information for making their health care choices, especially as employers turn to online purchasing models and defined contribution type health plans.

We applaud this group of employers for recognizing that together, they have the clout to make a difference in patient safety. We hope they will use this clout to push the medical community to make further improvements in quality.

LETTERS

E&O market changing significantly

To the editor: I have just read Gavin Souter's Nov. 6 article, "D&O Liability Market Showing Signs of Hardening." This is a good article and from a broker's perspective helps to manage expectations of risk managers/clients.

As an industry in general, we tend not to give as much attention to E&O/professional liability insurance, which is critical coverage—and not just for lawyers, accounts and consultants, but for all firms that derive revenue from "fee for service" services.

In a time when the economy is shifting to a knowledge-based economy and traditional bricks and mortar companies are budgeting significantly in the "emerging services" area, risk transfer for professional liability exposure is critical.

Like the D&O market, the complexity of the E&O market is changing significantly, with market leaders looking to increase rates from 15% to 30%.

I believe it would very beneficial to your readership to do another, similar story on E&O.

Daniel J. Wadley
Senior Vp
Marsh Inc.
New York

Punitive damages a societal issue

To the editor: Your Oct. 16 Opinion, "Punitive Reviews Needed," brings up the issue of punitive damage, discussing the pros and cons of constitutionality for seemingly excessive awards.

Although I am not in the legal profession, nor have I ever participated in a punitive damage award, I have given some thought to the subject. Compensatory damages pay for medical bills, loss of time, inconvenience, pain and suffering, and all other items connected with the negligence of the defendant. Punitive damages, on the other hand, relate more to taking the defendant to the woodshed to teach him or her right from wrong.

The plaintiff has been injured and compensatory damages place a dollar value on making the plaintiff whole. Wages have been reimbursed and the body is brought back to health or a dollar value is placed on the continuing unhealthy state. Pain and suffering has been paid in full and property damage has been repaired or replaced. The plaintiff is left with many dollars to abundantly compensate for the unpleasant experience.

Punitive damage is more of a societal issue, sort of like paying a traffic ticket

See **Letters** *on page 22*

LETTERS TO THE EDITOR

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Net offers host of challenges

By MICHAEL BRADFORD

PALM BEACH GARDENS, Fla.—Insurers and risk managers each face their own challenges in using the Internet to gain efficiencies in underwriting and loss control.

For insurers, the issue of "channel conflicts" is an Internet distribution problem they are encountering, while risk managers are left wanting some important tools that could improve their intranet and Web-based loss control efforts, according to two experts who spoke at the World Captive and Alternative Risk Financing Forum earlier this month in Palm Beach Gardens, Fla.

Chris Lajtha, corporate risk manager at Schlumberger Ltd. in Paris, told forum attendees that he uses the Internet and an intranet to turn over risk management responsibilities to the company's operations. Part of the challenge, he said, has been in developing computerized tools to get that job done.

At Schlumberger, risk management "responsibilities lie in the field operations," Mr. Lajtha remarked. "The way we support that is by giving good, useful information to our business units."

Mr. Lajtha's eight-person department has done away with insurance manuals and used the information that was in them to create a risk management Web site on the Schlumberger intranet. "We're taking ourselves out of the loop," Mr. Lajtha said of his department, and letting the field units assume responsibility for managing their risks.

He complained that insurers and others have been slow to develop useful computerized tools that risk managers can use in an online setting like Schlumberger's to facilitate loss control efforts. But, Mr. Lajtha added, current technology at least has allowed him to develop his own.

Identifying and assessing risks is "very difficult," he noted, and adequate tools for that task are hard to come by. So Schlumberger developed its own.

The program allows users to examine all eventualities in a project and can project the cost of measures to protect the project from potential losses. "It took me about two and a half years to get this project out," he said.

"That's a tool I should not have had to develop," said Mr. Lajtha, but one that insurers should have been able to provide their client.

And, when a corporate directive was issued in 1996 for every Schlumberger unit to develop an emergency response plan, Mr. Lajtha's department was able to put together another software program to get the job done after unsuccessfully scouring the marketplace for such a tool, he said. The Schlumberger product is a Web-based tool that provides crisis management training and can be used in a "hot situation," he explained.

Mr. Lajtha is creating a library of information from the recommendations by Schlumberger's property insurer, FM Global. When the insurer makes a loss-control recommendation, "every one is costed, so we can do a cost-benefit," he explained. "And we're asking them to turn each one into a Web-based library" that explains why it is important and the consequences that could result from an incident that it addresses, Mr. Lajtha said.

Insurers, meanwhile, are facing some electronic challenges of their own. Namely, how to move their products over the Internet, according to another speaker at the forum.

There are "some pretty significant challenges in the insurance business, primarily related to channel conflicts," said James W.B. Hole, a principal with Towers Perrin Reinsurance in Philadelphia. Those conflicts, he explained, arise when an insurer must decide whether to cut out an agent or broker and sell coverage directly to the policyholder over the Internet.

Insurers moving online worry that they will be viewed as contributing to "disintermediation," a process of bypassing intermediaries and one that has become the focus of growing attention. It's a significant concern concerning commercial insurance, he noted, because agents and brokers still write more than 90% of that coverage.

Selling insurance over the Internet is raising the question of where the intermediary fits into the transaction, but that doesn't mean agents and brokers will be left completely out, according to Mr. Hole. Their roles, however, could be different in some cases, he suggested.

As the capacity of the Internet to transmit video and text increases, agents in some cases may find themselves in call centers, handling transactions with Web users they can see through computer-mounted video cameras, Mr. Hole said.

Kathryn J. McIntyre, Chicago-based publisher and editorial director of *Business Insurance,* moderated the session. BI

Looking at risk in a different light

By MICHAEL BRADFORD

PALM BEACH GARDENS, Fla.—Most companies miss the real value of risk by striving only to eliminate it, according to the risk manager for a large multinational corporation.

"The flip side of risk is opportunity," said Chris Lajtha, corporate risk manager for Schlumberger Ltd. in Paris. "The common perception of risk is that it's dangerous, it's negative—that it's something to be avoided, to be reduced."

Speaking during a session at the World Captive and Alternative Risk Financing Forum held in Palm Beach Gardens, Fla., earlier this month, Mr. Lajtha offered a view of risk that differs from that of most risk managers.

"A better understanding of risk is that we are in business to take risk," he said. "Our share-

See **Risks** *on next page*

Risks

Continued from previous page

holders expect us to take risk. If they didn't want risk, they would leave their money in T-bonds. They are looking for a rate of return between 15% and 25%," Mr. Lajtha noted—not the "risk-free" rate of around 6%.

That means a company is responsible for generating a favorable return on capital "commensurate with the risk taken," he stated.

Therefore, the "real risk management contribution," said Mr. Lajtha, "is to take more risk, not less—and to do so intelligently. That's where the real competitive advantage comes in."

Within Schlumberger, reducing losses and volatility are among the risk management department's goals, Mr. Lajtha explained; but it also must provide tools that teach various departments how to intelligently select and take on risks that can add value to the corporation. That way, an "extra return on capital" can be achieved, he said.

The idea, Mr. Lajtha said, is to assume more risk by "customizing the risk assumption, not minimizing."

He stressed the importance of making sure there is a "risk-aware culture" within the company. It is a "key issue for corporate risk management teams," he said.

Such a culture can be difficult to create, Mr. Lajtha noted. At Schlumberger, for example, engineers and other professionals have trouble defining and identifying risks, he said.

With a risk management team of about six in a multinational company the size of Schlumberger, the "primary goal of corporate risk management is communication," Mr. Lajtha said. "We don't manage risk. It's a stupid title."

Instead, his department works to inform and educate others on how to manage risk, he explained. Mr. Lajtha uses online technology to provide information that field operations can use to manage risk and control losses.

Mr. Lajtha said the risk management profession as a whole would do well to cooperate more. The "lack of cohesion in the risk management profession" is very disappointing, he remarked. Mr. Lajtha said he finds very little help available from regional and national risk management associations and is bothered that the different associations don't have more in common in their approaches to risk. "Every association has different ways of describing risk," he pointed out. There also is a disappointing trend to "standardize risk management," particularly by "non-practitioners" of the profession, Mr. Lajtha said.

Defining risk as an accident or occurrence isn't appropriate, Mr. Lajtha said, because it carries a negative connotation. A better way to define risk is "as a measure," he suggested. "It's a measure of the deviation from the range of expected outcomes."

That definition works because it can be used within any department of the company, whether it is human resources, treasury, legal or another area, Mr. Lajtha emphasized. "You have, therefore, a common measure of risk that you can apply across any organization."

Joining Mr. Lajtha in the session were Jeanne H. Pores, senior vp of Physicians' Reciprocal Insurers in Manhasset, N.Y.; and Paul F. Buckley, treasury director-risk management at Lucent Technologies Inc. in Murray Hill, N.J. D. Hugh Rosenbaum, principal with Tillinghast-Towers Perrin in London, moderated the session.

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Taking care of capital with risk

By RODD ZOLKOS

PALM BEACH GARDENS, Fla.—Because risk management is capital management, insurance can be used as a capital management tool, according to an alternative risk financing expert.

And doing so can create a competitive advantage for an organization in some cases, and in others, it can increase shareholder value, according to Brian M. Kawamoto, a director at Swiss Re New Markets Corp. in New York.

Properly structured insurance-based solutions can provide value by diversifying financing sources and by creating off-balance-sheet capital, which can potentially allow for increased operational and financial leverage, Mr. Kawamoto said.

"The capital market process really allows you to jettison those non-core risks that may be dilutive to your equity capital," noted Mr. Kawamoto, speaking as part of a panel on capital markets and risk management at the World Captive and Alternative Risk Financing Forum earlier this month in Palm Beach Gardens, Fla. In the process of shedding those risks, an organization may provide itself more efficient sources of financing and in so doing, reduce its cost of capital. It also may diversify its sources of capital and could potentially reshape the organization's risk profile for other stakeholders such as shareholders, lenders and regulators, he said.

Despite the convergence of the financial services markets, Mr. Kawamoto suggested there isn't really a "new" market for risk.

"What is changing in the new markets is the role of the providers, and all of the convergence that is going on in the financial services industry speaks to that," he said.

Select capital providers—reinsurers, trading houses and the like—are moving into a space that once was the sole province of commercial and investment banks, Mr. Kawamoto suggested. In the process, reinsurers are redeploying capital and adopting corporate finance techniques to provide a new market for clients. The forms taken by that capital range from insurance to options to private equity, he said.

See **Capital** *on next page*

Capital

Continued from previous page

As an example of reinsurance as a form of capital, Amy Bradach, a principal at Centre Solutions in New York, described the case of a specialty health care manager asked by a health plan customer to guarantee the financial outcome of the service it was providing.

"The disease manager said, 'I can do that, but I need capital to support the guarantee I'm providing you,' " she noted.

In searching for that capital, the disease manager found such traditional capital sources as equity capital, debt, letters of credit, traditional insurance or an offshore captive all having shortcomings in the particular situation.

Instead, the specialty health care manager obtained its capital support through a program Centre Solutions crafted involving a multiyear aggregate reinsurance cover sold to the health plan customer, with the disease management service provider sharing in the risk through its fee structure.

Offering another example of insurance as a capital management tool, Douglas F. Bateson, vp at J.P. Morgan Securities Inc. in New York, discussed corporate-owned life insurance.

Many financial institutions have purchased COLI programs, viewing them as an attractive, flexible long-term asset they can use to fund nonqualified liabilities, Mr. Bateson said.

In its simplest form, a COLI is a life insurance policy purchased by the corporate policyholder on a group of its employees, he said. The investment is made in one or more premium payments, and assets grow to meet the mortality payments needed under the policy.

The growing assets offset growing deferred employee benefits, and companies' core motivation for entering COLI programs is to fund deferred employee compensation liabilities that don't typically fit under a pension plan, Mr. Bateson said.

A COLI can be done either on a "general account" or a "separate account" platform. In the former, the COLI investor has exposure to the insurance company's general account, and the investment is similar to purchasing a long-term insurance company indenture. In the latter, the investor's exposure is to a segregated bond portfolio, and the investment is similar to purchasing asset management services.

"A general account policy is kind of a black box," Mr. Bateson said. "As a policyholder you can't see into the black box. You can't see how the gears are moving." That's not a comfortable situation for most institutional investors, Mr. Bateson said.

The separate account approach, however, reduces credit risk, and allows the investor to select the investment strategy and asset manager. On a separate account COLI, the net return to the policyholder will equal the results achieved by the asset manager minus policy fees and expenses.

Kathryn J. McIntyre, publisher and editorial director of *Business Insurance*, moderated the session. BI

Enterprise risk management an ongoing process

By RODD ZOLKOS

PALM BEACH GARDENS, Fla.—The enterprise risk management marketplace is "in a state of transformation," with the potential applications of such an approach a constantly evolving "moving target," according to one enterprise risk specialist.

Speaking at the 10th annual World Captive and Alternative Risk Financing Forum earlier this month in Palm Beach Gardens, Fla., Robert Curtis, a vp at AIG Risk Finance in New York, noted that most major insurance companies are establishing dedicated teams to address enterprise risk products, "because that's where they believe the future trend is going."

And new entrants such as investment banks, consulting firms and major accounting firms also are moving into the area as well, he said.

Mr. Curtis suggested that if one defines enterprise risk as programs that include any type of business risk that traditionally hasn't been insured, there have been a lot of deals done.

"However, truth be known, there have been a lot of failures," he added.

For many reasons, Mr. Curtis said, it has been difficult to close enterprise risk financing deals. Among the common obstacles are a lack of clear objectives on the part of the potential buyer, miscommunication of risk appetite, and capacity or knowledge that isn't adequate to take on an enterprise risk program.

But interest in enterprise risk management is growing, Mr. Curtis said, including interest in programs that involve blending insurance with tradable financial risks, as well as programs involving non-tradable financial risks.

He said he's also seeing a growing market for insuring "uninsurable" business risks, such as production margins and costs, patent royalty streams, residual value, some types of credit risk, operational impact risk or intellectual property.

Ultimately, though, an enterprise risk program has to serve the purposes of the organization if it's going to be brought to fruition, no matter how good it looks on paper, Mr. Curtis said.

Discussing his company's adoption of an enterprise risk program, Thomas Wronski, director of insurance and risk management at FMR Corp. in Boston, noted that the program had its genesis in a mandate from the company's chairman to get coverage for "anything bad that can happen any time at any place in the world."

