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**UNUMPROVIDENT SETTLES WITH ELIOT SPITZER / PAGE 3**

**WORLD TRADE CENTER INSURERS WIN FIGHT OVER CAP ON REBUILDING COSTS / PAGE 3**

## In Brief

### Insured cat losses drop in 3Q: PCS

U.S. catastrophes caused an estimated \$971 million in insured property damage during the third quarter of this year, according to a preliminary estimate from the Insurance Services Office Inc.'s Property Claim Services unit. That compares with insured losses of \$48 billion during the same period last year and \$24 billion during the same period of 2004. Unusually destructive hurricane activity marked both previous third-quarter periods.

### Garamendi urges 9.5% comp rate cut

California insurance Commissioner John Garamendi is recommending a 9.5% decrease in the workers compensation pure premium rates for policies beginning Jan.

See **NEWS IN BRIEF** page 54

# Cooney out as Max Re chief as finite risk probe reopens

By **RUPAL PAREKH**

**HAMILTON, Bermuda**—The departure of Robert J. Cooney from the helm of Max Re Capital Ltd. following a reopened probe into the reinsurer's accounting for some finite risk contracts may help Max Re move on from a troublesome period, but the loss of the well-known executive could ultimately hurt the company, observers say.

While the move may mean that Max Re can move ahead with a clean slate, Mr. Cooney was a skilled leader with valuable industry contacts, they say.

Mr. Cooney—who founded Hamilton, Bermuda-based Max Re in 1999 after serving as president and chief operating officer of XL Insurance Ltd.—resigned as Max Re's chairman and chief executive last week. He also stepped down from the boards of the company and each of its subsidiaries, though he will be available as a consultant until Dec. 31, Max Re said in a statement.

W. Marston Becker, a Max Re director since 2004, was appointed by the company's board to step in as chairman and acting chief executive officer.

Max Re also said that its executive vp and chief risk officer, Peter A. Minton, has assumed the additional role



Mr. Cooney

of chief operating officer, while Angelo Guagliano—executive vp of Max Re's operating subsidiary, Max Re Ltd., and president of Max Re Ltd.'s insurance division—has assumed the role of chief underwriting officer for all of the company's insurance and reinsurance operations.

"After founding and leading Max Re for seven years, I have submitted my resignation because I believe it is in the best interests of the company to do so," Mr. Cooney said in the statement. "I am confident that Max Re will continue to succeed and grow under the new management team put in place."

Mr. Cooney's exit coincides with Max Re's reopening of an internal investigation earlier this year into finite risk retrocessional contracts written by the reinsurer in 2001 and 2003 (*BI*, April 3).

That probe, conducted by the reinsurer's audit and risk management committee, was concluded in May

See **MAX RE** page 53



# High court considers punitives

By **MARK A. HOFMANN**

**WASHINGTON**—The Supreme Court may use a tobacco liability case to determine whether due process guarantees allow a jury to levy punitive damages on a defendant for the effects of its conduct on people who are not a party to the suit.

That was one of two questions presented to the high court last week as it heard arguments in *Philip Morris USA vs. Mayola Williams*. The other question is whether, in reviewing a jury's award of punitive damages, an appellate court's conclusion that a defendant's conduct was highly reprehensible and analogous to a crime can override the constitutional requirement that punitive damages be reasonably related to the plaintiff's harm.

The case centers on the Oregon Supreme Court's Feb. 2 ruling that upheld a \$79.5 million punitive damage award to the widow of a smoker. The award came atop a compensatory award of \$821,485, which was later reduced by \$300,000 to bring it in line with Oregon's cap on wrongful death damages. The size of the punitive damage award seemed to go against the guidelines spelled out by the U.S. Supreme Court in its 2003 decision in *State Farm Mutual Insurance Co. vs. Curtis Campbell et al.* In that case, the high court's majority held that under most circumstances, punitive damages in excess of single-digit multiples of the underlying compensatory damages are so disproportionate as to be unconstitutional.

The Oregon Supreme Court, however, said that Philip Morris' conduct was so "extreme and outrageous" that the guidelines didn't apply. In addition, the Oregon

See **PUNITIVES** page 54

# Lower drug costs may result from CVS/Caremark combination

*Deal could lead to more consolidation in PBM sector*

By **GLORIA GONZALEZ**

**NASHVILLE, Tenn.**—The merger of one of the biggest pharmacy retailers and a major pharmacy benefit manager should result in lower prescription drug pricing and may foreshadow a future trend of consolidation in the PBM industry, benefit managers and consultants say.

PBM Caremark Rx Inc., which

SNAPSHOT	
<b>CAREMARK</b>	
Revenues:	<b>\$33 BILLION</b>
Retail pharmacies in network:	<b>60,000</b>
Mail order prescriptions processed:	<b>58 MILLION</b>
<b>CVS</b>	
Revenues:	<b>\$37 BILLION</b>
Retail drugstores:	<b>5,420</b> (5,367 with pharmacy)
Percentage of revenues from prescription drugs:	<b>70%</b>
Prescriptions filled:	<b>433 MILLION</b>
Source: Company reports for 2005	

buys drugs directly from manufacturers and distributes them through a network of 60,000 pharmacies as well as through mail-order, and major pharmacy chain CVS Corp. announced last week that they will merge in a \$21 billion deal that would create an integrated pharmacy services provider.

