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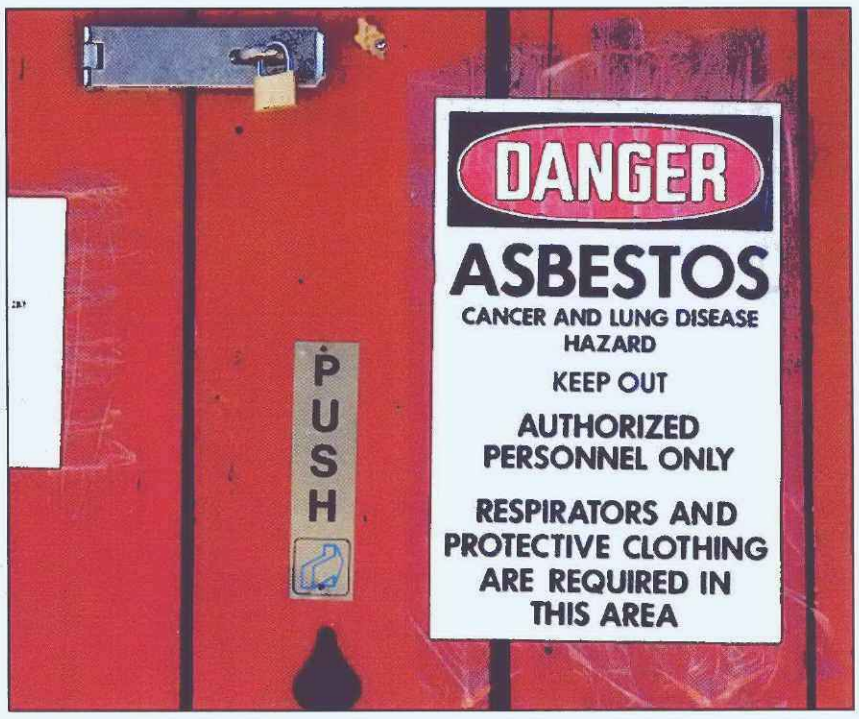

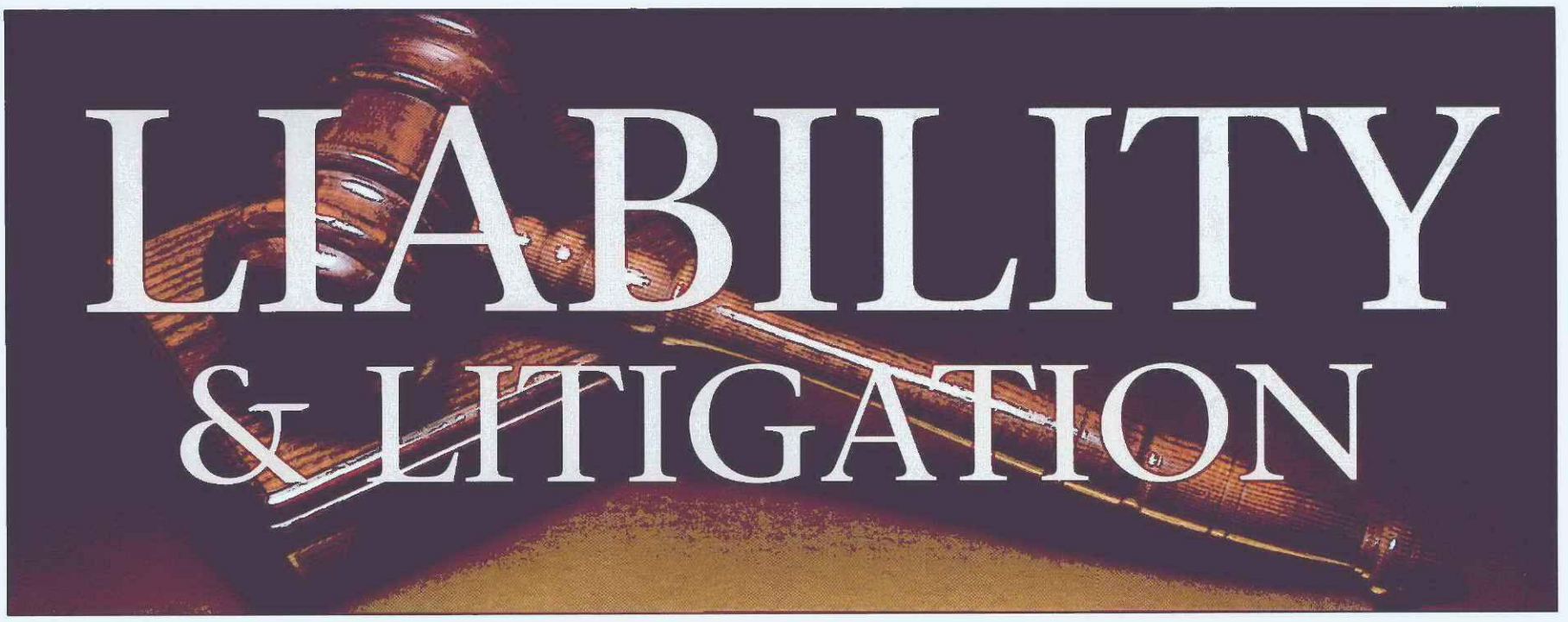

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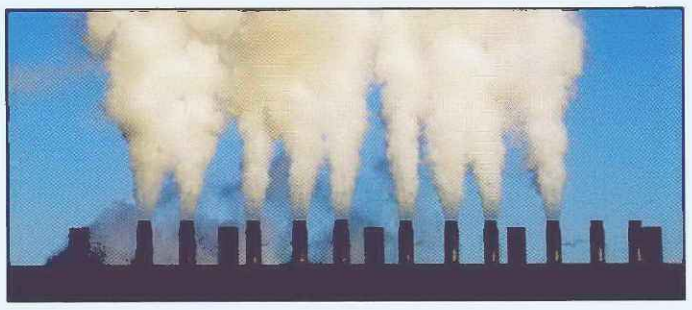

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GROCERY CHAIN FIGHTS INSURER OVER MULTIPLE INJURY TRIGGER FOR COMP CLAIMS / PAGE 3

REP. BARNEY FRANK REVEALS TRIA EXTENSION PROPOSAL / PAGE 3

TRADE BILL COULD EXPAND ELIGIBILITY FOR COBRA HELP, SIGNAL MORE CHANGE / PAGE 3

In Brief

Ironshore acquires U.S. shell company

Ironshore Inc.'s U.S. subsidiary, Ironshore Holdings (U.S.) Inc., has acquired Stockbridge Insurance Co., a Minnesota-based admitted insurance company, from Folksamerica Reinsurance Co. The deal will provide the renamed Ironshore Indemnity with licenses in 46 states plus the District of Columbia. Ironshore Indemnity will be the admitted insurer for the Hamilton, Bermuda-based Ironshore's U.S. operations, which currently consist of the IronPro and IronBuilt divisions. Earlier last week, Ironshore said it had been approved to offer property/casualty insurance on excess and surplus basis for risks in Louisiana.

Greenberg seeks talks on 'direction' of AIG

American International Group Inc.'s former longtime chief, Maurice R. Greenberg, is calling for discussions with stockholders and third parties concerning the insurer's "performance and strategic direction." In a filing Friday with the Securities and Exchange Commission, Mr. Greenberg–a significant shareholder in AIG who now heads C.V. Starr & Co. Inc.–said he and others "anticipate holding discussions with stockholders and third parties that may address a number of issues, including without limitation, their respective views on (AIG's) business and prospects, the suggested disposition of certain of its operations investment opportunities and concerns over the direction of (AIG) generally." A spokesman for AIG had no immediate comment late Friday.

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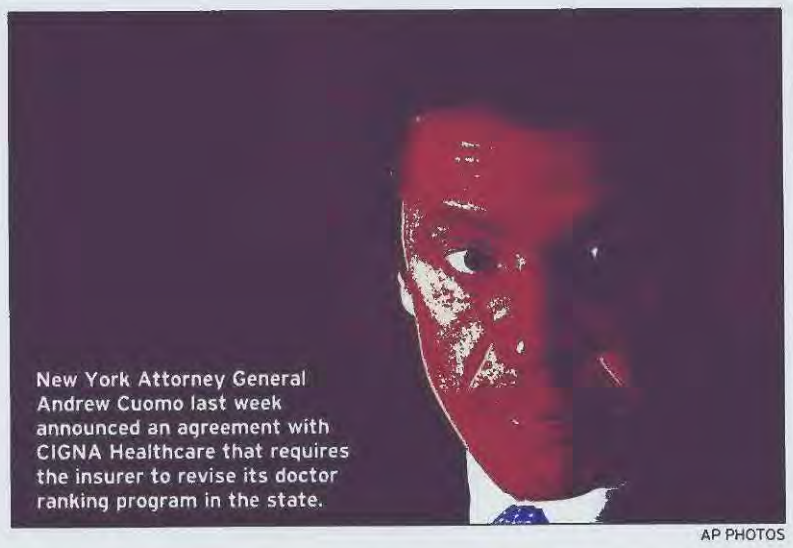

New York Attorney General Andrew Cuomo last week announced an agreement with CIGNA Healthcare that requires the insurer to revise its doctor ranking program in the state.

AP PHOTOS

CIGNA could set trend with doctor ranking deal

Rating will emphasize quality considerations in addition to pricing

By JOANNE WOJCIK

NEW YORK—CIGNA Healthcare's agreement with the New York Attorney General Andrew Cuomo's office to revamp its doctor ranking program may become the standard for similar programs at other health insurers.

The agreement, which was revealed last week, came three months after Mr. Cuomo launched an investigation into health insurers' doctor ranking programs, concerned that the programs might steer members to physicians based on price rather than quality.

Under the agreement, Bloomfield, Conn.-based CIGNA will ensure that its rankings include established national standards to measure quality in addition to cost, and to disclose to consumers and physicians how the rankings are determined, breaking them down by cost, quality and when a combined score is given, what proportion is based on cost vs. quality. The insurer also agreed to submit to outside oversight (see related box).

Although a deadline for publishing the new doctor rankings was not set, CIGNA officials said they expect to have something available by early 2009. In the meantime, current rankings, which CIGNA asserts "always included both quality and cost" factors, will continue to be made available to plan members until the new rankings become

See **RANKINGS** page 41

Failed insurer saga shows wider woes

New state liquidation chief vows change

By DOUGLAS McLEOD

NEW YORK—Union Indemnity Insurance Co.'s collapse was one of the more spectacular insolvencies of its day, but many people may not remember that far back.

'It was an entire entity with a culture of not getting things done.'

Mark Peters,
New York Liquidation Bureau

It was 1985: Ronald Reagan was president, Microsoft Corp. had just introduced its first version of Windows, and the current head of the New York Liquidation Bureau, Mark G. Peters, was an undergraduate at Brown University.

Twenty-two years later, Union Indemnity is back in the news. Mr. Peters, who took over the Liquidation Bureau seven months ago, submitted the first public report on Union's financial condition to a New York court last month and proposed making the first distribution to creditors since the liquidation order.

Aside from being milestones for Union Indemnity, the actions may also be a sign of change at the Liquidation Bureau, which has long been troubled by complaints of poor management or worse—Mr. Peters' predecessor is now awaiting trial on corruption charges—and which has been faulted for the glacial pace of its work.

Mr. Peters, in an interview, ticked off the problems he found after joining the bureau from the New York Attorney General's office in April: deficient systems for tracking and collecting reinsurance, the lack of an outside audit of its operations and a general sense of "inertia" that contributed to a failure to move liquidations forward.

"It was an entire entity with a culture of not getting things done," he said of the bureau. "It was run more like a corner candy store."

Mr. Peters has responded by bringing in new senior staff and taking various steps to improve the bureau's performance.

"In 18 months, this place will be unrecognizable," he promised.

Whether he succeeds remains to be seen. State guaranty fund officials, who have waited more than

See **LIQUIDATION** page 42

Aon to cut 2,700 staff in latest restructuring

Analysts expect cost-cutting efforts will help brokerage's profits during softening market

By SALLY ROBERTS

CHICAGO—With its three-year restructuring program nearly complete, Aon Corp. last week said it is embarking on another, similar restructuring effort that will cost the brokerage $360 million and eliminate 2,700 employees.

Word of the new cost-cutting effort came as the Chicago-based brokerage posted better than expected third-quarter results and was met warmly by shareholders.

Analysts said Aon's latest restructuring, while a bit surprising, appears to be the next step in efforts to expand its margins and drive shareholder value as top-line growth remains difficult to come by in the soft pricing environment.

"As we continue to make investments globally to better serve our clients, we remain equally committed to improving operational excellence," Aon President and Chief Executive Officer Greg Case said in a statement announcing the latest effort. "This restructuring plan has a similar approach to that of our 2005 restructuring plan, which has had very positive results. We are continuing efforts to simplify our complex organization and eliminate expense that does not contribute directly to our ability to efficiently deliver value-added products and services to our clients."

As part of the plan, Aon said it will lay off 2,700 predominantly non-client facing employees and either outsource or offshore 1,100 of those positions. It also plans to further consolidate human resources, finance and information technology functions around the

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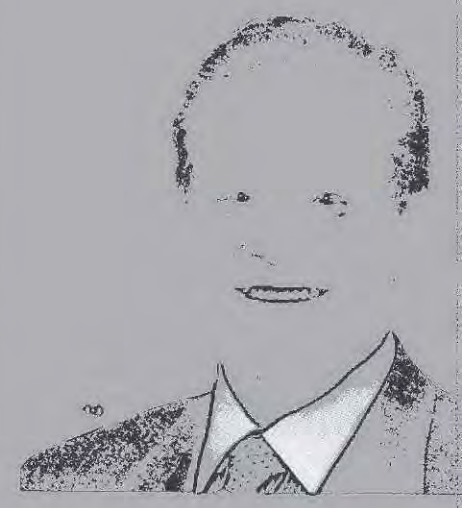

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On the Web

BI VIDEO

Re Views features Aon's Ted Devine

Reinsurance industry leaders discuss trends in Re Views, a series of video interviews at *BusinessInsurance.com*. In the latest interview, Aon Re Global CEO Ted Devine discusses how insurers are making the most of reinsurance and the capital markets. View the new video at *BusinessInsurance.com/video*.

BI PHOTO GALLERIES

PCI conference photos available online

A photo gallery featuring pictures taken at this year's Property Casualty Insurers Assn. of America meeting in Boston is available online at *www.BusinessInsurance.com/gallery*. Enjoy the memories of this and other events or submit your own photos.

QUESTIONS & ANSWERS

Q&A podcasts feature tort reform pros, cons

The differing opinions on tort reform expressed by reform advocate Sherman Joyce and opponent Joanne Doroshow on page 30 of this issue can be heard via podcasts available at *www.BusinessInsurance.com/QandA*.

BI DIRECTORIES

Rent-a-captive directory updated

Business Insurance has updated its rent-a-captive facilities and policyholder-owned alternative risk facilities directories for 2007. Both are available online and can be purchased for download in either PDF or Excel spreadsheet format. Go to *www.BusinessInsurance.com/directories*.

Business Insurance

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Multiple injury claims trigger court battle

Self-insured employer says excess insurer shuns accepted practice

By ROBERTO CENICEROS

LOS ANGELES—A self-insured employer is involved in a legal fight with its excess workers compensation insurer over the insurer's attempt to stop what the employer says is a common method of settling multiple injury claims.

The dispute between Eden Prairie, Minn.-based Supervalu Inc. and its insurer, a unit of CNA Financial Corp., could significantly raise the trigger for excess coverage of claims involving multiple injuries to one worker, some observers say.

The case stems from a lawsuit filed by Supervalu, which owns the Albertsons grocery chain and other retail operations. The company said its excess insurer in 2005 began insisting that multiple injuries contributing to a single permanent and stationary determination under California's workers comp system should be counted as separate occurrences for the purpose of exhausting Supervalu's self-insured retention and triggering excess coverage.

CNA filed a motion for summary judgment in the Los Angeles case late last month.

To trigger coverage for more than a decade prior to 2005, Albertsons' excess workers comp insurers interpreted "loss" and "occurrence" consistent with workplace injury claim settlement practices under California's workers comp system, the lawsuit claims. Under that practice, related injuries to a single worker could be combined for purposes of settling a claim.

But Continental Casualty Co., a Chicago-based unit of CNA, said Supervalu wants to shift "large portions of its self-insured exposure" onto Continental.

Continental's policy language states that it will indemnify Supervalu only when each occurrence exceeds the policyholder's retention, according to CNA's court filing.

Risk management observers say, however, that it is customary practice under the workers comp systems for employers and their insurers to handle multiple injury claims from a single claimant under a single master file.

Cumulative trauma cases, for example, are settled as a single claim when a single disability rating is issued for all combined claims, they say.

The practice occurs when a claimant has multiple injuries over time, often to the same or related body parts, and a doctor determines the claimant's injury is permanent

See **COMP** page 41

Trade bill would extend COBRA cover subsidies

Measure could signal more changes ahead for health cover plan

By JERRY GEISEL

WASHINGTON—Employees who lose their jobs due to foreign competition and older pension plan participants whose plans fail would receive bigger health insurance premium subsidies under trade legislation approved by the House last week.

The measure, H.R. 3920, also would expand the number of people eligible for the subsidies and would increase the length of time certain beneficiaries could use those subsidies to partially offset the cost of COBRA health care continuation coverage purchased from their former employers.

The heart of the measure, approved on a 264-157 vote, would provide an 85% tax credit—up from the current 65% credit—that eligible employees could apply toward their health insurance coverage. The health coverage tax credit can offset the cost of coverage in a variety of health insurance plans, including COBRA continuation coverage.

Under current law, the requirement that eligible beneficiaries pay 35% of the premium is the main reason few use the HCTC, legislators say. In a typical month, less than 10% of the 250,000 people eligible for the HCTC use it.

Another change in the legislation would increase the number of people eligible for the HCTC. Under current law, the primary beneficiary loses the HCTC when he or she becomes eligible for Medicare. If the primary beneficiary has a younger spouse, the spouse cannot take advantage of the HCTC even though he or she is not yet eligible for Medicare. The House bill would end this problem by allowing employees' dependents to retain eligibility for the HCTC.

The measure also would allow employees who meet certain criteria to continue to receive COBRA coverage after the normal 18-month eligibility period runs out.

Under the current trade law,

See **COBRA** page 40

COBRA SINCE 1986

How Congress has expanded the Consolidated Omnibus Budget Reconciliation Act

1986: Landmark COBRA law enacted allowing former employees and dependents to continue group health care coverage. Former employees can buy COBRA coverage up to 18 months after losing group coverage. Surviving or divorced spouses can obtain coverage for 36 months. The premium is 102% of the group rate.

1989: Disabled former employees given the right to buy an extra 11 months of COBRA coverage by paying a premium equal to 150% of the group rate.

1989: Employees with pre-existing conditions are allowed to retain COBRA coverage even after they are covered under a new employer's health plan.

1990: States allowed to pay COBRA premiums on behalf of low-income workers and dependents eligible for Medicaid.

1994: Employees in military reserves who are called to active duty permitted to buy COBRA-like coverage from their employers.

2002: Employees who lose their jobs due to foreign competition entitled to federal COBRA premium subsidies.

2007: Congress considers trade legislation to allow employees who lose their jobs due to foreign competition to keep COBRA coverage beyond the 18-month cutoff.

House lawmaker floats TRIA extension proposal

Says temporary fix would aid negotiation

By MARK A. HOFMANN

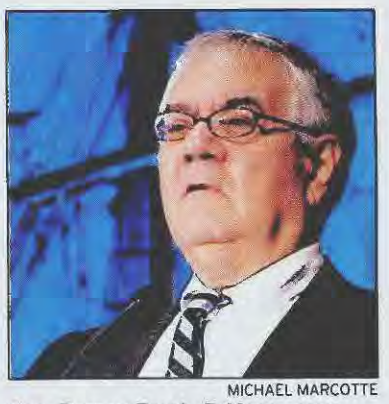
WASHINGTON—Supporters of a federal terrorism insurance backstop remain optimistic that differences between the House and Senate approaches to the issue can be worked out before a key House member introduces a bill asking for a 120-day extension of the program in an effort to reach a compromise.

House Financial Services Committee Chairman Barney Frank, D-Mass., offered that proposal during an address at the Property Casualty Insurers Assn. of America's annual meeting in Boston last week. He said he wants that option to be available to prolong negotiations should the Senate send a bill to the House that he considers inadequate.

There are several key differences between the House-passed and Senate versions of TRIA, including the length of the extension, the program's trigger and the lines of coverage involved. For example, the Senate bill, which recently passed the Banking, Housing and Urban Affairs Committee, would extend the backstop program for seven years, while the House-passed version calls for a 15-year extension of the program, which expires Dec. 31. In addition, the House bill, which President Bush said he would veto, would add group life coverage to the program, while the Senate bill would not.

Rep. Frank had critical words for the Senate's approach. "They pass a bill and they come to us and they say: 'We were barely able to do this, and if you make us change it, the whole thing will fall apart,'" he said. He characterized as "the strength of weakness" such a tendency to pass bills "that are better than nothing but not as good as they should be."

If an agreement is not reached by the end of the legislative year, Rep. Frank said when senators say "you have to accept our version without change or the programs will expire, my answer will be: 'Oh, no, they won't, because all you have to do is pass (this extension bill) and we'll see you between now and April."



MICHAEL MARCOTTE

Rep. Barney Frank, D-Mass., says the U.S. House could force the Senate to compromise on terror cover.

Insurance industry supporters of the backstop reacted cautiously to Rep. Frank's proposal.

"It's a tough call for the industry because most of us prefer the House bill, and we would like to see the regular order of a conference," said Joel Wood, senior vp-government affairs at the Council of Insurance Agents & Brokers in Washington. "But we also have the experience of two previous iterations of TRIA, and I think the Senate Banking Committee is a very collegial committee and once they find where their critical mass is, they generally stick to it. I still remain bullish that a compromise will emerge, but I am increasingly pessimistic that December will be a chaotic month for policyholders and their brokers," Mr. Wood said.

"A lot of the concern in the policyholder/brokerage community is that certainty is perhaps the most important element of the federal backstop and that's why we were so pleased to see the Senate compromise at seven years, because that will create a better environment where projects can move forward,

See **TRIA** page 40

U.S. NAVY PHOTO

Members of the USS James E. Williams board Korean cargo ship Dai Hong Dan last week to render medical assistance following a pirate attack near Somalia.

Pirate attack on ship part of recent surge

Risk remains small; marine hull, cargo and war policies cover

By SALLY ROBERTS

Pirate attacks like the one that occurred last week on the North Korean cargo vessel near Somalia are generally covered by the marine insurance market.

Whether piracy is a covered peril under a marine hull or cargo policy or a separate war risk policy, however, depends on the market and forms placed, experts say.

In last week's attack, the crew of the Dai Hong Dan regained control of their vessel after fighting with pirates who seized the bridge of the ship. Three crew members were injured and two pirates were killed and five others captured, according to the U.S. Navy, which provided medical assistance and other support to the crew.

Attacks increase

The attack is part of a recent surge of pirate incidents that comes after several years of decline (see story, page 42).

"Piracy does remain a very real and potentially severe loss in the shipping world," said Martin McCluney, a managing director in the marine and energy division of Marsh Inc. in New York. "The principal areas of concern are in the Horn of Africa, the South China Sea and the Straits of Malacca; that's where most of the high value, high severity commercial losses occur."

But while the risk is real, the number of pirate attacks remains small, said Gary Moore, a New York-based principal in the marine practice of Integro Ltd.

"Don't get me wrong, it is a major issue, but if you look at the stats of the pirate attacks in any one year worldwide and compare it to the number of ships there are and the navigation of the vessels, it is very small," he said.

According to the ICC International Maritime Bureau, there were 239 pirate attacks against ships in 2006.

But piracy has become more sophisticated since the days when most pirates were simply after cash. Today's pirates, often armed with automatic weapons, approach ships by speedboat, with the goal of holding crew and vessels for ransom or stealing valuable cargo, they say.

As a result, the outcome of a pirate attack is "far more worrying" today, said Neil Smith, senior manager-underwriter at the Lloyd's Market Assn.

The marine insurance market is prepared to handle the risk of piracy, but how it is underwritten depends on the market, experts say.

In the U.S. and Norwegian marine markets, for example, piracy risks are excluded from hull clauses and instead are covered under separate hull war risk policies, which also cover terrorism risks, experts say.

Under the war risk policy, marine underwriters have the ability to separately rate piracy risks and do so based on a predetermined list of high-risk sea areas published by the Joint War Committee of the Lloyd's Market Assn., they say. Ship owners must notify their underwriters every time they are traveling through a high-risk area and the underwriters will charge an additional premium for each trip, which can be considerable, they note.

The hull war risk policy provides

See **PIRATES** page 42

UnitedHealthcare to pay $775M for Fiserv's health businesses

Insurer says purchase will boost PBM, managed care base

By JEFF CASALE and DAVE LENCKUS

MINNETONKA, Minn.—UnitedHealth Group Inc. unit UnitedHealthcare has agreed to acquire Fiserv Inc.'s health-related businesses for $775 million in cash.

The deal includes Fiserv Health Plan Administration, a third-party administrator of self-funded health plans; Fiserv Health Specialty Solutions, which includes a subrogation and overpayment recovery organization and a claim repricing and data management service; and Fiserv Health Plan Management, an outsourcing service for midsize health plans and health care payer organizations.

In addition, UnitedHealthcare will acquire Innoviant Inc., a prescription benefits administrator; Innoviant Pharmacy, a prescription mail-order service; and Avidyn Health, a care management company.

Brookfield, Wis.-based Fiserv Health reported that the health-related business produced net revenue of $303.5 million for the first nine months of 2007.

Minnetonka, Minn.-based UnitedHealthcare said it will retain the 3,200 Fiserv employees currently working in the sales-related businesses.