With that in mind, FMR, better known as Fidelity Investments, set out to enhance existing risk financing programs, cover previously uninsured losses and provide catastrophic risk transfer limits.

Among the challenges in crafting the program was the identification of business and operating exposures. "It's clearly a challenge when you're establishing that self-funded layer," Mr. Wronski said.

Another challenge is the disclosure of sensitive business issues. "What you're asking people to do is disclose all their dirty laundry," he said.

Allocation of the enterprise risk management program's expenses can be yet another challenge. With such a broad program, it can be difficult to determine how to allocate expenses to the various units. In Fidelity's case, the company resolved the problem by keeping the expenses at the corporate level.

Coverage continuity is another challenge, and is something Fidelity is constantly looking to improve.

When it moved to craft an enterprise risk management program, Winnipeg, Manitoba-based United Grain Growers Ltd. sought a more focused understanding of the risks facing the company, noted Michael J. McAndless, the Canadian company's corporate risk manager.

As at Fidelity, a key to UGG's process was examining risks affecting every aspect of the organization, and creating a risk management committee that still remains in place. "We think that risk management is too important to be owned by one individual in the organization," Mr. McAndless said. "It's part of everyone's job."

Mr. Wronski advised companies considering an enterprise risk management program to "Look at the broadest definition of loss," and added, "Enterprise risk management is a process not a project. This is something that we've been working at for in excess of five years and it's something we work at every day."

Similarly, at UGG, "We have only started on this journey," added Mr. McAndless. And, he advised, "Don't bite off more than you can chew. Integrated risk management is a continuing process."

Mitchell J. Cole, principal at Towers Perrin in New York, moderated the session. BI

250 attend conference

PALM BEACH GARDENS, Fla.—The 10th World Captive and Alternative Risk Financing Forum drew more than 250 registrants to the PGA National Resort & Spa in Palm Beach Gardens Nov. 13-15.

The annual event, co-sponsored by *Business Insurance*, SINSER Management Services and Tillinghast-Towers Perrin featured nearly two full days of sessions devoted to the latest trends in captive insurance as well as an alternate track for other risk financing options.

The 2001 World Captive Forum will again be at the PGA National Resort from Nov. 12-14, 2001. For more information, contact Christina Gassman, Conference Director, World Captive Forum, 4248 Park Glen Road, Minneapolis, Minn. 55416; 952-928-4659; fax: 952-929-1318.

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Due diligence wards off D&O disaster

By Steven J. Gladstone

When ValuJet Flight 592 crashed in the Florida Everglades on May 11, 1996, killing everyone on board, Daniel Gonzalez wasn't there. He wasn't there when the oxygen canisters that caused the crash were mislabeled and loaded into the plane's cargo hold in Miami, either.

Mr. Gladstone

Nevertheless, Mr. Gonzalez—who at the time of the crash was vp of SabreTech Inc., an Orlando, Fla.-based airline maintenance firm—was charged with 110 counts of manslaughter. He was also charged with unlawful transportation of hazardous waste, conspiracy and falsifying records, and he faced up to 55 years in prison and fines of more than $2.7 million if convicted.

Although a jury acquitted Mr. Gonzalez and two of the firm's maintenance workers of criminal charges stemming from the crash, SabreTech was found guilty of the same criminal charges and later went out of business as a result of the criminal penalties and civil claims.

The prosecution of Mr. Gonzalez, which sought to establish that he was ultimately responsible for the actions of SabreTech personal that led to the ValuJet crash, was unusual only because of its high profile.

Once an executive recovers from the initial shock of learning that he or she is the subject of a criminal proceeding, that person may then be in for another surprise upon learning that his or her employer cannot or will not provide him or her with a defense. It doesn't get any better when the party learns that a directors and officers insurance policy specifically excludes coverage for criminal proceedings.

It is becoming increasingly common for federal and state prosecutors to take legal action against corporate executives as a result of legislators having incorporated criminal penalties into an increasing number of regulatory statutes, such as the federal Clean Air Act and the Clean Water Act, aimed at carrying out public policy priorities. Due to the growing threat of prosecution, company directors and officers need to make sure their D&O insurance policies will insure them for more than just civil lawsuits.

Probably the worst assumption prospective purchasers of D&O insurance can make is that all such policies are alike and that, as long as they have a policy, they are protected. In the world of D&O insurance policies, there are material differences with respect to how different insurers' D&O policies are constructed and, more importantly, in the coverage they provide. When performing due diligence, the risk manager and insurance broker need to carefully review the terms and conditions of a prospective insurance contract to make certain that the policy will provide the broadest possible coverage.

Here's a brief examination of some of the typical policy terms and conditions found in D&O policies and their impact on coverage when a criminal or related proceeding is initiated against a company director or officer.

• **Definition of "claim."** The risk manager or insurance broker's coverage analysis will very quickly be concluded if the criminal proceeding brought against the director or officer does not fall within the policy's definition of a "claim." In addition to civil proceedings against a director or officer, the definition of "claim" in a directors and officers insurance policy should also include criminal proceedings. A few D&O policies go further and include formal investigations of a director or officer as part of the definition of "claim." For example, if a director or officer were to receive a target letter from the Justice Department advising that he or she was being investigated for criminal activity, the officer could seek coverage under the D&O contract for the ensuing investigation. If the D&O policy does not define what constitutes a "claim," it may ultimately be up to the courts to determine whether a particular proceeding is a claim under the policy. In one recent case, *Klein vs. Fidelity & Deposit Co. of America*, the term "claim" was not defined in the policy, and the court took it upon itself to come up with an appropriate definition. Unfortunately for the insured, the court's narrow definition did not include the matter submitted to the insurer.

Even though the insurance contract may contain a broad definition of "claim," other sections of the policy may limit or wholly exclude coverage for criminal proceedings. It is imperative that time be spent reviewing the entire insurance contract prior to agreeing to bind coverage.

• **Pollution exclusion.** D&O policies almost uniformly exclude coverage for pollution claims. A number of pollution exclusions contain broad prefatory language so that any claim "based upon, arising out of, directly or indirectly resulting from in consequence of or in any way involving" pollution will also be excluded. Other policies opt for a narrower approach by excluding only claims "for" pollution. If the policy employs "for" language, a criminal action brought against a director or officer for violations of the clean air act would likely not be excluded. Moreover, a pollution exclusion containing "for" language would probably allow coverage for a shareholder class action suit alleging the directors and officers misrepresented the costs associated with cleaning up a hazardous waste spill. Some policies include specific affirmative language stating the pollution exclusion will not apply with respect to a securities claim or a derivative action brought by or on behalf of the company against the directors and officers.

Some D&O policies state that the dishonesty exclusion can be triggered by the mere allegation of dishonesty, as opposed to actual proven dishonesty.

There are even D&O policies on the market that will delete the pollution exclusion in certain situations, such as when the company is insolvent and unable to indemnify the directors and officers.

• **Dishonesty exclusion.** Another crucial area of review is the policy language used to trigger what is commonly known as the dishonesty exclusion. This exclusion is generally designed to exclude claims involving dishonest, fraudulent or criminal conduct by a director or officer. A potential issue that may arise with respect to this exclusion is the policy language employed to trigger the exclusion. For example, some policies state that the exclusion can be triggered by mere allegations of dishonest conduct, as opposed to actual proven dishonesty. If this language is present, the director or officer immediately loses coverage if the claim alleges dishonest conduct regardless of whether there is any evidence supporting the allegation.

Other policies provide that the exclusion can be triggered by a finding "in fact" that the director or officer engaged in dishonest, fraudulent or criminal conduct. A potential concern with such language is it is not always clear when dishonesty "in fact" occurs. Some policies contain explicit language stating the dishonesty exclusion can only be triggered by a final adjudication or judgment establishing that such dishonest, fraudulent or criminal conduct did in fact occur. The benefit of the "final adjudication" language is the exclusion cannot be triggered until there has been a final adjudication that the director or officer did in fact engage in dishonest conduct.

• **The insured vs. insured exclusion.** The purpose of the insured vs. insured exclusion is to preclude potentially collusive claim situations whereby either a director or officer or the company makes a claim against another director or officer in order to raid the insurance policy proceeds. Without the exclusion, a company could conceivably view the policy as a piggy bank to be raided whenever it is in need of cash. The insured vs. insured exclusion generally contains a coverage carve back for employment practices claims, derivative actions not sponsored or solicited by the company and cross-claims or third-party claims for contribution or indemnity by a director or officer.

There has been some dispute as to whether the insured vs. insured exclusion applies to exclude coverage for claims by a bankruptcy trustee or government appointed rehabilitator stepping into the shoes of the corporate entity and suing the directors and officers. The question as to whether the insured vs. insured exclusion operates to bar coverage for claims by a bankruptcy trustee or rehabilitator has been thoroughly litigated. Unfortunately, there isn't a consensus among the courts as to whether claims by these quasi third parties should be covered under the D&O policy. A number of insurers have recently added language to their policies affirmatively stating they will cover claims by a bankruptcy trustee or conservator against the directors and officers.

• **Imputation wording.** In some instances, the government in prosecuting a case may employ a shotgun approach and name individuals who were really not participants in the alleged wrongdoing. The last thing an innocent director or officer who has been charged with criminal activity wants to learn is that the guilty plea of a fellow officer has voided his or her insurance coverage. This scenario can be avoided if the policy contains language stating that the conduct of one director or officer will not be imputed to another director or officer.

The insured vs. insured exclusion of some D&O policies keeps a company from using the policy as a piggy bank to be raided whenever it is in need of cash.

• **Pay on behalf vs. reimbursement.** Some D&O policies maintain that the insurer will only pay the costs of the claim after it has been resolved. Even if a company is solvent, funding the defense of a catastrophic claim can be detrimental to the bottom line. A number of insurers now include language in their policies stating the insurer will advance defense expenses on an ongoing basis in excess of the deductible during the life of the claim.

• **The claims process.** Defending a claim can be a harrowing experience. After all, the professional integrity and reputation of the director or officer is being placed at risk. In addition, an adverse judgment could wreak havoc on the individual charged with the wrongdoing as well as on the company. Directors and officers do not need an already difficult state of affairs further complicated by having to do battle with their insurer regarding the coverage they thought they had. Poor claims handling will diminish the value of the best

See **D&O** *on next page*

D&O

Continued from previous page

insurance product. Insurance carriers do have very different approaches and reputations for handling claims. A knowledgeable broker or agent is instrumental in guiding the insured to not only the best insurance product but also to an insurer with a reputation for providing quality claims service.

An experienced D&O insurer should have claims specialists who are able to navigate through the most complex of claim situations. Additionally, the insurer should be a partner in the process, giving the policyholder the benefit of its experience in regard to similar claim situations. Perhaps the two most important ingredients an insurer's claim department should have are: a willingness to communicate and listen to the concerns of the insured; and a pragmatic and practical approach to the claim with the understanding that, as in any long-term relationship, there is an ebb and flow with the claim part being just one aspect—albeit a very important one—of that relationship.

Claims against directors and officers are not like simple slip-and-fall claims; they are complex and potentially catastrophic in nature. An insurance carrier that cannot or will not communicate with its insured or that cannot respond quickly to a fast-moving situation can make a difficult claim situation even worse.

In summary, in many instances, D&O claims involve both substantial and complex issues. Careful review of the terms and conditions of the policy prior to binding coverage is essential. The insurance agent or broker should confirm that the insurers' claim department has substantial experience in the handling of D&O claims. Finally, the insurer, the insurance broker or agent, and the policyholder need to partner together in order effectively and successfully manage the claims process. BI

Steven J. Gladstone is senior vp-claims for Executive Liability Underwriters, a Hartford, Conn.-based unit of XL Capital Ltd.

Court finds ski accident was compensable

A workers compensation claimant who worked at an inn as a "ski bum" was entitled to compensation benefits for injuries sustained while skiing, according to the Supreme Court of Vermont.

Joseph W. Grather was hired by The Gables Inn Ltd. in Stowe, Vt., in the fall of 1993 as a "ski bum." He was expected to live at the inn, prepare and serve breakfast in the mornings, and serve food and drinks at "apres ski" and dinner in the late afternoon. He was paid $100 per week, given room and board, tips and a restricted ski pass that allowed him to ski, but only during the middle of the week. After he was hired, his employer encouraged Mr. Grather to become acquainted with the town and the ski slopes. On March 17, 1994, after working the breakfast shift, Mr. Grather went skiing, where he crashed into a tree and incurred severe injuries, leaving him disabled for some time. Mr. Grather applied for workers comp, which was denied on the ground that the inn received no benefit from providing its employees with a ski pass beyond a general boost in morale.

On appeal, the Vermont Supreme Court concluded that the inn did receive a benefit sufficient to bring Grather's skiing within the course of his employment. Here, the court said, the employer benefited from the recreational opportunities it provided by using them as a way to induce applicants to accept employment. The court emphasized that the ski pass given to Mr. Grather was an inducement for employment in the position, meaning that "the ski pass benefited the employer beyond the tangible benefit of improving employee morale." Thus, the court held that Mr. Grather's skiing injuries arose in the course of his employment and that he was entitled to compensation.

Grather vs. Gables Inn Ltd., Supreme Court of Vermont, Feb. 18, 2000 (BI/02/N.-$10).

Drug-related firing precluded benefits

A workers compensation claimant's termination for violating an employer's drug-use policy constituted a voluntary abandonment of his former position and precluded temporary total disability compensation, according to the Supreme Court of Ohio.

Walter L. Cobb Jr. was awarded workers compensation as a result of an injury he sustained in the course of his employment. Shortly after the injury, Mr. Cobb began receiving temporary total disability compensation. In 1996, Mr. Cobb took a company physical and tested positive for illegal drug use. The written company drug policy in effect at that time stipulated that use of drugs could lead to termination, and in September 1996, Mr. Cobb was fired for violating the company's drug policy. His request for reinstatement was denied by the Industrial Commission, and he appealed that decision.

The appellate court said that the employer's drug-use policy clearly defined the prohibited conduct. It also identified violation of that conduct as a potentially dischargeable offense, of which Cobb was admittedly aware, the court said. Thus, the court agreed that Cobb's violation of the employer's drug-use policy constituted a voluntary abandonment of his former position of employment and precluded disability compensation.

State Ex. Rel. Cobb vs. Industrial Commission, Supreme Court of Ohio, Feb. 23, 2000 (BI/01/N.-$10).