The merger will result in significant benefits for employers and health plans through more effective cost management and innovative new programs, Caremark and CVS executives say.

The combined entity should be a positive development for employers as it may have greater leverage in price negotiations with prescription drug manufacturers, benefit managers say. The merged company may be able to pass on discounts to CVS customers and employers and employees that use Caremark.

"I think it can probably only be a good thing," said Juliet Vestal, the Las Vegas-based director of health care management for Harrah's

See **CVS** page 53

## SPOTLIGHT

### REINSURANCE: TRENDS & ISSUES

Cat rates expected to soar despite low losses; rates on casualty risks slip; alternative reinsurance capacity takes hold; U.S., Europe clash over collateral requirements; litigation over reinsurance coverage continues; finite risk fades from view as buyers, sellers shy away from controversial coverage.



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- Bryon Ehrhart, *president and CEO of Aon Re Services*

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## On the Web

### BI DIRECTORIES

#### Reinsurance Brokers directory updated for '06

The *Business Insurance* Reinsurance Brokers directory has been updated for 2006 and is available online. Company name and address, 2005 and 2004 gross revenues and number of employees are some of the fields included in this in-depth research tool. To purchase, go to [www.BusinessInsurance.com/directories](http://www.BusinessInsurance.com/directories).

### EMERGING RISK STRATEGIES

#### Risk manager Meltzer knows value of a network

In his newest column, John J. Hampton interviews Susan



Meltzer, International Federation of Risk & Insurance Management Assns. chairwoman. As a risk manager for

an insurance company in Canada, Ms. Meltzer works—and networks—to bring a global perspective to the profession. Access the interview online at [www.BusinessInsurance.com/EmergingRiskStrategies](http://www.BusinessInsurance.com/EmergingRiskStrategies).

### BI COMMUNITY FORUMS

#### Get involved in the ERM discussion on the Web

How can risk managers ensure they are involved when top management discusses risk issues? *BI's* Community Forums are just the place to talk about emerging risk strategies. Join the online discussion group at [www.forums.BusinessInsurance.com](http://www.forums.BusinessInsurance.com) to post your ideas, share your success stories or ask your own questions.

### INDUSTRY FOCUS AT PCI

#### Check in daily this week for PCI news online

*Industry Focus*, *BI's* monthly supplement, will be at PCI in Seattle, publishing daily updates of events and news in its PCI show daily, available as a PDF at [www.IndustryFocus.com/PCI](http://www.IndustryFocus.com/PCI).

## Business Insurance

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

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# UnumProvident, Spitzer, California reach settlement on compensation practices

## Insurer agrees to fully disclose how it pays brokers

By JOANNE WOJCIK

**CHATTANOOGA, Tenn.**—UnumProvident Corp. has reached settlements with New York Attorney General Eliot Spitzer and California Insurance Commissioner John Garamendi that will change the ways the disability insurer compensates brokers and consultants.

The agreement with New York resolves an investigation of deceptive practices in UnumProvident's compensation of producers in the sale of group insurance products. The practices included payments to brokers based on their ability to per-

suade clients to renew policies despite rate increases, and loans to brokers whose principal and/or interest rates could be reduced if brokers placed a sufficient amount of business with UnumProvident.

From 2000 to 2004, Unum provided more than \$12 million in loans to brokers and consultants. It also purchased a 6.5% interest in USI Holdings Corp. common stock prior to its 2002 public offering, entitling Unum to a seat on the broker's board. UnumProvident also bought shares in other brokers, including Assurex Global and BenefitPoint Inc., according to the attorney gen-



Mr. Spitzer

eral's office.

According to USI Senior Vp and General Counsel Ernest Newborn, most of UnumProvident's holdings in USI were sold in USI's secondary public offering in April 2004. In addition, Unum relinquished its board seat in May 2002. Any remaining holdings Unum has in USI have been deeded to a separately managed trust over which it has no legal ownership or beneficial ownership.

Assurex and BenefitPoint could not be reached for comment.

Under the settlement, Chattanooga, Tenn.-based UnumProvi-

dent agreed to provide full disclosure of broker compensation to employers and to stop making loans to, or obtaining undisclosed ownership interests in, brokers.

UnumProvident also has agreed to pay \$15.5 million in policyholder restitution and a \$1.9 million civil penalty to the state of New York. Eligible policyholders have until Aug. 1, 2007, to request a distribution.

UnumProvident may request to amend the agreement to allow for the payment of contingent commissions on substantially the same terms and to the same extent as permitted by agreements the New York attorney general has reached with other insurers. Otherwise, UnumProvident may only pay

See **SETTLEMENTS** page 52

## District court judge says cash balance plans are age discriminatory

### Employers had hoped uncertainty over after appeals court ruling

By JERRY GEISEL

**NEW YORK**—The legal status of cash balance pension plans remains far from settled after a federal judge ruled last week that the plans discriminate against older workers.