According to a spokesman for UnitedHealthcare, Fiserv's Innoviant will reinforce UnitedHealthcare's pharmacy benefits management business and overall, Fiserv's Health Specialty businesses will add to the managed care company's products and services base.

The transaction is expected to close in late 2007 or the first quarter of 2008, subject to regulatory approvals and closing conditions, according to a statement released by both companies. Fiserv expects to receive approximately $475 million of net transaction proceeds.

Meanwhile, Fiserv Inc. faces a lawsuit stemming from the company's 2001 purchase of a health care claims administrator and stop-loss provider.

See **FISERV** page 43

Supply chain insurance can fill gaps in business interruption cover: Panel

Wider protection helps organizations cope with disruptions

By KRISTIN GUNDERSON HUNT

ITASCA, Ill.—Business interruption coverage only goes so far in protecting a company from catastrophic losses, and risk managers should consider additional insurance to cover serious disruptions in their operations, according to a panel of brokers.

Among other things, business interruption insurance is limited in that it requires a direct physical loss, has defined policy wording that is somewhat limited in scope, and it can involves a long and complex claims process, they said.

To complement business interruption coverage, companies should consider insurance for supply chain problems, they said during a session of the Risk & Employee Benefits Conference and Exhibition held in Itasca, Ill., Oct. 25-27.

Specifically, they say, trade disruption insurance covers the financial consequences of disruption of supply chains, even when there is no physical loss or damage to a policyholder's assets. It covers lost profits along with extra cost.

Such insurance would cover disruptions such as the destruction of a supplier's or customer's property; closure or blockage of transportation routes; a government blockade or embargo; third-party strikes; and insolvency of a key supplier or customer, said Ross Norstrom, managing director for the insurance services division of Mesirow Financial Holdings Inc. in Chicago.

For instance, in the case of third-party strikes, trade disruption insurance would cover the extra costs for a contingency plan and lost revenue. In the case of key supplier or customer insolvency, it would cover the extra costs involved in changing suppliers and lost revenue.

Insurers offering the coverage will want to have an understanding of a policyholder's supply chain and its supply chain management. The insurer will also want to be aware of

See **REBEX** page 40

Nov. 14 Online Executive Forum to explore comp terrorism risk

Business Insurance on Nov. 14 at 11 a.m. Eastern Standard Time will host a free Online Executive Forum™ on "Workers Compensation: Protecting People in the Age of Terrorism."

The threat of terrorism has not abated since Sept. 11, 2001, and concentrations of workers in office buildings present significant exposures for employers and insurers in the event of another attack. A catastrophic loss could easily result in workers comp losses in the billions of dollars. Attend this Online Executive Forum™ for an in-depth discussion of risk management and insurance issues, ways to minimize the risk to concentrations of workers, and the latest status of the TRIA backstop, among other issues.

Panelists for the Nov. 14 webcast are:

David R. Holmquist, chief operating officer of the Los Angeles Unified School District.

Mark J. Noonan, managing director and workers compensation practice leader at Marsh Inc.

Richard L. Thomas, senior vp and chief underwriting officer, Domestic Brokerage Group, at American International Group Inc.

BI Senior Editor and Western Bureau Chief Roberto Ceniceros will moderate the interactive panel discussion.

The webcast will feature an interactive question and answer period for the live audience. To register for this Online Executive Forum™ as well as view archived prior webcasts, please visit *www.BusinessInsurance.com/webinars*

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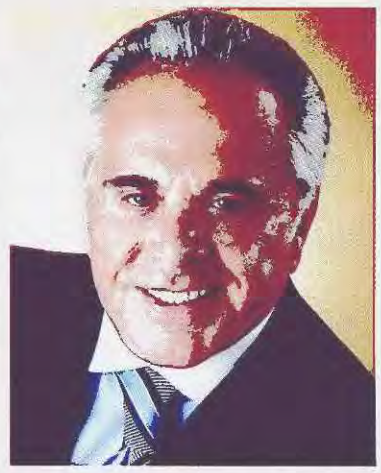
Questions Answers



Joseph J. Plumeri, chairman and chief executive officer of Willis Group Holdings Ltd., has been an outspoken advocate of transparency in broker compensation. Industry panelists at the recent biennial conference of the Federation of European Risk Management Assns. discussed a special 2.5% brokerage payment in the U.K. market, which Willis said it will accept with clients' permission. Mr. Plumeri spoke with BI to explain the move.

'Beyond transparency'

Q: What's the issue with the 2.5% commission in the U.K. market?

The U.K. market has been paying a 2.5% brokerage on fee accounts. It creates an unlevel playing field if some take it and others don't. It allows our competitors to offer reduced fees to clients. If the brokerage commission was available to our clients, it didn't make sense to us to leave it in insurers' hands. We had to reconcile those issues against the backdrop of our principles. In our case, this is beyond transparency. It's a way of being comfortable with leveling the playing field and being able to offer it to our clients if it's available. Not only do we tell them it's available but we also make it available to them if they choose to take it. If they don't choose to take it, and they think we're providing value, then they can allow us to take it. But it was silly not to offer it to them. Our brand of 2.5% brokerage is not simply that we take it and tell them, it's to offer it to them, so they can get the discount if they believe that should happen. This has nothing to do with supplemental or contingent pay or anything else...It's Willis' 2.5% based upon our principles and that's the reason why we're doing it.

Q: How have clients reacted to this?

Some clients have said, "OK, take it." Some have said, "No, we pay you enough and we don't want you to take it." We've also had client advisory meetings in Europe, the U.K. and in the United States....Our clients feel comfortable...because it is beyond transparency. It's transparency plus permission.

Q: Why discuss this in the United States?

We're doing it in the U.K. because that's where the imbalance is. That's where the market has chosen to pay the 2.5%. We simply had to respond to the unlevel playing field that was going on there and the lack of our clients having the same opportunity. It was important to consult our U.S. clients, not because we're doing it here but because of the perception that it has. When they saw us doing it there, we wanted to explain...how it occurred....why the market was doing it and why we were consistent with our principles...even though it has nothing to do with the U.S. market.

To read the unabridged version of this Q&A, visit www.BusinessInsurance.com/QandA.

Q: What does the 2.5% reflect?

What happens in the U.K. is that brokers do the wordings for the contracts. That's...why I was so happy with contract certainty because John Tiner and the Financial Services Authority took it upon themselves to say, "Go fix contract certainty," which for us at Willis means policy deliverance within 30 days of inception. The brokers do that, not the markets. There's obviously a lot of cost in providing these services. Also, the claims processing is done by brokers in the U.K. In the U.S. the administrative process is different. We work with the insurance companies to make sure they're doing it responsively. One of the reasons we came up with the Willis Quality Index was to measure the carriers on...who is paying claims under their policies quickly, on a worldwide basis. We have more control over claim and policy processing in the U.K. because we do it ourselves. The system is different.

Where Aon, Marsh stand on U.K. fee

In response to *BI* requests, Aon Corp. and Marsh Inc. released statements.

Aon stated: "We have had our 2.5% ISB (brokerage service fee) in place on fee-based business in the U.K. since 2001. It was introduced following a commitment" to the Assn. of Insurance & Risk Managers "in 1999 to cease accepting contingent commissions. It is well established with both our clients and the markets and is fully transparent. Naturally, we review all aspects of our remuneration as market conditions change, and while the market has changed significantly since 2001, both in terms of regulation and the market cycle, we have no current plans to change our approach....We make our decisions based on what is best for our clients—not what our competitors are doing. Aon will always look for the best conditions at the best price for its clients."

Marsh stated: "In any discussion around broker remuneration, the key issue is transparency. Unlike the significant levels of contingent commission still being accepted by most U.K. brokers, Marsh's decision to charge a uniform 2.5% brokerage is fully transparent and disclosed to clients as part of their total cost of risk. We are pleased with the supportive response...from both the market and from clients. We...believe it is in the best interests of our clients that all U.K. brokers should spontaneously disclose all the remuneration they earn."

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Business Insurance OPINIONS

Employers learning from Enron's mistake

REMEMBER WHEN EMPLOYERS matched employees' 401(k) plan deferrals exclusively with company stock and then prevented—for decades in some cases—employees from divesting the employer contribution?

Only a few years ago, that practice was widespread. As recently as 2005, more than one-third of employers matched salary deferrals exclusively with company stock. Of those employers, less than one-quarter allowed employees to immediately divest the stock in favor of other investment options offered through the 401(k) plan.

Now, the wheel has turned, and quickly.

This year, according to a new Hewitt Associates Inc. survey, less than one-quarter of employers match salary deferrals only with company stock and, more significantly, more than two-thirds allow employees to divest that stock at any time.

That kind of situation is far less likely to happen today.

Why the change? Certainly, new requirements laid down by Congress have something to do with it. Provisions tucked into last year's pension plan funding reform law require that employers allow employees to divest company stock contributed as a match after three years. Legislation aside, we think employers would have moved in that direction on their own, though, perhaps not as fast.

Many employers have not forgotten how 401(k) plan design contributed to a retirement savings debacle for Enron Corp. employees. Enron not only matched salary deferrals with company stock, it also kept employees locked into those contributions until age 50.

Then, as Enron began to to fail, 401(k) plan participants watched helplessly as their stock value plunged to virtually nothing.

Thanks to legislation and employer redesign, that kind of situation is far less likely to happen today. Common sense and fairness tell us that employees shouldn't be locked into any 401(k) plan contribution, be it company stock or any other investment option. We're glad to see that employers overwhelmingly have come to recognize that.

Union Indemnity a case of how not to operate

A RECENT DEVELOPMENT in the 22-year insolvency of Union Indemnity Insurance Co. signals some good news for the failed insurer's creditors, but the historical facts remain disturbing.

The New York Liquidation Bureau, which has administered the Union Indemnity estate, has a new head, who says the bureau is close to making the first distribution to creditors since the insurer entered liquidation in 1985.

That's right: Zero dollars have been paid to Union Indemnity's claimants, despite more than two decades in liquidation. More than 30,000 claims have been filed against Union Indemnity, though many have been dismissed. The insurer is insolvent by more than $400 million.

Union Indemnity was denied substantial assets when courts ruled that evidence of fraud voided the company's ability to recover from many of its reinsurers. Had those contracts been enforced, the estate could have collected about $200 million. Regardless, it defies belief that no payments to creditors could be made in 22 years under the bureau's administration.

Whether the New York Liquidation Bureau's prior problems were caused by ineptitude or corruption—the bureau's former head is under indictment—we hope the saga of Union Indemnity teaches important lessons in how not to manage insolvencies in the future.

Letters

Regular workplace profanity adds problems

TO THE EDITOR: In regard to "F-bombs in the Office Help Improve Some Worker Relationships" in the Oct. 22 issue of *Business Insurance*: I have not read the study, but as a human resources manager charged with enforcing policies against profanity and verbal abuse between employees, I don't (agree with) the idea that the "regular use of profanity expresses and reinforces solidarity among staff."

My experience is that the regular use of profanity creates more problems than it solves.

Whether it is directed at another employee, customers or family members, for me, the impact of profanity is greater when it is used sparingly, since then its use is out of character in the environment and that difference carries more weight. I don't really need more management people to "apply a tolerant leadership culture to the workplace and deliberately allow swearing."

Leslie Fieldman
HR Manager
Griffiths Corp.
Minneapolis

Write us

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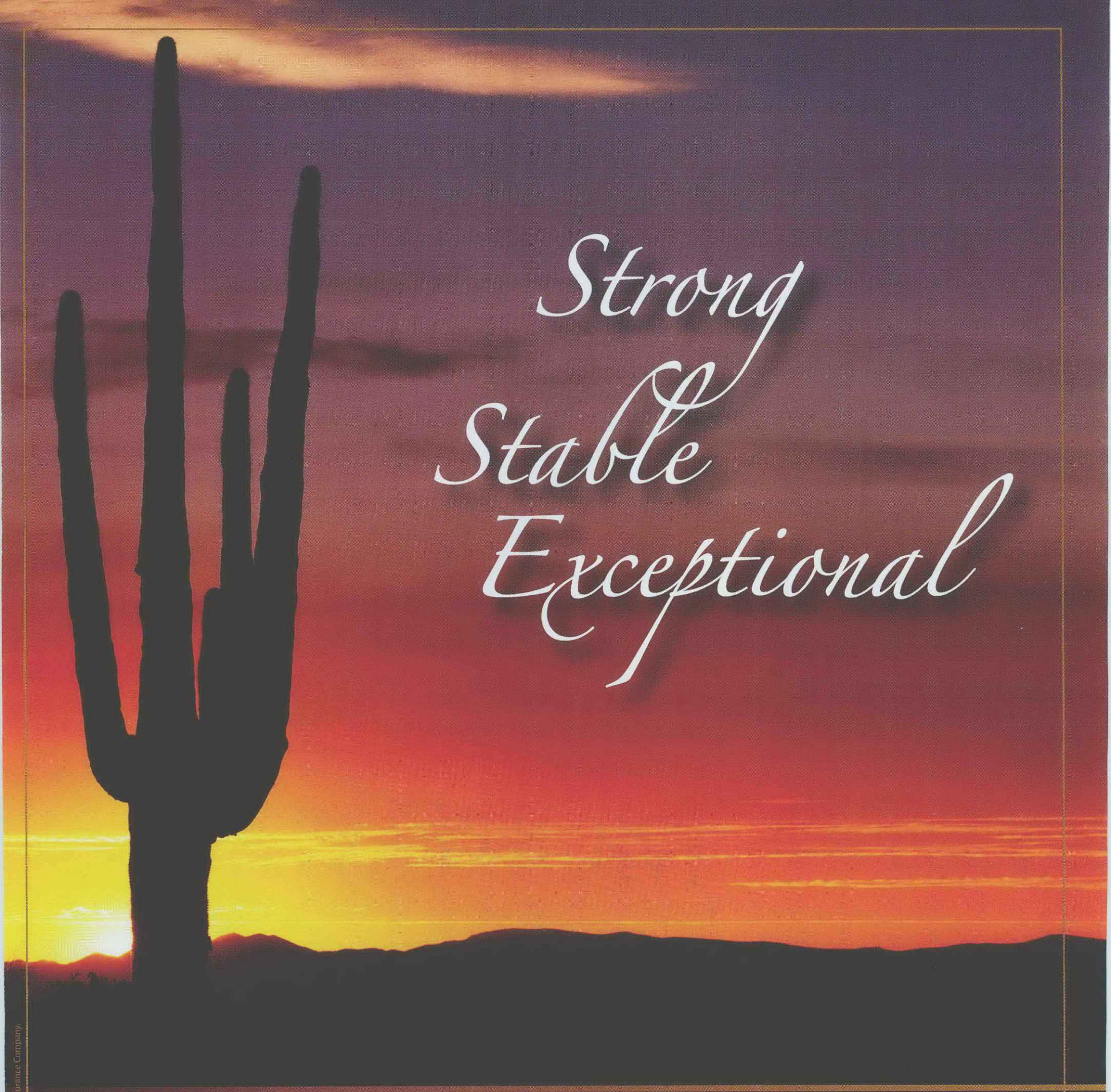
Online Poll at www.businessinsurance.com

Does your employer offer automatic enrollment in a 401(k) plan?

NEXT WEEK'S POLL: *Is your defined benefit pension plan: frozen to new enrollments; not frozen but likely to be; or not frozen, and with no plans to freeze enrollments in the future?*

***BI* Online Poll tool sponsored by Wausau Insurance Cos.**



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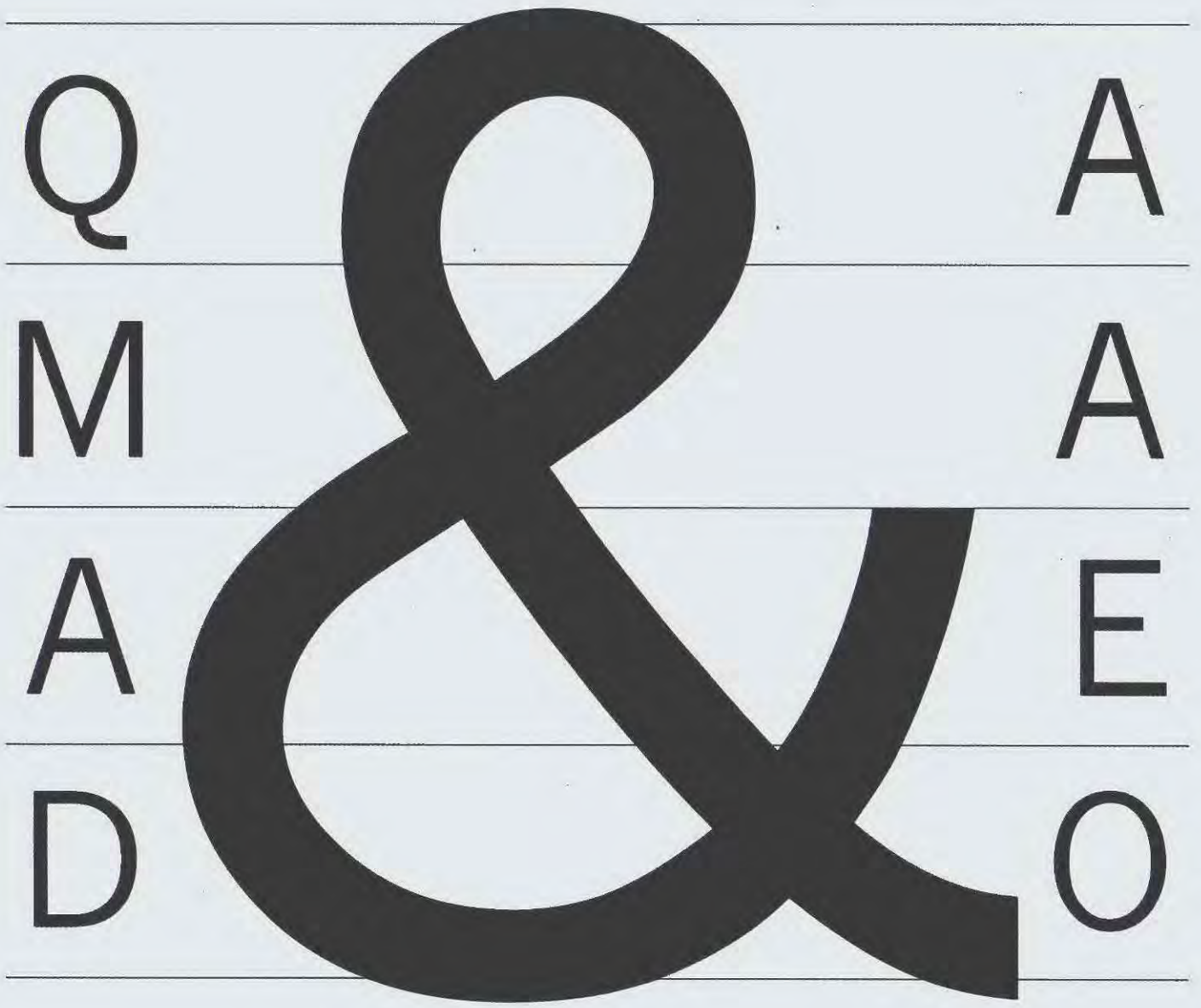

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Jim Schwartz on Professional Services Contract Wordings (Nov 9 at 9:45 am)
Chris Warrior on M&As (Nov 9 at 9:45 am)

We are also pleased to announce that, as of today, the financial strength of all our insurance operations is rated A by A.M. Best. Our U.S. admitted carrier, Beazley Insurance Company, Inc., which began writing business in 2005, has been upgraded from A- to A.

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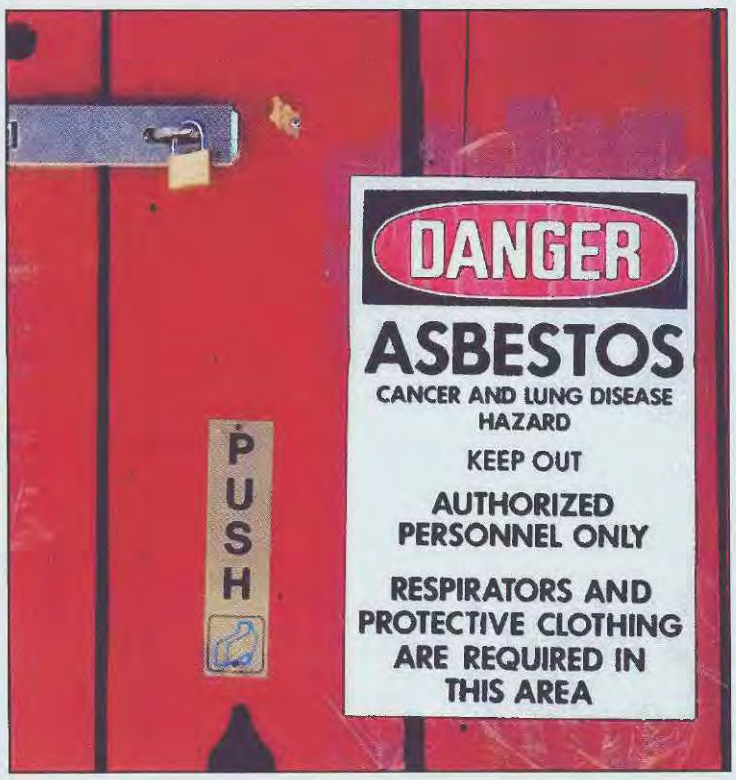
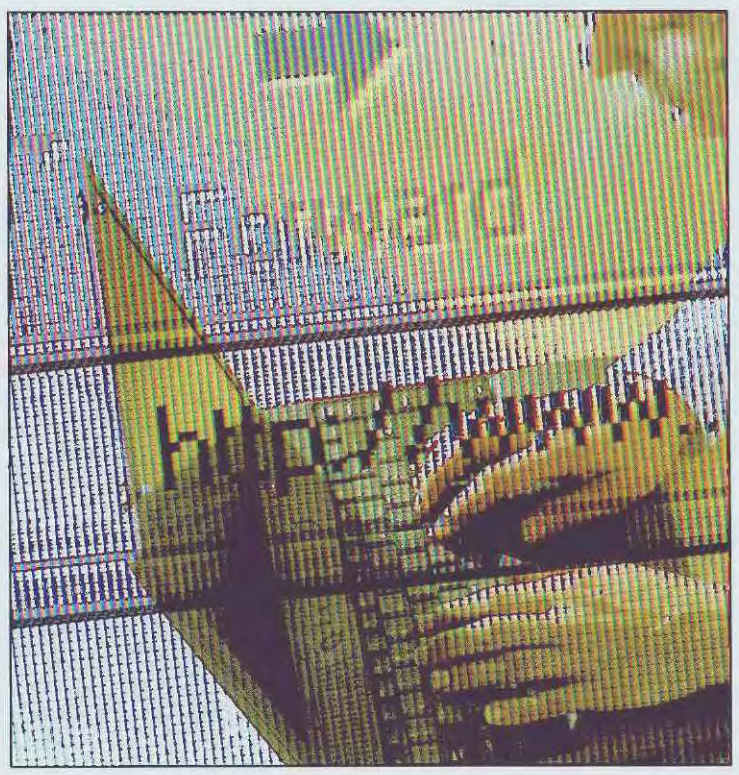




LIABILITY & LITIGATION

GUARDING AGAINST THE KNOWN AND THE UNKNOWN

Asbestos still No. 1 among mass tort risks

Insurers may exclude emerging exposures; risk managers advised to avoid anti-stacking

By DAVE LENCKUS

Risk managers who want to take measures now to protect their organizations against potential mass tort claims have an abundance of possible concerns, including the next incarnation of the greatest mass tort of all time: asbestos.

On the short list of risk management and legal experts' concerns are climate change, lead, electromagnetic fields, silica, technology security and pandemics.

But nothing says mass tort claims like asbestos, and many observers say asbestos claims continue to be their top concern even with a reduction of incurred losses and claim payments in recent years.

Despite exclusions for asbestos liability coverage that insurers inserted into general liability policies during the mid-1980s, policyholders facing new asbestos claims will be able to turn to older policies for coverage if those policies were in force when claimants were exposed, experts say.

"One thing that 20 years of experience in this area always shows is that the next asbestos is always asbestos," said Mark A. Behrens, a partner with Shook, Hardy & Bacon L.L.P. of Washington.

Even so, the asbestos liability problem is not as explosive as once was.

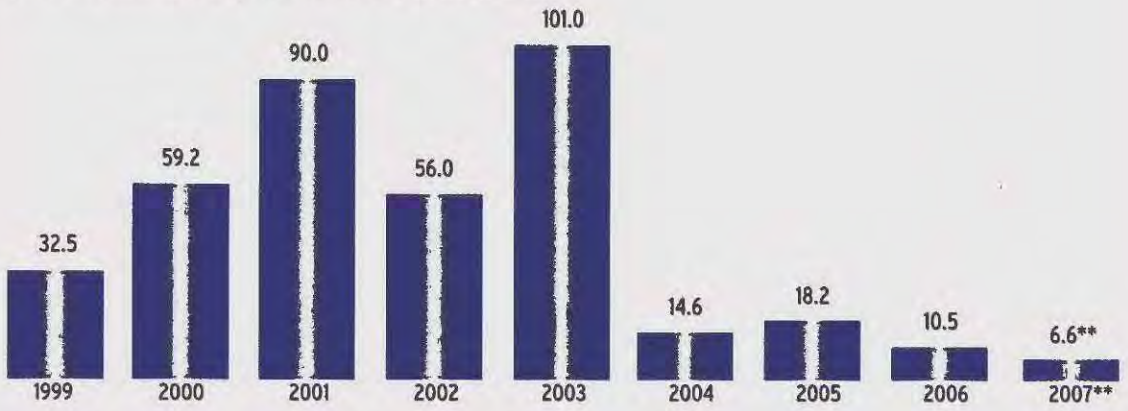
Indeed, new asbestos claim filings have fallen significantly in recent years (see chart, page 12), according to the Manville Personal Injury Settlement Trust, which was formed in 1988 to settle asbestos-related personal injury claims. Claims against the trust represent about 80% to 85% of all new asbestos claims filed and are the best gauge of claim trends, according to a representative of Rand Corp.