LEGAL BRIEFS

Vicarious liability not covered: Court

An employee dishonesty liability insurance policy did not provide coverage for a policyholder's vicarious liability to third parties, according to the 9th U.S. Circuit Court of Appeals.

The case in question arose from a legitimate practice known as "diverting," under which grocers buy and sell on a secondary market. Because of regional differences in the price of merchandise sold by manufacturers, grocers can occasionally purchase products from retailers in another part of the country at a price lower than they would pay for the product wholesale. The diverting operation at Vons Cos. Inc. was handled by Gene Shirley, an employee of Stanford Trading Co. On behalf of Vons, Mr. Shirley bought diverted goods from and sold diverted goods to Premium Sales Co. Mr. Shirley falsely confirmed some 500 fictitious transactions, ostensibly in Vons' name. Premium obtained over $40 million from investors on account of transactions Mr. Shirley falsely confirmed. Vons, for its part, lost no money. Premium's investors discovered the fraud and sued several parties, including Vons. They claimed Vons was liable because of Mr. Shirley's actual or apparent authority to act for Vons and because of Vons' negligent supervision of Mr. Shirley. Vons settled the claim against it by a payment of $10 million. Vons then filed a proof of loss with its insurer, Federal Insurance Co., under an employee dishonesty policy that covered Vons for the direct loss of money caused by theft or forgery by any employee. Federal Insurance denied the claim. Vons then brought this suit seeking a declaration from the court that the policy provided coverage, and the federal trial court ruled against Vons.

The appellate court agreed with the trial court, stating that under the insuring clauses, Vons is covered only for direct losses to Vons caused by an employee's dishonesty, not for vicarious liability for losses suffered by others arising from its employee's tortious conduct. Under its policy, the court said, Federal Insurance provided Vons with coverage for "direct losses" that were "caused by" employee theft or dishonesty. Vons' policy did not provide coverage for third-party claims, the court said. The trial court decision was affirmed.

Vons Cos. Inc. vs. Federal Insurance Co., 9th U.S. Circuit Court of Appeals, May 9, 2000 (BI/04/N.-$10).

Worker intoxication voids claim: Court

An employee's intoxicated state constituted willful or serious misconduct that resulted in his death, thus precluding him or his survivors from receiving workers compensation benefits, according to the Appellate Court of Connecticut.

Francesco Paternostro was employed by the Arborio Corp. as a member of a road crew assigned to erect warning signs along a section of Interstate 84. On the evening of the accident, he was notified of an incorrect sign pattern and was instructed to correct the problem. He drove to the site and, in contravention of company policy, walked across three highway lanes to fix the sign.

On his return to his truck, he was struck and killed by an automobile. A half-empty liquor bottle and six full cans of beer were found in the passenger compartment of his truck. A blood sample drawn from the Mr. Paternostro's body revealed a blood alcohol level of 0.18%.

Mr. Paternostro's wife filed for survivor's benefits. The workers compensation review board denied her claim. She appealed.

The appellate court concluded that the evidence supported the commissioner's finding that Mr. Paternostro's actions prior to the accident constituted willful and serious misconduct. The court pointed out that he was intoxicated and had violated the employer's policy against crossing the highway.

Consequently, the court agreed that compensation should not be paid because of his willful misconduct.

Paternostro vs. Arborio Corp., Appellate Court of Connecticut, December 28, 1999 (*BI*/05/s. -$10)

Court rules suicide compensable

No showing of derangement was required for a school superintendent's suicide to be compensable under workers compensation, according to the Supreme Court of Iowa.

David Fleming was superintendent of the Humboldt Community Schools from 1988 until his death in 1993. The job stress allegedly leading to Mr. Fleming's death arose from his advocating the concept of identifying outcome goals in education and tailoring curriculum to meet those goals. The concept was very controversial in the community and Mr. Fleming became the focal point of community criticism.

He began suffering from depression, became less organized and had trouble concentrating. In June 1993, after having an acute anxiety attack, he began receiving psychiatric treatment, including antidepression and antianxiety medicine. During this period, the school board abandoned Mr. Fleming's recommendation.

On June 26, 1993, Mr. Fleming committed suicide by carbon monoxide poisoning. His wife applied for and was awarded workers compensation based on his death caused by job stress. However, the school board and its insurer appealed.

On appeal, the school board argued in part that Mr. Fleming's widow could not recover because the death of her husband was self-inflicted. But the court said that suicide is compensable on proof of causation directly linking an employment injury to a worker's loss of normal judgment and domination by the disturbance of his mind.

The court rejected the board's argument that a job-related injury must be caused by a deranged mental state which, in turn, caused the suicide. "The term 'derangement,' we believe," the court said, "is too nebulous to adopt as a prerequisite to recovery." The award of compensation was affirmed.

Humbolt Community Schools vs. Fleming, Supreme Court of Iowa, December 22, 1999 (*BI*/01/S. -$10) BI

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available, at $10 each, by sending a check payable to Mayo H. Stiegler, to Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. Provide the listed number for each opinion ordered.

GLOBAL BRIEFS

Willis Group Ltd. in London has appointed a new executive vp to develop and expand its client base worldwide. Mario Vitale, who previously was president of Kemper Risk Management, will report directly to Willis Executive Chairman Joe Plumeri. Mr. Plumeri said in a statement that Mr. Vitale "will be invaluable in leveraging the Willis product portfolio, services and relationships to group our client base and expand our product offerings."...Aon Corp. has acquired a 50% stake in **P.L. Ferrari** of Italy, a broker and leading specialist in protection and indemnity insurance. The two have formed a joint venture, creating one of the largest P&I brokerages in the world. The venture will use the P.L. Ferrari name and the company's offices in Genoa, Naples, Monaco and London, as well as Aon's global network....Standard & Poor's Corp. has lowered its counterparty credit and insurer financial strength ratings on **HDI Haftpflichtverband der Deutschen Industrie VaG**, the parent of Hannover Reinsurance Co., to AA- from AA. The downgrade is based on HDI's continued reliance on the German property/casualty sector, which is expected to remain intensely competitive despite signs of hardening rates. Positive factors, however, include HDI's "strong underlying operating performance and very strong capitalization." Expansion of its life business, while it will eventually strengthen HDI's market profile, will in the short term dilute its profitability and absorb capital, S&P added. The rating outlook was revised to stable from negative....Moody's Investors Service Ltd. has downgraded its performance rating of Lloyd's of London **aviation syndicate 808**, managed by Crowe Syndicate Management Ltd., to C+ from B, and is keeping the rating under review for possible further downgrade. Moody's said the change relates to uncertainty over support from Stockton Re, the syndicate's main financial backer, for 2001 and beyond. "Given the uncertainty over the future of the syndicate, the rating reflects the fact that it is not expected going forward that the syndicate's results will match the Lloyd's average return over the cycle based on a short-term outlook for the syndicate," said Moody's ....**Winterthur Life**, a unit of the Credit Suisse Group, has bought a strategic equity stake in Chinese life insurer Tai Kang Life Insurance. The size of the stake and the financial terms were not disclosed, but Winterthur Life said it is the first foreign insurer to enter such an alliance in China and that its interest derives from the fact that China's financial services market is currently one of the fastest-growing in the world.

U.K. manslaughter law reform sought

By SARAH VEYSEY

LONDON—A recent string of fatal rail accidents in the United Kingdom is prompting increasing and louder calls for a change in U.K. criminal law to make it easier to charge corporate officials with manslaughter.

The U.K. government currently is reviewing public comments received on a proposed corporate killing offense.

"There is great public concern at the inability of the criminal law to convict a company of manslaughter, often for errors where, if an individual had been responsible, they would have been convicted," said Charles Clarke, minister of state at the Home Office, speaking at a seminar on corporate killing organized by Aon Risk Services Ltd. in London.

But the delay in getting the proposed corporate killing law onto the books, and the fact that even if passed, the law would not be applied retroactively, is prompting some observers to demand that manslaughter charges be brought against companies responsible for the recent fatal rail accidents.

The Nottingham, England-based Assn. of Personal Injury Lawyers has backed a call by Member of Parliament George Galloway for the board of directors of Railtrack P.L.C., the U.K. rail operator, to be prosecuted for corporate manslaughter following the Oct. 17 rail crash at Hatfield, Bedfordshire, in which four people died.

"APIL believes only the threat of prosecution in such cases will prevent similar tragedies from

See **Reform** *on next page*

PHOTO: AFP

The Oct. 17 rail crash at Hatfield, Bedfordshire, and other recent rail accidents have stepped up public calls for a change in U.K. manslaughter law.

Changes in Japan to aid buyers: Study

By CAROLYN ALDRED

Japanese insurers are facing challenging times in the face of deregulation, increased competition and changing customer demands, according to a new report by Swiss Reinsurance Co.

However, Japanese risk managers likely will benefit from less expensive insurance and more flexible and innovative products in an increasingly liberal and competitive market, the report predicts.

At the same time, a separate report published by Moody's Investor Services Ltd. this month puts a long-term negative rating outlook on the Japanese property/casualty insurance sector, pointing out that deregulation and liberalization will make the market far more competitive.

Although Japan ranks—and likely will continue to rank—as the world's second-largest insurance market, accounting for about 30% of global life premiums and 10% of non-life insurance premiums, it is a market in the midst of a sea change, according to the Swiss Re report.

"Historically, the high level of domestic savings and a strong industrial sector have underpinned the growth of Japan's insurance business; but in the '90s, prolonged economic hardship, industry deregulation and declining investment returns translated into arduous business conditions for insurers," the report states.

Although Swiss Re says that "there are signs that the worst may be over for Japan's economy," it also contends that the insurance sector "must reinvent itself to stay competitive in the new marketplace that resulted from the implementation of Japan's 'Big Bang' financial reform launched in 1996."

In recent years, Japanese insurers have been given more freedom to set their own rates and develop new products; more foreign insurers have entered the market; and there have been several insurance company mergers and collapses, the report explains.

Meanwhile, an aging population is resulting in changing demand for life, pension and long-term care products, while increasingly sophisticated Japanese risk managers also are looking for new property/casualty insurance products, according to Swiss Re.

"The interplay of major forces such as financial globalization,

See **Japan** *on next page*

Insurers to shell out in coverage dispute over peanut recall

By KATE TILLEY

BRISBANE, Australia—The company that triggered an Australia-wide recall of peanut butter and peanut products in 1996 has won a court battle with its insurers for coverage of its business interruption losses.

The Peanut Co. of Australia Ltd., based in Kingaroy, Queensland, and previously known as PMB Aust. Ltd., sued MMI General Insurance Ltd. of Sydney and seven other insurers that participated in its property and business interruption policy after they paid only $700,000 Australian ($364,000) of PCA's $5.5 million Australian ($2.9 million) claim for business interruption losses.

Judge Debra Mullins of the Queensland Supreme Court delivered the judgment in PCA's favor at the end of September. However, she has postponed deliberations on how much the insurers must pay PCA. The company's policy offers limits of $8 million Australian ($4.2 million) for any one claim, according to court papers.

A 1996 outbreak of salmonella was traced to products made by PCA, which processes peanuts (*BI*, Sept. 2, 1996). PCA supplied shelled, roasted peanuts to Melbourne-based Kraft Foods Ltd., a subsidiary of Northfield, Ill.-based Kraft Foods Inc.

Kraft recalled 10 brands of peanut butter, including generic products it manufactured on behalf of major retailers in Australia, and Kraft peanut chocolates and satay sauces. Melbourne-based food manufacturer Uncle Toby's Co. Ltd. withdrew its peanut muesli bars, which contained Kraft-supplied peanut butter. Kraft's peanut products were withdrawn from shelves for more than four months.

Kraft faced a class-action suit in Australia's Federal Court from 905 people who became ill after eating contaminated peanut butter and peanut products. The suit, filed in 1996, was settled two years later, when Kraft agreed to compensate the claimants. The settlement terms were not disclosed.

The salmonella outbreak occurred from March to June 1996, with PCA identified as the source of the tainted nuts on June 24. Kraft ordered its initial product recall on June 23.

The Supreme Court heard evi-

See **Recall** *on page 18*

Swiss Re, Moody's foresee growth for trade credit market

By EDWIN UNSWORTH

The global market for credit insurance is forecast to grow steadily over the next five years, with the biggest gains coming from the United States and emerging countries, albeit at a smaller volume than in Western European countries.

Two reports released this month suggest that credit insurance not only is a strong and healthy business, but also is set to enjoy strong growth over at least the next five years.

A study by Swiss Reinsurance Co. concludes that globalization and e-business are providing important new opportunities for trade credit insurers. Trade credit insurance provides coverage against the risk of outstanding receivables, which the reinsurer says can be the most important asset for a non-financial company. According to Swiss Re, accounts receivable, or trade credit, can account for up to 50% of a company's total assets.

The worldwide market for private credit insurance generates more than $4 billion in annual premiums, according to Swiss Re. Historically, though, this form of insurance has been more popular in Europe than elsewhere. Western Europe accounts for $3.5 billion—or 84%—of worldwide volume, while the United States accounts for only $500 million, or 12%. Over the last 10 years, however, annual premium growth of credit insurance in Western Europe has averaged about 5%, while U.S. premium growth has been 10%. Swiss Re predicts that these growth rates will change little over the next five years.

"Given the low penetration of credit insurance in the U.S. market, premium growth is expected to remain strong," the study says.

The market for credit insurance worldwide is changing rapidly, according to the Swiss Re study. Considerable consolidation has taken place, with the five leading European credit insurers increasing their share of the worldwide market over the past decade to 80% from 50%. The five leading insurers are:

- Euler, a Paris-based insur-

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Reform

Continued from previous page

happening again," the APIL said in a written statement.

"The threat of prosecution for causing death through negligence is the strongest motivation there is for ensuring company directors put safety before profit," said Patrick Allen, a vp of the lawyer organization. "This is why APIL has supported the government's plan to introduce a new offense of corporate killing," he said.

In addition to seeking charges against Railtrack officials, Mr. Allen also called upon the government to swiftly introduce the proposed new offense of corporate killing. "We all know the current law doesn't work," he said. "There has to be a more sensible way."

The APIL also is lobbying for the creation of a dedicated "disaster bureau" within the government to oversee investigations into fatal accidents. "We have also called repeatedly for the creation of an accident and disaster bureau, which would have the power to hold a public inquiry, chaired by a judge from a specialist panel, following any major disaster involving loss of life," said Mr. Allen.

He said the proposal has received interest from some government officials and representatives of the Health and Safety Executive.