When cash balance plan benefits are expressed as a retirement-age annuity, an older employee who started working at the same time as a younger employee will receive a smaller benefit, which is age discrimination, ruled Judge Harold Baer Jr. of the U.S. District Court for the Southern District of New York, in a case involving JPMorgan Chase & Co.'s plan.

Judge Baer's ruling, which rejected JPMorgan Chase's motion to dismiss the age discrimination charge, is the first to go against an employer since the 7th U.S. Circuit Court of Appeals in August ruled in a case involving IBM Corp. that the plans do not discriminate against older employees.

That ruling bolstered employers' hopes that the uncertainty about the legality of cash balance plans would soon come to an end. The uncertainty was fueled by a federal judge's 2003 ruling in a class action suit against IBM that the design of cash balance plans is inherently age discriminatory.

Many pension experts believed that the reasoning of the appeals court, which reversed Judge G. Patrick Murphy's decision in the

IBM case, would prove so persuasive that other courts would quickly fall in line, putting an end to cash balance plan age discrimination litigation, which has been going on for at least seven years and costing employers tens of millions of dollars in legal fees.

### 'It is immaterial that the plans appear age neutral.'

Judge Harold Baer Jr.  
U.S. District Court  
for the Southern District of New York

There were good reasons for that optimism. In the first two district court rulings following the IBM decision, both courts dismissed age discrimination charges against the employers sponsoring the plans, with the two judges specifically citing the appeals court ruling in the IBM case in their rejection of the age discrimination claims (*BI*, Oct. 30).

But with Judge Baer's decision in the JPMorgan Chase case, that optimism was short lived. While the appeals court had ruled that the plans are age neutral, since the benefits and interest credits employees earned are not based on age, Judge Baer rejected that analysis.

"It is immaterial," Judge Baer wrote in his Oct. 30 decision, "that the plans appear age neutral. Despite the fact that every employ-

See **CASH BALANCE** page 52



The proposed rebuilding of the World Trade Center may not proceed exactly as leaseholder Silverstein had planned after a federal judge ruled the leaseholder can only recover the cost of the towers as they stood before Sept. 11, 2001.

## Leaseholder can't recover replacement cost of WTC

By RUPAL PAREKH

**NEW YORK**—The World Trade Center's leaseholder can recover from a group of insurers only the cost of rebuilding the Twin Towers as they stood before the Sept. 11, 2001, terrorist attacks—not the costs for any improvements to the buildings—under a New York federal court ruling handed down last week.

The latest decision ends one of several ongoing disputes between Silverstein Properties Inc. and some of its insurers. At issue was whether policies issued by six insurers would provide coverage on a so-called "replacement cost" basis or an "actual cash value" basis, which measures the value of the property as it existed prior to the loss and takes depreciation into account.

The insurers—Allianz Global Risks US Insurance Co., Gulf Insurance Co., Industrial Risk Insurers, Royal Indemnity Co., Travelers Indemnity Co. and Zurich American Insurance Co.—argued that they should not be liable for extra expenses related to the rebuilding effort, additional costs Silverstein and related policyholders put at about \$700 million.

The policyholders hold that the changes are necessary to "adapt the structures' design to the changed legal, physical, and political environment of post 9/11-New York," court papers say.

Siding with the insurers, U.S. District Court Judge Harold Baer wrote in his opinion that policyholders' replacement cost recovery would have to be limited to the costs for rebuilding the towers as they existed on the day of the attacks. "The provisions unambiguously establish that the most the insureds can recover on a replacement cost basis is the amount it would cost to reproduce the WTC beam-for-beam, pane-for-pane, as it stood early on the morning" of Sept. 11, he wrote.

Silverstein currently stands to collect approximately \$4.6 billion from all of its property insurers under a federal appeals court ruling last month; the leaseholder had sought about \$7 billion.

*SR International Business Insurance Co. Ltd. vs. World Trade Center Properties L.L.C. et al., 01-CIV-9291, U.S. District Court for the Southern District of New York (Manhattan).*

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## Call for Nominations

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Nominations for the Risk Manager of the Year, and Risk Management Honor Roll, are now being accepted by *Business Insurance*.

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Executives anywhere in the world who are involved in risk management for a corporation, not-for-profit institution or government entity can be nominated.

The nominations will be judged by a panel of executives representing all aspects of risk management and the commercial insurance industry.

**Business Insurance** www.BusinessInsurance.com

Honorees are announced and profiled in the annual Risk Manager of the Year feature published by *Business Insurance* which is distributed at the RIMS annual Conference and Exhibition each spring. Awards will be presented at a special luncheon honoring these risk managers.

**DEADLINE FOR NOMINATIONS:  
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For nominating forms and instructions, call 312-649-5274 or e-mail:

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## Commentary

# Elections will never be a problem in Winstonia



**PAUL WINSTON**

Associate Publisher and Editorial Director  
Paul Winston's commentary appears periodically. E-mail: [pwinston@businessinsurance.com](mailto:pwinston@businessinsurance.com)

From Winstonia's shores, thanks to the broad reach of our satellites, I see that Election Day is here at last for Americans. By the time America reads this, its citizens might already have cast their votes, many no doubt hoping that would end the cacophony of the candidates, the near ceaseless barrage of campaign noise, mudslinging, sleaze and punditry that accompanies elections in the United States.