See **ASBESTOS** next page

Rankings: Policyholder-owned alternative risk facilities- Page 14, Rent-a-captive facilities- Page 20

MANVILLE ASBESTOS CLAIMS HISTORY

Asbestos-related claims filed since 1999, in thousands.*



*Source: *Manville Personal Injury Settlement Trust **First half of 2007*

Asbestos: Paid claims, losses drop from peak

CONTINUED FROM PREVIOUS PAGE

Statutory or judicially imposed medical criteria that must be met to file a claim in about three dozen states are largely responsible for keeping individuals exposed to asbestos out of the courthouse unless they develop an asbestos-related illness, Mr. Behrens said.

At the same time, the volume of asbestos-related losses and paid claims are nowhere near what they once were, noted Gerard Altonji, an assistant vp in the property/casualty ratings division at A.M. Best Co. Inc. in Oldwick, N.J.

Incurred losses and paid claims, however, still remain "very high," he said.

Incurred losses, including incurred-but-not-reported losses, fell more than 75% to $2 billion at year-end 2006 from about $8.5 billion at year-end 2002, Mr. Altonji said. The sharp reduction in losses, which are net of reinsurance, means that insurers are adequately reserved, he said.

Paid losses, meanwhile, have remained steady in the range of $2.3 billion to $3 billion annually over the past three years, he said.

But several factors suggest that asbestos liability issues will continue to beset risk managers for years to come and even drive up losses, some observers say.

For example, dozens of companies driven into bankruptcy reorganization by asbestos liability claims are beginning to emerge from reorganization, noted policyholder attorney Robert M. Horkovich, a partner with Anderson Kill & Olick P.C. in New York.

When those companies emerge, court-imposed stays against the asbestos claims will be lifted, he said. Meanwhile, some of those policyholders will have to resolve coverage issues with insurers—something that many defendants put off while focusing on reorganization, Mr. Horkovich said.

In addition, some of the insurance settlements that those reorganizing companies did hammer out covered only certain types of claims that policyholders will likely face, attorneys said.

For example, insurers have settled many product liability and completed operations claims with policyholders, but have not resolved non-completed operations—or work-in-progress—claims against asbestos installers or premises liability claims against facility owners, for example, that had asbestos on their property to fireproof their boilers (*BI*, May 14).

The plaintiffs' bar also is filing more claims in friendlier litigation forums or those with little experience in handling asbestos claims, such as Southern California and Delaware, Mr. Behrens said.

Meanwhile, Mr. Horkovich said, new asbestos claimants could appear for decades, since there is a 30- to 40-year asbestos illness latency period. The United States began banning asbestos insulation in the early 1970s and continued banning products containing asbestos into the 1990s. Plus, companies continue to find and remove asbestos from their facilities.

Business consultant Romy Comiter, however, said she is not sure asbestos is the next asbestos.

"I don't think there is the next asbestos," said Ms. Comiter, a senior manager for SMART Business Advisory & Consulting L.L.C. in London.

Ms. Comiter agrees that asbestos

See **ASBESTOS** page 16

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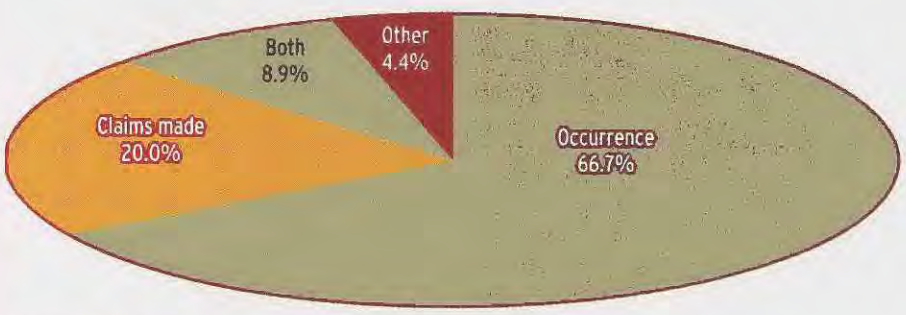
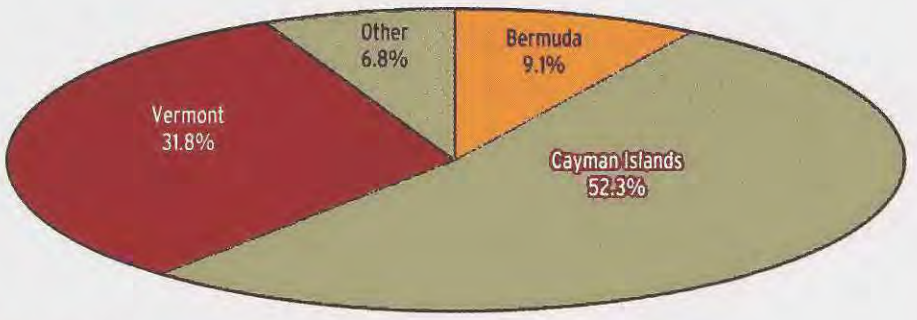
Coverage forms used by policyholder-owned facilities



Source: BI survey

ONSHORE AND OFFSHORE

Policyholder-owned facilities by domiciles



Source: BI survey

Largest policyholder-owned alternative risk facilities

Ranked by 2006 gross premiums written

Rank	Facility/Domicile	2006 gross premiums written	2006 participants	Business conducted by participants	Risks insured	Management company	Phone/Web site	Contact
1	**Associated Electric & Gas Insurance Services Ltd.** Bermuda	$1,231,811,000	451	Utility and related energy industries	D&O, excess liability, employment practices, excess workers compensation, fiduciary liability, professional liability, property	AEGIS Insurance Services Inc. The Maxwell Roberts Building, 1 Church St., Fourth Floor, Hamilton, HM 11 Bermuda	441-296-2131 *www.aegislink.com*	Alan J. Maguire, president/CEO
2	**Oil Insurance Ltd.** Bermuda	$1,197,330,000	83	Chemicals and mining, oil and gas exploration and production, petrochemicals, utilities	Control of well and third-party pollution liability, physical damage to property	OIL Management Services Ltd. 30 Woodbourne Ave., Third Floor, Pembroke, HM 08 Bermuda	441-295-0905 *www.oil.bm*	George Hutchings, senior vp/COO
3	**Raffles Insurance Ltd.** Cayman Islands	$208,418,691	256	Contractors, distributors, manufacturers	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands, B.W.I.	345-946-2100 *www.rafflesinsurance.com*	Michael Gibbs, president-Kensington Management Group Ltd.
4	**American Contractors Insurance Group** Bermuda	$151,282,000	38	Construction contractors	Auto liability, financial guaranty, general liability, workers compensation,	ACIG Insurance Co. 12222 Merit Drive, Suite 1660, Dallas, Texas 75251	972-702-9004 *www.acig.com*	William S. McIntyre, chairman
5	**Affinity Insurance Ltd.** Cayman Islands	$90,283,290	205	Contractors, distributors, manufacturers, retail	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands, B.W.I.	345-946-2100 *www.affinityinsuranceltd.com*	Michael Gibbs, president-Kensington Management Group Ltd.
6	**Churchill Casualty Ltd.** Cayman Islands	$88,794,973	97	Contractors, distributors, manufacturers	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands, B.W.I.	345-946-2100 *www.churchillcasualty.com*	Michael Gibbs, president-Kensington Management Group Ltd
7	**Oil Casualty Insurance Ltd.** Bermuda	$76,635,000	76	Chemicals and mining, oil and gas exploration and production, petrochemicals, utilities	Excess general liability	Oil Management Services Ltd. 30 Woodbourne Ave., Third Floor, Pembroke, HM 08 Bermuda	441-295-0905 *www.ocil.bm/ocil*	Jerry Rivers, senior vp/COO
8	**Temporary Services Insurance Ltd.** Cayman Islands	$64,189,867	117	Temporary employment companies, staffing firms	Workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands, B.W.I.	345-946-2100 *www.tempsinsurance.com*	Michael Gibbs, president-Kensington Management Group Ltd.
9	**Traffic Insurance Ltd.** Cayman Islands	$52,431,711	60	Trucking companies	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands, B.W.I.	345-946-2100 *www.trafficinsuranceltd.com*	Michael Gibbs, president-Kensington Management Group Ltd.
10	**MPC Insurance Ltd.** Vermont	$44,349,527	11	Law firms	Professional liability	Marsh-Captive Management Services 100 Bank St., Suite 610, P.O. Box 530, Burlington, Vt. 05402-0530	802-864-2129	Jonathan McKenzie, vp/senior account manager

Source: *BI* survey

Researched by: Kevin Edison, Karen Tucker

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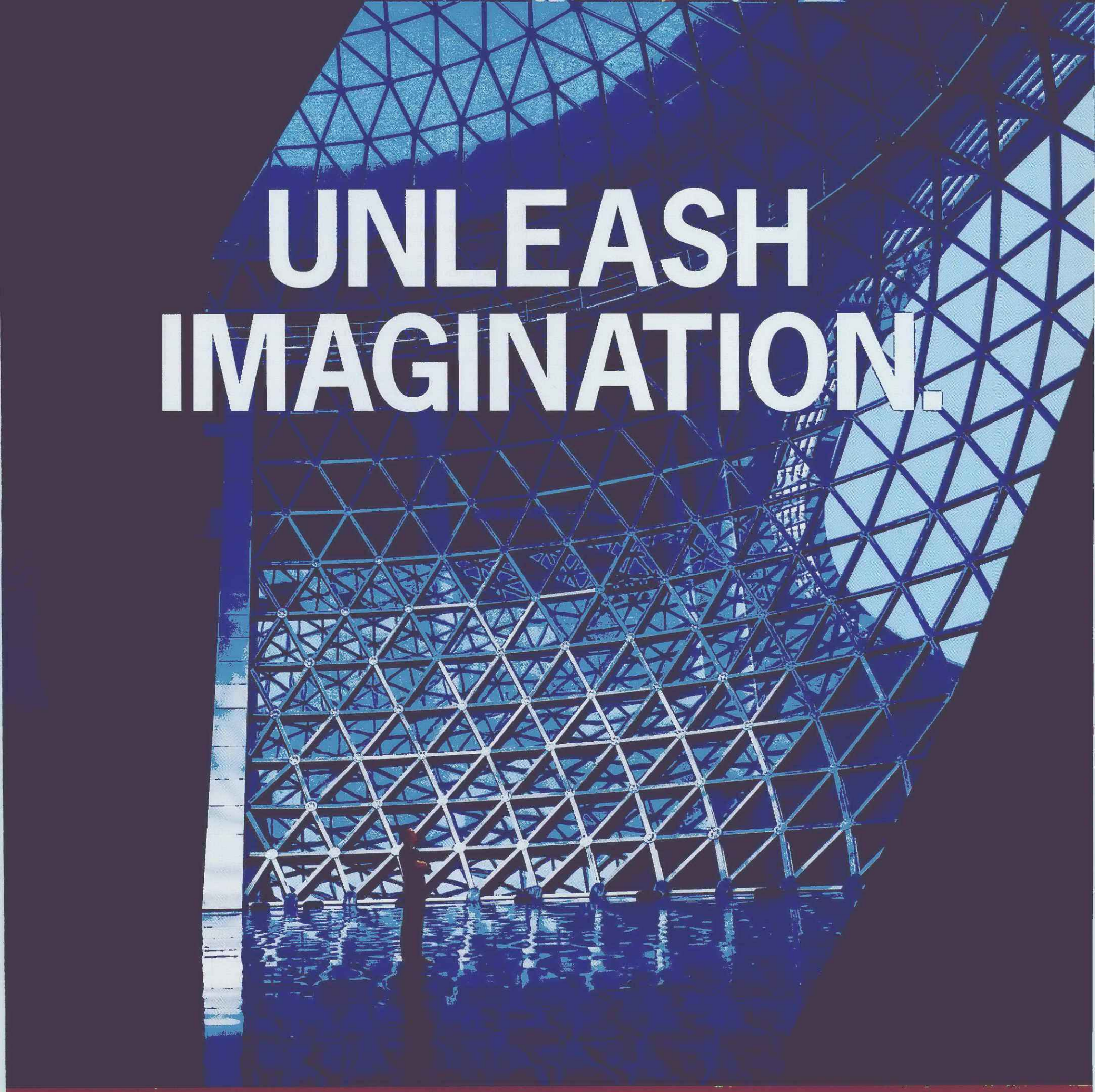

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Experts question whether global warming lawsuits can succeed

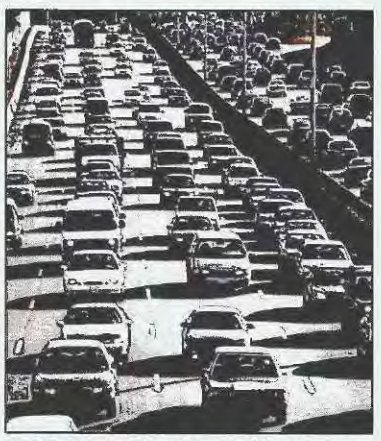
By DAVE LENCKUS

While state government and private plaintiffs continue to attempt to hold industry accountable for its contribution to climate change, legal experts question how soon or even whether such efforts can succeed.

Litigation attempting to hold business accountable for its impact on global warming has not succeeded because courts have determined the issue is political in nature and should be handled through regulation, said policyholder attorney Jim Davis, a partner and chairman of the energy and chemical industries group at New York-based Anderson Kill & Olick P.C.

For example, a Mississippi federal judge on Aug. 30 invoked the so-called "political question doctrine" in dismissing a lawsuit in which a group of Mississippi residents claimed that several coal, oil and chemical companies were liable for emitting greenhouse gasses that led to conditions that strengthened Hurricane Katrina.

A few weeks later, a federal judge in California also invoked the doctrine in dismissing the state's lawsuit against six automakers over the role their products have played in global warming.



California invoked the 'political question doctrine' in dismissing a global warming lawsuit against automakers.

Despite those rulings, the reluctance of courts to step out from behind the political question doctrine "may change" given the U.S. Supreme Court's April 2 ruling that greenhouse gases are pollutants under the Clean Air Act and that states have a right to compel federal regulation of vehicle emissions, Mr. Davis said.

Notably, Mr. Davis said, the Mississippi judge was not troubled by the scientific evidence the plaintiffs presented in support of their claim.

Mr. Davis also said he would not be surprised to see climate change plaintiffs try to use the market share theory of liability that lead paint plaintiffs used successfully in suing paint manufacturers. That would alleviate the burden of tying a particular company's greenhouse gas emissions to a particular loss by allowing the plaintiffs to argue that a defendant's emissions are responsible for a certain percentage of every loss caused by climate change.

Defendants could include not only companies that emit greenhouse gases but also those that manufacture products—such as autos and lawn mowers—that contribute to global warming.

But insurer attorney Dan A. Bailey asserts that climate change plaintiffs would face a daunting challenge if they asserted a market share theory of liability.

Any amount of lead paint produced by any manufacturer can be harmful, said Mr. Bailey, a partner with Bailey Cavalieri L.L.C. of Columbus, Ohio. While the aggregate amount of greenhouse gas emissions may contribute to global warming, "it's not clear that any one company is really harming anybody" with its individual emissions, he said.

Companies' bigger climate change liability exposure is from shareholder lawsuits, but that exposure is a long ways off, if it ever develops, Mr. Bailey said.

The chances of success of a shareholder class action lawsuit against a company are minimal, he said. Such a lawsuit would have to be based on a material drop in share price immediately after a company revised its financial statements regarding its climate change-related costs and liabilities.

A more likely scenario is a shareholder derivative action that would claim a company's mismanagement of global warming-related issues led to significant losses, Mr. Bailey said. Such claims do not have to be based on drops in share price.

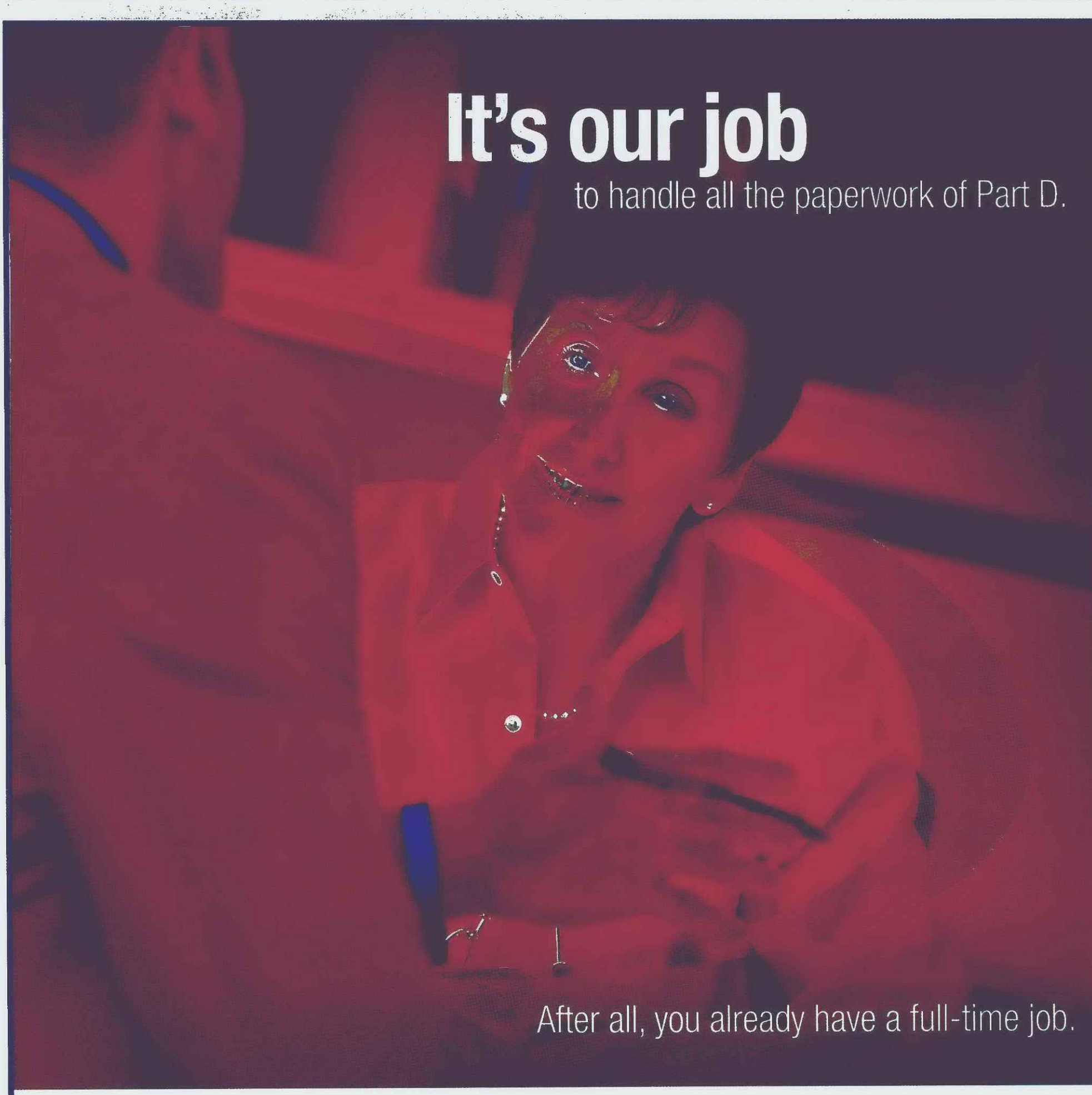
The question for companies facing such suits is whether their directors and officers liability insurance would respond, since those policies contain broad pollution exclusions, he said. The Supreme Court's ruling that greenhouse gases are pollutants would support insurers' denial of coverage because of the pollution exclusion, Mr. Bailey said.

But Side A-only policies that cover directors and officers when their organizations are precluded from indemnifying them often contain carve-outs that would circumvent the pollution exclusion, he said.

The wording of the bodily injury and property damage exclusion in a Side A policy likely would determine whether directors and officers could tap those policies, Mr. Bailey said.

If the exclusion bars coverage "for" such claims, a shareholder derivative action would not be swept in with excluded third-party bodily injury and property damage claims, he said. The exclusion in most Side A policies contains the "for" language, he said.

But some of the exclusions bar coverage "arising out of" bodily injury and property damage claims. That broader language would bar coverage for shareholder derivative action lawsuits, he said.



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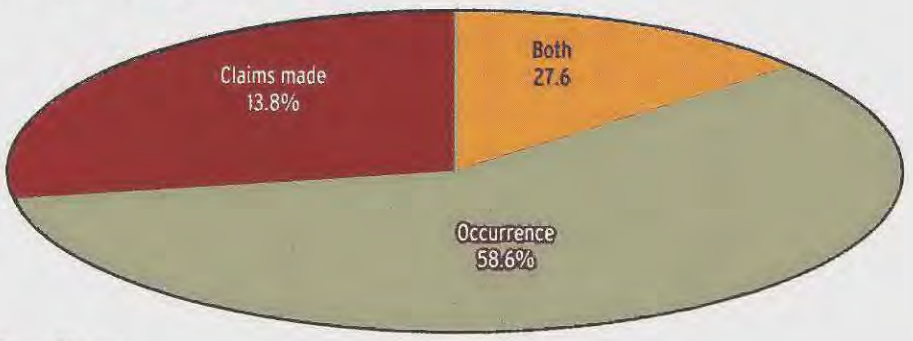
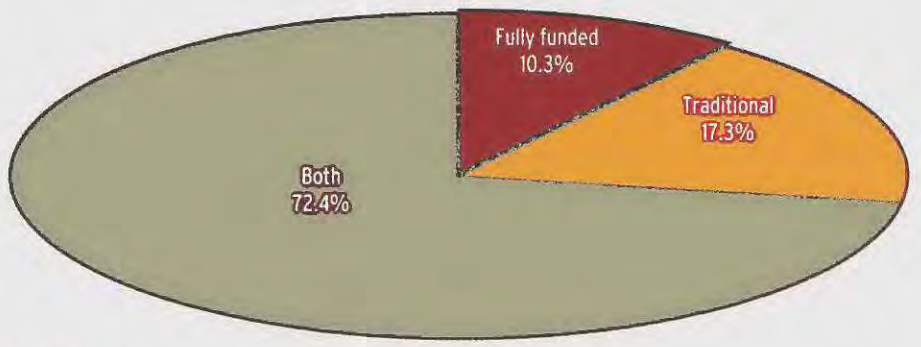
LIABILITY TRIGGERS

Coverage forms used by rent-a-captive facilities



Source: BI survey

TYPES OF RENT-A-CAPTIVE PROGRAMS



Source: BI survey

Largest rent-a-captive facilities

Ranked by 2006 gross premiums written

Rank	Facility/Domicile	2006 gross written premiums	Estimated 2007 gross written premiums	2006 participants	Estimated 2007 participants	Risks insured	Management company	Phone/Web site	Contact
1	**Guardrisk Group of Cos.** South Africa	$391,613,155 [1]	$479,933,998 [2]	325	344	Life, nonlife	Guardrisk Holdings Ltd. Alexander Forbes Place, 90 Rivonia Road, Fourth Floor, Sandton 2146 South Africa	27-11-669-1100 *www.guardrisk.co.za*	Herman Schoeman, managing director
2	**Universal Re-Insurance Co. Ltd.** Bermuda	$174,000,000	$200,000,000	135	146	All lines	Atlantic Security Ltd. Windsor Place, 18 Queen St., Hamilton, HM 11 Bermuda	441-295-5425	Hal Forkush, president
3	**Universal International Reinsurance Co. Ltd.** Bermuda	$149,000,000	$160,000,000	70	75	All lines	Atlantic Security Ltd. Windsor Place, 18 Queen St., Hamilton, HM 11 Bermuda	441-295-5425	Hal Forkush, president
4	**Arlington Insurance Co. Ltd.** Bermuda	$55,000,000	$60,000,000	100	110	Auto liability, general and professional liability, product warranty, workers compensation	Liberty Mutual Management (Bermuda) Ltd. P.O. Box HM 2455, Hamilton, HM JX Bermuda	441-296-2131	Simon Hothersall, assistant vp
5	**Alternative Re Ltd.** Bermuda	$53,781,724	N/A	150	N/A	Auto liability, general liability, property, products and completed operations, workers compensation	Alternative Re Ltd. Wessex House, 45 Reid St., Hamilton, HM 12 Bermuda	441-278-9245	Gavin P. Collery, president/COO
6	**Lansdowne Insurance Co. Ltd.** Bermuda	$52,356,496	$45,000,000	62	65	Property/casualty	CTC Allegro Insurance & Risk Management Ltd. Burnaby Building, 16 Burnaby St., Hamilton HM 11 Bermuda	441-295-8495	Andy McComb, president
7	**SEG Insurance Ltd.** Bermuda	$41,754,103	N/A	N/A	N/A	Auto liability, general liability, workers compensation	Artex Risk Solutions (Bermuda) Ltd. Swan Building, 26 Victoria St., Hamilton, HM HX Bermuda	441-292-4654 *www.rent-a-captive.com*	Peter J. Mullen, president
8	**Marchmont Insurance Co. Ltd.** Bermuda	$32,400,000	$17,000,000	5	4	Health, life, pension, property/casualty	HSBC Insurance Solutions (Bermuda) Ltd. Insurance Building, 112 Pitts Bay Road, Hamilton, HM 11 Bermuda	441-292-5566 *www.bfm.bm*	S. Andrew White, assistant vp-manager
9	**Atlantic Gateway International (SAC) Ltd.** Bermuda	$30,000,000	$30,000,000	28	32	Commercial property/casualty	Quest Insurance Solutions 131 Prosperous Place, Unit 18B, Lexington, Ky. 40509	859-263-5015 *www.frankgates.com*	Rick Stasi, COO-Frank Gates Alternative Risk
10	**Stuart Insurance Group Ltd.** Bermuda	$20,000,000	$21,000,000	35	35	Commercial auto liability, commercial general liability, warranty, workers compensation	Liberty Mutual Management (Bermuda) Ltd. P.O. Box HM 2455, Hamilton, HM JX Bermuda	441-296-2131	Gunther Gerber, account manager

1 2006 premium volume is converted from South African rand = $0.1410 (3/31/07). 2 2007 estimated premium volume is converted from South African rand = $0.1462 (10/29/07).