According to Mr. Clarke, the British government currently is considering 166 responses it received to its consultation paper on a proposed corporate killing law. Comments were received from business, employers' associations, lawyers, pressure groups and the general public, he noted.

The government's consultation paper—which incorporates many recommendations made four years earlier by the Law Commission, a government advisory body—was published in May. The consultation period ended in September, and the government is now considering how to proceed with implementing the proposed changes in the law, said Mr. Clarke.

There are several deficiencies in current U.K. involuntary manslaughter statutes that prompted the government to propose a change, Mr. Clarke said.

One is that the "narrow scope of the identification doctrine"—which requires an individual who is the "embodiment" of a company to be proved guilty for a conviction to be made—is extremely limiting, he said. This, in turn, contributes to a very low number of convictions, he said, noting that just three companies have ever been convicted of corporate manslaughter under existing law.

'We all know the current (manslaughter) law doesn't work,' says Patrick Allen. 'There has to be a more sensible way.'

Mr. Clarke said the changes were also proposed because of public concern about the inability of general criminal law to convict a company of involuntary manslaughter.

Under the government's proposal, he said, corporate killing changes could be brought if "management failure" was a contributing, but not necessarily the sole, cause of a death. The charges could be brought against management, "even if the immediate cause was the act or omission of an individual," such as an employee.

Management failure would be defined as "conduct far below what can reasonably be expected of the corporation in the circumstances," he said.

The government proposes that the new law apply not just to incorporated entities, but also to "undertakings," which would include any trade, business or other activity providing employment. This broader application, said Mr. Clarke, would not only significantly widen the scope of the new law—making it applicable to about 3.5 million enterprises—but also would minimize inconsistencies that could arise from prosecuting cases only against large corporate entities.

Mr. Clarke said that the government is still assessing the extent to which individual directors of companies should be held liable for corporate killing offenses and whether a conviction should carry a prison term.

Other issues, such as where jurisdiction would lie if a company owned by an overseas parent were convicted, also have yet to be decided. However, Mr. Clarke said he is confident that foreign companies would accept the validity of the legislation.

"I think most major corporations will accept the primacy of U.K. law here. I can't see directors fleeing," he said.

Mr. Clarke said he hopes the proposed new law would change the culture of some companies and put health and safety higher up their agendas. But he added that determining the reach of the law would entail a fine balancing act.

"We have to bear in mind that too strict a test of liability might lead the more conscientious enterprises—the very firms we want to support—to question the point of continuing to supply goods or services which attract any risk at all," he said. BI

Japan

Continued from previous page

industry deregulation, economic restructuring and demographic pressures is transforming the business landscape of the Japanese insurance market. Insurers are facing a very different operating environment in the new millennium," the report states.

During the past year, there have been at least four major mergers among Japanese property/casualty insurers, involving companies that account for more than 40% of the market's non-life premiums. At the same time, alliances between life insurers and property/casualty insurers are emerging, which will help provide clients with total risk management services.

According to Swiss Re, the Japanese insurance market ranks prominently in the world's league tables, both in terms of size and penetration. With property/casualty premiums totaling $92 billion and life premiums totaling $361 billion in 1998, Japan accounted for 70% of the Asian property/casualty market and 82% of the Asian life market.

Although "many foreign companies have been eyeing the huge Japanese market, it has proven to be a hard nut to crack," with foreign companies still only accounting for 4.7% of the premiums in the property/casualty sector and 7.7% of the life sector, based on 1998 premiums and ownership structures as of March 2000, according to the report.

The market also is highly concentrated with the five largest companies accounting for 54% and 60% of the property/casualty and life premiums, respectively, in 1998. The expected wave of consolidation will push these ratios for the top five even higher to 69% and 63%, respectively, the report predicts.

Since U.S.-Japan insurance talks in 1994, a series of liberalization and deregulation measures have been implemented, including:

- Allowing the mutual entry of life and property/casualty insurers into each other's business, in April 1996.
- Implementing a notification system for regulatory approval of insurance policy terms and conditions to replace the prior-approval system, in April 1996.
- Allowing differentiation of rates for voluntary automobile insurance, in June 1997.
- Liberalizing tariffs by gradually abolishing insurers' obligation to use rates set by rating organizations over a two-year transition period that ended July 2000.
- Introducing early warning measures based on the solvency margins of insurers, in April 1999.
- Removing controls on agent commissions, expected in April 2001.

In Japan, 'commoditized products are facing bigger price pressures, while customers are demanding tailor-made services,' the Swiss Re report notes.

At the same time, Japan's financial liberalization means that foreign companies, domestic non-insurance corporations, and financial institutions all are now able to compete in the Japanese insurance market.

So far, overseas insurers, mainly operating as foreign branches in Japan, have a relatively small share of the market. They are strongest in the so-called "third sector," which includes such risks as medical and long-term care insurance, according to Swiss Re.

In the property/casualty market, the collapse of Daiichi Mutual Fire & Marine Insurance Co. in May is seen as an exception, and property/casualty insurers generally "remain well capitalized and enjoy top-notch ratings" says Swiss Re.

However, a recent report by Moody's suggests that may well change.

"The average rating of Japan's 12 largest (property/casualty) insurers is A1—far higher than those of all other companies and financial institutions," says Tokyo-based Moody's analyst and report author Hideyuki Ito.

However, deregulation and liberalization are "lowering the industry's long-standing barriers to entry, thus opening the market to competition," according to the Moody's report.

As a result, while the short- to medium-term outlook is stable, Moody's long-term outlook for the sector is negative.

"There is a risk that a rapid fall in revenue will squeeze margins and inevitably lead to underwriting losses," Moody's report states, predicting that "within five years, combined ratios would rise above 100%."

In Japan "this is a particular source of concern because of the country's economic conditions, low interest rates, its stock market's fluctuations over the last few years and the low ratio of invested assets to net premiums: Japanese (property/casualty) insurers cannot afford to run large underwriting losses like their American and European peers," the Moody's report points out.

However, while insurers face challenges, Japanese risk managers likely will benefit from the changes in Japan's insurance market.

Full tariff—or rate—deregulation in the property/casualty market took effect as of July 2000, leaving property/casualty insurers free to calculate their own rates, which will lead to more competitive pricing, Swiss Re points out.

Property/casualty insurers also now have more flexibility in designing and launching new products, including coverage for commercial risks. "This has happened against a backdrop of growing sophistication of risk management in Japanese corporations. As a result, commoditized products are facing bigger price pressures, while customers are demanding tailor-made services," the Swiss Re report notes.

Meanwhile, the convergence of the insurance and banking industries is leading to several changes, including: the development of integrated financial services and products; the removal of regulatory barriers to cross-selling of insurance, banking and investment products among financial institutions; and the formation of large financial conglomerates.

There have also been several risk transfer transactions from insurance to capital markets, though the generally soft reinsurance market in recent years has meant that "momentum remains sluggish," Swiss Re notes.

"The top three non-life insurers have all made use of securitization in 1997 and 1998 to boost and stabilize their industrial earthquake and typhoon capacity," the report notes, adding, however, that "while the issues have been successfully placed, further initiatives by Japanese insurers to transfer hazard/event risk to the capital market have been slow in coming."

However, "the outlook for securitization remains promising, given the high level of catastrophe exposure and signs of an imminent hardening of the reinsurance market," the report notes.

In the life sector, "Japan is home to several of the world's largest life insurance companies but the industry has been mired in difficulties since the early '90s," Swiss Re points out.

Rock-bottom interest rates have created one of the most severe problems to Japanese life insurance companies, and there has been a series of insurance company failures since 1997, the report states.

Meanwhile, foreign insurance companies and financial institutions have "accelerated their efforts to enter into and fortify their operations in Japan," the report says.

Looking ahead, life insurers are focusing on two major lines of business: nursing care and pension products, due to the fast changing demographic profile of Japan.

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The Swiss Re report, "sigma 8/2000-Japan's Insurance Market—A Sea Change," is available at www.swissre.com.

For information about obtaining the Moody's report, contact 212-553-0376 in New York or 44-207-772-5454 in London.

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Recall

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dence from microbiologist Dr. Peter Wood that an auger through which peanuts traveled at the PCA plant was "grossly soiled" by "scavenging rodents."

PCA had an industrial special risks policy, which covered it for property losses and consequential loss for a period of 12 months. While there was no physical loss or damage, PCA relied on an extension in the policy that extended damage to include losses directly resulting from closure by a public authority due to the outbreak of an infectious or contagious disease.

Judge Mullins decided that PCA's business operations were disrupted for nine months after the contamination was traced to it.

The insurers had argued that the processor's business returned to normal less than a month after the problem was identified, when the Queensland Government's Health Department lifted a temporary ban on production on July 20, 1996.

Judge Mullins disagreed, and said the indemnity period extended to March 31, 1997.

"The uncertainty in the marketplace...created by such a dramatic event as the plant shutdown following the discovery of salmonella in product produced from the plant continued to affect the way in which the plaintiff (PCA) conducted its operations...after July 20," Judge Mullins said in a 57-page judgment.

She found the PCA's normal business operations were immediately affected by the shutdown and subsequent cleaning of equipment and the need to comply with the testing regime imposed by the Queensland Health Department from June to November 1996. Business was also disrupted by the need to meet Kraft's requirements and QHD recommendations on process and plant changes.

"There were cash flow problems from the shutdown and drops in sales, particularly through no sales being made to Kraft from August to early October in 1996...(and) consequences in additional storage requirements and for other areas of operation," Judge Mullins added.

Judge Mullins said it was "artificial" for the insurers to say the effects of the salmonella outbreak ceased once Queensland health inspectors permitted the PCA plant to resume operations.

As part of PCA's claim to insurers, the court heard that Kraft had deducted $734,550 Australian ($381,996) from a payment owed to PCA in July 1996, as the value of stock received before the salmonella outbreak that it had been unable to use. The product was returned to PCA and processed into oil to mitigate the loss. Judge Mullins said it was a "not unreasonable commercial decision" on PCA's behalf to forgo the payment because it had caused Kraft's losses, and that the returned stock should be included in the company's loss of profits calculation.

PCA Managing Director Robert Hansen testified about the disruption to business, including the time he and other senior managers at PCA had spent dealing with issues raised by customers, farmers and PCA's bank after the salmonella outbreak. "We were managing the crisis, instead of doing our jobs," he said. Other staff gave evidence that "the telephone was constantly ringing with angry and concerned customers."

When Kraft's production resumed in October 1996, it required a large amount of stock, and PCA made it a priority client, which meant relationships with other clients suffered, according to PCA.

Judge Mullins accepted the business interruption calculations made by loss adjuster GAB Robins, which was hired by PCA.

Mark Darwin, an attorney with the Brisbane office of McCullough Robertson, who represented PCA in the coverage dispute, said the case contained a clear message for companies and their risk managers: "Do not accept the assessment of an insurer's loss adjuster, if you believe your insurance is intended to provide more cover."

The attorney said that "the insurer's adjuster simply did not understand the company's business and, having taken a certain view about the claim, was not interested in considering the company's submissions."

Mr. Darwin said PCA was successful on 17 of the 18 components of its claim. Judge Mullins rejected coverage of a consultant's fee for reviewing its operating processes.

Mr. Darwin said it was significant that Judge Mullins recognized that some of the interruption to PCA's business after July 20, 1996, was caused by what she called the need to address the "new awareness" of the risk of future salmonella contamination.

"She has held that, to the extent and for the period that both the salmonella outbreak and the need to address the risk of future contamination were operative causes of the interruption, the salmonella was still a proximate cause of the losses," he said. "The judgment recognizes the general principle that where there are competing proximate causes and loss from one is covered, the insured is entitled to recover, so long as the other causes are not expressly excluded."

Judge Mullins adjourned the case, while PCA makes further submissions to the court for calculating the processor's losses. The quantum should be finalized before the end of the year, according to Mr. Darwin.

Mike Woolmer, an attorney from the Brisbane office of Gadens Lawyers who represented MMI and the other insurers, said he would not comment on the case before it was finalized. BI

Derbyshire mystery solved

LONDON—The 20-year-old mystery surrounding the sinking of the giant bulk carrier Derbyshire was resolved this month when an inquiry, headed by a London High Court judge, found that the tragedy was the result of inadequate hatch covers.

The decision removes blame from any of the 44 people who died in the sinking; a 1988 assessor's report said the loss resulted from the failure of the crew to secure a forward hatch cover.

The 176,000-ton Derbyshire, which was carrying a heavy cargo of iron ore, disappeared 400 miles east of Japan in September 1980 during a typhoon. The sinking of the 4-year-old ship occurred so quickly that there was no time for the crew to send out a distress call, and the ship's whereabouts were unknown.

Initially, the British government refused to hold an inquiry, claiming that without a wreck to examine, there was no way to determine the cause of the loss. But when the Derbyshire's sister ship, the similarly designed Kowloon Bridge, broke in two off the coast of Ireland in 1986, the government gave in to pressure and held an inquiry the following year. The findings were inconclusive, however, saying that the Derbyshire "was probably overwhelmed by the forces of nature."

After persistent pressure from families of the victims, the wreckage of the Derbyshire was located in 1994, and surveys were carried out in 1996 and 1997. In March 1998, an independent assessor's report concluded that a hatch cover had failed, but that there was no evidence of any other structural failure of the ship. After the publication of the assessor's report, Deputy Prime Minister John Prescott ordered that the inquiry be reopened (*BI*, Jan. 4, 1999).

Insurers had already said, after the 1998 inquiry, that the findings were unlikely to lead to higher premiums on similar ships.

The latest inquiry, led by High Court Justice Colman, determined that inadequate hatch covers enabled sea water to pour into the ship during the storm, causing it to sink deeper into the sea and increasing the pressure on other hatch covers, which burst and allowed the ship to be totally flooded.

Justice Colman called on the government to press "strongly and urgently" for new standards for hatch cover strength, both for existing and new bulk carriers.

—*By Edwin Unsworth*

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A proposer's conference will take place on December 4, 2000, at 3 p.m., at 250 Broadway, Board Room, 12th Fl. The deadline for submitting proposals is 3 p.m., December 22, 2000.

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INTERNATIONAL

Credit

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er whose majority owner is Allianz A.G. Holding, with a 51% stake.

- Groupe Coface, a Paris-based insurer with multiple shareholders, including SCOR S.A., which has a 20% stake.
- Hermes Konzern, based in Hamburg, Germany, which is owned by Allianz.
- Gerling-Konzern Speziale Kreditversicherungs A.G., a Cologne, Germany-based unit of the Gerling Group.
- NCM Holding N.V., an Amsterdam-based insurer whose majority owner is Swiss Re.