Even my e-mail, [inbox@winstonia.gov](mailto:inbox@winstonia.gov), has been receiving messages almost daily from candidates in the U.S. House and Senate races and from their political parties, with increasingly shrill messages about the end of life as we know it if the other team is elected. I figure about half of these are phishing expeditions by clever hackers hoping I will open my wallet and pledge my credit limit to the cause. The other remainders are fishing expeditions by political parties hoping I will open my wallet and pledge my credit limit to the cause. My wallet remains closed.

Even the candidates appear to suspect that much of the populace has grown weary of the endless catfighting between the parties. Now, when watching political ads on U.S. television I have to squint at the fine print in the last 0.5 seconds of an ad to see if a candidate is a Democrat or a Republican, since candidates from both parties are studiously avoiding such angst-ridden labels and emphasizing their "independence."

Of course, very important business issues could well be decided by these elections, such as Eliot Spitzer's to do list, whether the federal government opts to partly finance terrorism insurance, or foot the entire bill after an attack, and whether bacon cheeseburgers become the next mass tort.

It must be frustrating for U.S. businesses to have their fortunes dictated by the votes of people halfway across the country with whom they have no relationship, or whose political leanings can be swayed overnight by John Kerry's bloopers or what comes out of Rush Limbaugh's mouth.

How much simpler running a business would be in a place where, with a little grease on the palm, virtually anything a company desires is in reach—a place like Winstonia.

Winstonia, as any school child can tell you, is a benevolent dictatorship nestled in the wilds of Illinois. As such, our government is blissfully free from the hysteria caused by campaigning

politicians, influence peddlers and Jon Stewart. Our tiny nation exists for one purpose: To make money for us both.

You want tort reform? Just ask (and please refer to the handy fee schedule that accompanied your incorporation papers). Tax-free catastrophe reserves? No problem (if the aforementioned fees are current). To do away with

**There's really only one thing that Winstonia frowns on, only we can't remember what it is at the moment.**

quarterly earnings reports? That's a big yes (as long as your quarterly deposits are maintained). Back-date your stock options? You'll find that the rules of the Winstonia Department of Securities are quite enlightened on this subject (for the proper percentage).

There's really only one thing that Winstonia frowns on, only we can't remember what it is at the moment. Oh yeah: a free and meddling electorate.

### Risk Manager of the Year

Did you know that there is only a little more than a month to nominate someone for the 2007 Risk Manager of the Year?

This is your chance to tell us about a boss, a colleague or a client who should be recognized for their outstanding work as a risk manager. The nominating process has been revised this year to make it easier to nominate worthy individuals.

Please visit [www.businessinsurance.com/RMOY](http://www.businessinsurance.com/RMOY) to download a simple nominating form and tell us about a worthy individual who is a credit to the profession.

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# Business Insurance OPINIONS

## Federal inaction carries a very high cost

IF THERE EVER was an example of the damaging consequences that can result when federal legislators stay on the sidelines on an important employee benefits issue, the controversy over cash balance pension plans is it.

The first cash balance plan was set up in 1985. Since then, more than 1,000 employers, including a good chunk of the nation's biggest and best-known companies, have converted their traditional pension plans to cash balance arrangements.

As employers adopted the new design, they and their advisers pleaded with legislators to clarify pension law to recognize the plans.

Regrettably, legislators gave employers the cold shoulder. And the result of that congressional indifference: a slew of lawsuits charging, among other things, that the plans as designed discriminate against older employees.

While we think that allegation is absurd—where's the discrimination in an arrangement in which all employees, regardless of age, receive the same benefit and interest credits—what we think really doesn't matter. What does matter is that while most courts, including one federal appeals court, have rejected the age discrimination charge, a couple have not.

That means the litigation is going to go on for some time. And what will the result be? For starters, millions and millions of dollars of corporate dollars, which perhaps could have been used to support employee benefit programs, instead will be spent on legal fees.

Still worse, some employers that are tired of waiting for the legal uncertainty to end will phase out cash balance plans in favor of defined contribution plans, where the legal risks are lower but such plans also don't protect employees from investment risk as cash balance plans would. That result hardly is in the public interest. While Congress, finally, passed legislation this summer to protect new cash balance plans from age discrimination suits, it is of little comfort to employers that started the plans years ago.

It would be unrealistic to expect any more action on this front from Congress. We just hope that this sorry chapter of congressional inaction will serve as a lesson to legislators that they are elected to lead and not walk away when leadership is required.

*Regrettably, legislators gave employers the cold shoulder.*

## Lid on finite coverage coffin nearly nailed shut

THE DEPARTURE OF YET another insurance industry chief executive at the same time that the company runs into issues over its involvement in the finite risk market (see story, page 1) would seem to be yet another nail in the coffin of what was once a useful niche of the insurance and reinsurance market.