Source: *BI* survey

Researched by: Kevin Edison, Karen Tucker

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TOP 10 SETTLEMENTS

The biggest wage and hour settlements entered into or paid in 2006:

$98 MILLION	Citigroup Global Markets Inc.
$89 MILLION	UBS Financial Services Inc.
$87 MILLION	United Parcel Service of America Inc.
$65 MILLION	IBM Corp.
$42.5 MILLION	Morgan Stanley & Co.
$38 MILLION	24 Hour Fitness
$37 MILLION	Merrill Lynch Inc.
$27.5 MILLION	Siebel Systems Inc.
$15 MILLION	Sears Roebuck & Co.
$14.9 MILLION	Electronic Arts Inc.

Source: "Annual Workplace Class Action Litigation Report: 2007 Edition," Seyfarth Shaw L.L.P.

Explosion of class action lawsuits focus on wage and hour violations

Certifying class easy under Fair Labor Standards Act

By SALLY ROBERTS

When an employer is sued for employment practices violations today, the suit likely doesn't allege discrimination or sexual harassment, but rather violations of state and federal wage and hour laws.

The ease by which plaintiff attorneys can certify a class or collective action under the federal Fair Labor Standards Act, coupled with worker-friendly state statutes and the lack of accurate time recording and reporting by employers, has resulted in an explosion of class action overtime lawsuits around the United States in the past several years, labor attorneys say.

Allegations of misclassifying employees as exempt from overtime and not paying for off-the-clock work hours continues to result in multimillion-dollar settlements and verdicts against employers (see chart).

Most recently, Coral Gables, Fla.-based specialty contractor MasTec Inc. said it would pay $12.6 million to settle the unpaid overtime claims of current and former service technicians in 10 states around the country, who sued the company in federal court in Florida in 2005.

Because such claims are generally excluded from employment practices liability insurance policies, employers are left with little protection (see story, page 24).

'It's probably the leading exposure right now for employers in the U.S., even more than employment discrimination.'

Gerald Maatman, Seyfarth Shaw L.L.P.

As a result, vigilant due diligence of payroll practices and protocols as well as education and training are keys to mitigating exposure, attorneys say.

Under the FLSA, created in 1938 to protect industrial workers from exploitation, employees are guaranteed time-and-a-half pay for hours worked beyond a 40-hour work week, unless they are salaried and fall into one of three main exempt categories: professional, executive or administrative.

In 2004 the U.S. Department of Labor modernized the FLSA by making it easier for employers to determine overtime exemptions and by raising the salary threshold, below which workers automatically qualify for overtime pay.

Rather than decreasing the amount of overtime lawsuits as the Labor Department had hoped, the changes added "a lot more fuel to the fire because people started talking about it more," said Paul Siegel, head of the wage and hour practice for Jackson Lewis L.L.P. in Melville, New York.

In 2005 there were 4,039 federal wage and hour suits filed, 10% more than the 3,671 filed in 2004, according to the Administrative Office of the U.S. Courts. In 2006, the number of federal wage and hour cases filed jumped another 4.2% to 4,207, and attorneys say the pace is not slowing.

"It's probably the leading exposure right now for employers in the U.S., even more than employment discrimination," said Gerald L. Maatman Jr., a labor attorney with Seyfarth Shaw L.L.P. in Chicago, who estimates that five to seven wage and hour class action lawsuits

See **WAGE** page 24

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Wage: Explosion of class actions filed under FLSA

CONTINUED FROM PAGE 20

are brought every day in Cook County, Ill.

"We currently have 211 pending class actions we're handling firmwide and at least 90% of them are wage and hour class actions," said Brian T. McMillan, an attorney with employment law firm Littler Mendelson P.C. in San Jose, Calif. "It's just absolutely incredible the increase in wage and hour class actions that we've seen."

Attorney say part of the reason for the proliferation of wage and hour suits is that—unlike federal employment discrimination cases that are difficult to certify as a class under Title VII of the Civil Rights Act—certifying a class is much easier under the FLSA and legal action can be launched by a single person.

The FLSA "makes it really way too easy to certify a class and lump these matters together where there are so many individualized differences," said Robin Conrad, executive vp of the National Chamber Litigation Center in Washington, who, on behalf of the U.S. Chamber of Commerce, has filed a number of amicus briefs in support of employers in wage and hour lawsuits. "There seems to be some fundamental unfairness here," she said.

'It's like open hunting season because it's easy for employees to say 'I generally worked through my meal period or didn't take it or perhaps took a 20-minute meal break rather than 30 minutes, three days a week for the last three years.'

Brian T. McMillan, Littler Mendelson P.C.

In addition, various worker-friendly state statutes have contributed to the proliferation of wage and hour claims, attorneys say.

In California for example, the state Supreme Court ruled unani-

See **WAGE** page 26

Wage, hour coverage available

While wage and hour claims generally are excluded from employment practices liability insurance policies, employers can obtain limited protection for such risks from a handful of underwriters.

Beazley Group P.L.C., Monitor Liability Managers Inc. and Travelers Cos. Inc. each offer defense cost coverage for state and federal wage and hour claims, either as an endorsement or as a supplement to their EPLI policies.

Employers, for example, can purchase sublimits ranging from $150,000 up to $1 million in wage and hour defense cost coverage from London-based Beazley as part of an endorsement to its EPLI policy.

Premiums vary depending on the sublimits purchased, but policyholders can expect to pay up to $250,000 for $1 million in defense cost coverage, said Carrie Brodzinski, EPL product manager for Beazley in Farmington, Conn.

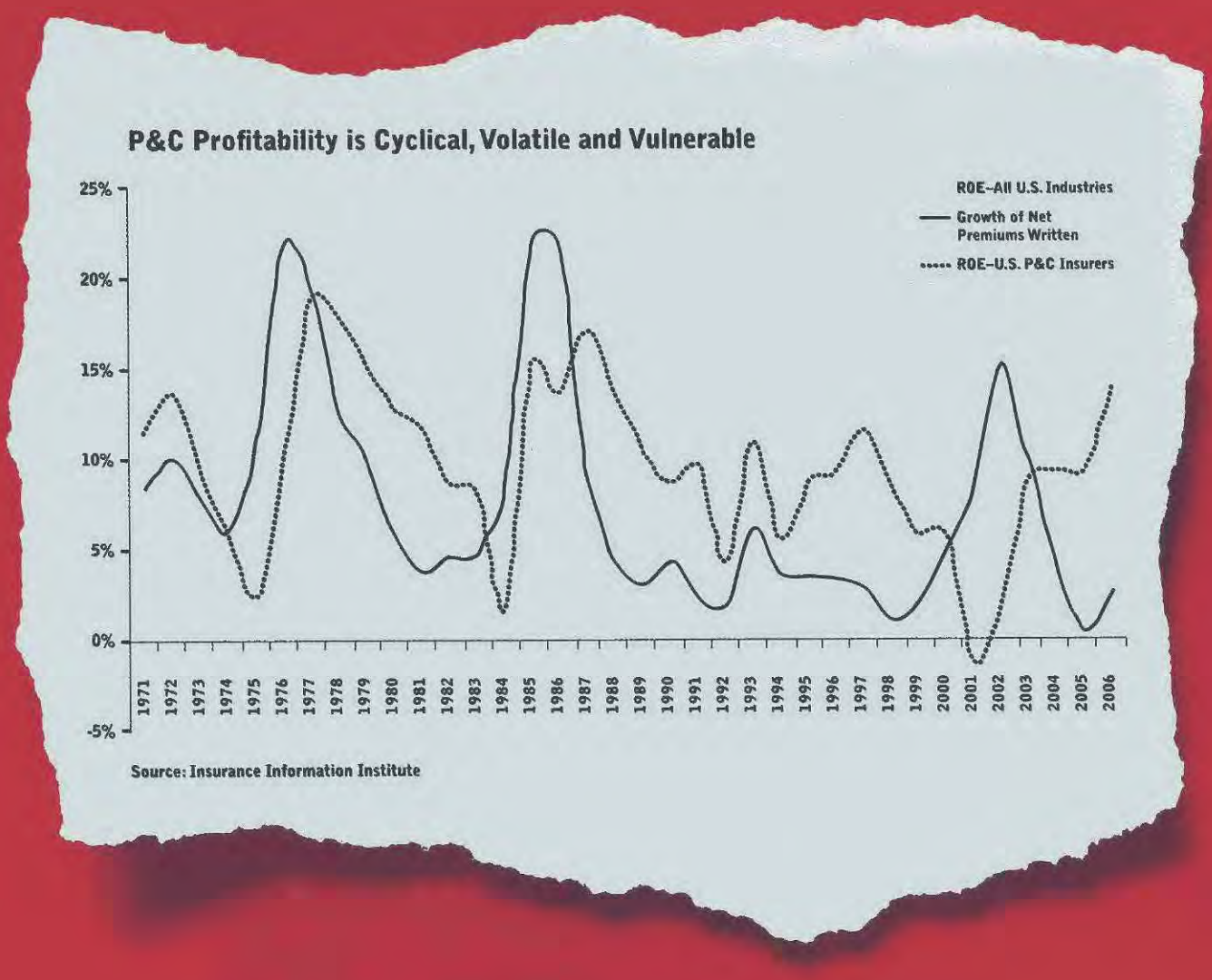
Meanwhile, Rolling Meadows, Ill.-based Monitor offers up to $100,000 in defense cost coverage for wage and hour claims under an EPL endorsement. Premiums vary based on a number of factors that range from where the policyholder is located to how many people it employs, a spokeswoman said.

And St. Paul, Minn.-based Travelers offers $100,000 in defense cost coverage for wage and hour claims as part of its EPLI product, said Cara Lovering, EPL product manager based in Hartford, Conn.

As part of the coverage, each of the underwriters offers employers a number of wage and hour risk management tools and services to help them assess their practices and protocols and mitigate their exposures.

—By Sally Roberts

We believe straight talk can lead to steady bottom lines.



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Wage: Explosion of class actions filed under Fair Labor Standards Act

CONTINUED FROM PAGE 24

mously in April that the premiums owed to employees for missed meals and/or rest periods are "wages" subject to a three-year statute of limitations rather than a "penalty" subject to a one-year statute of limitations.

That has resulted in a "dramatic increase" in the number of cases alleging missed meals and rest periods against California employers, Mr. McMillan said.

"Aggressive plaintiff attorneys find it not too difficult to come across employers not keeping accurate records of the meal breaks," he said. "It's like open hunting season because its easy for employees to say 'I generally worked through my meal period or didn't take it or perhaps took a 20-minute meal break rather than 30 minutes, three days a week for the last three years," he said. "Add that up and it's an enormous liability for employers," which have the burden of keeping accurate records of meal breaks and what hours employees worked, he said.

Accurate record keeping is one of several steps employers can take to minimize their exposure to wage and hour claims, experts say.

Clear policies and procedures that detail the company's payroll practices and time-reporting obligations also are key, they say. These policies should not only be included in the employee handbook, but also should be spelled out through various education and training programs, they say.

Employers also should require employees to look at their paychecks and either confirm that their time worked was recorded accurately or be given a toll-free phone number to call if they notice improper deductions or time not paid, Jackson Lewis' Ms. Siegel said.

Indeed, just as in discrimination and harassment cases, courts today care about whether employees know how to complain if they think they're being underpaid or misclassified, said Shanti Atkins, president and chief executive officer of Employment Law Training Inc., a San Francisco-based online compliance training provider that recently rolled out a new wage and hour online training program for employees and managers.

"You have these companies that have invested a ton of money and thinking into their compliance mechanisms in the area of harassment and discrimination, yet it hasn't been transferred over to this other area, which is actually a bigger liability," she said.

An internal audit of payroll practices also is a smart move, especially when it comes to potentially misclassifying a nonexempt employee, attorneys say.

"One of the biggest areas of liability is employees who are misclassified as exempt rather than nonexempt," said Mr. McMillan. "That's a factually specific analysis because you need to look at what that employee is actually doing. While job title might give a clue, you have to actually see what that employee is doing each day and how much time they are spending each day performing those tasks."

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Reformers and plaintiff attorneys take battle to the states

At the federal level, however, many agree that Democratic majority in Congress makes tort law changes highly unlikely

By MARK A. HOFMANN

Tort reform, never the easiest of tasks on Capitol Hill, isn't likely to be getting any easier any time soon, say civil justice reform advocates.

Last year's elections that created Democratic majorities in both houses of Congress made tort reform extremely difficult, if not impossible, on the federal level. Reformers also have found themselves increasingly playing defense at the state level, as efforts arose to roll back the reforms passed over the past two decades.

But reform proponents say that their movement remains viable despite the new challenges. In fact, they may have inadvertently received some help from some high-profile plaintiffs' attorneys who found themselves in trouble with the law.

"It's business as usual in the sense that we're as active and engaged as we have ever been," said Lisa Rickard, president of the Washington-based U.S. Chamber Institute for Legal Reform. But she said that the trial bar is "reinvigorated in both mission and money."

Reformers have enjoyed "tremendous success" at the state level in recent years, said Sherman Joyce, president of the Washington-based American Tort Reform Assn. As a result, reformers in some jurisdictions may feel that they can take a break, he said.

Biggest challenge

"The biggest challenge is that we have to recognize we have new challenges," Mr. Joyce said. "When we look at the landscape, the really serious issues are consumer protection acts, appeal bonds and the whole question of private attorneys general."

Passing reform at the national level has always been difficult, reformers say.

"I wouldn't say that tort reformers have written off Capitol Hill, but legal reformers realized long ago that tort reform on Capitol Hill is kind of like chasing your tail," said Glenn Lammi, chief counsel of the Washington Legal Foundation's legal studies division. "It's always been tough to get 60 votes in the Senate even when the party that is a little more favorable to tort reform was (in power). It caused them to try to have to get things in small bites. That's good, but it doesn't necessarily get you everything you want."

"Tort reform is a difficult thing to achieve in any environment, particularly in this new and evolving environment, where the Democrats have majorities in the House and Senate and those majorities may increase," said Paul Mattera, senior vp and chief public affairs officer for Boston-based Liberty Mutual Insurance Co. He noted that the Class Action Fairness Act, which he described as a "modest reform bill," passed only after at least a decade of intense lobbying. Asbestos litigation legislation "could not go over the goal line" despite Republican majorities in both houses and a Republican president, he said. "And I think that's instructive."

Not surprisingly, those opposed to the reformers' goals say that the effort's glory days are long behind it.

'This is dramatically new. The mantra of the plaintiffs' lawyers is that everything should be left to the courts.'

Victor Schwartz,
American Tort Reform Assn.

"They certainly lost steam at the federal level," said Joanne Doroshow, executive director of the Center for Justice & Democracy in New York. "Congress is no longer seriously dealing with tort issues. And the president, who had made this an issue throughout this administration, has also stopped speaking about it."

"I believe this issue never had any real legs to it," she added. "It was a tool for the administration and political allies of big business to raise money. But voters have never considered this an important issue for them."

"On the national level, it is true that the tort reform movement has certainly lost considerable steam," said Brian Wolfman, director of the Washington-based Public Citizen Litigation Group, which opposes tort reform.

"I think the reason is twofold," said Mr. Wolfman. "As a historical matter, the effort at the federal level was largely unsuccessful even in environments in which you would have thought they had a decent shot. No. 2, the political atmosphere is quite different in any event. It's not simply that the Democrats are in control of Congress," he said, adding that

Continued on next page

CONTINUED FROM PREVIOUS PAGE

President Bush has "so little political capital now" that he would be unlikely to spend it on a tort reform effort.

The Democratic gains at the federal level mean that reformers are focusing on defending against "expansion by plaintiffs' lawyers to increase their income," said Victor Schwartz, ATRA's general counsel and a longtime tort reform proponent. He noted that efforts are already under way to scale back or eliminate federal pre-emption of some state tort actions when federal law supersedes state liability law, such as cases involving drugs governed by the Food and Drug Administration.

Mr. Schwartz said efforts to overturn reform at the state level have been "even more dramatic." There have been hearings on more than 50 bills across the country that would either repeal reform or expand the ability to sue, he said.

"This is dramatically new," he said. "The mantra of the plaintiffs' lawyers is that everything should be left to the courts. And the tort reformers went to the legislature and now we have the plaintiffs' lawyers going to the legislature."

There will still be attempts in the states to enact traditional tort reforms such as limiting perceived excesses in consumer protection acts, he said, adding, "the mountains toward limiting liability through legislation have become much steeper."

"I think it slowed down before the political changes," said John Lobert, senior vp-state government relations for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America. Many of the successful reform efforts in the states occurred in the 1980s and 1990s, he said. But state supreme courts would often find those reforms unconstitutional, he said.

After that first wave of change, reformers focused on smaller incremental changes, said Ann Spragens, PCI's senior vp, secretary and general counsel. This included appeal bond reform, which proved to be significant in some class actions that involved hundreds of millions of dollars.

"We still have gotten some tort reform at the state level," said Mr. Lobert. But the focus has at times switched to the courts from the legislatures. After high courts declared reforms unconstitutional, the business community turned its attention to unfavorable state supreme courts with elected rather than appointed justices, he said.

"These are sleeper races for the electorate," said Mr. Lobert. "Once we concentrated on that, we really solved some of our problems."

"I think that one of the bigger challenges for legal reformers is the perception of legal reform being more beneficial to business than it is to consumers," said Mr. Lammi of the Legal Foundation. "However, I think the legal reform movement has improved dramatically over the last five years in making the case that legal reform does help consumers."

Reform efforts may have received a boost from the recent indictments and guilty pleas of members of the law firm Milberg Weiss Bershad & Schulman L.L.P., which specialized in class action securities suits. The federal indictments accused members of the firm of paying kickbacks to people who agreed to be plaintiffs in the suits.

The indictments "illustrate in a very precise matter all that's wrong with the system in regard to trial lawyers' plaintiff shopping," said Ms. Rickard of the U.S. Chamber Institute for Legal Reform.

The indictments underscore that there are "very serious abuses," agreed ATRA's Mr. Joyce.

"Legal reform isn't just about passing legislation, it's about changing the legal climate and the legal culture," said Ms. Rickard.

A difference of opinion

The question of whether and how the civil justice system should be reformed has played out in both the states and on Capitol Hill for more than two decades. Business and professional groups have advocated tort reform as a means to guarantee fairness in the courts as well as spur U.S. economic competitiveness in a global marketplace.

Consumer groups and plaintiffs' attorneys have countered that tort reform—which some refer to as "tort deform"—is actually an attempt to shield wrongdoers from the consequences of their actions and have sought to both block new efforts and overturn previously enacted changes in the civil justice system.

Senior Editor Mark A. Hofmann recently discussed the issue with two prominent advocates for each position. Joanne Doroshow is executive director of the Center for Justice & Democracy in New York, which opposes tort reform. Sherman Joyce is president of the American Tort Reform Assn. in Washington, which advocates continuing reforms.

Tort reform crucial to ensure access to health care services

Q: Why is tort reform necessary?

We believe tort reform is necessary because it affects many important aspects of our society. Probably the most significant for most people is access to health care. We see clear cases of important life-saving medical services not being available.

Mr. Joyce

If you're a small business, a single frivolous lawsuit can be the difference between survival and not surviving. We've seen here in Washington, D.C., this outrageous case involving the dry cleaner sued by the judge over the lost pair of pants.

What's probably lost in the discussion is that they're going to close that business as a result of that case.

When the system doesn't work, it really it affects all segments of our society, whether it's schools, local governments, small businesses, large business or health care providers. Fixing our system and having a balanced legal system is in the public interest.

Q: The amount of damages sought is higher today than in the past. But is the number of actions actually growing? Why or why not?

We hear that it is in some instances, but I don't think it's really possible to know with great precision in terms of our overall legal system. I think from our standpoint what is most relevant is the increase in particular new lines of lawsuits, whether it's state consumer protection laws being used as they were in this particular dry cleaner case in Washington, D.C. A case like that, which attracted even international attention, is obviously very significant for us.

When we see more and more lawsuits being driven by personal injury lawyers working almost in tag teams with state attorneys general or other government officials is something that is of concern to us.

An issue that's of great concern as well is we've seen recently a challenge to an appeal bond cap in Florida. I would hope that no one would disagree that people should have reasonable opportunity to appeal cases when they believe a judgment is excessive.

Q: Why are caps on noneconomic damages necessary?

The major focus on noneconomic damages in our arena is in the health care environment. This is of particular concern to physicians, other health care providers, hospitals and all that are involved in the delivery of health care. States like California or Texas, which have enacted comprehensive medical liability reform including reasonable limits on noneconomic damages, are states where the access-to-health-care crisis has either been solved or has never developed.

It's an important policy consideration. It's a tough call to make; we admit that it's sometimes very difficult to make the argument. Nevertheless, we think when all the equities are considered, that it's important to have a reasonable limit on noneconomic damages to preserve access to health care.

Q: People on the other side of the debate often say that the tort reform movement seeks to deny people access to the courts. What's the best way to preserve plaintiffs' access to courts?

See **PRO** next page

Current system often relieves wrongdoers of responsibility

Q: Why is tort reform unnecessary?

Tort reform is really nothing more than laws that take away a victim's right to go to court or take away the power or authority of a jury to decide compensation. Some of these laws are quite cruel—in terms of the effect, for example, they might have on a

Ms. Doroshow

catastrophically injured child to get adequate compensation from those who were negligent or reckless and caused the injury. It could be devastating to the families who need to care for these children and others.

They also relieve wrongdoers of their responsibility for causing an injury or death. They take away people's constitutional rights. All in all, they're not only unnecessary, they're terrible public policy.

Q: The amount of damages sought is higher today than in the past. But is the number of actions actually growing?

No, the number of tort cases has been falling for years. According to National Center for State Courts, it is getting harder and harder for people to get into court. Some of that is the result of these so-called tort reform laws that have been passed in the last 20 or 30 years.

Generally the damages will track medical inflation, which is always going up. Some smaller cases can't get into court anymore because of these tort restrictions that are on the books. So it sometimes creates a deceptive look at the tort system now. So it's only the higher-damages cases that can get into court at all.

Generally speaking, the damage awards and jury awards when adjusted for inflation have been fairly stable.

Q: Why are caps on noneconomic damages unnecessary?

Noneconomic damages, sometimes described as pain and suffering, are really much more than that.

They really deal with the quality of life of a person and their ability to live on a day-to-day basis—free of any kind of debilitating physical or emotional problems that diminish that. It's the kind of suffering that very seriously injured people encounter each time they try to do something sort of mundane in life that many of us take for granted. It's this loss that the law described as noneconomic but goes to the very essence of our quality of life. So they're very, very important kinds of damages to compensate for, and caps obviously are unfair to people who have suffered these kinds of losses, particularly women who don't work outside the home, or children or senior citizens whose wages or economic loss are disproportionately less than, say, a CEO of major corporation. So caps on noneconomic damages often discriminate against those kinds of people.

Q: What's the best way to preserve plaintiffs' access to the courts?

Keeping the system strong, and the very first step we should be taking is to repeal many of these tort restrictions that have passed and are currently on the books. Caps on damages for sure should be repealed; some states have caps that affect economic damages as well. These are particularly cruel laws.

Joint and several liability restrictions are very unfair, particularly in crime cases, negligent security cases and very unfair in environmental pollution cases where you have many toxic polluters at once.

See **CON** next page

Con: No evidence of frivolous rise

CONTINUED FROM PREVIOUS PAGE

Q: Are frivolous lawsuits in fact increasing, or is frivolity in the eye of the beholder?

There's certainly never been any evidence that the system has been overrun with frivolous lawsuits. In fact, all of the academic literature says the exact opposite—it's never been a problem.

There are going to be anecdotal cases like that. You're always going to have them and they get pumped up in the media and people have an impression that's what the system is about. It's really not. Frivolous cases don't it make past the initial motions. They get bounced out of court. It's kind of a nonissue.

I would definitely say in the eye of the beholder. I don't believe anyone who's been sued believes that a case is other than frivolous, but that certainly is not the case in terms of the law.

Pro: Suits ruled to be frivolous should result in penalty

CONTINUED FROM PREVIOUS PAGE

Our perspective is when the rules are clear and fair and there are not profound questions about where responsibilities begin and end, you have a balanced legal system that's going to work in a more efficient way. It's simply not going to take as much time to litigate as many issues.

We believe in access to the courts. People should be able to fully air their concerns, but whether its issues like use of these state consumer protection laws, unlimited pain and suffering awards because of the impact they have on health care—these are issues we believe are in the public interest, and ultimately the public is best served by a system that is balanced in terms of the way it treats both plaintiffs and defendants.

Q: Are frivolous lawsuits in fact increasing, or is frivolity in the eye of the beholder? You'd mentioned the dry cleaner case.

The dry cleaner case we don't consider frivolous. It was really pointed more to the nature of the underlying law that was used.

Again, it's difficult. We can point to certain analyses done by small business that suggest that frivolous lawsuits continue to be a very serious problem for smaller business organizations.

Our perspective is you can never have too few frivolous lawsuits and ensuring that the system works properly.

We understand that Rep. Lamar Smith, R-Texas, is going to introduce a proposal that passed the House in the last Congress, which would strengthen the sanctions for the filing of a frivolous claim to ensure that there would be sanctions, as opposed to making it optional.

People should know there will be penalties for bringing a frivolous claim. Frivolous clams need to be carefully defined. Just because someone loses a case doesn't make it frivolous, we understand that. If somebody sues the owner of store claiming he or she was injured by falling in the store and has never been in the store, that's pretty clearly frivolous.