In addition to consolidating, the credit insurance market is extremely competitive, which is pushing credit insurers to enter new markets and to provide new products and services, such as credit information, debt collection, and lines of credit for commercial Internet purchases, according to Swiss Re.

The Swiss Re study says the "explosive" growth of business-to-business Internet transactions is providing a relatively new source of business for credit insurers. "By providing lines of credit to buyers on the Internet, credit insurers are enhancing their fee-based revenues by leveraging their proprietary information on the credit-worthiness of buyers," the reinsurer says.

Additionally, opportunities are also arising from the expanding market for derivatives and asset backed securities, the study concludes. Credit insurers can provide asset specific credit enhancement, particularly for the underlying assets of the asset-backed commercial paper of trade receivables, says the study.

Looking at the U.S. market for credit insurance, the Swiss Re study says that the premium volume is lower because there is not as much demand and rates are lower than in Europe for the coverage.

'We place reinsurance close to the top of the list to emphasize its importance in the running of credit insurance business,' says the Moody's study.

U.S. rates are significantly lower, according to Swiss Re, because U.S. credit insurers provide fewer services than European credit insurers. Also, retentions are higher among U.S. buyers, it notes.

In addition, a big source of demand for trade credit insurance in Europe is the construction industry, whereas U.S. contractors typically cover their trade receivable risks through surety bonds. Other factors behind the lower demand for credit insurance in the United States is that U.S. companies are less dependent on exports, the risk of credit defaults is lower because company information is more readily available and more transparent, and credit management within companies is better developed than in Europe, Swiss Re reports.

Meanwhile, in emerging countries credit insurance is not widely bought, partly because a necessary condition for its development is a legal environment with efficient insolvency laws and enforceability of debt collections, says Swiss Re. Economic instability and high inflation are also restricting the development of a domestic credit insurance market in such countries.

Eastern Europe "is definitely a growth market" for credit insurance, led by Poland, Hungary and the Czech Republic, the reinsurer says. It adds, however, that "Eastern Europe is not yet an important market on a global level" in terms of credit insurance volume.

In Latin America, demand for credit insurance has been growing, albeit slowly. This growth is mainly occurring as European companies purchase local companies as they are privatized, bringing with them the concept of insuring against credit losses. Domestic trade credit insurers have been established in Brazil, Chile and Argentina. Swiss Re reports that while "overall premium growth is still not strong for domestic trade credit insurance, the trend is positive."

In Asia, the Asian financial crisis of recent years has generated an increased interest in credit insurance. As a result, several European credit insurers have opened subsidiaries there. While state-owned export insurers write most Asian trade credit insurance, in Japan private insurers have started to provide credit insurance.

This month, Euler and Hermes announced a joint venture with Marubeni Co., a diversified Japanese conglomerate, to launch a new company Hermes & Euler Credit Services (Japan) Ltd. Scheduled to start business in the first quarter of 2001, it will concentrate initially on domestic credit risks. When announcing the venture, Euler and Hermes said Japan is expected to eventually become one of the world's leading credit insurance markets.

Swiss Re points to some possible blips on the horizon for credit insurers.

The biggest challenge the insurers face is a potential increase in self-insurance aided by increased accessibility to information on credit risk from commercial information databases and rating agencies.

The Swiss Re study coincides with a report from Moody's Investors Service Ltd. that issues a favorable outlook for European credit insurers.

In its annual Credit Insurance Industry Outlook, Moody's says that credit insurance is one of the few areas in Europe's property and casualty insurance and reinsurance markets that is generating profit and growth.

According to Moody's, one of the factors behind this favorable outlook is increasing sensitivity to credit risk among companies in the European market. In addition, it notes that because of high barriers to entry, the handful of companies that dominate the market are unlikely to face significant competition from new entrants. The extensive networks created by the top European credit insurers for the distribution of their products, risk monitoring and collection are not easy for would-be competitors to replicate over the short term, the ratings agency added.

Possible challenges for the future, however, include "the volatility of the business, the historically low level of penetration and the ever-present risk of disintermediation," according to Moody's.

Moody's adds, however, that a key aspect of the financial strength of a credit insurer is the quality of its reinsurance.

"We place reinsurance close to the top of the list to emphasize its importance in the running of credit insurance business," says Moody's study. It says one reason for this is that four out of the top six European credit insurers—barring Euler and Coface—currently cede the majority of their premiums to reinsurers through quota share excess of loss treaties. "In a way, one could say that credit insurers 'front business' for a panel of reinsurers," says Moody's.

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The Swiss Re study, Sigma No. 7/2000, is available for free from Swiss Reinsurance Co., Economic Research & Consulting, P.O. Box, CH-8022, Zurich, Switzerland; 00-411-285-2551; www.swissre.com.

For information about the Moody's report, "Credit Insurance Industry Outlook," contact Daphne Hand, 212-553-0376, or the Moody's Press Desk in London, 00-44-207-772-5454.

Marine market beginning to harden: Report

By EDWIN UNSWORTH

LONDON—Even insurance brokers recognize that marine underwriters must be successful at raising rates at renewal or else they will perish, Willis Group Ltd. says in a review of the market.

Marine Market Review 2000, published this month by London-based Willis, says that the groundwork has been laid for firmer pricing in the market.

With the proliferation of multi-year insurance programs offered in the late 1990s now expiring, "underwriters will no doubt take this opportunity to impose what they consider to be long overdue increases on loss making accounts," the report notes.

A rise in reinsurance costs, both facultative and treaty contracts, combined with a reduction in reinsurance capacity, will also fuel pressure for marine insurance rate increases, the report says.

Steven Barton, chief operating officer of Willis' marine division, warns that in spite of insurers' need for higher prices, brokers, whose job it is to act in the best interests of their clients, will be trying to negotiate the best terms for the buyer.

Nevertheless, he said, brokers recognize that without an increase in rates, the financial health of the marine market will worsen, which is incompatible with buyers' need for security.

The review states that it is important that with the groundwork in place for firmer rates, the marine market "does not repeat the methodology employed at the time of the last hardening market," which was a knee-jerk impulse to raise rates across the board, without regard to the loss history of individual policyholders.

This time around, brokers will expect underwriters to "look more carefully at individual claims records, management and loyalty to the market before deciding renewal terms," said Mr. Barton.

In the London marine insurance market, there is an expectation by brokers and underwriters that in 12 months' time it will be a different place than it was at the beginning of this year, says the review. Some Lloyd's syndicates have already reduced their underwriting capacity and let underwriters go.

In the hull insurance market, the ingredients are nearly in place for terms to harden, according to the Willis report. 2000 will be another unprofitable year for underwriters, reinsurance costs are increasing, and underwriters are refusing to offer multiyear policies without some form of annual review, the report states. While it is still possible for a major shipping fleet with reasonable claims records to obtain improved terms at renewal, particularly if they switch insurers, Willis says it expects that the number of hull underwriters prepared to maintain market share with unprofitable business will continue to diminish.

The cargo market is "finally" starting to show signs of hardening, according to the review. A number of underwriters are refusing to renew on reduced terms, and in an increasing number of cases, cargo underwriters are quoting tougher terms. While there is still overcapacity, underwriters are being more selective in the risks they choose to write, it adds.

'The market is showing signs of turning with rate rises being applied to most loss making business,' says Trevor Hart.

Marine liability rates are also showing initial signs of hardening. With underwriters generally having to pay more for their reinsurance than 12 months ago, they "have come to the inevitable conclusion that premium levels must start to increase."

Overcapacity still exists in this line, and the review says that "until the number of market participants in this sector is reduced, it is difficult to see how the current effort by some underwriters to impose a general increase in rates can succeed."

Trevor Hart, active underwriter on Lloyd's syndicate 62, is quoted in the report as saying: "The market is showing signs of turning with rate rises being applied to most loss making business. The combination of reinsurance rates shooting off into orbit and a reduced number of underwriting outfits left, the premium rates on marine business will rise in the near future." BI

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Results

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holding up," said Mr. Lewis. "I believe that additional rate increases will result in improved profitability in 2001," he added.

"We expect in commercial lines to see prices continue to rise in 2001," said Jay Cohen, an analyst with Merrill Lynch & Co. in New York. "The results are still under some pressure. There's clearly still a need, as demonstrated by the underlying results, to see higher prices," he said. Furthermore, "we do expect the reinsurance market to tighten up more in 2001, and that should put added pressure on the primary companies to raise rates."

Mr. Cohen said earnings growth will accelerate next year and "should begin to better reflect the improving fundamentals."

"It's an interesting time," said Gary Thompson, senior vp for Hartford Commercial, a unit of Hartford Financial Services Group Inc., who is responsible for middle-market commercial business. Those who have been responsible in how they have managed both the pricing and profitability of their books of business can look forward to improved earnings over the next 12 to 18 months, Mr. Thompson said.

But the outlook is not positive for everyone.

In addition to the matter of the lag time between price hikes and their impact on the bottom line, "There are some companies out there that have some pretty serious issues to face on their balance sheet first," before strong revenues can be reflected, said Michael Smith, an analyst with Bear, Stearns & Co. in New York.

"Over the last decade or so, loss reserve trends have steadily weakened to the point where the industry looks like it's in a loss reserve deficit situation," he said. Furthermore, other indicators, such as paid-to-incurred ratios and cash flows from operations, "are not only worse than they were in the 1983-84 period that led up to the last upturn, but they're worse than we've see in the post-World War II period," said Mr. Smith.

"This is a sick industry. It's been living off its balance sheet for 10 years," and it must be built back up before it starts to show earnings, said Mr. Smith.

John L. Ward of the Cincinnati-based Ward Financial Group Inc., said, "A lot of companies are looking to loss reserves for earnings relief." Some insurers are "tapping into that source of earnings too aggressively, and it may come back to bring some negative news down the road." It is "an issue that's sort of lurking around the environment, particularly on the commercial side," said Mr. Ward.

Among the nine-month results for the 19 companies surveyed by *Business Insurance* were:

- Net income—which was reported by only 16 companies—rose to $9.17 billion, a 17.3% increase over the first nine months of 1999.
- Net premiums written increased to $65.40 billion, up 8.2% compared with the nine-month period in 1999.
- Insurers posted a 104.2% combined ratio vs. a 105.6% ratio for the comparable period a year ago.
- The policyholder surplus of the 15 insurers that reported this data stood at $50.69 billion as of Sept. 30, down 0.7% from a year earlier.

Probably the most significant development during the third quarter "was not on the bottom line but on the top line, in that you saw premium comparisons noticeably improve for a number of companies," said Mr. Frank, who cited American International Group Inc., Chubb Corp., Hartford and The St. Paul Cos. Inc. in their commercial businesses.

"And what that's telling you...is that the cycle turn, which until now was pretty much anecdotal, is now becoming tangible in the reported results of the companies, at least on the top line," said Mr. Frank. "In other words, the business of kicking bad business out the door is winding down, and the accelerating price increases are starting to show up on what's being kept."

'We expect in commercial lines to see prices continue to rise in 2001,' says Jay Cohen of Merrill Lynch.

Hartford's Mr. Thompson said nine-month results are "all over the place." Hartford began pushing price hikes in the second quarter of 1998, "so we're beginning to see certainly some meaningful improvement in trends across our books of business," he said.

Earnings in the nine-month period were pretty much in line "with rather modest expectations," said Mr. Smith of Bear, Stearns. The management commentaries that accompany results have been better than the actual results, he said, with price hikes continuing to increase each quarter and more segments "getting on board."

In addition, the brokers are excited, and "we haven't seen any brokers excited since 1987," Mr. Smith said. "Even the reinsurance companies are starting to talk now about the tightening market, so commercial lines seem to be making some pretty good progress. It hasn't shown up in the numbers yet, but I think that's about to."

Although "underwriting results are still somewhat spotty, the price increases we have been hearing about for some time are beginning to help many of the companies," said Mr. Cohen of Merrill Lynch.

He added, however, "there's still clear margin pressure on the numbers." In addition to the lag between price increases and their full reflection in earnings, companies have not been able to release loss reserves as aggressively as they did last year.

"In fact, in some cases we're seeing some companies add to reserves modestly," which "makes for tough earnings comparisons," Mr. Cohen said. Furthermore, he added, claims inflation "is still eating into some of those price increases."

Warburg Dillon Read's Mr. Lewis said that while it was a good third quarter for insurers, it "could have been better, considering how light catastrophic loss activity was, and factoring in rating increases achieved to date and actions instituted by the more disciplined underwriters in the field to enhance their operating results."

While there is still room for improvement in results, analysts expect the property/casualty industry's stocks to continue to do well. According to the *BI* Stock Index, insurers and reinsurers have enjoyed a 15.6% boost in their stocks for the 52 weeks ending Nov. 17, though there was a 0.7% decline for the week that ended Nov. 17.

"The stocks have done quite well this year," said Mr. Cohen. "Valuations are now reaching probably a 10-year high, so the positive fundamental changes going on in commercial lines have not been lost on the market. The stocks are saying that the market is convinced that things will continue to get better and earnings will improve."

As for the future, "I would not expect to see the types of returns we've seen for the past seven months, but I think the group will remain in favor, and I think the stocks can generally perform well over the next six to 12 months," said Mr. Cohen.

Mr. Frank of Salomon Smith Barney said: "clearly, the easy money in the group has been made. However, with price increases at the primary commercial level accelerating, and with signs that the reinsurance market is also beginning to tighten," the group will probably outperform the overall market for a while longer, he said.

"I still think the industry will outperform the market," agreed Mr. Lewis, who said this momentum will be "led by further rate increases, positive earnings surprises and the possibility of increased (merger and acquisition) activity."

"As long as written premiums continue to grow at an accelerating rate, then investors are likely to buy these shares enthusiastically," said Mr. Smith. Especially in an environment where so many other market segments seem to be having a decline in earnings, "insurance stocks start to look like a pretty safe haven," he said.

"There certainly has been some help from the flow of funds out of technology and into other safe havens," including insurance, agreed Gary Ransom, senior vp at Hartford, Conn.-based Conning & Co. "You have to give yourself a little more time at this point to see the stocks go higher." BI

Major property/casualty insurers' nine-month 2000 results

Ranked by change in net income. All amounts in thousands of dollars.