As we report on in our Spotlight on reinsurance, due to the investigations into some questionable use of finite products, the use of the coverage has dwindled to the point that the finite sector is in danger of disappearing. And that would be a shame.

While investigations into the use of finite contracts have clearly uncovered some abuses of the coverage, it would be wrong to conclude that all uses of finite risk coverage are illegitimate or illegal.

As a tool for covering difficult risks, for providing less expensive alternatives to traditional reinsurance, and for ensuring that funds will be available to pay future losses, finite risk coverage has served many insurers and policyholders well, and should be allowed to continue to do so.

While we can understand why many former buyers and sellers of the products would now shy away from them, we think that a more aggressive attempt to clarify the rules on the legitimate use of finite risk would be a far more positive approach to the problem.



## Letters

### RIMS' New Orleans stance will aid recovery

To the editor: Kudos to the Risk & Insurance Management Society Inc. for standing its ground and committing the organization to holding its annual conference and exhibition in New Orleans next April. According to the Oct. 23 edition of *Business Insurance*, RIMS made its decision in the face of at least one organization's conference cancellation and nagging concerns about airline service.

At its heart, the insurance industry—whether commercial or residential, broker, MGU or exclusive agent—is about risk mitigation and recovery. RIMS' decision to keep next year's conference in New Orleans is an apt reflection of the industry's commitment to those key concepts.

Aon has had a sizeable contingent of commercial claims people working

in the Gulf coast for many months, liaising between the insurers and the insured, helping place our clients squarely back on the road to recovery. We know firsthand of the commitment of New Orleans' people to their own revitalization—made easier with each investment in the city's economy.

While no one should make light of the challenges that currently exist and that lay ahead for New Orleans, we agree with RIMS President Michael Liebowitz that to turn our back on New Orleans now would do a disservice to the city and to its people.

*Greg Case  
President  
and Chief Executive Officer  
Aon Corp.  
Chicago*

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## Online Poll at [www.businessinsurance.com](http://www.businessinsurance.com)

*Does your organization have an emergency plan for dealing with an influenza pandemic?*



**NEXT WEEK'S POLL:** *What changes should the industry make on finite reinsurance?*

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# Market: Property cat reinsurance rates soar despite low losses

CONTINUED FROM PREVIOUS PAGE

Denzer said.

"I think we just have to wait to let the market absorb the mild cat season and see where that takes us," he added.

"What is remarkable and very encouraging" is that the reinsurance market remains "quite disciplined," said Pierre Ozendo, Armonk, N.Y.-based CEO of Swiss Reinsurance Co.'s Americas division. There is "not a lot of foolishness" despite some price competition in shorter-tail and lower-risk casualty lines, plus contract wordings remain firm, said Mr. Ozendo.

That "should give us the opportunity to keep things in pretty good shape."

Property cat rate increases will not be as high in January as they were this summer, most observers say. Instead, reinsurers will focus on bringing those renewals nearer to midyear 2006 levels.

"I think most people would agree the pricing levels in July were the best ever" for reinsurers, said Steven K. Bolland, president of reinsurance intermediary Gill & Roeser in New York. "If nothing happens between now and the end of the year, I don't think reinsurers will see those pricing levels at Jan. 1 because they

were truly amazing, for the U.S., anyway," he said.

Mr. Priebe anticipates "there'll be some movement upwards on the January programs, bringing them more in line with what we saw at midyear. We may find a point in between the two, but I don't think pricing will be flat" in peak catastrophe zones.

Property cat will play catch-up with the July renewals, agreed Chris O'Kane, London-based CEO of Aspen Insurance Holdings Ltd. Reinsurance buyers in July paid up to 60% more than January buyers, "so there's a pretty significant difference."

William H. Eyre Jr., managing director and CEO of reinsurance intermediary Towers Perrin Reinsurance in Philadelphia, agreed "there is an element of catch-up" for the January 2007 renewals.

"I think all indications are that reinsurers, for this Jan. 1, are going to be focusing on the clients' exposures," and their 2005 hurricane loss development since last year's fourth quarter, said Mr. Eyre.

### Expectations very different

John Gwynn, managing director at Memphis, Tenn.-based Morgan Keegan & Co., pointed to a dispari-

ty in expectations. Reinsurers say they expect further rate increases—in some cases significant hikes, while primary companies "are all saying 'We got hit pretty hard midyear and we're assuming because there are no storms that we're going to get some relief.'"

"I've never seen such divergence in the expectations before," said Mr. Gwynn, who added, "I think they'll split down the middle. We'll see some rate increases, but probably not enough to make the property reinsurance business an attractive, long-term proposition."

William J. Adamson, CEO of reinsurance intermediary Carvill America Inc. in Chicago, said he sees no major changes despite a mild year for catastrophes "because there's still such a shortage of capacity in peak zones for natural perils." Carvill estimates the capacity shortage in peak zones still totals close to \$50 billion despite the mild cat losses so far this year.

Fear of future catastrophes is one factor influencing the property cat rate environment.

John L. Ward, CEO of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm that specializes in the insurance industry, said, "The industry is still very fearful of a stepped-up level of cat activity, in terms of both frequency and severity, and until the outlook—the expectation for cat activity—changes, I think we're going to continue to see rates be firm," he said.