Similarly if somebody went into the store and never fell, that's also frivolous.

These are the most egregious cases and there should be sanctions when these cases are initiated.

Canada ruling may provide way to avoid class action lawsuits

By GLORIA GONZALEZ

A recent Supreme Court of Canada decision strongly supporting arbitration to resolve disputes between businesses and consumers will be a useful tool in managing class action litigation risks, legal experts say.

Even so, businesses located in two of Canada's largest provinces likely will be less affected by the decision as provincial laws prohibit businesses from requiring consumers to submit to binding arbitration, experts say.

The ruling stems from Dell Computer Corp.'s mislabeling of prices on its Web site. In April 2003, two handheld products were incorrectly listed for sale online at substantially lower prices than intended. Before Dell could completely correct the problem, 354 Quebec residents ordered the units at the lower prices. The company announced it would not honor those orders, prompting a buyer and a consumer advocacy group to seek permission to launch a class action lawsuit against Dell in Quebec.

Dell sought to dismiss the request and refer the proceeding to arbitration based on a mandatory arbitration clause in its online contract terms and conditions for sales.

The trial judge ruled the arbitration clause did not apply because of Quebec law giving provincial entities jurisdiction over an action involving consumer contracts with Quebec residents. The Quebec Court of Appeal upheld the ruling in 2005, saying Dell had not properly brought the arbitration clause to the customer's attention because customers had to access terms and conditions via a hyperlink. Therefore, the court ruled, Dell could not enforce the arbitration clause.

In *Dell Computer Corp. vs. Union des Consommateurs*, the Supreme Court of Canada in July dismissed the motion seeking authorization for a class action lawsuit against the company and referred the claim to arbitration.

In its decision, the Supreme Court made several assertions that could be favorable to businesses.

It held that a challenge to an arbitrator's jurisdiction must be resolved first by the arbitrator unless the challenge is based on a question of law, which is a "strong statement" on the role of arbitration in the justice system, said Mahmud Jamal, a partner in the Toronto-based litigation group of Osler, Hoskin & Harcourt L.L.P., who represented Dell in the case.

The Supreme Court also ruled that arbitration agreements can preclude class actions even in Canadian consumer contracts, because a class action is a procedural vehicle rather than a substantive right.

"It shows confidence in the institution of arbitration as a whole," said Anne-Marie Lizotte, a Montreal-based partner in the research department of Osler and co-counsel for Dell.

'Keep putting these (arbitration) clauses in if you want to manage the risk of class actions.'

Frederic Bachand, McGill University

Previously, some lower courts treated arbitration clauses as an element in the overall decision of whether to certify a class action and considered whether a class action would be preferable, litigation experts say.

The Supreme Court also ruled that the terms and conditions of the Dell agreement were sufficiently accessible because consumers could click on a hyperlink that appeared on every page that the consumer accessed.

As a result of the ruling, it is clear that the Supreme Court believes that consumers have a responsibility to read terms and conditions when purchasing goods over the Internet, said Christine Carron, a senior partner in the corporate and commercial litigation department of Ogilvy Renault L.L.P. in Montreal.

Several litigation experts said the Supreme Court's decision effectively gives companies a tool to minimize the risk of class action lawsuits.

"It will basically provide a way of blocking class actions," Mr. Jamal said.

Ontario and Quebec, though, have passed legislation prohibiting the waiving of class action rights in consumer contracts, and Alberta law bans arbitration clauses in limited situations, litigation experts say.

A company that operates in both Quebec and Saskatchewan would find that an arbitration clause is rendered meaningless by Quebec's law, but would be enforceable in Saskatchewan, said David Stolow, a partner in the class action and corporate commercial litigation department at Davies Ward Phillips & Vineberg L.L.P. in Toronto. "There is no clear, hard and fast rule as to the standard that is going to apply across Canada," he said.

However, even in provinces with legal prohibitions, the bans apply only to certain types of contracts, said Frederic Bachand, assistant professor in the faculty of law at McGill University in Montreal, who intervened in the case on behalf of the London Court of International Arbitration, an international institution for commercial dispute resolution.

In Quebec, for example, insurance contracts are excluded from the law so insurers are likely to include arbitration clauses and stipulations barring class actions in their contracts, he said.

"I wouldn't be surprised if *Dell* wasn't part of a broader movement or trend where courts would make it harder for class actions to be commenced in Canada," Mr. Bachand said

From a risk management perspective, though, companies wanting to minimize their class action exposures should include arbitration clauses in contracts in light of the Supreme Court decision, experts say.

"Keep putting these clauses in if you want to manage the risk of class actions," Mr. Bachand said.

Dell Computer Corp. vs. Union des Consommateurs and Olivier Dumoulin, 2007 SCC34, July 17, 2007

Companies face new media exposures with online publishing

Cyber risk insurance market grows as more companies purchase coverage to avoid lawsuits

By KRISTIN GUNDERSON HUNT

As technology continues to change the way companies do business, more insurers are broadening their coverage to help meet the expanding legal exposures companies face as a result of publishing content online, especially those not considered traditional media or publishing outlets.

"From the telephone to the radio to the television, technology is always changing and the law has to adapt to deal with it, and it's doing that with the Internet right now," said Eric Robinson, staff attorney for the Media Law Resource Center, a nonprofit information clearinghouse in New York.

Any company using new media to publish content faces the same exposures as a traditional publisher or media outlet, said Jay Brown, New York-based senior claims counsel for the technology, media and telecom division of London-based Hiscox Global Markets.

"Companies have to bear in mind they are legally responsible for what goes out on their site," said Mr. Brown. "They need to educate themselves on the traditional media rules. Just because the medium has changed doesn't mean the rules of the road have changed."

Some typical legal pitfalls include defamation, publicity and privacy violations, copyright infringement and trade secret misappropriation, said Eric Goldman, an assistant law professor and director of the High Tech Law Institute at Santa Clara University law school in California.

Mr. Goldman said a company's liability has less to do with the technology it uses than the content it publishes.

"There is a disconnect," Mr. Goldman said. "People are publishing content when they don't see themselves as content publishers. They think it's all about technological risks when it's all about content risks."

Still, technology has enabled more content publishing, further exposing companies—even on an international level. Because the Internet has no boundaries, companies are subject to laws in numerous countries.

"Once you're on the Internet, you're global," said Laura Johnson, vp of Euclid Managers L.L.C., an underwriting manager based in Kansas City, Mo.

She said implementing restrictions can help protect against lawsuits. Companies should consider the amount and type of content they're willing to publish. They need to determine who is allowed to post content, the subjects they are permitted to discuss and who is responsible for monitoring the content.

Highlighting restrictions on interactive Web sites and disclaimers regarding the accuracy of the site's information can also mitigate risk, Ms. Johnson said.

With such widespread use of the Internet, however, even the most cautious companies are still vulnerable.

Approximately 70% of U.S. adults use the Internet, according to research from the Pew Internet and American Life Project, a nonprofit Washington organization that studies the Internet's impact on communities and work and home life.

The Digital Millennium Copyright Act, passed in October 1998, is one of the most well-known pieces of legislation affecting content publishing on the Internet. It prohibits anyone from evading technological measures that protect a copyrighted work. It also protects Internet service providers and Web hosts from copyright infringement under the act's "safe harbor" provisions if they implement appropriate procedures for taking information down from their sites.

The Children's Online Privacy and Protection Act of 2000 is another prominent piece of legislation. It targets commercial Web sites and

See MEDIA next page

WHAT TO AVOID

Companies must be careful to avoid a host of legal pitfalls when publishing content, regardless of what medium they use to publish, that include:

DEFAMATION: Untrue and harmful factual statements about another person.

PUBLICITY/PRIVACY RIGHTS VIOLATION: The commercial exploitation of someone else's name or image (publicity rights) or the public disclosure of private factual information.

COPYRIGHT INFRINGEMENT: Republication of someone else's copyrighted material.

TRADE SECRET MISAPPROPRIATION: Disclosure or use of a company's secret data.

Source: High Tech Law Institute at Santa Clara University

Media: Cyber risk market grows as more companies buy coverage

CONTINUED FROM PREVIOUS PAGE

online services either directed to children younger than 13 or those in which children younger than 13 provide online information. The Federal Trade Commission has brought several actions against companies such as Mrs. Field's Cookies, Hershey Foods and Lisa Frank Inc. under the act for collecting personal information from children without first obtaining the proper parental consent.

States are also taking an active role. Ms. Johnson said more states require that companies notify individuals whose identities they have wrongfully exposed.

As for lawsuits, the current focus seems to be on blogs. So far this year, four cases have resulted in verdicts against bloggers in which they paid damages—of $2 million and $3 million in two instances—to the plaintiffs. Ms. Johnson said more than 50 lawsuits tied to blogs have been filed in recent years.

Ms. Johnson also said social networking sites, similar to MySpace, are the next likely candidates to be hit hard by lawsuits under defamation, copyright and trademark infringement laws.

With more lawsuits popping up and precedent being set, more companies are investing in cyber liability insurance.

The annual gross written premiums for the 2007 U.S. cyber risk market is estimated in the $400-million range, up from $300 million to $350 million last year, according to information in the "Cyber Risk Market Survey 2007," in the June Betterley Report published by Betterley Risk Consultants Inc.

'New insurers are coming in and providing pretty adequate coverage, which reflects the fact it's a risk that is virtually universal to all companies.'

Geoffrey Allen, Willis of New York Inc.

The survey focused on coverage for organizations offering products and services via the Internet, such as retailers and content providers.

Experts said between 10 and 15 insurers offer cyber risk policies that nonmedia companies can buy to protect themselves from online exposures.

"New insurers are coming in and providing pretty adequate coverage, which reflects the fact it's a risk that is virtually universal to all companies," said New York-based Geoffrey Allen, senior vp of executive risks and errors and omissions and eRisk product leader for Willis of New York Inc.

Experts said cyber liability policies vary widely. The most consistent piece of cyber liability coverage is network security, which covers computer attacks including hacking, viruses and liability for information disclosed or for services a company couldn't provide while its system was down.

Additional media liability coverage for defamation, copyright or trademark infringement, and misuse of intellectual property might be included in a cyber risk policy. However, in a menu-driven system, where companies can pick and choose additional coverage for their policies, companies might add such coverages to their professional liability or errors and omissions policies.

Some companies' online activities still can be covered through their general liability policy, although experts warned they should ensure their online activities match the scope of their coverage.

A variance in price for cyber risk policies also exists.

Ms. Johnson said for small companies, the minimum premium range is typically between $1,500 and $5,000 for up to $1 million in coverage, subject to a minimum retention or deductible of $2,500.

She said estimating a price range for large companies' policies is difficult because the cost is so reliant on the type of company and the extent of its Web presence.

Mr. Allen said insurers will take similar factors into consideration before underwriting a policy. However, with broader coverage becoming available and no sign that use of the insurance is falling off, companies should be able to get the coverage they need.

"It's here to stay," Mr. Allen said. "There's a need for the product."

CYBER RISK COVERAGE

Specific coverages that may be, but are not always, included in a cyber risk policy are:

- Errors & omissions
- Virus
- Unauthorized access
- Security breach
- Personal injury
- Advertising injury
- Loss of use
- Resulting business interruption
- Copyright infringement
- Trade or servicemark infringement
- Patent infringement

Source: Betterley Risk Consultants

Business Insurance
PERSPECTIVE

Avoid film interruption with a pre-production plan

By Neil Gibson

Tabloids are flooded with stories of the mishaps that befall certain actors and actresses. For most, it may seem like mere gossip fodder. What is often overlooked, however, is that these celebrities are a main component of a business—the film business.

The unavailability of an actor can result in a total interruption of the filming process, while the production company remains financially responsible for crew, equipment, locations, rentals and other expenses during this downtime. Damaging or preventing access to a set location can also lead to interruption or postponement of the scheduled filming at an additional expense to the production company.

Entertainment production insurance packages, under certain conditions, provide protection against the extra expenses stemming from an interruption, postponement or cancellation caused by these types of situations. However, most production companies are unaware of the specifics of the policy and how it will respond to a possible loss.

Celebrities are a main component of a business–the film business.

Although most incidents are not foreseeable, by understanding the potential problems, reviewing the policy and developing a plan before a problem occurs, dealing with the claims process and resuming production will be a far smoother process when problems do happen.

The first step in any production interruption plan should involve reviewing and understanding the policy before the start of shooting. While policy wordings may differ depending on the underwriter, the general and special conditions or definitions of the standard production policy include the following:

- Special rights and duties: Under the terms of production coverage forms, the production company is required to ensure that all contract terms for performance services, facilities, property, equipment and supplies are sufficiently longer than the estimated time of completion. Before commencing filming, production companies should ensure they have reasonable flexibility to allow for the possible interruption. Recovery may be limited if the extra expenses incurred are increased due to the failure to meet the contract term requirements of the policy.
- Notice of loss: Companies must contact the insurer immediately to report a loss. Given the transient nature of the production industry, delays in reporting can also mean that payment will be delayed or even denied due to the insurer's potential inability to properly investigate and gather sufficient information.
- Due diligence: Production companies must use reasonable care and do all things reasonably practicable to avoid, minimize or diminish at their own expense any loss or circumstance that could result in a claim. The rule of thumb for this particular condition is for production companies to act as if they were paying for the extra expenses out of their own budget.
- Access to records and examination under oath: Companies should provide the requested documentation in support of the loss amounts claimed and give adjusters immediate access to anyone who must be interviewed during the course of the investigation.
- Subrogation: Companies should also assist the adjuster in providing the required documents or other supporting evidence to assert recovery rights and ultimately minimize the loss.

When an extra expense claim occurs, there are a significant number of variables that affect the end result. For example, if a cast member suffers a minor injury or ailment, there may be options to shoot around the individual until he or she is able to return, which in some cases prevents a loss. The most important initial step by the production company is accurately assessing the situation at hand, as well as the available options. An experienced adjuster can assist in the evaluation and possibly identify alternatives of which the production may be unaware.

Extensive documentation is required during the claims process, and while it is impossible to prepare all the documents before an event, organizing what is available and having a checklist prepared will expedite the process. While each loss is different, production companies may expect to be asked to provide the following documents, among other things:

- Incident report detailing facts of loss, along with independent supporting documentation.
- Contact information for crew.
- All call sheets and daily production reports
- A separate accounting ledger set up after the incident to isolate and capture all insurance costs and gather all supporting documents to substantiate these costs (time cards, payroll reports, invoices, contracts, etc.).

Early and continued communication, along with the timely submission of the required information, will usually result in an expeditious and satisfactory resolution for all parties involved. Occasionally, a dispute will arise regarding general policy conditions or scope of the loss, and it should be understood that the policyholder does have redress under the policy through the appraisal condition, although there is a time limit on lawsuits. However, such instances are rare, as most adjusters, insurers and the production policyholder can usually come to an agreement regarding items under dispute.

Insurers are committed to paying what is reasonably owed under the policy. With the advocacy of the broker in any dispute, most issues are capable of resolution without legal action, as all parties work to find common ground for resolution.

Neil Gibson is a senior general adjuster for Crawford & Co. (Canada) in the Global Technical Services office in Toronto.

PROFESSIONAL MARKETPLACE

HELP WANTED

North Carolina Health Insurance Risk Pool
Executive Director

Responsible for the start-up and management of the new North Carolina Health Insurance Risk Pool (Pool). The Pool, a non-profit, has a mission to help to reduce the number of uninsured in North Carolina by offering more affordable health insurance coverage for individuals whose medical history and lack of access to employer health insurance render coverage unaffordable. Position works under the direction of the Board of Directors. Executive Director must insure that revenue sources exceed expenses of the Pool. The Executive Director will be required to exercise judgment in program planning, coordinate complex strategies involved with the delivery of quality health care coverage to a high-use market and determine the most effective allocation of Pool resources. Duties include administering contracts with third party vendors, reporting on operations, ensuring compliance with statutory guidelines and interacting with various publics.

The Executive Director must have a four year degree, preferably in health administration, business administration, insurance, economics, or similar discipline and a minimum of six years experience in health insurance and extensive management experience, or an equivalent combination of education and experience. Graduate degree in job related discipline will be valuable. The position requires strong interpersonal skills, in-depth knowledge of the health insurance industry along with strong organizational and presentation skills. Position is available immediately; start date is negotiable. Competitive compensation package offered.

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

HELP WANTED

President

Large insurance brokerage seeks President for our Miami office. Qualified candidate will develop and implement plans to maximize the revenues and profits of the office while supporting the corporation's strategic business plan and initiatives; grow the company's name in the community and provide leadership to staff and create an environment that fosters teamwork and creativity. Major responsibilities include: Develop budget and business plans, implement sales training program, aggressively grow mid-market business through cross selling and managing sales force. Monitor production, retention and business growth. Acquire new talent, mentor professionals and develop a succession plan. BS degree (Risk Management and Insurance or Finance major preferred) and at least 10 years relevant professional experience in the insurance industry with 5 years minimum in a sales management position. Excellent communication skills a must. Ability to know and develop strong marketing and specialty risk placement relationships and maximize commission rates where feasible. Please send cover letter, resume and salary history to *Business Insurance*, Box 3258, 360 N. Michigan Avenue, Chicago, IL 60601 or e-mail **bibox3258@BusinessInsurance.com.**

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT • SOUTHERN DISTRICT OF NEW YORK

In re Petition of PRO Insurance Solutions Limited, as foreign representative of GREYFRIARS INSURANCE COMPANY LIMITED, SOVEREIGN INSURANCE (UK) LIMITED, ALLIANZ INSURANCE PLC, HEDDINGTON INSURANCE (U.K.) LIMITED, MITSUI SUMITOMO INSURANCE COMPANY (EUROPE), LIMITED, THE OCEAN MARINE INSURANCE COMPANY LIMITED, OSLO REINSURANCE COMPANY (UK) LIMITED, THE SEA INSURANCE COMPANY LIMITED, TOKIO MARINE EUROPE INSURANCE LIMITED, WAUSAU INSURANCE COMPANY (U.K.) LIMITED, and ALLIANZ GLOBAL CORPORATE & SPECIALTY (FRANCE)

Debtors in a Foreign Proceeding.

In a Case Under Chapter 15 of the Bankruptcy Code

Case Nos. 07-B-12934 (JMP) through 07-B-12944 (JMP) (Jointly Administered)

NOTICE OF ORDER GRANTING RECOGNITION OF FOREIGN PROCEEDINGS, PERMANENT INJUNCTION AND RELATED RELIEF

NOTICE IS HEREBY GIVEN THAT, in connection with the petitions filed on September 18, 2007 (the "Petitions") by PRO Insurance Solutions Limited (the "Petitioner"), in its capacity as the duly authorized foreign representative, as defined in section 101(24) of title 11 of the United States Code (the "Bankruptcy Code") of Greyfriars Insurance Company Limited, Sovereign Insurance (UK) Limited, Allianz Insurance plc, Heddington Insurance (U.K.) Limited, Mitsui Sumitomo Insurance Company (Europe) Limited, The Ocean Marine Insurance Company Limited, Oslo Reinsurance Company (UK) Limited, The Sea Insurance Company Limited, Tokio Marine Europe Insurance Limited, Wausau Insurance Company (U.K.) Limited, and Allianz Global Corporate & Specialty (France) (collectively, the "Petitioning Companies"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an Order Granting Recognition of Foreign Proceedings, Permanent Injunction and Related Relief (the "Order"), among other things:

1. Providing that the proceedings respecting the Schemes (as defined in the Order) of the Petitioning Companies under the Companies Act 1985 of Great Britain (the "Companies Act") in the High Court of Justice of England and Wales (the "High Court") and the Schemes of the Petitioning Companies are granted recognition pursuant to section 1517(a) of the Bankruptcy Code;
2. Providing that the proceedings respecting the Schemes of each of the Petitioning Companies other than Allianz Global Corporate & Specialty (France) ("Allianz Global") under the Companies Act in the High Court, and the Schemes of such Petitioning Companies, are granted recognition as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code;
3. Providing that the proceeding respecting the Scheme of Allianz Global under the Companies Act before the High Court, and the Scheme of Allianz Global, are granted recognition as foreign nonmain proceedings pursuant to section 1517(b)(2) of the Bankruptcy Code;
4. Providing that all relief afforded foreign main proceedings pursuant to section 1520 of the Bankruptcy Code is granted;
5. Providing that sections 361 and 362 of the Bankruptcy Code apply with respect to the Petitioning Companies and the property of the Petitioning Companies that is within the territorial jurisdiction of the United States in relation to Scheme Claims (as defined in the Order);
6. Providing that sections 363, 549, and 552 of the Bankruptcy Code apply to a transfer of an interest of a Petitioning Company in property that is within the territorial jurisdiction of the United States and related to the WFUM Pools Business (as defined in the Order) to the same extent these sections would apply to property of an estate;
7. Providing that the Petitioner may, in accordance with the Schemes, operate the WFUM Pools Business of the Petitioning Companies and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552 of the Bankruptcy Code in relation to such WFUM Pools Business;
8. Providing that the Petitioner may, in accordance with the Schemes, operate all of the business of Greyfriars Insurance Company Limited ("Greyfriars") and Sovereign Insurance (UK) Limited ("Sovereign UK") and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552 of the Bankruptcy Code in relation to such business;
9. Providing that section 552 of the Bankruptcy Code applies to property of the Petitioning Companies that is within the territorial jurisdiction of the United States and related to the WFUM Pools Business;
10. Providing that section 552 of the Bankruptcy Code applies to all of the property of Greyfriars and Sovereign UK that is within the territorial jurisdiction of the United States;
11. Providing that the Petitioning Companies' Schemes (including any modifications or amendments to such Schemes) shall be given full force and effect in the United States, and shall be binding on and enforceable against any person or entity that is a Scheme Creditor (as defined in the Order) of the Petitioning Companies, including, without limitation, against such person or entity in its capacity as a debtor of a Scheme Company (as defined in the Order) in the United States;
12. Providing that a Valuation Statement (as defined in the Order), including all amounts determined by the Scheme Adjudicator (as defined in the Order), Scheme Actuary (as defined in the Order), or Actuarial Adjudicator (as defined in the Order), shall be final and binding on the Petitioning Companies subject to sanctioned and effective Schemes and any person or entity that is a Scheme Creditor of a Petitioning Company, including, without limitation, against such person or entity in its capacity as a debtor of a Scheme Company in the United States;
13. Permanently enjoining all Scheme Creditors of any Petitioning Company from taking any action in contravention of, or inconsistent with, the sanctioned and effective Schemes;
14. Requiring that, in accordance with clause 2.8.4 of the Schemes, all Scheme Creditors of any Petitioning Company must abide by, and be bound by, the terms of the sanctioned and effective Schemes;
15. Permanently enjoining, except as otherwise provided herein or in the Schemes, all Scheme Creditors of any Petitioning Company from seizing, repossessing, transferring, relinquishing or disposing of any property of any Scheme Company subject to a sanctioned and effective Scheme, or the proceeds thereof, in connection with any Scheme Claims in the United States;
16. Permanently enjoining, in accordance with the Schemes, all Scheme Creditors of any Petitioning Company from: (a) commencing or continuing any Proceedings (as defined in the Order) (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) in connection with any Scheme Claim, including by way of counterclaim, against a Scheme Company subject to a sanctioned and effective Scheme, or any of its property in the United States, or any proceeds thereof, and seeking discovery of any nature against such Scheme Company; (b) enforcing any judicial, quasi-judicial, administrative judgment, assessment or order, or arbitration award obtained in connection with any Scheme Claim, and commencing or continuing any Proceedings in connection with any Scheme Claim (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim arising out of a Scheme Claim against any Scheme Company subject to a sanctioned and effective Scheme or any of its property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; (c) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring a Scheme Company subject to a sanctioned and effective Scheme to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any Proceedings (including, without limitation, arbitration, mediation or any judicial, quasi judicial, administrative action, proceedings or process whatsoever) in connection with any Scheme Claim and such statute, rule or requirement will be rendered null and void for Proceedings; provided, however, that nothing in the Order shall in any respect (i) affect any Security (as defined in the Order) or the replacements for such Security or (ii) enjoin any policy or regulatory act of a governmental unit, including a criminal action or proceeding, in accordance with section 1521(d) of the Bankruptcy Code; (d) drawing down any letter of credit established by, on behalf or at the request of, a Scheme Company subject to a sanctioned and effective Scheme, that relates to a Scheme Claim or the WFUM Pool Business in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (e) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement that relates to a Scheme Claim or the WFUM Pool Business in which a Scheme Company subject to a sanctioned and effective Scheme has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established; provided, however, no drawing against any letter of credit shall be made in connection with any commutation unless the amount has been agreed in writing with the Petitioner or the Scheme Manager (as defined in the Order) or permitted by further Order of the Bankruptcy Court;
17. Requiring that, in accordance with the terms of the Schemes, all persons and entities in possession, custody or control or property of the Petitioning Companies or the proceeds thereof, to turn over and account for such property or proceeds thereof to the Petitioning Companies or the Scheme Manager;
18. Requiring that all Scheme Creditors of the Petitioning Companies that are beneficiaries of letters of credit established by, on behalf or at the request of a Scheme Company subject to a sanctioned and effective Scheme or parties to any trust, escrow or similar arrangement in which a Scheme Company subject to a sanctioned and effective Scheme has an interest that relates to a Scheme Claim or the WFUM Pool Business, to: (a) provide notice to the Petitioner's United States counsel (Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, Attn: Francisco Vazquez, Esq. and, with respect to Greyfriars and Sovereign UK notice should also be sent to Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Stephen Doody, Esq.) of any drawdown on any letter of credit established by, on behalf or at the request of, a Scheme Company subject to a sanctioned and effective Scheme, or any withdrawal from, setoff against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which a Scheme Company subject to a sanctioned and effective Scheme has an interest, together with information sufficient to permit the Scheme Manager to assess the propriety of such drawdown, withdrawal, setoff or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff, or other application was made, and provide such notice and other information contemporaneously therewith; and (b) turn over and account to the Scheme Manager for all funds resulting from such drawdown, withdrawal, setoff, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established;
19. Requiring that every Scheme Creditor of the Petitioning Companies that has a claim of any nature or source arising out of a Scheme Claim or the WFUM Pool Business and that is a party to any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) pending in connection with any Scheme Claim or WFUM Pool Business in which a Scheme Company subject to a sanctioned and effective Scheme is or was named as a party, or as a result of which a Scheme Claim may be established, to place such Scheme Company, the Scheme Manager and the Petitioner's United States counsel (Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, Attn: Francisco Vazquez, Esq., and with respect to Greyfriars and Sovereign UK, notice should also be sent to Allen & Overy LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Stephen Doody, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives: (a) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and (b) any and all correspondence, or other documents circulated to parties named in the master service list;
20. Providing that nothing in the Order shall in any respect prevent the commencement or continuation of proceedings against any person or entity or other insurer other than the Scheme Companies subject to sanctioned and effective Schemes; provided, however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than the Scheme Companies subject to sanctioned and effective Schemes, such settlement or judgment shall not be binding on or enforceable against any of the Scheme Companies; and
21. Providing that except with respect to the matters over which the Bankruptcy Court has expressly retained jurisdiction, the above-referenced Chapter 15 cases are hereby closed, subject to being reopened pursuant to section 350(b) of the Bankruptcy Code.