	Corporate			Property/casualty operations					
	Net income 2000	Percent increase (decrease) 1999-2000	Consolidated revenues 2000	Combined[1] ratio 2000	Combined[1] ratio 1999	Net premiums written 2000	Percent increase (decrease) 1999-2000	Policyholder surplus 2000	Percent increase (decrease) 1999-2000
1 CNA Financial Corp.	$1,021,000	473.6%	$11,690,000	114.3%	112.6%	$6,250,000	(24.2)%	$8,120,000	2.4%
2 ACE Ltd.	429,194	101.6	4,022,871	95.6	100.2	3,867,711	135.3	5,240,505	35.6
3 Travelers P/C Corp.	1,101,000	25.8	8,139,000	102.2[2]	103.5[2]	6,597,000	5.9	N/A	N/A
4 Chubb Corp.	546,200	19.4	5,399,500	99.9	103.4	4,727,700	10.0	3,406,400	9.9
5 Old Republic	204,880	15.3	1,513,206	107.2[2]	110.4[2]	653,975[2]	1.5	1,368,903	(1.3)
6 The St. Paul Cos.	800,000	15.0	6,388,500	105.0	108.1	4,382,800	11.0	6,198,300	21.5
7 American International Group	4,138,756	10.6	33,456,722	96.0	95.5	13,023,490	6.6	N/A	N/A
8 Hartford Financial Services	701,000	9.7	10,804,000	103.0[2]	103.5[2]	5,534,000[2]	9.4	5,602,000	(27.8)
9 Cincinnati Financial Corp.	166,999	(8.2)	1,749,867	104.4[2]	102.0[2]	1,377,439[2]	11.0	2,882,062	3.7
10 RLI Corp.	20,900	(13.2)	194,100	94.6	91.0	203,700	13.7	N/A	N/A
11 SAFECO Corp.	104,400	(49.7)	5,434,300	110.9	107.8	3,485,200	(1.3)	2,440,600	(11.6)
12 Hartford Steam Boiler	21,500	(65.7)	507,500	102.6	91.5	363,700	35.4	396,800	(22.2)
13 American Financial Group	38,900	(69.3)	2,833,300	108.8	100.8	1,971,900	16.8	1,579,100	(4.4)
14 Royal & SunAlliance USA[2]	2,000	(98.1)	N/A	107.8	110.9	2,307,000	85.3	3,181,000	(2.4)
15 Ohio Casualty Corp.	(68,661)	(167.9)	1,294,518	119.9[2]	114.3[2]	1,160,370[2]	(2.6)	837,004	(4.7)
16 Argonaut Insurance Co.	(59,276)	(317.2)	130,897	260.8[2]	123.7[2]	79,743[2]	22.1	440,782	(30.2)
—Kemper Insurance Cos.	N/A	N/A	2,482,947	110.0[2]	110.7[2]	2,067,694[2]	9.5	2,130,598	(14.7)
—Liberty Mutual[2]	N/A	N/A	N/A	113.6	116.7	6,560,000	5.0	6,867,000	(0.8)
—Fremont General Group	N/A	N/A	903,632	166.1	120.4	786,765	24.8	N/A	N/A
Cumulative	$9,168,792	17.3%	$96,944,860	104.2%	105.6%	$65,400,187	8.2%	$50,691,054	(0.7)%

[1]After dividends [2]Statutory N/A-Company did not provide data

Rip Van Winkle for president

Many people are aghast that so many voters in Palm Beach County, Fla., mistakenly cast their votes for an unintended candidate during elections earlier this month.

In case you were on the dark side of the moon on Nov. 7, or reside in West Palm Beach and do not know what transpired, allow me to quickly bring you up to date. What happened was that the polling places in Palm Beach County opened very early in the morning and many of the voters were still asleep when they cast their votes. Thousands of them in fact. There can be no other explanation.

As a result, rather than elect Al Gore by a landslide, the heavily Democratic county wound up with a nearly equal number of votes for Gore and George W. Bush. And a couple thousand votes for right-winger Pat Buchanan as well. Also, about 20,000 votes were set aside because either they were not completely punched or were punched too often.

This is regrettable but understandable because, as of Election Day, only about a week had gone by since U.S. clocks had been adjusted to reflect the end of daylight-saving time. It now is clear that not enough time had transpired for these Floridians' internal clocks to make this adjustment and regain equilibrium. As a result of this wrinkle in the space-time continuum, thousands of Floridians literally were sleepwalking through the voting process.

Paul D. Winston

Not only did they not have their eyes open wide enough to discern that there was more than one candidate running for office, but they also apparently lacked the strength that typically comes with wakefulness to firmly punch a pointed metal stylus through a piece of paper to signal their intended vote.

Naturally, when they did wake up later that day, after a third cup of Sanka, they were horribly embarrassed and claimed they were defrauded and hoodwinked; eventually, many of them came to believe this was true.

Normally this sort of mass error is not a problem, because normally strong, charismatic and distinguishable candidates are running for office and someone wins a big majority of the votes—enough to cover the thousands of mistaken votes cast in a place like Palm Beach County and still assure victory for the candidate these folks *would* have voted for had they been fully awake.

If the Floridians had been awake and their votes had given the state's electors a clear winner, we probably all would be thinking about the turkeys soon to grace our tables on Thanksgiving instead of the turkeys who are fighting in court to represent Florida in the White House. No such luck.

But I say don't blame those Floridians, no matter what everyone is saying about them. The wayward voters of Palm Beach County should hold their heads high—when they're awake, that is—because the laws of this great land are supportive of their predicament. That's right, our legal system—the pride of the free world—protects these and other narcoleptic individuals from charges of negligence.

It's true: a federal appeals court last month ruled that just because an attorney slept through much of his client's Houston murder trial does not mean the client is entitled to a new hearing with more alert representation. If that isn't an affirmation of the rights of the drowsy in this great nation, then I don't know what is (or else maybe you should pinch me to make sure I'm awake).

The majority opinion by the 5th U.S. Circuit Court of Appeals in *Burdine vs. Johnson* held that simply because an attorney nods off during a trial is not prejudicial against his client, per se. In this case—in which the defense attorney allegedly conked off frequently and at times was noted to be snoozing for 10 minute-stretches—the defendant wound up getting the death penalty. Oops.

Surely if one is not required to stay awake and try to save a client from lethal injection in Texas, one cannot be expected to stay awake for more mundane matters like choosing a president.

As soon as all the fuss in Florida quiets down, we can all go back to napping for the next four years. Wake me when it's over.

Editor Paul D. Winston's commentary appears fortnightly and on www.businessinsurance.com. He can be reached at pwinston@crain.com

Claims

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plan administrator would have 48 hours to make a benefit determination.

For non-urgent pre-service claims, a plan administrator would have 15 days after the receipt of a claim to make a benefit determination.

However, this 15-day deadline could be extended by another 15 days in certain situations. Such extensions would be allowed if the plan administrator both determines that an extension is necessary due to reasons beyond its control and notifies the enrollee—prior to the end of the first 15-day deadline—that more time is needed to render a decision. If the reason for the extension were the enrollee's failure to provide sufficient information for the plan to make a decision, the enrollee would have 45 days to provide the necessary information.

For post-service claims, benefit determination would have to be made within 30 days of receipt of a claim. This 30-day deadline could be extended once for up to 15 days by the plan administrator if the extension is for reasons beyond the control of the administrator. If the extension is necessary because the enrollee hasn't provided information needed to process a claim, the enrollee would have 45 days to provide it.

Generally, enrollees would have up to 180 days to file an appeal of an adverse benefit determination. If an enrollee appeals a benefit determination, plans would have 72 hours—in the case of an urgent pre-service claim—to rule on an appeal and 30 days for other pre-service claims. For post-service claims, plans would have 60 days to rule on appeal.

These new deadlines are a significant liberalization from the proposed rules first issued in 1998, which immediately triggered a firestorm of criticism.

Among other things, the original deadline proposals made no distinction between claims delivered before or after a service or procedure was performed.

In addition, the deadlines themselves were much tighter. For example, benefit determinations, in the case of non-urgent care, were supposed to be resolved within 15 days. But the proposed rules also would have required plans to notify enrollees within five days if information was incomplete. In effect, that would have created a five-day deadline, which plans said would have dramatically increased their administrative costs, while leading to more claims processing errors and hindering their ability to spot fraud.

Plans are applauding the Labor Department for revamping and liberalizing the deadlines.

"The Department of Labor clearly responded to a number of concerns that were raised. We believe the deadlines are consistent" with what is going on in the marketplace, said Kathryn Wilber, executive director for private market regulation for the American Assn. of Health Plans, a managed care trade group in Washington.

"There is ample evidence that the department listened to the concerns the business community raised. This is a significant improvement and regulators deserve credit for that," said Paul Dennett, vp-health policy at the American Benefits Council, a Washington-based lobbying organization representing employers.

Still, the final rules are a much tougher standard for plans to follow than the 1977 regulations they will replace. Under the 1977 rules, plans had up to 90 days to make benefit determinations.

"This is a much more stringent standard than what had existed," said Mark White, a consultant with Watson Wyatt Worldwide in Washington.

Indeed, the regulation likely will boost costs as plans have to beef up their claims handling staffs and increase investments in technology to process claims faster. The department estimates that, starting in 2002 when the regulation goes into effect, overhead costs will increase by $379 million.

But on a per participant basis, the added cost is modest. The department pegs the annual cost of complying with the new rules at $2.77 per health plan enrollee.

"The cost to carry out any particular claims transaction is likely to be low, but claims volume is high (1.4 billion health benefit claims per year), so aggregate costs are substantial," the department said in the regulation, published in the Nov. 21 Federal Register.

Some benefit experts say that higher administrative costs could be offset if faster resolution of claims leads to patients getting treatment faster.

"I would hope this would lead to fewer people being hurt by delays," said Marc Machiz, a partner in Cohen, Milstein, Hausfeld & Toll in Washington.

The regulation will apply to self-funded plans. In the case of fully insured plans, such as those offered by health maintenance organizations, the regulation sets a minimum standard. However, states still will be allowed, if they so choose, to set tougher rules for insured plans. BI

State

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half long, also quickly ran into trouble in the state General Assembly. The General Assembly approved GOP-introduced legislation banning the use of state funds to promulgate a standard.

The General Assembly's action paralleled that of Congress, which has repeatedly passed legislation that barred OSHA from using appropriations to issue a standard.

But the state standard also ran into trouble with the Rules Review Commission, a state agency that oversees regulations.

"The proposed North Carolina standard was blocked by (the) Rules Review Commission, several members of which are appointed by the General Assembly. The bottom line is that the commission, with which the commissioner respectfully disagrees, determined that the department did not have the authority to move forward in enforcing such standard last December," said a spokesman for Commissioner Payne.

"The rules review commission looked at it and decided that it wasn't effective because of certain vagueness and ambiguities," said Mr. Senn.

"In May, the commissioner moved forward and filed suit challenging that particular decision by the Rules Commission," Mr. Payne's spokesman said. The suit, which is still in the pre-trial stage, is before the Wake County Superior Court in Raleigh.

The ergonomics emerged as an issue in the electoral race to succeed Mr. Payne. The Democratic candidate—Doug Berger—said that he favored promulgation of a standard, although not as stringent as that initially proposed by Mr. Payne. His Republican opponent—state Rep. Cherri Berry—weighed in against a standard like Mr. Payne's, holding that it would harm the state's economy. The winner of that race has yet to be certified; Ms. Berry unofficially held a narrow lead over Mr. Berger.

It is not clear whether Ms. Berry, if she wins, would be able to rescind the standard. Nor is it clear if Gov. George W. Bush becomes president whether his new administration could quickly rescind the federal rule.

The federal rule, as well as the North Carolina adoption of it, takes effect Jan. 16, giving employers 11 months to meet the requirements.

Mr. Payne's decision to adopt the federal rule as the state rule took some opponents a bit off guard.

"We were not aware that they were going to promulgate—they just did it," said RIMS' Mr. Toay. He added though, that doing so made sense because states that issue their own workplace safety rules have to "meet the minimum standards proposals by federal OSHA" and adopting OSHA's own standard was the most effective way to do so.

Phil Kirk, president of Raleigh-based North Carolina Citizens for Business and Industry, the state's major employer trade group, said he was not surprised by the commissioner's action and said the group may seek to have a state court block imposition of the standard.

"We were not surprised that the commissioner thumbed his nose at our legislature again," he said. He called the act a "last ditch effort by a politician on his way out," much as the Clinton administration issued its final ergonomics standard during its last few weeks in office.

The Labor Department spokesman disagreed with that assessment.

"Commissioner Payne has been a longtime proponent of an ergonomics standard, long before he decided not to seek another term in office. Obviously, he supports addressing the issue of ergonomic and ergonomics problems and he moved forward with a proposal for an ergonomics standard. That proposal is under litigation," he said.

Mr. Kirk called issuance of any ergonomics standard "premature, pending results of a congressionally mandated study of ergonomic-related disorders by the National Academy of Sciences.

"After the NAS study is completed, we may change our mind. We believe it is unnecessary and too costly" and that a voluntary approach by businesses is more effective, he said.

"We will continue to oppose it," Mr. Kirk promised. The employer group hasn't decided whether to seek judicial relief. BI

Partner

Continued from page 1

of unmarried workers with certain benefits not governed by the federal Employee Retirement Income Security Act, such as family medical leave and free travel. She subsequently ruled the airlines must begin the process of providing these benefits within 30 days (*BI*, July 12, 1999).

The ATA contends that federal transportation laws pre-empts local ordinances, including San Francisco's domestic partner statute, said the spokesman. Otherwise it "would be virtually impossible to operate a national transportation system" and to fly "unencumbered from city to city without having to meet what could best be construed as a patchwork quilt of local ordinances."

Kevin Theriot, Western regional counsel for the American Center for Law & Justice, agreed that the ordinance violates federal laws. "If we allow the individual municipality to legislate in ways that specifically is meant to control businesses in other states—in our case that was Tallmadge, Ohio—then you've got problems of free commerce being able to be conducted across state lines," he said.

Mr. Theriot did not address the issue of providing benefits to domestic partners from a moral or religious perspective at the oral arguments, despite Mr. Robertson's opposition to legitimizing same-sex relationships. He subsequently said, though, that it is relevant in the sense that "it's clear that other municipalities don't believe you should elevate domestic partnership to the same level of marriage." It is unlike racism, he added, which is illegal in every municipality.

A spokesman for the San Francisco's city attorney's office could not be reached for comment. BI

Vail

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which were around 12 degrees Fahrenheit, he said.