Some point to the possibility of devastating earthquakes, despite the recent focus on hurricanes. Last month, for instance, Hawaii was jolted by a magnitude 6.7 temblor.

The quake, which caused little damage, is expected to have little if any impact on the reinsurance market, although "it might make one or two people think about earthquakes," said Mr. Bolland.

"I'm hearing more and more talk about earthquake exposure, and the potential for earthquake catastrophes," Mr. Ward said.

The Northridge, Calif., earthquake was 12 years ago, said Steve McElhiney, president of Dallas-based EWI Inc., a reinsurance intermediary. Subsequent quakes "are overdue" while modeling in this area is "somewhat limited," he said.

The light catastrophe season "doesn't change the long-term expectations" of catastrophes, said Aspen's Mr. O'Kane. "The pricing models are there, and it's not going to change just because we were lucky for one year." Furthermore, the rating agencies' stringent capital requirements remain in place. "It's difficult to cut prices if you can't cut the capital," he said.

However, some observers say reinsurance rates may decrease in January.

"I think the profitability of the reinsurers, particularly in Bermuda, will be phenomenal through the storm season, and it's going to be a lot of downward pressure" on rates through 2007, Mr. McElhiney said. "It's quite conceivable that rates could go down" by about 2% to 3%, he said.

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# Competition keeping lid on casualty reinsurance rates

*Lack of major losses, diversification also a brake on pricing*

By JUDY GREENWALD

The reinsurance market continues to be bifurcated, with property catastrophe rates still rising while casualty lines continue to experience modest decreases due to competition, observers say.

The lack of major losses and diversification are the two main factors behind the softening casual-

ty market.

"There seems to be a pretty much 'go as is' approach" in the casualty market, said William J. Adamson, chief executive officer of reinsurance intermediary Carvill America Inc. in Chicago.

"There's not been any major, major events or major crises, so I think it's pretty much business as usual, with normal market pressures, clients looking for some concessions and markets doing their best to hang on to whatever they've got," Mr. Adamson said.

There's "not a lot of action" in casualty, said Paul Karcn, CEO of

Eenfield Group Ltd.'s U.S. division in Minneapolis. "Everybody's talking about property, still."

David Priebe, CEO-Europe for New York-based reinsurance intermediary Guy Carpenter & Co. a unit of Marsh Inc., said casualty pricing "will probably moderate as we move into '07, recognizing the favorable experience over the last two years" as well as "people's desire to build a diversified portfolio."

There have been no significant losses that would lead to increased rates, "so the competition is definitely increasing," said Damien

Magarelli, an analyst with Standard & Poor's Corp. in New York. He estimates casualty rates for the most part are "flat to modestly down" by about 10%.

Arguably, reinsurers can still earn a margin on casualty business, but a continued decline into 2007 could reach a point "where companies will have to walk away from a lot more business than previously," said Mr. Magarelli.

Diversification is also a factor, say observers.

Steven K. Bolland, president of reinsurance intermediary Gil & Roeser in New York, said, "People

are competing to diversify their books away from cat-related business, and therefore there is more competition going into the casualty lines." In addition, "most reinsurers had a good year," their capital base increased and they therefore want to leverage their capital. As a result "I would imagine the casualty pricing will come under a little bit of pressure," he said.

William H. Eyre Jr., managing director and CEO of reinsurance intermediary Towers Perrin Reinsurance in Philadelphia, said, "The one area that could go flat or slightly up could be workers comp cat pricing," which will be determined by insurers' aggregate exposures to catastrophe-exposed areas.

Even where there is casualty competition, however, observers say it has been moderate.

"We continue to see a soft market, but nothing that I would call irrational, and I think it'll be based upon the experience of the client as opposed to any kind of a broad brush" used by reinsurers, said Michael D. O'Halleran, chairman and CEO of Chicago-based reinsurance intermediary Aon Re Global, a unit of Aon Corp.

"I don't think anything crazy is going to happen, but I think it'll continue to soften," said J. Paul Newsome, vp and senior equities analyst at A.G. Edwards & Sons Inc. in St. Louis.

Steve McElhiney, president of Dallas-based EWI Inc., a reinsurance intermediary said, "It's fortunately not a free fall, but I think year over year it's inevitable we're going to see some downward pressure on all casualty lines," he said.

John Gwynn, managing director at Memphis, Tenn.-based Morgan Keegan & Co., said that while "we don't seem to have reached the tipping point" that imperils balance sheets, "I think we're headed in that direction."

The year 2008 will be the time where "either something happens to change the rate activity" or "people start getting in the danger zones of repeating the '97-2001 period" of soft pricing and reserve inadequacies, Mr. Gwynn said.