Copies of the Order, the Schemes and the Petitions are available upon written request to the undersigned counsel.

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Attorneys for Petitioner, as foreign representative of the Petitioning Companies
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Attn: Howard Seife, Esq. and Francisco Vazquez Esq.

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Attorneys for Petitioner, as foreign representative of Greyfriars and Sovereign UK
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New York, New York 10020
(212) 610-6300
Attn: Ken Coleman, Esq. and Stephen Doody, Esq.

LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT
No. 7637 of 2007
IN THE MATTER OF
WINTERTHUR SWISS INSURANCE COMPANY
AND IN THE MATTER OF THE COMPANIES ACT 1985 OF GREAT BRITAIN
SCHEME OF ARRANGEMENT
between
WINTERTHUR SWISS INSURANCE COMPANY (formerly Accident and Casualty Insurance Company Winterthur) (in respect of business written through the agency of CR Driver & Co Limited)
and its SCHEME CREDITORS (as defined in the Scheme of Arrangement referred to below)

NOTICE IS HEREBY GIVEN that by an order dated 25 October 2007 made in the High Court of Justice of England and Wales in the above matter the Court has directed that a meeting of the Scheme Creditors (as defined in the scheme of arrangement hereinafter mentioned) (the "Meeting") of Winterthur Swiss Insurance Company (the "Company") be convened for the purpose of considering and, if thought fit, approving (with or without modification) a scheme of arrangement proposed to be made between the Company and its Scheme Creditors pursuant to section 425 of the Companies Act 1985 (the "Scheme"). The Meeting will be held on Friday 11 January 2008 at the offices of Clyde & Co, 51 Eastcheap, London, EC3M 1JP, United Kingdom, commencing at 11am (London time).

All Scheme Creditors are requested to attend at such place and time either in person or by proxy. Scheme Creditors may vote in person at the Meeting or may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

Scheme Creditors are all cedants of the Company having claims or potential future claims arising under or in connection with any reinsurance policies underwritten on the Company's behalf through the agency of CR Driver & Co Limited between 1 January 1967 and 31 December 1981 with the exception of any claims arising out of policies entered into with Lloyd's Syndicates in respect of which the Company considers that its liability has been commuted.

Scheme Creditors are requested to lodge completed forms of proxy and voting forms at KMS Insurance Management Limited, America House, 2 America Square, London, EC3N 2LU, United Kingdom marked for the attention of Richard Finney by 5.30pm (London time) on Tuesday 8 January 2008. Forms may also be handed in at the registration desk prior to the Meeting. Completed forms may be returned by fax and, if scanned and saved in Portable Document Format (PDF), by email. Please note that faxed and emailed forms will only be accepted if they are legible and (in the case of forms returned by email) they are received in the mailbox of the addressee and can be opened and printed by the recipient. Scheme Creditors are requested to send the originals, to be received at the above address by 5.30pm (London time) on Friday 18 January 2008, or to hand them in at the registration desk prior to the Meeting.

A copy of the proposed Scheme and a statement explaining the effect of the Scheme, as well as blank forms of proxy and voting forms, may be obtained at or on written application to KMS Insurance Management Limited, America House, 2 America Square, London, EC3N 2LU, United Kingdom marked for the attention of Richard Finney before 5.30pm (London time) on Tuesday 8 January 2008. They may also be downloaded and printed from the website www.winterthur-crdriver-scheme.co.uk.

The Court has appointed George Clarke of KMS Insurance Management Limited or, failing him, Bill Goodier, of Continuum Holdings Limited, to act as chairman of the Meeting and has directed the chairman of the Meeting to report the result of the Meeting to the Court. The Court has appointed William J. Brewer to act as independent vote reviewer for the purposes of reviewing the values placed on Claims for voting purposes and preparing a report on the reasonableness of those values for submission to the Court.

If approved by the requisite majority of creditors (or any class of them), the Scheme will be subject to the subsequent approval of the Court.

Any policyholder who has any questions concerning the action he is required to take should contact Richard Finney of KMS Insurance Management Limited at the address above, tel: +44 (0) 207 488 5460, fax: +44 (0) 870 600 7583, email: helpdesk@winterthur-crdriver-scheme.co.uk.

DATED THIS 26 day of October 2007

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
In re:
SOVEREIGN MARINE & GENERAL INSURANCE COMPANY LIMITED
Case No.: 07-44652 (JMP)

PLEASE TAKE NOTICE that on October 23, 2007, the Bankruptcy Court for the Southern District of New York entered an order (the "Order") pursuant to 11 U.S.C. § § 105 and 304 granting the Motion heard before the Honorable James M. Peck in the Alexander Hamilton Custom House, One Bowling Green, New York, New York on October 23, 2007 for injunctive relief that, among other things, gives full force and effect in the United States to the Amended Scheme of Arrangement between Sovereign Marine & General Insurance Company Limited and its Scheme Creditors (the "Scheme") and enjoins all persons and entities from taking any action inconsistent with the Scheme.

Any person wishing to obtain a copy of the Order should contact Lisa J. P. Kraidin at (212) 610-6300 or at Lisa.Kraidin@allenovery.com.

ALLEN & OVERY LLP,
1221 Avenue of the Americas, New York, New York 10020, Tel: (212) 610-6300, Fax: (212) 610-6399,
Attention: Ken Coleman, Stephen Doody

LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF
UNION INDEMNITY INSURANCE COMPANY OF NEW YORK
Supreme Court County of New York
Index No.: 41292/85
NOTICE

On July 16, 1985, Union Indemnity Insurance Company of New York ("Union") was placed into liquidation and then-Superintendent of Insurance of the State of New York James P. Corcoran and his successors in office were appointed as Liquidator (the "Liquidator") of Union. Pursuant to the New York Insurance Law ("Insurance Law") and the Liquidation Order, the Liquidator was given the responsibility of, among other things, marshalling Union's assets and adjudicating claims consistent with Article 74 of the Insurance Law. The Liquidator has submitted to the court supervising Union's liquidation proceeding (the "Court") a verified petition (the "Verified Petition") seeking approval of: (i) the initial report on the status of Union's liquidation (the "Initial Report") and the financial transactions delineated therein; (ii) the establishment of November 15, 2007 as the bar date for presentment of all claims other than administrative costs and expenses; (iii) the payment of all administrative costs and expenses; and (iv) a distribution, to the extent that assets are available after payment of all administrative costs and expenses and in accordance with the priorities set forth in Insurance Law Section 7434, to those creditors of Union possessing allowed claims.

A hearing is scheduled on the Verified Petition on December 18, 2007 at 12:00 Noon before the Supreme Court of the State of New York, County of New York at the Courthouse, IAS Part 3, Room 248, 60 Centre Street, New York, New York. If you wish to object to the Verified Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least fifteen business days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address:

The Superintendent of Insurance of the State of New York as
Liquidator of Union Indemnity Insurance Company of New York
123 William Street
New York, New York 10038-3889
Attention: Jack A. Franceschetti, Esq.

By filing the Verified Petition, the Liquidator is seeking permission from the Court to pay in the near future a monetary distribution to certain creditors possessing allowed claims pursuant to Insurance Law Section 7434. For this reason, creditors of Union are advised to review all available information and to ascertain all of their rights before considering any proposal offering to buy or otherwise compromise their claims.

The Verified Petition and Initial Report are available for inspection at the above address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor Claims Department at (212) 341-6814.

Dated: October 19, 2007

ERIC R. DINALLO
Superintendent of Insurance of the State of New York as Liquidator of Union Indemnity Insurance Company of New York

Comings & Goings

BROKERS:

Willis Group Holdings Ltd. has made several senior-level promotions:

Shoji Ohashi has joined as the new representative director and chairman of Willis Japan Holdings K.K. in Tokyo. He joins Willis after retiring from his position as chairman of Marsh Japan.

Yoshiki Yamamoto is the new director and chief executive officer of Willis Japan Holdings K.K. Previously, he was senior vp in the global risk management department of Marsh Japan.

Lanny Johnson and **Lisa Fielding King** have been named senior vps in the company's Philadelphia operations. Previously, Mr. Johnson was a senior vp at Marsh & McLennan Cos. Inc. Ms. King was formerly health care casualty broker, team leader and senior care industry resource at Marsh.


Mr. Johnson


Ms. King

Managing general agency and surplus lines wholesaler U.S. Risk Insurance Group Inc. has named **Paul Sedgwick** managing director of U.S. Risk International Pty. Ltd., a brokerage operation in Sydney, Australia. Previously, he was CEO of Insurance Brokers Network Australia Ltd.


Mr. Sedgwick

Woodruff-Sawyer & Co. has promoted **Jennifer Walsh** to employee benefits practice leader in San Francisco. Previously, she was vp and account executive.


Ms. Walsh

Paul Primavera has been named senior vp-construction claims for Lockton Cos. Inc. in Baltimore. Before joining Lockton, he was senior vp in the construction national practice at Willis.

Mary G. Williams has been named area executive vp of City Underwriting Agency Inc. in Lake Success, N.Y. Previously, she was an executive vp for Arthur J. Gallagher & Co.

INSURERS:

Arch Insurance (Bermuda) in Hamilton has named **Terry L. Pimentel** president, effective Jan. 1, 2008. He will replace James J. Ansaldi, who is retiring. Before his promotion, Mr. Pimentel was senior vp, excess casualty.

Zurich Financial Services Group has named **Kevin Dunham** as senior vp and global relationship leader for the Western region of its Global Corporate in North America business unit. Mr. Dunham, who will be based in Glendale, Calif., previously was senior vp and manager of the Los Angeles branch of ACE Risk Management.

Simsbury, Conn.-based Hartford Financial Services Group Inc. has promoted **Ronald R. Gendreau** to executive vp in charge of its group benefits division. Before his promotion, he was senior vp in the division overseeing risk management and customer service.

Catlin Group Ltd. has named **William P. Casey** managing director and senior vp of Catlin Scottsdale in Scottsdale, Ariz. Most recently, he was senior vp of brokerage operations with Geo. F. Brown & Sons.

Medical professional liability insurer Washington Casualty Co. in Issaquah, Wash., has named **Mike Rutz** to the newly created position of managing director. Previously, he was vp of marketing.

Ronald C. Parisi has been named national program director of Redwood City, Calif.-based CAMICO Mutual Insurance Co. Previously, he was director of accountants liability for Fireman's Fund Insurance Co.

Zurich North America Commercial has appointed **Alister Campbell** chief agent and CEO for Zurich Insurance Co. in Canada, replacing Robert Landry, who will retire at the end of the year. Previously, Mr. Campbell was a senior vp for ING Group Inc.

REINSURANCE:

Joseph Vitale has been appointed senior vp of the GCFac unit of Guy Carpenter & Co. L.L.C. in New York. Previously, he was U.S. team leader for facultative solutions at Benfield Group Inc.
Also at the GCFac, **Jon Parker** has been named senior vp and leader of the Latin American team in London. Previously, he was executive director of the property and casualty division of HSBC Insurance Brokers.

OTHER PROVIDERS:

Dublin, Ohio-based Frank Gates Cos. has expanded the role of **Debbie Baker**, senior vp and West region manager in Phoenix, to include oversight of its national support operations.


Ms. Baker

Linda Ulrich has joined Buck Consultants L.L.C. as a director in its Secaucus, N.J., office. Previously, she was director of compensation for the U.S. insurance group of MassMutual Financial Group.

Also at Buck, **Thomas Burke** has been appointed director in the Pittsburgh office. Previously, he was an independent consultant.

Robert Rhoad has been named partner in the health care and false claims act groups of Crowell & Moring L.L.P. Mr. Rhoad who will be based in the Washington office, previously was chair of the national health care litigation practice group of Porter Wright Morris & Arthur L.L.P.


Mr. Rhoad

UP CLOSE
Charles Rosen

NEW JOB TITLE: Chief executive officer of Woodruff-Sawyer & Co. in San Francisco

START DATE: Jan. 1, 2008

BEFORE THE PROMOTION: I was an employee benefits practice leader for three years, and have 16 years experience in employee benefits and insurance.

REASON FOR THE SWITCH: I took the new job to take advantage of the opportunity to lead one of the premier independent brokers in the United States.

VITAL STATISTICS: I have a Bachelor of Arts from the University of California in Los Angeles. I spent 13 years at Marsh in San Francisco and Orange County, prior to joining Woodruff-Sawyer in 2004.

GOALS FOR NEW POSITION: I want to achieve sustained growth and profitability while adhering to our core values: Integrity, professionalism, innovation, community and independence.

FIRST TIME IN THE JOB MARKET: I sold home-grown zucchini door to door in my neighborhood, age 8.

TOP ADVICE: It sounds so basic, but it's the key to success in our business and too many people forget it: "Stay close to clients."

OUTSIDE THE INDUSTRY, A DREAM JOB: I'd be a food and wine writer/critic. I love what I do now, but getting paid to eat at great restaurants and write about it would be a lot of fun.

TO SUBMIT ITEMS

Business Insurance **would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to: Joe Walker, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806;** ***jwalker@businessinsurance.com.***

International NEWS

Reinsurance pricing pressure builds

Many buyers seeing softer rates except U.K. areas with wind, flood claims

By RICHARD MILLER

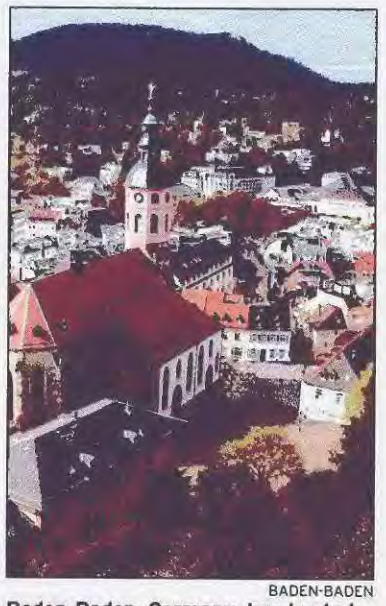
BADEN-BADEN, Germany—As market players staked out their varying positions in reinsurance contract negotiations last month, most could agree on one point: Corporate insurance buyers can expect to continue benefiting from softer rates at their own Jan. 1 renewals.

"The corporate insurance buyer I think will have the pleasure in getting slightly reduced prices, because there is capacity in the market," said Rolf Tolle, franchise performance director for Lloyd's of London, who was in Baden-Baden, Germany, to take the temperature of the market at an annual meeting of insurers, reinsurers and brokers.

"There is regrettably not all the discipline in the world, so there will be people who will be prepared to sell their capital and their capacity at cheaper rates," Mr. Tolle said.

"We are not at the end of (the softening trend) unless something happens," noted Michael Handler, the Zurich, Switzerland-based managing director and chairman for continental Europe for Guy Carpenter & Co. L.L.C. in New York. "I think we are still in the downward cycle."

"Nonlife premiums in Western Europe will reduce by something like 3% over the next five years, so everyone is trying to see how they will position themselves, both on the insurance side as well as the reinsurance side," Mr. Handler added.



BADEN-BADEN

Baden-Baden, Germany, has hosted an annual meeting of insurers, reinsurers and brokers since the 1970s.

In Baden-Baden last month, reinsurers generally argued for rate stability across the board in reinsurance contracts, while insurers and brokers were trying to push rates lower.

"Some players in the market are engaging in talking the market down; I tend to disagree with this," said Hans-Peter Gerhardt, chief executive officer of Paris Re Holdings Ltd., based in Zug, Switzerland.

"I think the fact that we have had a good year in 2006 (in return on equity) after a very bad year in 2005, and possibly another good year in 2007 is not a reason to give up underwriting discipline."

"Obviously, we will try to put pressure on the reinsurers to bring down the prices," said Anders Christian Carstensen, head of group ceded reinsurance at TrygVesta A/S, a Nordic nonlife insurer based in Ballerup, Denmark.

Reinsurance brokers interviewed felt there was room for reinsurance rates to move lower.

Adrian Clark, managing director at reinsurance broker Benfield Group Ltd. in London, characterized it as "a drift down or an adjustment."

"The insurers are looking at the reinsurers and seeing in the last two years a substantial profit has been made, and saying, 'Can I have a little bit of that myself, please?'" Mr. Clark said.

Capacity, he noted, is not an issue. Rate reductions may just depend on how much the insurers are willing to push. "Ultimately, it depends on the customer's decision as to whether to be opportunistic or not," he said.

On catastrophe reinsurance, for example, "if they decide to be opportunistic in the way they buy, they can probably find themselves a

See **REINSURANCE** next page

Positives, negatives debated should Europe move to differential pricing

By RICHARD MILLER

BADEN-BADEN, Germany—To address concerns raised by the European Commission in September in its sector inquiry final report of possible anti-competitive practices in the reinsurance and coinsurance business, industry players predict the market will move in the direction of differential pricing when writing large risks.

Under differential prices, each insurer or reinsurer would set a price for their share of the risk.

But opinions differ as to the extent to which such a move will benefit the end consumer.

MORE COVERAGE of the meeting in Baden-Baden, about natural cat rates, is online at *www.BIEurope.com.*

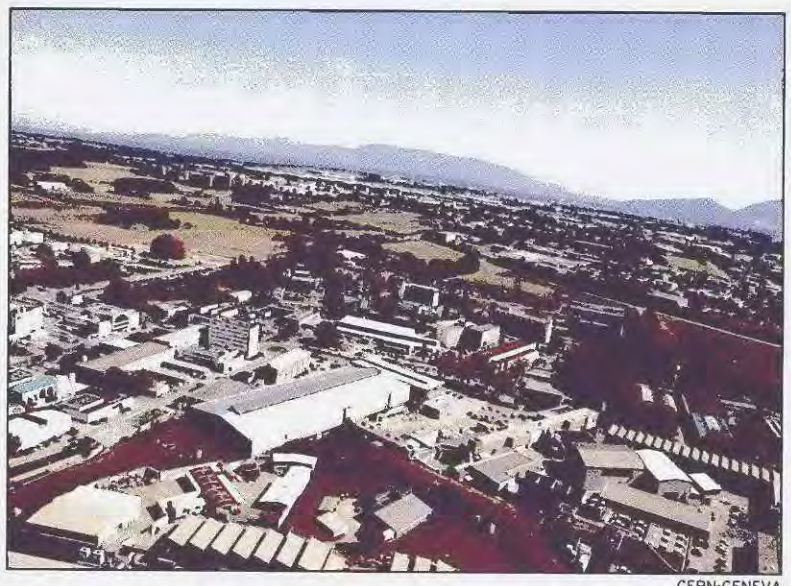
On one hand, Ludger Arnoldussen, a member of Munich Reinsurance Co.'s board of management, believes differential pricing will reduce costs for primary insurers.

"If you are paying the same prices to everybody that you are paying to Munich Re, then basically you are overpaying for some of your reinsurance," said Mr. Arnoldussen, a longtime advocate of the practice.

"By doing that, obviously, you give a benefit to the insured, because I think all and all, they will probably get a cheaper price then they would otherwise," said Anders Christian Carstensen, head of group ceded reinsurance at TrygVesta A/S, a Nordic nonlife insurer based in Ballerup, Denmark. "The insurance companies writing that, they come in at a certain level and they are happy with the price they get."

On the other side, Hans-Peter Gerhardt, chief executive officer of Paris Re Holdings Ltd., based in Zug,

See **DIFFERENTIAL** next page



CERN-GENEVA

Officials with the CERN particle physics facility in Switzerland say earthquake coverage already is in place, but current availability is "rather limited."

Swiss earthquake pool delayed at least a year

Ideas include passing law to mandate coverage

By MICHAEL BRADFORD

BERN, Switzerland—Plans for a mandatory earthquake insurance arrangement in Switzerland by 2008 have been delayed as many of the country's cantons, or states, struggle with how to structure a pool or other arrangement to fund the exposure.

The Swiss Insurance Assn., which is involved in the effort by the cantons, insurers and others to develop a national earthquake insurance arrangement, said it now hopes it can be structured by Jan. 1, 2009. The delay comes from work that still needs to be done by 19 of Switzerland's 26 cantons that each have their own insurance laws, a spokesman for the association explained.

Apart from federal approval of any arrangement, those 19 cantons would all have to approve an arrangement individually and, therefore, would need to change local laws or ordinances that govern how property insurance is written. "Changing laws in Switzerland can take some time," said the SIA spokesman.

The Swiss insurance market has in recent years sought a way to provide affordable earthquake coverage in a country where it is scarce and costly. The SIA and others had hoped that by 2008 a plan would be in place to cover all businesses and homeowners.

The risk of quakes is not as great as in other parts of the world such as California or other seismically active regions, but it is significant enough that insurance should be a part of the way risk managers protect their property against earth movement, according to Martin Bertogg, head of the earthquake group at Swiss Reinsurance Co. in Zurich.

In 1356, the strongest earthquake ever recorded north of the Alps destroyed Basel, Mr. Bertogg noted. "That points to the fact that in rare cases we can have very serious earthquakes," he said.

Depending on which calculation you consider, a repeat of the Basel quake could cause up to 60 billion

See **QUAKE** next page

Reinsurance: Plentiful capacity, reinsurer profits pressuring prices

CONTINUED FROM PREVIOUS PAGE

good deal, but then that might mean breaking relationships that they've had for a long time. They may choose not to do that," Mr. Clark said.

David Rainbow, London-based deputy managing director for continental Europe at Willis Re, a unit of Willis Group Holdings Ltd., who concentrates on property/casualty business, said where there have been specific claims, such as Windstorm Kyrill and floods in the United Kingdom, "there will be rate adjustments," he said.

"But, overall, on single-territory business in continental Europe on the property side, we are expecting a continued pressure on rates because of the amount of appetite for business which is non-aggregated with other parts of (reinsurer portfolios)."

"On the multiterritory peak zone business, we expect there to be abundant capacity, but particularly where the United Kingdom is involved and also with flood, we think that many reinsurers are reasonably full, they have got as much aggregate as they are comfortable with, so there will be less softening there," Mr. Rainbow added.

Single-territory property cat coverage will be flat to down as much as 15%, and multiterritory will be flat to down as much as 5%, he said.

"We have a very healthy market; that's a good place to be. And you just need to find the right balance. There have been no major losses. Reinsurers have got fantastic results. And therefore there would be no reason for there to be not some form of reflection of that in pricing," Mr. Rainbow said.

One major topic at the Baden-Baden renewals meeting was exactly to what degree reinsurers were willing to shoulder some of the burden of falling primary rates, particularly for major industrial risks.

'The insurers are looking at the reinsurers...and saying, "Can I have a little bit of that myself, please?"'

Adrian Clark, Benfield Group Ltd.

In Germany, where commercial insurance market competition is fierce, some brokers forecast that 2008 industrial insurance rates will decrease about 15% to 20% in property lines and 10% to 15% in casualty lines.

Commenting on large industrial risks in Germany, Ludger Arnoldussen, a member of the board of management at Munich Reinsurance Co., said while prices for commercial lines are still softening in the primary market due to competition, that does not mean prices on the reinsurance side will soften.

"Renewal terms for the industrial business will be a hot topic, I think, because we still see intense competition for big industrial risks in Germany," he said. "For these risks, most of the big industrial players buy reinsurance on a non-proportional basis, and there you are not so closely linked to what they are doing on the original pricing side, so it is easier to separate yourself as a reinsurer from price competition...but that will be a tough negotiation."

Benfield's Mr. Clark said reinsurers were going to come under pressure from insurers to "pay their part," be it on a pro-rata or loss basis.

Stiff competition for industrial risks in Germany led Swiss Re Germany A.G. in Munich, part of Zurich-based Swiss Reinsurance Co., to monitor those risks closely. "To the extent we are participating originally to buy proportional facultative reinsurance, for instance, then we are facing this development as well, and we have to define the borderline below which we do not continue our participation," said Thomas Witting, deputy board member for Swiss Re Germany.

"In general, I cannot deny that there is a downward trend on prices—it is still ongoing—but we would reduce our engagement there if we have the feeling that it goes substantially under our technical price," Mr. Witting said.

Differential: Many see Europe adopting pricing based on share of risk

CONTINUED FROM PREVIOUS PAGE

Switzerland, points to the problems faced by the aviation industry, where differential pricing has been the practice for at least 20 years.

"It has created a market with the most extreme volatility, and if you talk to the buyers, they hate this volatility because there is no way they can budget their insurance costs by more than 18 months out," said Mr. Gerhardt. "With that, I am not sure it serves the consumer."

Nevertheless, Mr. Gerhardt does not expect the industry to lobby against the suggestion by the European Commission that a differential pricing method should be considered. "I do not have the impression that the industry is motivated to go against" this, he said.