Investigators found that the cause of the blaze was a faulty fireplace chimney. The investigators—including those from the Bureau of Alcohol, Tobacco and Firearms—also will be looking at why the one water supply was frozen. Federal investigators were called in because local teams have limited resources, according to Mr. Gulick.

ATF investigators also were called to Vail in 1998 to investigate a series of arson fires that caused $12 million in damage to the ski areas facilities on Vail Mountain. A group called the Earth Liberation Front, which had been protesting the ski area's expansion into a lynx habitat, claimed responsibility for the fires; however, no arrests have been made. BI

Privacy

Continued from page 2

cluded provisions aimed at allowing insurers to conduct essential claims handling and processing tasks.

- The NCOIL model "takes a less restrictive approach than the NAIC regarding medical privacy," Ms. Nolan said.

NCOIL 'takes a less restrictive approach than the NAIC regarding medical privacy,' says Susan Nolan.

Under NCOIL's approach, an insurer is required to seek an individual's signature on an "opt-in form," which provides permission to use data, only if it wishes to use personally identifiable medical data solely for the purpose of marketing.

Under the NAIC model, personally identifiable health information can't be disclosed under most circumstances, unless the individual signs an annual opt-in form.

"We felt we had to address it at the lowest possible level" in light of the fact that the U.S. Department of Health and Human Services has not yet released its federal privacy regulations, Ms. Nolan said.

The NAIC's goal had been to provide protection for consumers until HHS regulations go into effect. NCOIL's overall goals were to "give insurers a level playing field with other financial institutions at the same time preserve the regulation of insurance at the state level and protect consumers," Ms. Nolan said.

Federal banking regulators already issued privacy rules for the institutions they govern, though enforcement of the rules for both banks and insurers has been postponed until July 2001.

The NCOIL model is getting a mixed response from observers.

Property/casualty trade groups such as the Alliance of American Insurers and the National Assn. of Independent Insurers, support the NCOIL model, while opposing the NAIC model.

In addition, while favored by some insurers, adoption of the NCOIL model would have no direct impact on the buyer of commercial property/casualty insurance, said Rey Becker, vp of property/casualty for the Alliance in Downer's Grove, Ill.

On the other hand, the American Insurance Assn. prefers that state legislatures consider only the NAIC model for the sake of uniformity. The AIA also fears that legislative consideration of both models may delay enactment of state privacy rules for insurers beyond the July 2001 deadline, said Patricia Holden, assistant vp of state affairs for the AIA's Midwest region in Skokie, Ill.

Texas Insurance Commissioner Jose Montemayor, who attended NCOIL's recent meeting, said he will "strongly recommend" that Texas legislators adopt the NAIC model, but also will make them aware of NCOIL's model proposal.

"We are very deferential to our legislators in Texas," he said. BI

Cathedral

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of 2010's total premium volume.

Cathedral was originally set up by Bankside Syndicates Ltd. as a "spread vehicle" to invest in a number of Lloyd's syndicates. Elvin Patrick, who was at Bankside and left shortly after its acquisition by Limit Underwriting Ltd., spearheaded Cathedral's move to launch its own syndicate and has been named 2010's active underwriter.

The new syndicate is "an old-fashioned-type business"—the sort a lot of other underwriters at Lloyd's wish they had, Mr. Patrick said. Because it is a small operation with only a few people, it lacks the "bureaucratic, hierarchic structure" that hinders the decision-making of other syndicates, Mr. Patrick said.

In addition, everybody working at Cathedral is a principal, which Mr. Patrick says "could turn out to be a popular model."

The new syndicate has already attracted considerable client and broker interest, partly because it is independent and partly because it has a strong team of experienced underwriters, said Mr. Patrick.

"We have ambitious long-term plans, but our first priority is to establish ourselves as a market-leading syndicate, based on consistent, technically sound underwriting and customer service."

Over time, the syndicate should develop wider risk-based products, possibly including structured balance sheet protections, he added. BI

Letters

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for speeding. Society wants to cause speeders to think twice before speeding. There is nothing like a couple-hundred-dollar fine to enhance the thought process. Do you see how this is a public issue? Even as traffic ticket fines go to the people at large, punitive damages should go to the state and not to the plaintiff and the plaintiff's attorney.

Yes, punitive damages should be substantial. Yes, they should be within the bounds of the Constitution. But put them in the public's pocket where they rightfully belong. Paying some individual $20 million to spank a large corporation for a wrongful act is unconscionable.

Dean D. Young Sr.
Agent
Professional Insurance Services
Newtown Square, Pa.

London

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istration involved in a risk.

- A single underwriter or predetermined number of underwriters responsible for the claims administration process. The aim of this initiative is to give the broker one point of contact.
- A London Market Standards Agency to collect and publish marketwide aggregate data to enable participants to benchmark their performance.
- Premium payment terms agreed at the time of placement. This is intended to avoid disputes or questions arising during the term of the policy.

Risk managers would welcome any moves to streamline the way business is done in the London market, said David Gamble, chief executive of the London-based Assn. of Insurance & Risk Managers. "AIRMIC must welcome any effort to improve service from the London market," he said. "It is something that everyone has been saying for a long time needs to be smartened up. There are lots of plus points about the way the city is organized, but until it can be demonstrated that service has been sorted out, there will always be questions," he said. "We are very positive towards any efforts to improve service, and we hope that they will produce the goods."

Insurance buyers should indeed welcome the changes, according to Simon Harrap, chairman of the LIBC. "Our customers still want to use London, but they are put off by our out-of-date working practices," he said. "I am confident this reform package will give us the necessary impetus to remain a world-class center."

Among the proposed reforms is the creation of a London Market Standards Agency to collect and publish marketwide aggregate data. This would enable market participants, and eventually insurance buyers, to measure the performance of London market participants against an aggregate set of benchmark standards.

'Our customers still want to use London, but they are put off by our out-of-date working practices,' says Simon Harrap.

Adopting the new service standards is voluntary, but Tim Carroll, chairman of the IUA, said he hopes they would provide an incentives to companies to improve their performance. "If a company is above the benchmark that will hopefully be a selling point," he said. "And if it is below the benchmark then that should act as an incentive."

A pilot program involving 12 London market companies is already under way, and details of the structure of the LMSA, the standards agency, will be announced in early 2001, Mr. Carroll said.

Companies will pay a small fee, in the hundreds rather than thousands of pounds, to use the LMSA service on a pay-as-you-go basis, said Mr. Carroll. The LMSA service would make use of computer software to benchmark companies and would include seven benchmarks for brokers and four for underwriters, said Marie-Louise Rossi, chief executive of the IUA.

The LMP2001 program will not only streamline business transactions in the London market but may also help to bring down transaction costs, said Mr. Carroll. "Lots of these (reforms) are behavioral changes so there is a relatively low cost," he said. "It does require some investment in technology, but after that, we will really start to see the benefits," he said.

Thirteen London market organizations, including brokers Aon Group Ltd. and Willis Group Ltd., have already signed up to the LMP2001 program.

Benefits for buyers will include: clarity of contract terms and faster receipt of contract documentation; faster receipt of claim settlement; clarity and faster receipt of full insurance contract details; faster confirmation of contract changes; faster agreement and settlement of claims; measurement of performance and improved overall service, the IUA said.

"This is proof, if any was needed, that the London market has woken up to the challenges of the new global insurance industry," Lloyd's Chairman Max Taylor said in a statement. "With these reforms, we're signing up to world-class service standards to match the world-class expertise that London has traditionally provided," he said. BI

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Continued from page 2

ed, drew 100 responses, she said. The CIAB's members collectively place more than 80% of the nation's commercial property/casualty insurance premiums.

The most recent survey found that medium-sized commercial accounts, defined as those generating between $25,000 and $100,000 in annual fees and commissions, experienced the greatest degree of hardening when comparing the market during July 1-Sept. 30 with the previous three-month period.

Fifty-four percent of those midsize accounts reported pricing increases of more than 10%, compared to 26% of the small accounts—those generating less than $25,000 in annual fees and commissions—and 49% of the large accounts, which are those generating more than $100,000.

In fact, 97% of the medium-sized accounts reported some degree of price firming, compared to 88% of the large accounts and 73% of the small accounts. A full quarter of the small accounts reported no change in pricing, and 2% reported a decrease of as much as 10%—the only category to report softer pricing.

The CIAB index found that commercial automobile coverage was experiencing the greatest degree of hardening for medium and large accounts in the third-quarter, with 90% of the respondents in both of those size categories calling market conditions—in terms of pricing and underwriting—either "somewhat hard" or "very hard" for that line. Only 10% reported no change in the third quarter.

A majority of the respondents in those categories also used those two terms to describe conditions in workers compensation, property and general liability markets when comparing the third quarter of the year with the previous three months (see chart, page 2). Eighty percent called the workers comp market "somewhat hard" or "very hard," while 18% reported no change and only 2% called it either "somewhat soft or very soft."

Eighty-three percent reported some degree of hardening for property accounts, while 16% reported no change and only 1% characterized that line as "somewhat soft." Two-thirds—67%—of the respondents called general liability "somewhat hard" or "very hard," while 30% reported no change. The rest called it "somewhat soft."

The only line of coverage that a majority of respondents did not categorize as hard to some extent was umbrella liability insurance. The majority—54%—instead described umbrella as undergoing no change. Thirty-eight percent reported conditions as "somewhat hard," 4% as "very hard," 2% as "somewhat soft" and 1% as "very soft."

Umbrella's status as the odd line out probably won't last indefinitely, according to Alice Cornish, vp-research for Prudential Securities Inc. in Boston.

"The major commercial line that appears to be the softest is umbrella. Based on comments that we're hearing from companies, I would expect that when we look at January renewals, that line would change as well," she said.

"You can see a very clear trend of a firming market" overall looking at the results of the CIAB surveys throughout the year, she said.

But both Ms. Cornish and Ms. Kemper stressed that the conditions do not appear to indicate the onset of an extremely hard market, such as that seen 15 years ago.

"It certainly doesn't appear to be another 1985. It appears to be a very orderly and much-needed correction in commercial insurance prices," said Ms. Cornish.

"I think there are a couple of differences. In '85, you had pretty much across-the-board rate increases, particularly in liability," said Ms. Kemper. "There was a liability crisis. There was also a lack of capacity that also fueled the dramatic rate increases.

"Today, you have a different situation. In certain high-risk areas, increases have been more dramatic, such as nursing homes. There is still a tremendous amount of capacity in the marketplace that may, in the long run, keep the rates from spiking," Ms. Kemper said.

Both said that the index is of value to risk managers and producers alike.

"From a buyer's perspective, it would give additional credibility to the message the broker is giving them," said Ms. Cornish.

"As an example, the one line that has seen fairly uniform price increases is auto. If someone were renewing their program, this type of information would give them some idea of where their renewal fits in generally, but it would also give them an indication that everyone is getting a price increase of one form or another," she said.

"It's important for the buyers to know what the market is doing," agreed Ms. Kemper. The CIAB index can act as "kind of a benchmark, so that both the member and the buyer would have information about what's going on around the country."

She said with rates going up, the index allows the risk manager and the broker "to look at the whole risk" and see if there are ways for the client to offset the impact of the rate increases by retaining more risk, risk shifting or reducing risk.

The CIAB index also found that group medical pricing is continuing its climb for accounts of all sizes, a trend that has also been evident throughout the year.

Fifty-seven percent of both small and medium-sized accounts reported that group medical pricing had gone up by more than 10% in the third quarter compared to three months earlier, as did 44% of large accounts. Twenty-seven percent of small accounts reported increases of up to 10%, as did 29% of the medium-sized accounts and 33% of the large accounts. Only 3% of the small accounts, 2% of the medium accounts and 5% of the large accounts reported no change, and the remainder of each category did not report group medical market conditions.

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For more information about the CIAB index and the most recent findings, contact Jacob Tsizis, communications associate, at jtsizis@ciab.com

FOR THE RECORD

Excerpts from *BI*'s Daily Online Updates, Nov. 20 - Nov. 22, 2000

FORD SETTLES HARASSMENT SUIT A class-action sexual harassment lawsuit filed by 14 women against Ford Motor Co. was settled Nov. 17 for $9 million. This settlement supersedes a $7.5 million settlement of the same claims that the automaker reached in September 1999 with the U.S. Equal Employment Opportunity Commission. According to the plaintiffs' attorney, Keith L. Hunt of Hunt & Associates P.C. in Chicago, "the judge reviewed the lawsuit and found that the EEOC's lawsuit lacked bite and didn't provide meaningful protection for the women in the class." The $9 million will be paid out to an estimated 1,043 women, though only 150 have filed to date. Claimants have until mid-January 2001 to file for participation in the class. The settlement was approved by U.S. District Judge Elaine Bucklo in the U.S. Northern District Court in Chicago. Ford could not be reached for comment. The Dearborn, Mich.-based automaker reported it did not have insurance for the settlement at the time of its EEOC agreement.

URAC SCORING SYSTEM The American Accreditation HealthCare Commission/URAC, which establishes standards and accredits managed care companies, has adopted a new scoring system for its health plan accreditation program. Under the newly released system, a numerical weight is assigned to each standard to indicate its relative importance. The most important standards receive the highest weight and must be achieved to receive URAC accreditation. Health plans must also comply with the organization's other standards and score a certain level of points to obtain accreditation. The current system that is being replaced has a list of "shalls" and "shoulds" instead of quantitative measures. To become accredited under the current system, plans must comply with all the "shall" standards and 60% of the "should" standards. But under the new system, a plan would receive a rating from 0, for non-compliance, to 4, for total compliance, for each standard. The standards themselves have a weight assigned to them, from 1 to 5, with 5 being the most important. When accrediting a plan, Washington-based URAC will multiply the rating by the weight given to the standard to arrive at a figure. For example, a 3 rating given on a standard with a weight of 4, yields a score of 12. This is then compared to the possible top score for that standard of 16. Then, a final score is assigned to the plan based on the percent of the possible scores it attained. The new scoring system will go into place when URAC revises its standards for its various accreditation programs. This is set to start in 2001 and continue into 2002.

TIME WARNER TEMPS New York-based Time Warner Inc. will pay $5.5 million to settle a Labor Department lawsuit alleging that the media conglomerate denied benefits to certain employees by incorrectly classifying them as temporary workers or independent contractors.

The federal government sued Time Warner Inc., Time Inc. and its subsidiaries in October 1998, alleging they denied health and pension benefits to hundreds of eligible workers, including writers and photographers for the company's subsidiary publications (*BI*, Nov. 2, 1998). According to the Labor Department's suit, the workers were not informed of their right to participate in corporate pension and health plans. Time Warner did not admit to any wrongdoing as part of the settlement. The company did not disclose the number of workers affected, though the settlement applies to all employees who worked at the publishing subsidiary between 1992 and 1997.