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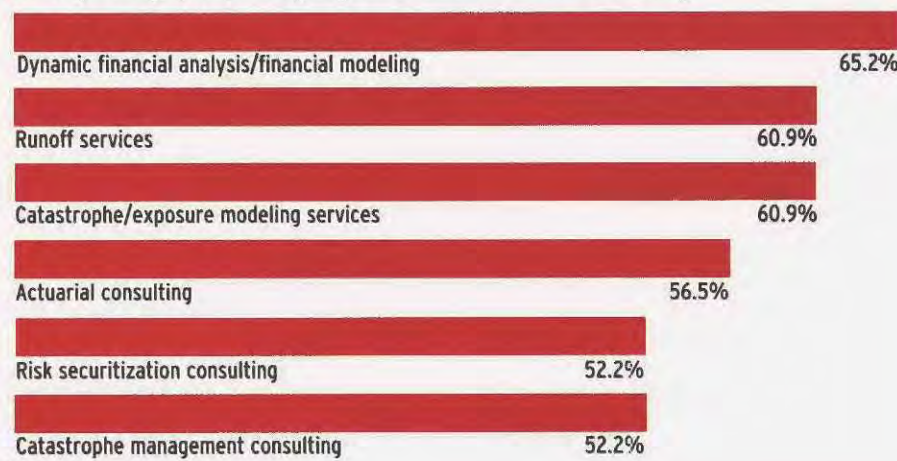


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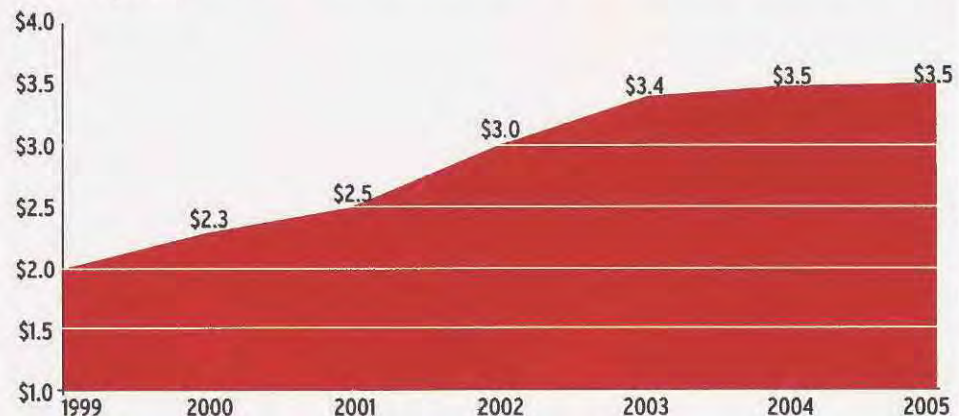
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Source: BI survey

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Source: BI survey

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Ranked by 2005 gross revenues from reinsurance brokerage and related services\*

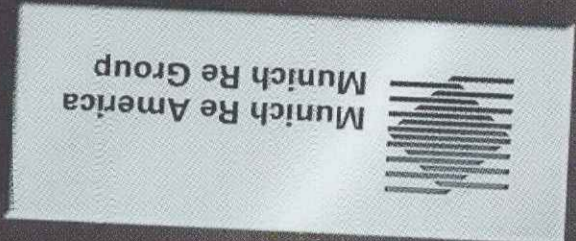
Rank	Company/Address	Phone/Fax/Web site	2005 reinsurance gross revenues	2004 reinsurance gross revenues	% change	2005 employees	Principal officer
<b>1</b>	Aon Re Global Aon Center, 200 E. Randolph St., Chicago, Ill. 60601	312-381-1000 Fax: 312-381-0160 www.aon.com	\$920,000,000	\$940,000,000	-2.1%	2,860	Michael D. O'Halleran, chairman/CEO
<b>2</b>	Guy Carpenter & Co. Inc. 1 Madison Ave., Fourth Floor, New York, N.Y. 10010-3658	917-937-3000 Fax: 917-937-3500 www.guycarp.com	\$838,000,000	\$868,000,000	-3.5%	2,617	David Spiller, president/CEO
<b>3</b>	Benfield Group Ltd. 55 Bishopsgate, London, EC2N 3BD England	44-207-578-7000 Fax: 44-207-578-7001 www.benfieldgroup.com	\$589,809,600 <sup>1</sup>	\$558,331,800 <sup>2</sup>	5.6%	1,900	Grahame Chilton, group CEO
<b>4</b>	Willis Re 10 Trinity Square, London, EC3P 3AX England	44-207-488-8111 44-207-488-8976 www.willisre.com	\$565,000,000	\$550,000,000	2.7%	1,188	Grahame Millwater, chairman
<b>5</b>	Jardine Lloyd Thompson Group P.L.C. 6 Crutched Friars, London, EC3N 2PH England	44-207-466-1300 Fax: 44-207-466-1470 www.jltre.com	\$155,826,240 <sup>1</sup>	\$145,173,600 <sup>2</sup>	7.3%	N/A	Dominic Burke, group chief executive
<b>6</b>	Towers Perrin Centre Square East, 1500 Market St., Philadelphia, Pa. 19102-4790	215-246-1600 Fax: 215-246-1700 www.towersperrin.com	\$153,300,000	\$146,000,000	5.0%	430	William H. Eyre Jr., managing director/CEO
<b>7</b>	Cooper Gay (Holdings) Ltd. 52 Leadenhall St., London, EC3A 2EB England	44-207-480-7322 Fax: 44-207-481-4695 www.coopergay.com	\$92,750,000 <sup>3</sup>	\$87,550,000 <sup>3</sup>	5.9%	470	Tobias C.D. Esser, group chief executive/COO
<b>8</b>	BMS Group Latham House, 16 Minories, London, EC3N 1AX England	44-207-480-7288 Fax: 44-207-374-5928 www.bmsgroup.com	\$75,252,982 <sup>1</sup>	\$72,951,798 <sup>2</sup>	3.2%	328	John Spencer, group chief executive
<b>9</b>	Gallagher Re 6 Alie St., London, E1 8DE England	44-207-204-6000 Fax: 44-207-204-6262 www.gallagherre.com	\$75,000,000	\$78,000,000	-3.8%	220	Simon Gander, CEO-Gallagher Re (UK)
<b>10</b>	John B. Collins Associates Inc. 8500 Normandale Lake Blvd., Suite 2400, Minneapolis, Minn. 55437	952-820-0012 Fax: 952-820-2700 www.collins.com	\$52,035,000	\$48,060,000	8.3%	167	Patrick J. Denzer, president/CEO