From a logistical standpoint, Michael Pickel, a member of the executive board at Germany's Hannover Re Group, who heads nonlife treaty reinsurance for Germany, Austria, Switzerland and Italy, noted the difficulties posed when there are at least 25 treaties and numerous reinsurers.

"If every reinsurer fixes his own prices for each treaty, it would be a nightmare to do the accounting," he said.

On the subject of the EC's concerns about best terms and conditions clauses in such arrangements, Mr. Pickel added: "I think that is really consumer protection to make the same terms and conditions, because otherwise (the buyer) has gaps and so forth," he said.

'If you talk to the buyers, they hate this volatility because there is no way they can budget their insurance costs by more than 18 months out.'

Hans-Peter Gerhardt, Paris Re Holdings

However, Mr. Pickel pointed out that Hannover Re has never insisted on best terms and conditions, and "we are happy to put forward our own share with our rating at a different price," which already occurs with some clients in Germany, he added.

Jean Alisse, an attorney at law firm Dewey & LeBoeuf L.L.P. in Paris, believes the industry will move to differential pricing—and, in fact, it is already happening.

The French terrorism reinsurance pool, Gestion de l'Assurance et de la Réassurance des Risques Attentats et Actes de Terrorisme, with €1.8 billion ($2.59 billion) in capacity, is being placed this year on an auction basis, for example, he said. Reinsurers recently quoted the risk on a confidential basis and the results will be known in a matter of weeks, Mr. Alisse said.

"There is no absolute necessity for administrative reasons to have one quote, one premium and one condition. Brokers and insurers can manage differentiated conditions of insurance, so I think this will happen," he said.

Quake: Switzerland hit by infrequent but potentially costly temblors

CONTINUED FROM PREVIOUS PAGE

Swiss francs ($51.3 billion) in property damage, said Mr. Bertogg. Such an event would be extremely rare, however, with a probability of occurrence at around 1 in 3,000 per year, he said.

Another calculation puts potential quake loss in Basel at around 20 billion Swiss francs ($17.1 billion), with the probability of such an earthquake at 1 in 500 per year, according to Mr. Bertogg. That calculation is a more useful estimate for risk management considerations, he said.

Given the amount of coverage currently in place, insurers probably would pay up to about 3 billion Swiss francs ($2.57 billion) in claims on a quake in Basel that caused 20 billion Swiss francs in damages, said Mr. Bertogg.

"It is well-known that the frequency is low but severity can be high," said Lorenz Stampfli, head of insurance and risk management at the Conseil Européen pour la Recherche Nucléaire, the particle physics laboratory in Geneva. A pool or other arrangement that increased the availability of quake coverage in Switzerland is needed, he said.

CERN has earthquake coverage in place, Mr. Stampfli said, but the lab would like to see additional capacity become available. "The coverage is, so far, according to market conditions, rather limited," he noted.

If a mandatory program can be put together to protect property in Basel and other parts of Switzerland, it is unclear exactly how it would function.

One idea is to pass legislation that would make earthquake insurance mandatory and put in place a pool that could pay out up to 10 billion Swiss francs ($8.6 billion) to property owners affected by a quake, the SIA spokesman noted.

"There are still negotiations and different ideas," he said, and the final form of a mandatory insurance arrangement could take another shape. "There is still a lot of discussion about how it would work," he said.

If coverage is mandatory, it will also be inexpensive, the spokesman noted. A building valued at 1 million Swiss francs ($855,100) would probably cost less than 100 Swiss francs ($85.51) annually to insure for quake damage, he said.

It is likely that premiums would be kept low because all policyholders, regardless of their exposure, would see their premiums calculated according to the same rate. Such an arrangement would not be uncommon in Switzerland, the SIA spokesman pointed out.

Coverage for other natural catastrophes, such as avalanches, is calculated in that manner, the spokesman said.

That would mean property owners in Basel or Valais, where quakes are most likely in Switzerland, would pay the same as those in Zurich, where ground movement is not as apt to occur.

Commentary

Federal backstop vital to national security

MARK A. HOFMANN

Senior Editor Mark A. Hofmann can be reached at: mhofmann@businessinsurance.com

Nothing's more permanent than a temporary federal program, according to what often passes for common knowledge about official Washington.

Everyone has heard the bureaucratic horror stories about some agricultural program designed to assure the production of some good that was desperately needed during World War II, a program that didn't end with V-J Day. Instead, the program keeps chugging along for decades despite the total lack of any justification for its continued existence. Then there are the programs designed to help small farmers stay in business that over the years have mutated into subsidy-paying perpetual motion machines that spew their largesse in the direction of millionaires who wouldn't know the difference between hay and straw. And all this is courtesy of your taxpayer dollars.

You can blame it on institutional inertia.

Things start to exist because they do exist. That's not a question that arises only in the federal sector, either. Not that long ago, during a hearing that ranged from offshore reinsurance taxes to college endowments, I listened to earnest witnesses question what exactly college endowments were doing with their money, since some very large ones pay very little of their value annually in student aid. The endowments appeared to be growing for the sake of growing. As the father of a college freshman, I found that discussion quite intriguing.

When the Wall Street Journal agrees with Bob Hunter, you know something unusual's going on.

The possibility that the federal terrorism insurance backstop will be one of those well-intentioned temporary programs that becomes permanent has arisen during the current debate over extending the program for an additional seven or 15 years. Opponents argue that as long as there's a backstop, no private market for terrorism insurance will emerge. The longer the backstop remains, the longer insurers can ride the government gravy train free of charge, skeptics say.

Despite the fact that such arguments ignore the economic reality that insurers aren't going to underwrite a risk they cannot quantify, they have a certain resonance on both the left and right. Those on both sides of the spectrum see corporate socialism at work. When the Wall Street Journal agrees with Bob Hunter, probably the most high-profile industry critic, you know something unusual's going on.

The truth of the matter is the backstop involves national security, albeit of the economic rather than military variety. If a truly catastrophic terrorist attack should succeed, the wherewithal would be there to rebuild the target area.

Yes, there are exposed taxpayer dollars, but the government could recoup its costs over the long-term. That's a better deal than having simply to pay out billions in post-disaster relief, as happens repeatedly after major hurricanes, without hope of recovery.

This year's terrorism backstop debate seems to take these facts into account much more seriously than has been the case in previous congresses. The program appears likely to be extended far beyond the two-years extension it was given in 2005. Somewhere between seven and 15 years appears most likely.

That recognizes the fact that the struggle against terrorism is going to be a long one, something more akin to the Cold War than World War II. People from all—or at least most—points of the political spectrum agree that's the case. Yet like the Cold War, or the Thirty Years' War or the Hundred Years' War, the war against terrorism will someday come to an end.

Until that day comes, some form of the federal terrorism insurance backstop is an essential part of the entire national security strategy. And its staunchest supporters will welcome that day when the backstop is no longer necessary and can become the rare temporary program that sunsets after having met the purpose for which it was designed.

TRIA: Temporary fix to aid negotiations

CONTINUED FROM PAGE 3

where lenders can be assured of insurance coverage," he said.

"First and foremost, we need to get a bill out of the Senate," said Ben McKay, senior vp-federal government relations in PCI's Washington office. He noted that Senate Banking Committee Chairman Christopher Dodd, D-Conn., and Rep. Frank both favor a longer extension, while the Banking Committee's former chairman and now ranking minority member, Sen. Richard Shelby, R-Ala., prefers a minimalist approach.

"I think the significance is it probably opens the lines of communication between Chairman Dodd and Chairman Frank, because they're aligned on this issue," said Mr. McKay. "Barney Frank's bill has a 15-year extension, which was exactly what Chairman Dodd was saying back when Sen. Shelby was saying 'two years.' I think it boils down to the Republicans on one side and the Democrats on the other. I think Barney Frank can rightfully claim a lot of victories there when you consider where the Republican position started."

Long-term solution

"We applaud Chairman Frank as well as the key congressional leaders for all their hard work on TRIA, but unfortunately a short-term extension is going to be problematic for our companies as well as their insureds," said Marliss Browder, senior director-federal affairs in the National Assn. of Mutual Insurance Cos. in Washington.

"We remain hopeful that the House and Senate can resolve their differences this year because it is important that Congress adopt a long- term solution to address TRIA and the market," she said

A spokesman for the American Insurance Assn. in Washington expressed optimism that House and Senate leaders will be able to work things out.

"We're glad these issues have the attention of Congress and we're hopeful the House and the Senate leaders can reach accommodation on their differences," said the spokesman. "We think the industry has made compelling arguments why terrorism insurance should be extended, and nobody said the legislative process would be easy."

Senior Editor Meg Fletcher contributed to this story.

COBRA: Measure would extend subsidies

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employees who qualify for trade adjustment benefits can receive the 65% HCTC to offset COBRA premiums until their eligibility for COBRA expires. Under federal law, an employee who terminates employment can receive COBRA for a maximum of 18 months. That cutoff applies even if an employee remains eligible to receive trade adjustment benefits, which generally are available for up to 30 months.

The House bill would create a longer COBRA eligibility period for employees age 55 or older or who have worked for an employer for at least 10 years.

Under the bill, if individuals were still eligible for trade adjustment benefits at the time their COBRA coverage would otherwise be cutoff, they could continue their COBRA coverage from their former employers until they were eligible for Medicare coverage at age 65 or enrolled in another health care plan.

While the 85% HCTC credit would end after 30 months, a young employee who, for example, was chronically unemployed, potentially would have a right for COBRA coverage for decades.

This "would be a huge extension of COBRA and go way beyond prior proposals," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

That would increase employer costs since the COBRA premium paid by beneficiaries—which is 102% of the regular group rate—typically does not come close to covering the cost of claims incurred by beneficiaries, said Andy Anderson, of counsel with Morgan, Lewis & Bockius L.L.P. in Chicago.

Perhaps more significantly, such a long expansion of COBRA eligibility could be a placeholder for future legislative proposals to extend COBRA eligibility to a much broader group of employees, said Paul Dennett, vp-health policy at the American Benefits Council in Washington.

REBEX: Lines of coverages overlooked

CONTINUED FROM PAGE 4

potential threats to the supply chain, as well as any contingency plans and their implementation costs. Additionally, the company will need to make its insurer aware of the potential financial consequences of a disruption.

Another line of coverage often overlooked by companies is credit insurance, in particular business credit insurance and export credit insurance, the panelists said.

Business credit insurance is protection against unexpected bad debt, losses because of insolvency and slow payment of a customer, said Lee Fahrenz, a Chicago-based agent with Euler Hermes ACI of Owings Mills, Md. Business credit insurance indemnifies a policyholder against unforeseen bad debt losses resulting from commercial or political risks, he said.

Export credit insurance is another protection from unexpected losses, Mr. Fahrenz said. He said this covers a major unprotected asset for companies—their accounts receivable. Businesses are more likely to experience a loss with their accounts receivable asset than any other asset, he said. Accounts receivable typically represent 40% of a company's assets and are most vulnerable to unexpected losses.

Accounts receivable provides cash flow to the business, and few companies can effectively compete without extending credit to their buyers, he said. Export credit cover provides export protection against political risks such as changes in import and export regulations, contract frustration because of an act of war and foreign government nonpayment. It also allows export receivables to become recognized collateral, which can open up opportunities for better financing, he said.

Finally, the open terms of export credit insurance allows the buyer to keep their working capital line of credit available for other uses. "Export credit insurance eliminates the need to leverage your credit," Mr. Fahrenz said.

330 attend REBEX conference

ITASCA, Ill.—Nearly 330 people attended the 2007 Risk and Employee Benefits Conference and Exhibition in Itasca, Ill. The Chicago and Wisconsin chapters of the Risk Insurance Management Society Inc. hosted the Oct. 25-26 conference, which included 29 educational sessions.

Session topics included the role of enterprise risk management in international pandemic planning; recovering insurance for global warming liabilities; emerging tort trends; overlooked lines of coverage; and directors and officers policy issues, needs and requirements.

The next REBEX conference is scheduled for Oct. 30-31, 2008, at the Eaglewood Resort & Spa in Itasca, Ill. Information regarding the conference can be found on the RIMS Chicago and Wisconsin chapters' Web sites at *http://chicago.rims.org* and *http://wisconsin.rims.org*.

—By Kristin Gunderson Hunt

Ranking: CIGNA, New York reach agreement on quality program

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available, a spokeswoman said.

The new ranking system will apply to the 12,247 New York doctors in CIGNA Care Network, a so-called high-performance network that is also available in 27 other states.

TERMS OF AGREEMENT

Under an agreement with the New York attorney general's office, CIGNA Healthcare will:

- Ensure that doctor rankings are not based solely on cost and clearly identify the degree to which any ranking is based on cost.
- Use generally accepted national standards to measure quality, including measures endorsed by the National Quality Forum.
- Employ several measures to foster more accurate physician comparisons, including risk adjustment and valid sampling.
- Disclose to consumers how the program is designed and how doctors are ranked, and provide a process to register complaints about the system.
- Disclose to physicians how rankings are designed and provide a process to appeal incorrect ratings.
- Nominate and pay for a ratings examiner—subject to the approval of the attorney general—to oversee compliance with all aspects of the new ranking model and report to the attorney general's office every six months. The ratings examiner must be an independent "national standard-setting organization" and a 501(c)(3) nonprofit organization.

Although CIGNA officials did not say whether the new ranking system would be applied in those other states, Dr. Jeffrey Kang, senior vp and chief medical officer for CIGNA Healthcare, said the insurer is continuing to work with the attorney general's office to establish "a national model for the entire health insurance industry."

The agreement was reached with input from the Medical Society of the State of New York; the American Medical Assn.; and the Consumer-Purchaser Disclosure Project, a group of consumer, labor and employer organizations, including the National Business Group on Health (see related story).

The ranking programs investigated by Mr. Cuomo's office over the past several months, in some cases, lower or waive copayments and/or deductibles for plan members who use the providers they have identified as being more cost-effective or higher quality.

"Our members believe that quality trumps cost and that good quality is more cost-effective," said Susan Pisano, vp of strategic communications at America's Health Insurance Plans, a Washington-based insurance industry trade organization, of which CIGNA is a member.

Employers also have been supportive of the high-performance networks because lower premiums are generally charged for plan members who use them.

In addition to CIGNA, as part of the investigation, Mr. Cuomo's office sent letters to Aetna Inc., UnitedHealth Group Inc., Empire Blue Cross Blue Shield and several other insurers that use physician ranking.

The letter to UnitedHealth prompted the Minnetonka, Minn.-based insurer to hold off implementation of its UnitedHealth Premium Designation in New York until the fourth quarter of 2007. The program is available in 94 other markets across the country.

Although the agreement reached with CIGNA does not apply to any of the other insurers being investigated, the attorney general's office is continuing to negotiate with them with the intention of using the agreement as a template, Mr. Cuomo said when he announced the agreement last week.

"This rating system could serve as a model for the nation...and for other companies," he said.

Also during the Oct. 29 announcement, Charles Bell, program director for Consumers Union based in Yonkers, N.Y., said that the agreement "brings the process for evaluating doctors squarely into the sunlight."

And Dr. Nancy Nielsen, president-elect of the Chicago-based American Medical Assn., said the agreement was "a balanced approach that acknowledges physician ratings have a risk of error and should not be the sole basis for selecting a physician."

She added that "the AMA expects this agreement will influence other states to implement careful and independent oversight and evaluation of physician performance measurement projects to assess their integrity and fairness."

"If the goal is really to improve the care and help patients make informed choices, then we're all for it. If it's done in a fair, accurate and transparent way," Dr. Nielsen said.

The other insurers under investigation also commented positively on CIGNA's agreement and said it was consistent with their physician ranking programs.

"The principles of our Premium Designation program...are also at the core of this agreement," said a spokesman from UnitedHealth.

"The outline of the New York attorney general's agreement with CIGNA appears consistent with the general principles of Empire's transparency efforts," said a spokeswoman for Empire Blue Cross Blue Shield.

"We welcome working with the New York Attorney General on a similar agreement and to sharing details of our program with a nationally recognized external entity to help make these physician ranking programs the best they can be for consumers," said a spokeswoman for Aetna.

"The guidelines aren't far from what many of the plans were already doing," said Laurel Pickering, executive director of the New York Business Coalition on Health. However, she acknowledged that "the process may not have been transparent, which is definitely what we need."

She added that the coalition's employer members are relieved that an agreement was reached.

"We were concerned that these programs might be in jeopardy," she said. "We're guessing that others are going to follow suit. So it's good all around."

"It's new and I think that there are going to be bumps," said Ms. Pisano of AHIP. "The business community and consumer community have been advocating for there to be information for consumers, and my sense is that they have wanted to make sure we are moving ahead in this area, but we can't wait for the perfect system. Don't let the perfect be the enemy of the good."

Organizations formerly at odds find themselves aligned to improve system

The National Consumer-Purchaser Disclosure Project is a collaboration of employers, consumers and labor organizations that previously were at odds.

"Organizations that 15 years ago were at loggerheads over the Patients Bill of Rights now realize that 99% of the time, their interests are totally aligned, and that alignment is around having a better-performing health care system," said Peter Lee, co-chair of the project and executive director of the Pacific Business Group on Health in San Francisco.

The groups also believe that "the way to get there is to have information that is accurate and valid in consumers' and doctors' hands so they can use that information to make better choices. It's a transformational concept from where we were not too long ago," he said.

Among the project's members are the National Business Group on Health, the Business Roundtable, the American Benefits Council, the National Business Coalition on Health, Consumers Union, the AFL-CIO, and numerous individual employers including Marriott Corp., AT&T and 3M Corp.

The project, which has been working quietly behind the scenes for about five years, decided to became publicly involved in the New York attorney general's actions against insurers' doctor-ranking programs out of concern that they might interfere with its mission, according to Debra Ness, co-chair of the project and president of the National Partnership for Women & Families in Washington. Ms. Ness' group led the drive for passage of the federal Family and Medical Leave Act.

"We wanted to make sure this didn't become an action that would shut down the movement toward measurement and public reporting of these results, and to help inform consumers about the differences among physicians when it comes to both cost and quality," she said.

The project's next step will be to ensure that the guidelines outlined in the New York attorney general's agreement with CIGNA Healthcare are adopted by all health plans nationwide, according to Ms. Ness.

"We wanted this to be a national model to encourage this kind of measurement and reporting in a way that is fully transparent," she said.

For more information about the National Consumer-Purchaser Disclosure Project, visit *http://healthcaredisclosure.org*.

—By Joanne Wojcik

Comp: Multiple injury claims trigger battle over accepted practice

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and stationary for the combined claims. Or, a doctor issues a single disability rating for the combined injuries, said Diana J. Rich, workers comp program manager for the California Joint Powers Insurance Authority, a La Palma, Calif.-based insurance pool.

If the injuries are substantially different—for example, involving a knee and a shoulder—each injury is separately apportioned, Ms. Rich said.

In several states, cumulative trauma cases are a common example of multiple claim filings that often are subject to a single settlement, agreed Jeff Pettegrew, executive director and chief executive officer at California Self Insurers' Security Fund in Walnut Creek, Calif., which backs self-insured employers unable to meet their claim obligations.

Changing the practice could have broad implications for risk managers and the entire workers comp system, Mr. Pettegrew said. The amount of collateral employers must post to self-insure workers comp risks in California is determined, in part, by their excess coverage arrangements, he said.

Supervalu's lawsuit filed in a Los Angeles Superior Court shows that from May 1990 to June 2006, Albertsons purchased excess policies from San Francisco-based Wexford Underwriting Managers Inc. During the first four years, Wexford represented Transamerica Insurance Co., but after 1994 Wexford exclusively represented Continental, the lawsuit states.

'Our point is the excess carrier should follow the fortunes of the self-insured employer.'

Gwen Freeman,
Knapp, Petersen & Clarke P.C.

In 2005, Wexford began insisting that a when a single permanent and stationary rating is due to more than one occurrence, payments must be apportioned among the claims, the lawsuit states.

An attorney for Wexford referred calls to CNA. A spokesman for CNA declined to comment.

Seven of the nine underlying workers comp cases that Supervalu cites in its lawsuit involve cumulative trauma. One case, for example, involves a claimant that won an 83% disability rating from California's Workers' Compensation Appeals Board. The WCAB apportioned 75% of the rating for a specific injury with a loss date on Jan. 12, 1999, and 25% of the rating for cumulative trauma with a loss date of June, 14, 2002.

The injuries became permanent and stationary at the same time, therefore the defendants should be bound by the results of the underlying claims, Supervalu argues in its suit.

"Our point is the excess carrier should follow the fortunes of the self-insured employer," said Gwen Freeman a Glendale, Calif.-based partner at Knapp, Petersen & Clarke P.C., who represents Supervalu.

It may eventually take an appeals court to settle the issue, observed Michael Adreani, an insurance expert at Roxborough Pomerance & Nye L.L.P. in Los Angeles.

Ms. Freeman estimates that Supervalu's dispute with its excess insurers could involve between $3 million and $20 in claims settlements.

Liquidation: Bureau's new administration launches turnaround plan

CONTINUED FROM PAGE 1

two decades for any recovery on Union Indemnity losses, are taking a wait-and-see approach.

"I guess maybe I've become a 'show-me' person," said Joseph L. DellaFera, chief executive officer of the New Jersey Property-Liability Insurance Guaranty Assn. in Basking Ridge. "I think we're heading in the right direction, but we would still like to see some checks coming out of there."

Union Indemnity, a unit of broker Frank B. Hall & Co. Inc., was ordered liquidated in July 1985 after New York regulators found it insolvent by $138.5 million. The regulators then sued Union, Hall—later acquired by Aon Corp.—and their directors and officers, charging that they abused the insurer to benefit Hall brokerage clients and misrepresented its financial condition.

The litigation had an unfortunate side-effect: Several Union reinsurers used evidence of fraud collected by the liquidator's lawyers to win rulings that their contracts with Union were unenforceable. The rulings, affirmed by appellate courts in the 1990s, robbed Union of about $200 million in recoverables, the estate's largest potential asset.

Instead, its main asset became a $47.7 million settlement with Hall and its D&O insurer, a unit of American International Group Inc.

Financial information about Union was scarce until Mr. Peters filed an initial report on the insurer's status in New York State Supreme Court on Oct. 10. According to the filing, Union had assets of $106.4 million and liabilities of $515.7 million as of March 31, 2007, making it insolvent by $409.2 million.

Liabilities include $273.9 million in "Class II" policy-related claims, nearly all from state guaranty funds that paid Union policyholders' losses. Several lower classes of claimants, including reinsurance policyholders of Union, make up of the rest of the liabilities. After covering estate administration expenses, Class II claimants will be the only ones to recover anything, the filing says.

Through March 31, the liquidation bureau has handled 31,299 Union claims—about half of which have been disallowed or voided as duplicates—and has spent $68.9 million administering the estate, according to the filing.

While the court had previously set a bar date for Union claims, about 3,500 "policyholder protection" claims have been filed to preserve rights of recovery on future losses. In his filing, Mr. Peters has asked the court to set Nov. 15 as the final bar date for all claims.

He has also asked the court to authorize a first distribution to claimants. The amount of the distribution has not been determined, and Mr. Peters declined to comment on how much it might be.

Mr. Peters calls the liquidation bureau's failure to pay a Union distribution "outrageous," and suggests that the long delay is symptomatic of what he describes as years of poor management at the bureau.

Since the 1980s, the liquidation bureau in fact has been a target of periodic complaints, ranging from alleged political influence in the hiring of outside lawyers to corruption. Johanna Hall, Mr. Peters' immediate predecessor as special deputy insurance superintendent in charge of the bureau, was indicted with her husband last year on charges of allegedly soliciting a kickback from a design firm for a contract to renovate the agency's office. They have entered not-guilty pleas and are awaiting trial.

When he took over the bureau in April, Mr. Peters says he faced several large problems.

Among them was a lack of systems to keep track of reinsurance balances for several estates, and little effort to pursue recoverables. While the estates had "gross estimates" of recoverable amounts, the bureau did not keep track of amounts owed by individual reinsurers or how long those amounts were past due, he said.

This meant not only that the bureau was failing to recover huge outstanding balances, but also that its own annual reports of estates' financial status were "grossly unreliable," he said.

"I have no reason to believe that what was in the financial reports submitted every year was true," Mr. Peters said.

The liquidation bureau is now tracking reinsurance debts, re-auditing estates' financial status and aggressively pursuing reinsurers, initiating commutation talks and, when necessary, filing lawsuits, he said.

So far this year, the agency has recovered $150 million in reinsurance debts, about double the amount collected in 2006, he said. Much of the recoveries were for the estate of Midland Insurance Co., which collapsed in 1986. The Midland estate announced its second distribution to creditors in June; in August, the bureau sued OneBeacon Insurance Co. over a $2.2 million reinsurance debt allegedly owed to the estate.

Meanwhile, Mr. Peters also found that the liquidation bureau itself had not been audited in recent memory and that "its books were a mess." He has since hired an outside firm, Amper, Politziner & Mattia, to audit its financials, and the audit report will be posted on the bureau's Web site, Mr. Peters said. Amper is also auditing the financials of 28 of the bureau's estates.

Greater transparency would be a change for the liquidation bureau, guaranty fund officials say.

"New York has always been very secretive about the internal workings of the bureau. It has not been an open kind of process" in the past, said Paul Gulko, president of Guaranty Fund Management Services in Boston, which manages funds for seven states and the District of Columbia.

The officials say they have already met several times with Mr. Peters or his staff to exchange information.

"The present regime...recognizes that there have been some shortcomings in the past and they are trying to take steps to kind of play some catch-up," said David C. Edwards, president of Western Guaranty Fund Services in Denver, manager of six western state funds.

While encouraged, though, guaranty fund officials say they're waiting to see how the New York bureau actually performs.

"We're hopeful. The right things are being said," Mr. Gulko said. Still, "the check may be in the mail, but until the post office delivers it, you can't cash it."

Mr. Peters, for his part, said he understands the skepticism.