LLOYD'S AVIATION LOOKING UP Lloyd's of London aviation syndicates likely will report four consecutive loss years for 1997-2000, but they are showing improved longer-term prospects, according to a report by London-based Moody's Investors Service Ltd. Of the aviation syndicates trading in 1998-2000, 85% are forecast to report losses for 1998, as opposed to 78% for 1999 and 60% for 2000. Under Lloyd's three-year accounting system, the next accounting year, 1998, will close on Dec. 31. "In light of the continuing losses forecast by Moody's and the squeeze that direct writers are liable to face as a result of the likelihood of reinsurance protection premiums increasing more than primary premiums, the sector has a negative short-term outlook," said Dominic Simpson, Moody's senior analyst and author of the report. But, the report adds, because of premium growth potential and current efforts to raise rates, Lloyd's aviation sector has a better longer-term outlook.

INSURITY SCHOLARSHIP Insurity Solutions Inc., a commercial insurance software application provider, announced last week the recipient of its first Insurity Solutions Scholarship at Georgia State University, worth an estimated $2,500. Cynthia Wilson, a junior in GSU's Risk Management and Insurance program, won the scholarship because she carries a 3.9 grade point average and has demonstrated a high degree of interest in actuarial science and risk engineering and in the technology that is a part of both disciplines, according to an Insurity statement. "We are thrilled to be partnering with the pre-eminent college in the country in our field and very excited to have a young woman as bright and committed as Cynthia Wilson as our first scholarship winner," said Clyde Owen, president of Atlanta-based Insurity Solutions. The scholarship will be awarded annually.

E.C. EYES LLOYD'S REGULATION For the second time this year, the European Commission is seeking clarification from the British government about its regulation of Lloyd's of London in the wake of a number of complaints it has received from Lloyd's investors. The E.C. Financial Services Commission has asked HM Treasury and the U.K. Financial Services Authority, which jointly regulate Lloyd's, to clarify issues relating to regulation of individual Lloyd's investors, known as names. One of the E.C. complaints comes from the U.K.-based United Names Organisation. One of its co-chairmen, Katherine McKenzie-Smith, said the complaints are being brought on the basis of the European Union's non-life insurance directive 1973/239. Under this directive, she said, E.U. member countries have a duty to responsibly regulate their insurance operators, which she alleges the British government has failed to do in relation to Lloyd's. The names' complaints stem mainly from large losses suffered at Lloyd's in the 1980s, which resulted in financial calls on names to help pay claims. A Lloyd's spokesman said that Lloyd's has not yet been asked by the U.K. government to help respond to the E.C. commission's request for more information. He added, however, that the E.C. investigation "is not particularly relevant" because it relates to Lloyd's policies in the 1980s. A spokesman for HM Treasury would not comment on the nature of the information requested, but he said the U.K. government has been given a standard six weeks to answer the Financial Services Commission's questions. Answers to an earlier list of questions were given to E.C. regulators by HM Treasury in February.

BRIEFLY NOTED Philadelphia-based CIGNA Corp. has named Barry H. Caldwell vp of government relations in Washington. He will oversee federal and state government affairs for the insurance company, as well as its political action committee....Ulico Casualty Co. has introduced a **new trustee and fiduciary liability claims-made insurance policy**. The coverage, which is available in most states, is designed to address liabilities arising out of benefits administration. Enhancements to Washington-based Ulico's policy include: broader definition of claims to include coverage of injunctive and equitable relief; coverage of COBRA administrator errors and omissions; spousal liability coverage; and expanded IRS penalty coverage....Daytona Beach, Fla.-based brokerage **Brown & Brown Inc.** has bought independent agent The Flagship Group in Norfolk Va. The Flagship Group, which employs 35 people, specializes in providing coverage for fishing and river vessels. BI

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

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BI Industry Stock Report NOV. 20, 2000, THROUGH NOV. 22, 2000

BROKERS

		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Aon Corp.	NYS	29.88	-3.82	-25.31	42.75	20.69	2161
Brown & Brown	NYS	31.50	-2.51	64.44	34.81	15.63	36
Clark Bardes Holdings	NDO	10.88	-7.45	-24.35	17.88	8.50	20
E.W. Blanch Holdings Inc.	NYS	16.88	-7.53	-72.45	64.75	13.00	276
Gallagher Arthur J. & Co.	NYS	58.06	-5.11	79.34	64.44	23.06	434
Hilb, Rogal & Hamilton	NYS	40.69	-0.91	44.03	42.13	25.00	88
Kaye Group Inc.	NDO	7.75	-1.59	-7.46	11.88	5.00	3
Marsh & McLennan	NYS	111.38	-8.10	16.39	135.69	70.50	4935
BROKERS	AVERAGE		-4.29	20.72			

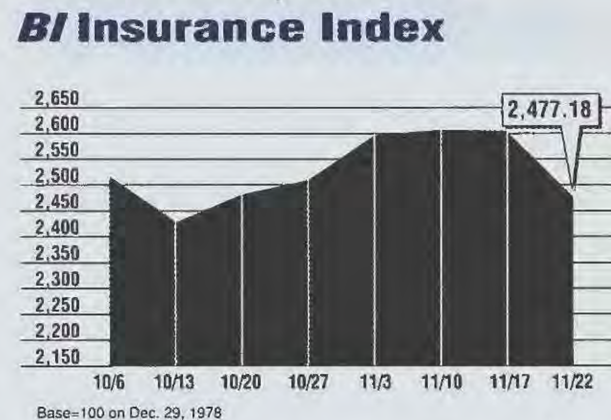
INSURERS/REINSURERS

		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
ACE Ltd.	NYS	38.38	-4.06	129.96	42.50	14.06	2416
Accel International Corp.	NDO	0.13	-69.21	-87.50	1.19	0.13	416
Acceptance Insurance Cos.	NYS	5.25	0.00	-8.70	15.13	2.75	48
AEGON N.V.	NYS	39.50	-2.77	-17.28	49.13	31.50	384
Aetna Life & Casualty	NYS	61.69	-6.71	10.53	73.69	38.50	2013
AFLAC Inc.	NYS	64.88	-4.60	37.48	74.94	33.56	2459
Allmerica Financial Corp.	NYS	60.69	-5.73	9.10	67.19	35.06	1040
Allstate Corp.	NYS	38.19	-2.08	58.70	40.31	17.19	7500
Ambac Financial Group	NYS	71.88	-3.69	37.72	83.38	38.88	1017
American Financial Group	NYS	20.31	-3.85	-22.99	30.25	18.38	163
American General	NYS	72.13	-3.75	-4.94	82.19	45.63	2801
American Intl Group	NYS	92.50	-4.95	28.32	102.56	52.38	10835
American Safety Insurance	NYS	6.50	-1.89	0.00	7.38	3.25	35
Argonaut Group	NDO	16.69	-0.74	-16.04	25.13	14.44	65
AXA-UAP Group	NYS	65.50	-6.76	-7.75	81.50	58.25	1122
Baldwin & Lyons Inc.	NDO	18.81	0.00	-14.97	23.94	15.25	36
Berkley W.R. Corp.	NDO	37.00	-1.33	77.25	38.50	14.00	522
Berkshire Hathaway Inc.	NYS	62700.00	-2.34	11.76	66500.00	40800.00	1
Capitol Transamerica Corp.	NAS	11.81	-0.53	17.39	13.25	9.38	11
Chubb Corp.	NYS	77.63	-6.19	37.85	87.56	43.25	2594
CIGNA Corp.	NYS	123.17	-3.98	52.89	134.16	60.75	2081
Cincinnati Financial Corp.	NYS	35.25	-3.92	10.59	43.31	26.19	463
Citigroup	NYS	47.06	-7.89	12.40	59.13	35.34	42926
CNA Financial Corp.	NYS	35.88	-3.20	-7.87	42.13	24.56	207
CNA Surety	NYS	11.44	-3.15	-12.02	14.94	9.81	112
EMC Insurance Group Inc.	NDO	10.00	3.90	9.59	11.38	6.81	3
ESG Re Limited	NDO	1.94	1.64	-72.07	7.75	1.72	53
Enhance Financial Services	NYS	13.44	-2.27	-17.31	19.31	8.63	970
Everest Reinsurance	NYS	57.94	-1.49	159.66	61.94	20.69	797
Fremont General Corp.	NYS	4.13	-18.52	-44.07	9.63	2.69	756
Frontier Insurance Group	NYS	0.31	11.11	-90.91	7.00	0.19	528
Gainsco Inc.	NYS	3.00	0.00	-44.19	6.38	2.94	268
Harleysville Group	NDO	23.25	1.09	63.16	23.25	11.63	159
HSB Group Inc.	NYS	38.75	-4.18	14.60	40.63	21.50	1985
HCC Insurance Holdings	NYS	23.50	-1.59	78.20	24.63	10.06	1195
ING Groep N.V.	NYS	67.25	-6.19	10.25	72.88	46.81	299
IPC Holdings Ltd.	NDO	21.44	0.88	44.12	22.88	9.75	148
Hartford Financial Services	NYS	69.06	-8.53	45.78	78.69	29.38	3226
John Hancock Financial Services	NYS	27.75	-3.06	63.24	32.00	13.44	4204
LaSalle Re Holdings Ltd.	NYS	18.88	-0.03	14.39	19.38	10.88	0
Lincoln National	NYS	42.69	-8.81	6.72	56.38	22.63	1752
MAIC Holdings Inc.	NYS	13.56	-7.26	-35.99	23.80	10.00	61
Markel Corp.	NYS	144.75	-1.86	-6.61	174.88	111.50	68
MBIA Insurance Group	NYS	65.56	-5.50	24.14	75.25	36.31	631
Meadowbrook Insur. Group	NYS	4.63	1.37	-29.52	8.75	3.94	1
MetLife	NYS	26.81	-10.44	88.16	30.94	14.25	3919
Mutual Risk Mgmt. Ltd.	NYS	17.88	-2.72	6.32	23.75	12.50	349
Navigators Group	NDO	12.50	0.00	28.21	14.13	8.63	0
NYMagic Inc.	NYS	17.25	0.73	30.81	17.38	12.25	6
Ohio Casualty Corp.	NDO	8.25	-5.71	-48.64	17.88	6.13	429
Old Republic Int'l	NYS	25.94	-0.95	90.37	27.81	10.63	1602
Partner Re Ltd.	NYS	51.88	-3.26	59.92	57.63	28.38	397
Penn-America Group Inc.	NYS	7.13	0.00	-8.06	9.75	6.63	2
PMA Capital Corporation	NDO	15.25	-5.06	-23.27	20.06	15.25	19
Philadelphia Cons. Holding	NDO	27.69	1.61	90.95	29.50	14.13	617
PXRE Corp.	NYS	14.88	3.93	14.42	17.56	9.94	125
Reliance Group Holdings	NYS	0.06	0.00	-99.06	7.75	0.05	1992
ReliaStar Financial Corp.	NYS	53.94	0.00	37.65	53.94	23.75	0
RenaissanceRe Holdings Ltd.	NYS	69.69	0.36	70.49	77.75	35.88	287
RLI Corp.	NYS	40.94	-1.06	20.40	41.88	26.25	10
St. Paul Cos.	NYS	49.63	-4.35	47.31	53.31	21.31	1907
SCOR	NYS	47.38	-1.57	7.06	53.63	38.38	11
SAFECO Corp.	NDO	24.94	-4.09	0.25	30.69	18.00	1110
SCPIE Holdings Inc.	NYS	21.75	-2.25	-32.30	36.94	18.31	NA
Seibels Bruce Group	NDO	0.88	28.68	-50.00	3.88	0.53	6
Selective Ins. Group	NDO	20.06	-4.18	16.73	21.50	14.63	134
Tokio Marine & Fire	NDO	57.63	1.10	-2.54	67.00	45.00	24
Torchmark Corp.	NYS	36.56	-5.03	25.81	38.75	18.75	2746
Transatlantic Holdings	NYS	93.69	0.33	20.02	95.75	68.75	13
Trenwick Group Inc.	NYS	22.25	-0.56	31.37	23.13	12.00	101
Unico American Corp.	NDO	6.38	0.00	-8.93	8.25	4.50	1
United Fire & Casualty	NDO	18.56	0.34	-17.96	23.38	15.50	4
Unitrin	NDO	34.81	7.12	-7.48	39.75	27.19	328
UNUM Corp.	NYS	25.81	-7.19	-19.49	36.19	11.94	2218
Vesta Insurance Co.	NYS	5.00	3.90	29.03	7.88	3.44	105
XL Capital Ltd.	NYS	77.19	-0.56	48.80	80.00	39.00	1133
Zenith National Ins.	NYS	23.94	-1.54	16.06	24.94	18.75	18
INSURERS/REINSURERS	AVERAGE		-1.92	12.39			

HEALTH MAINTENANCE ORGANIZATIONS

		Price	Weekly % change	Year to date %change	Year to date High	Year to date Low	Vol.(000)
Health Net Inc.	NYS	21.00	-5.62	111.32	21.88	6.63	0
Humana Inc.	NYS	11.88	-18.44	45.04	14.88	4.75	3625
Oxford Health Plans	NDO	36.13	-9.83	184.73	41.50	10.63	4390
Pacificare Health Sys.	NDO	14.63	-13.97	-72.41	72.31	9.81	2267
Sierra Health Services	NYS	3.44	-11.40	-48.60	10.00	2.44	492
United HealthGroup	NYS	112.69	-2.38	112.12	117.94	46.38	5039
Wellpoint Health Networks	NYS	100.81	-12.86	52.89	121.50	56.63	3276
HMOs	AVERAGE		-10.64	55.01			
ALL COMPANIES			-5.62	29.37			

BI Insurance Index



Base=100 on Dec. 29, 1978

Top advancing issues: Seibels Bruce Group, Frontier Insurance Group, Unitrin. Leading decliners: Accel International Corp., Fremont General Corp., Humana Inc. Most active issue: Citigroup. The *BI* Index dropped 4.9%; the Dow Jones 30 Industrials decreased 2.2%; the S&P 500 went down 3.3%, and the NYSE Composite dropped 2.7%. Average P/E: Brokers, 22.0; Insurers/reinsurers, 26.7; and HMOs, 15.0.

Source: *CNET Investor* (investor.cnet.com) Boulder, Colo.

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