"I don't particularly expect anyone to believe it just because I said it," he said. "Don't take my word for it; look at what we've done."

UNION INDEMNITY ACCOUNTING

Facts in the 22-year-old insolvency of a property/casualty insurer

FORMER PARENT: Frank B. Hall & Co.

ORDERED LIQUIDATED: July 16, 1985

LIQUIDATOR'S FIRST REPORT ON UNION'S FINANCIAL CONDITION: Oct. 10

ASSETS: $106.4 million

LIABILITIES: $515.7 million

INSOLVENT BY: $409.2 million

ESTATE ADMINISTRATION COSTS: $68.9 million

CLAIMS FILED: 31,299

DISTRIBUTIONS TO POLICYHOLDERS AND GUARANTY FUNDS: None

Source: New York Liquidation Bureau's initial report on the status of the Union Indemnity Insurance Co. of New York liquidation; all figures as of March 31, 2007.

Pirates: Attacks generally covered in marine market

CONTINUED FROM PAGE 4

primary coverage for injury or death to crewmembers as a result of a pirate attack, and ship owners will purchase excess coverage from protection and indemnity clubs, Marsh's Mr. McCluney said.

In London, piracy risks remain a covered peril under hull clauses of marine policies.

While the Lloyd's Market Assn. produced model clauses in 2005 that would enable Lloyd's of London underwriters to transfer piracy exposures to hull war risk policies from general hull policies, "so far the change has not happened," Mr. Smith said.

"For a market that has been around for over 300 years, we only did it in 2005. These things don't change overnight," he said.

He noted, however, that given today's more sophisticated pirate attack, it is hard to determine whether an attack is by pirates for personal gain, which would be covered under a hull policy, or by terrorists for a religious or political cause, which would be covered by a war risk policy.

"So far, I don't think there's been an instance that caused a problem," but "there is a potential problem from the insured point of view" as to which policy a claim would fall under, he said.

In addition to hull policies, piracy also is covered differently under marine cargo policies, experts say. Depending on the market and form, piracy risks will either be covered as a peril under the general cargo policy or it will be included in a war risk extension to the policy, brokers say.

Ship owners also are implementing various risk management techniques to mitigate their exposures, brokers say.

In addition to security patrols and keeping watch over the waters at all times, some ship owners have used sonic weapons and water cannons to keep pirates from boarding a ship, Mr. McCluney said.

And Mr. Moore said some ship owners have "something...like an electric fence around the top of the hull that prevents guys from getting over that onto the ship."

Piracy on slight upswing so far in 2007

Last week's deadly pirate attack on a North Korean cargo vessel in the waters near Somalia is one of a growing number of incidents occurring in the maritime industry today.

After trending downward since 2004, the number of piracy and armed robbery attacks against ships rose 14% to 198 incidents in the first nine months of 2007 compared with the same period in 2006, the second consecutive quarterly increase in attacks, according to the London-based International Maritime Bureau, which is a division of the International Chamber of Commerce.

Of those incidents, a total of 15 vessels were hijacked, 172 crewmembers were taken hostage, 63 were kidnapped and 21 were assaulted, the IMB said in a report released last month.

Somalia remains a "hotspot of great concern" with 26 incidents reported so far in 2007, compared to only eight in 2006, it said, noting that ransom demanded by the captors of hijacked ships are considerably higher than before.

Attacks also have risen sharply in Nigerian waters, with 26 incidents reported to the IMB so far in 2007 compared with the same period in 2006. Criminal groups claimed to have political motives for the theft and abduction of crewmembers, IMB said.

—By Sally Roberts

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News In Brief

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Cunningham Lindsey deal to take company private

In a deal designed to take insurance loss adjusting and claims management firm Cunningham Lindsey Group Inc. private, majority stakeholder Fairfax Financial Holdings Ltd. would reduce its stake in the company by nearly half at a cost of $30 million Canadian ($31.2 million). The new majority stakeholder would be Greenwich, Conn.-based private equity fund management company Stone Point Capital L.L.C., which would invest $80 million Canadian ($83.1 million) for a 51% stake in Toronto-based Cunningham Lindsey. Toronto-based Fairfax's stake would drop to about 45% from its current 84.1% share. Cunningham Lindsey's management would own the remaining 4% of the firm.

MAPFRE acquisition expands U.S. business

Madrid, Spain-based insurer MAPFRE S.A. may use the proposed acquisition of Webster, Mass.-based auto insurer the Commerce Group Inc. to expand its business in the United States. That expansion could include writing more commercial lines business in the United States, the company said. After meeting equity analysts in London last week, MAPFRE Vice Chairman Domingo Sugranyes said the proposed $2.21 billion acquisition of Commerce Group would act as a platform for the Spanish insurer's strategy to operate in more U.S. states but that any commercial expansion would be considered "cautiously."

Noted

New York-based law firm **Edwards Angell Palmer & Dodge L.L.P.** and London-based law firm **Kendall Freeman** plan to merge. The merger would greatly enhance both firms' insurance and reinsurance litigation practices, the firms said...Andy Hall will become president and chief operating officer of **CNA Financial Corp.'s Canadian operations** on Jan. 1. Mr. Hall will succeed Chuck Lawrence, who has led CNA Canada since 1997 and recently announced his upcoming retirement. Mr. Hall, who is currently vp in CNA's Denver branch, previously served as a vp for CNA Canada....The National Council on Compensation Insurance Inc. has agreed with a Florida Office of Insurance Regulation's request to reduce **workers comp rates** by 18.4% in 2008.

Aon: Restructuring the second since 2005

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world, and evaluate consolidation options to simplify its European operations on country-by-country basis. The brokerage also will consolidate real estate globally, it said.

Aon said the restructuring is expected to result in cumulative pretax charges of approximately $360 million from workforce reductions, lease consolidation and other related costs, resulting in $420 million in annualized savings by 2010.

The brokerage began a similar restructuring in 2005 a few months after reaching its $190 million settlement with attorneys general in Connecticut, Illinois and New York over its compensation practices, in which it formally agreed to cease accepting millions of dollars in contingent commissions.

That three-year plan, which resulted in a net reduction of about 3,600 employees and an estimated cost of $365 million, is "substantially complete" and on track to achieve annualized cost savings of about $280 million by 2008, Aon said.

'Market believes it will work'

"The 2005 restructuring plan worked great," said Cliff Gallant, analyst with Keefe, Bruyette & Woods Inc. in New York. To announce the new restructuring the same day it reported strong third-quarter results "makes you think maybe the cuts will work and margins will get better. Clearly, the market believes it will work," he said, referring to the 3.8% rise in Aon's share price last Thursday, the day following the restructuring announcement.

Indeed, with the 2005 restructuring winding up, analysts said Aon's new cost-cutting effort should further margin expansion and shareholder value.

'As we continue to make investments globally to better serve our clients, we remain equally committed to improving operational excellence.'

Greg Case, Aon Corp.

Aon's stock should respond "favorably" to the latest restructuring, as the activities "will likely be the next leg in Aon's margin expansion story and should drive longer term share performance," said David Small an analyst with Bear, Stearns & Co. Inc. in New York, in a note to investors.

"We continue to believe that as the cycle softens and growth is more difficult to achieve, brokers (that) are able to drive margin expansion will see better share price performance," he said.

While Aon reported third-quarter margin growth that was better than expected, "most of the upside is coming from the recognition of expense savings from the prior restructuring," said Mark Lane, a principal with William Blair & Co. in Chicago.

"As that dissipates, they need another kick. Organic revenue growth was 3% in the quarter (in risk and brokerage services). That's not fast enough (growth) to drive margin expansion," Mr. Lane said.

Aon reported an 11% rise in revenues for the third quarter of 2007 to $2.41 billion, while profits rose 92.5% to $204.0 million. Aon posted a 13.7% operating margin for the quarter, beating Wall Street estimates.

For the first nine months, Aon reported revenues of $7.28 billion, an 11.2% increase compared with the same period in 2006. Profits were up 32.2% during the period to $657 million.

Aon stock closed at $47.45 on Friday, up 3.6% from a week ago.

Fiserv: Deal to boost PBM base

CONTINUED FROM PAGE 4

That suit charges fraud related to an alleged illegal accounting practice and other actions by Fiserv and an official—including some actions involving UnitedHealthcare. The complaint was filed in state court in Minneapolis on Sept. 17 by three former officials and shareholders of the acquired company, Trewit Inc.

Under the terms of the deal, Trewit's shareholders would be paid $110 million up front. In addition, the shareholders could receive up to $108 million more over the next three years if Trewit and any additional acquisitions by Fiserv exceeded prescribed annual net profit thresholds.

But in calculating the net profits, Fiserv reduced them by taking charges for goodwill, even though a Financial Accounting Standard, FAS 142, barred such charges for goodwill beginning months before the Trewit transaction was finalized, the plaintiffs charge.

To further reduce net profits for Trewit, James W. Cox, the company's president and chief financial officer, reduced Trewit's contract with UnitedHealthcare—one of Trewit's biggest clients—to $3 million in 2004 from $8 million in 2002. Mr. Cox now serves as Fiserv's executive vp-mergers and acquisitions.

In addition, a Trewit company was barred from bidding on a huge state contract, the plaintiffs allege.

Mr. Cox then pressured the plaintiffs and other Trewit shareholders into accepting a $24.4 million buyout of the $108 million contingent payment by asserting that the shareholders had "no chance" of earning the contingent payment, the suit charges.

But "days" after the Trewit shareholders accepted the buyout offer in March 2003, Fiserv acquired Wausau Benefits Inc., which provided Fiserv a revenue stream that would have allowed the Trewit shareholders to earn their full $108 million contingent payment, the plaintiffs charge. Fiserv and Mr. Cox knew about the pending Wausau transaction and its implications for the Trewit shareholders when Mr. Cox pressured them into accepting the buyout offer, the plaintiffs charge.

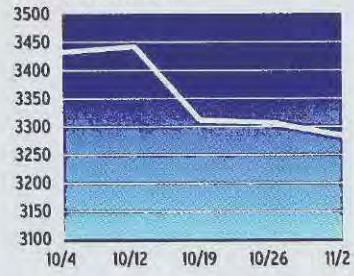
Fiserv declined to comment on the suit.

Stock Index

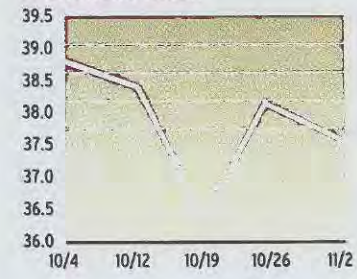
[10/29- 11/2]

Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at www.BusinessInsurance.com.

BI STOCK INDEX

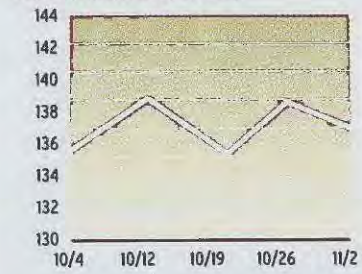


BI BROKERS INDEX



BI INSURER/REINSURERS INDEX

BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI *Stock Index vs. key indicators*

BI STOCK INDEX	▼
3279.86	-1.69%
DOW JONES	▼
13595.10	-1.53%
S&P 500	▼
1509.65	-1.67%

LARGEST GAINS

Fairfax Financial	9.81%
Odyssey Re	7.39%
Unum Corp.	6.53%
American Financial	4.59%
Berkshire Hathaway	3.92%

LARGEST LOSSES

Ambac Financial Group	-46.94%
MBIA Inc.	-29.50%
United Fire & Casualty	-12.66%
Citigroup	-11.49%
PMA Capital	-11.39%

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

Business Insurance END PAGE

Contributing: Jeff Casale, Roberto Ceniceros, Kristin Gunderson Hunt, Dave Lenckus

Gift of health now includes debit card

What do you get for the person who has everything? Maybe a chest X-ray. Or a root canal.

Highmark Inc. a Pittsburgh-based health insurer, last week launched the Healthcare Visa Gift Card. The gift card covers out-of-pocket health care expenses such as copays for doctor visits, prescriptions, vision care, dental care, health club memberships and elective procedures.

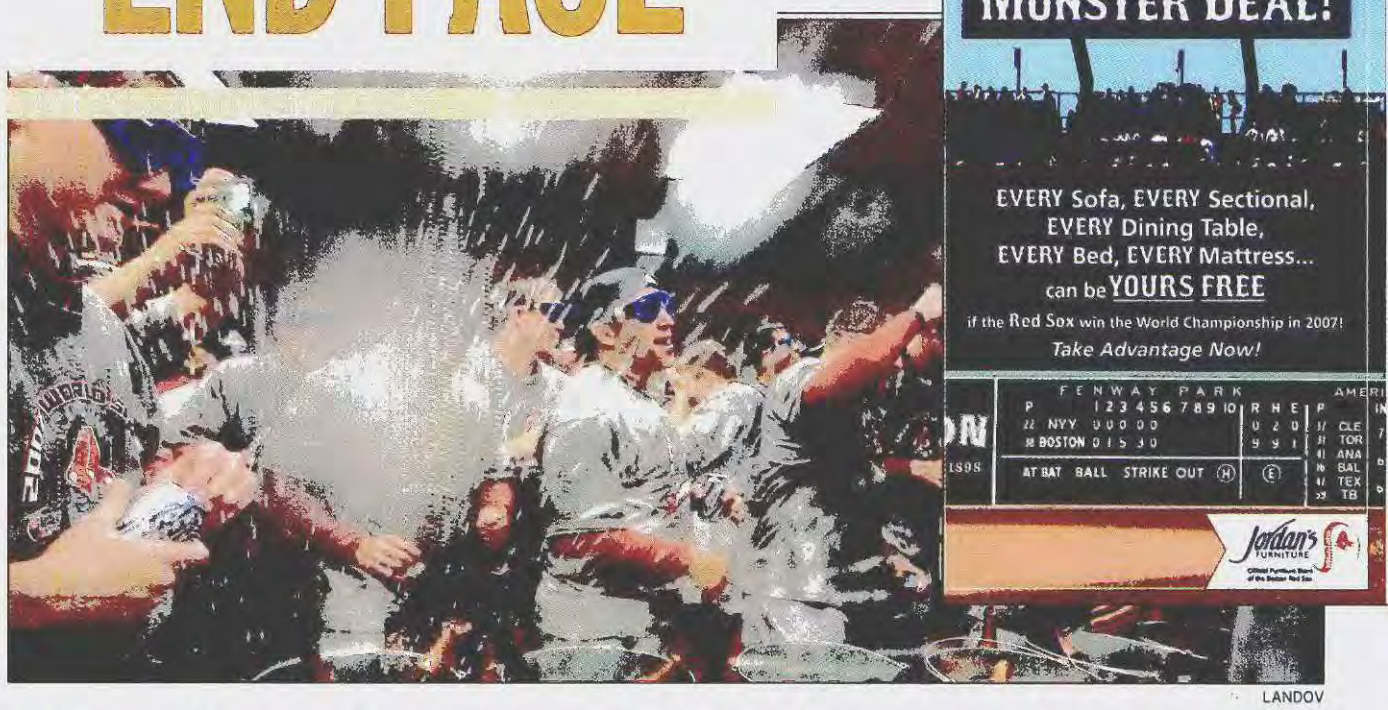
Kim Bellard, vp of e-marketing and consumer relationship management for Highmark, said company research indicated consumers would be interested in such a product because of its convenience and their preference for giving gift cards over cash as gifts. He also noted that as consumers take on more of their out-of-pocket health care expenses, they are looking for ways to cover those expenses.

"Every round of research got more and more positive about the card and its applicability to consumers' lives," Mr. Bellard said. "People seem to love to give and get gift cards. Gift cards are a very convenient way for consumers to pay for their expenses."

He said the health care gift card is the first of its kind, and the company is currently applying for a patent.

The gift cards can be purchased in full dollar amounts ranging from $25 to $5,000. They can be used regardless of a person's health insurance coverage, though use of the cards is limited to health and wellness merchants where Visa debit cards are accepted.

"It's a new kind of gift card. For people who are looking for new kinds of gift ideas, it's an innovative way to give something to someone who has these particular needs," Mr. Bellard said.



LANDOV

Furniture buyers win thanks to BoSox

For a second Red Sox World Series victory in four years, management at a Boston-area furniture dealer was willing to give away the store.

The BoSox came through in the fall classic, completing a four-game sweep of the Colorado Rockies on Oct. 29.

Now, Jordan's Furniture of East Taunton, Mass., is coming through—albeit with an insurance backstop.

Customers who purchased sofas dining tables, beds or mattresses from Jordan's between March 7 and April 16 are eligible for a full refund.

Customers have until Dec. 1 to mail their rebate claims to the store, which says it will honor claims it receives by Dec. 8.

But the good fortune of the Red Sox will not be a financial shutout for Jordan's—an official sponsor of the team, which won its second World Series in four years after an 86-year stretch of futility.

Jordan's purchased insurance to respond to the rebate claims. But a spokeswoman for Jordan's, a unit of Berskshire Hathaway Inc., would not comment on the store's coverage.

A Chicago-area furniture store ran a similar promotion in April, promising free furniture to customers in the event of the first Cubs World Series victory in 99 years.

The best deal available then was a Lloyd's of London policy that cost 2% of the first $500,000 of sales and 4% of sales exceeding that, said Gary O'Reilly, owner of Park Avenue Home Furnishings by O'Reilly's in Libertyville, Ill.

In May, Mr. O'Reilly noted, the same Lloyd's syndicate wanted a premium equal to 18% of furniture sales to back a promotion tied to a World Series victory for the White Sox, which won the 2005 Series. Mr. O'Reilly did not run that promotion.

Workplace gun mishap one for the books, legs, wall

"Colt 45, it works every time," a once-popular beer advertising tagline, apparently held true for a 47-year-old insurance agency worker.

Last week, while at work near Fort Worth, Texas, John Collins apparently shot himself in both legs when a .45-caliber Colt handgun that was in his coat pocket went off in his cubicle.

"We're assuming that he was manipulating the gun in some way and that somehow the hammer slipped and discharged the firearm," said Brett McGuire, Lake Worth police chief.

The bullet passed through both of Mr. Collins' legs and a bookcase before lodging in a wall across from where he was sitting at Al Boenker Insurance of Texas Inc.

Mr. McGuire said it did not appear that Mr. Collins was planning any type of workplace shooting, that he was simply carrying a concealed weapon—something that is legal in Texas with the proper permit.

Mr. Collins, however, did not have a concealed-carry permit, the police chief said.

"He didn't have any discipline problems or problems with any of his co-workers," Mr. McGuire said, adding that it was against company policy to have a weapon on the premises.

He said police were waiting for Mr. Collins to recover from his injuries before deciding whether to pursue charges.

Alienation of affection strips duty to defend

A surgeon who allegedly enticed a medical clinic manager into an extra-marital affair is not entitled to an insurer's defense of a lawsuit filed by the manager's husband, South Dakota's Supreme Court ruled.

The case of State Farm Fire & Casualty Co. vs. Thomas G. Harbert involved an orthopedic surgeon who allegedly began the affair with the clinic manager in 2001, court documents show.

When the manager's husband, David M. Kalt, discovered the affair, he filed for divorce and in 2004 sued the surgeon, Thomas Harbert, for alienating the affections of the woman he married in 1976.

The surgeon sought defense and indemnity coverage under his personal liability umbrella policy. State Farm rejected the claim and later won a trial court summary judgment that State Farm had no duty to defend.

Dr. Harbert appealed and the South Dakota Supreme court ruled that the policy doesn't protect him against the suit.

Among other findings, the state's high court ruled that alienation of affection is an intentional tort, or wrong, by enticing Peggy Kalt's affections away from her husband.

State public policy does not allow him to impute financial responsibility for his own intentional torts onto an insurer, the court ruled unanimously on Oct. 24. To find otherwise would permit "affair insurance," the state's high court decision stated. That would defeat the purpose of punishing and deterring individuals for their own tortious acts, the court concluded.

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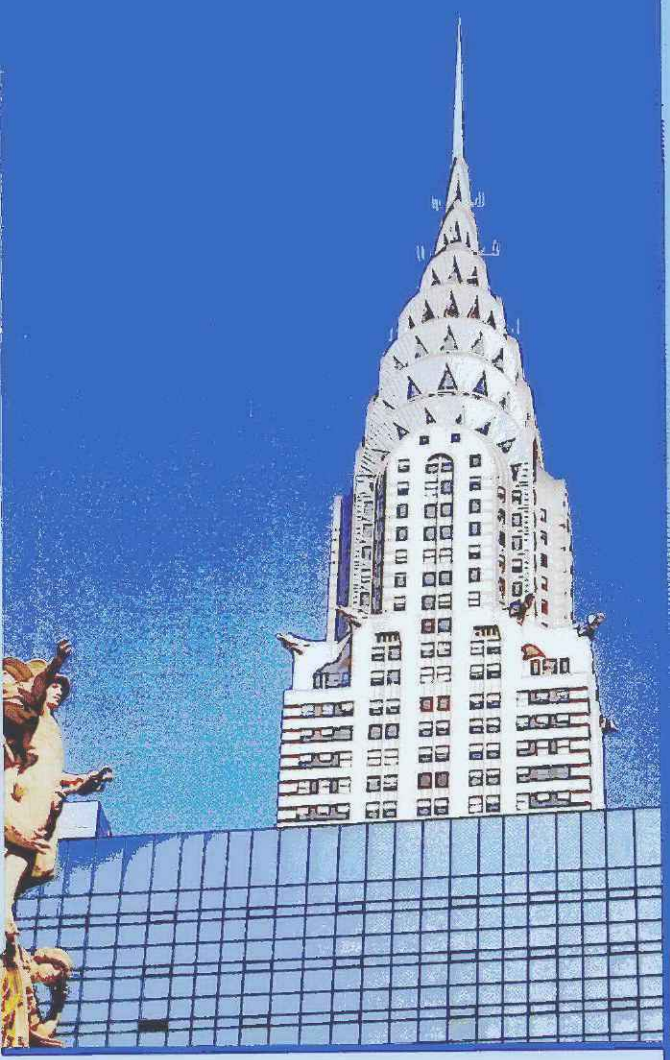

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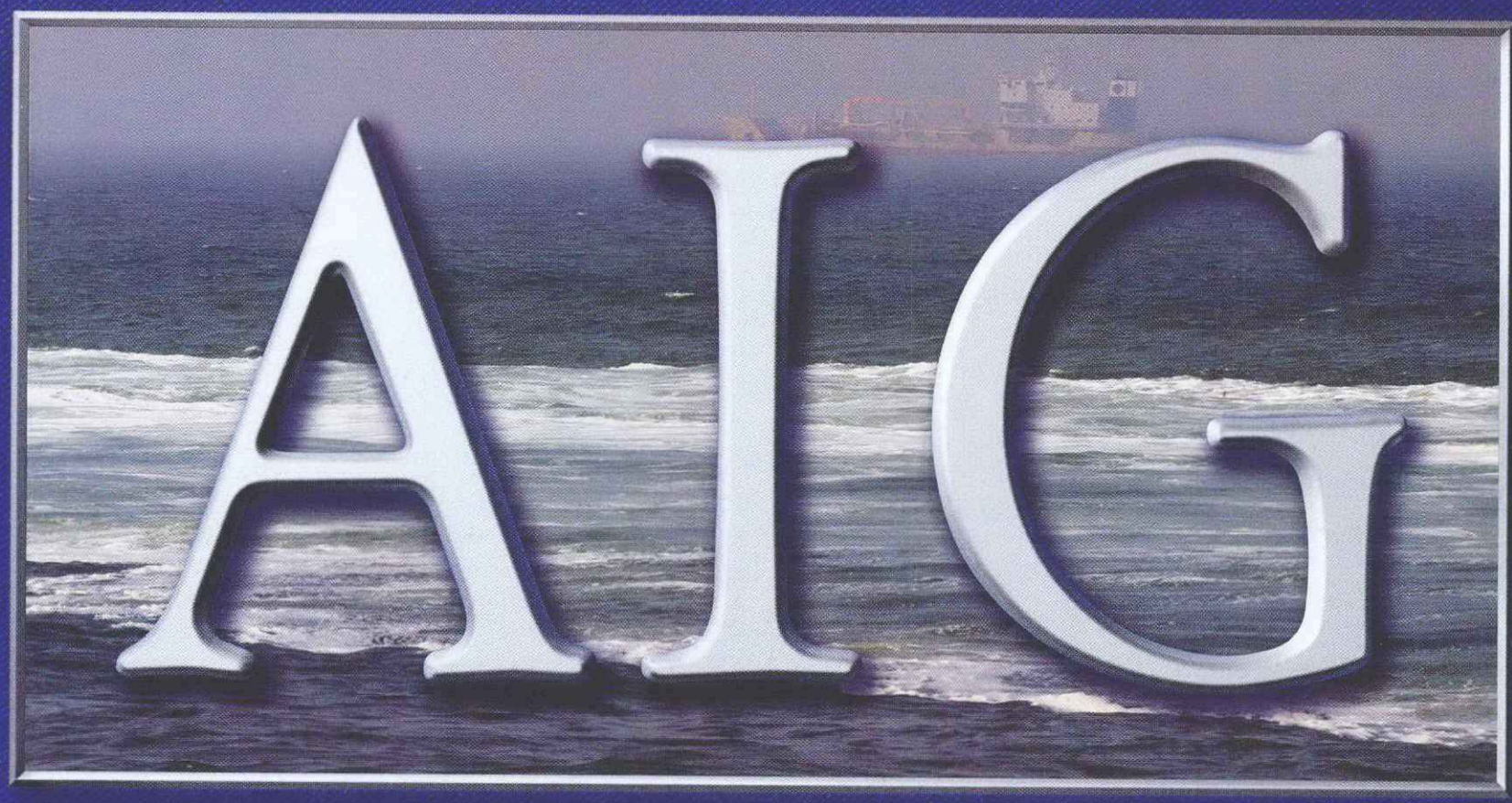

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