\*Includes all reinsurance revenue reported through their holding and/or subsidiary companies. N/A=Not Available. 1 Fiscal year 2005 British pound=\$1.8204. 2 Fiscal year 2004 British pound=\$1.833. 3 Fiscal year ending 9/30.  
Source: BI survey

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# Retrocessional capacity still tight amid light cat season

*Nontraditional sources help somewhat but market still tight*

By JUDY GREENWALD

This year's light U.S. storm season will not lead to a dramatic improvement in the availability and price of retrocessional coverage, but it may help, observers say.

They note that traditional retrocessional capacity, which largely abandoned the market in the wake of the 2005 hurricanes, has been

replaced—but only to a degree—by sidecars, catastrophe bonds and industry loss warranties, which are often supported by hedge funds (see story, page 22).

The already tight retro market was constrained further by Swiss Re Insurance Co.'s announcement in September that it would not renew the book of retrocessional business it inherited with its purchase of GE Insurance Solutions from General Electric Co.

Swiss Re decided to take GEIS out of the retro market to "keep our capacity and our capital for our customers, not for the compe-

tion," said Pierre Ozencó, Armork, N.Y.-based chief executive officer of Swiss Re's Americas division.

## Scarcity affects price

The scarcity of retro coverage is one of the factors contributing to property cat reinsurance's continued firmness, observers say.

"What retro market?" quipped Steven K. Bolland, president of reinsurance intermediary Gill & Roeser Inc. in New York.

Chris O'Kane, London-based CEO of Aspen Insurance Holdings

Ltd., said, "In the course of this year, we've moved away from being a major buyer of retro to becoming a medium-sized buyer of retro and my guess is we'll continue to move even further in that direction."

"Retro will be unattractive. It will be scarce and overpriced, so we probably won't want to buy, and I think others will reach a similar conclusion," Mr. O'Kane said.

John Gwynn, managing director at Memphis, Tenn.-based investment firm Morgan Keegan & Co., said the availability of retrocessional coverage is "another element of volatility in the final underwriting

outcome on these classes of business."

"Obviously, part of that problem is being taken care of through sidecars and bonds and (industry loss warranties)," but none of them "is significant enough yet to replace retro," Mr. Gwynn said.

Mark Rouck, a senior director at Fitch Ratings in Chicago, said the retro market will "continue to be fairly tight at least through the (Jan. 1, 2007,) renewal season."

However, "maybe by the mid-year renewals, you might have a better sense of how that market is

**'Retro will be unattractive. It will be scarce and overpriced, so we probably won't want to buy, and I think others will reach a similar conclusion.'**

Chris O'Kane, Aspen Insurance Holdings Ltd.

going to shape out over a more extended period," Mr. Rouck said.

## An eye on 2007

Some observers said they believe the situation will improve next year.

Richard DiClemente, president and CEO of New York-based THB Intermediaries Inc., said if the hurricane season ends without significant losses, he expects to see "some loosening up in the retro market for renewals in January" as well as in July.

"We expect some people sitting on the sidelines in anticipation of bad storms may start creeping back into the marketplace" and offering more capacity, Mr. DiClemente said.

"I think it's going to be improving compared to last year," said Steve McElhiney, president of Dallas-based EWI Inc., a reinsurance intermediary. Capacity that would not have been there a year or two ago may reappear, he said.

Retrocessional capacity coming from the capital markets will be a contributing factor, say observers.

Michael D. O'Halleran, chairman and CEO of Chicago-based reinsurance intermediary Aon Re Global, a unit of Aon Corp., said, "There's been new retro capacity in different forms, both from conventional reinsurance but also from the capital market/sidecar activities. It won't be dramatic, but there will be some new capacity available."

Aspen, for instance, plans to explore outside traditional retrocessional capacity and examine alternative sources that include sidecars, catastrophe bonds and ILWs, said Mr. O'Kane.

"We are looking at all of those options," he said.



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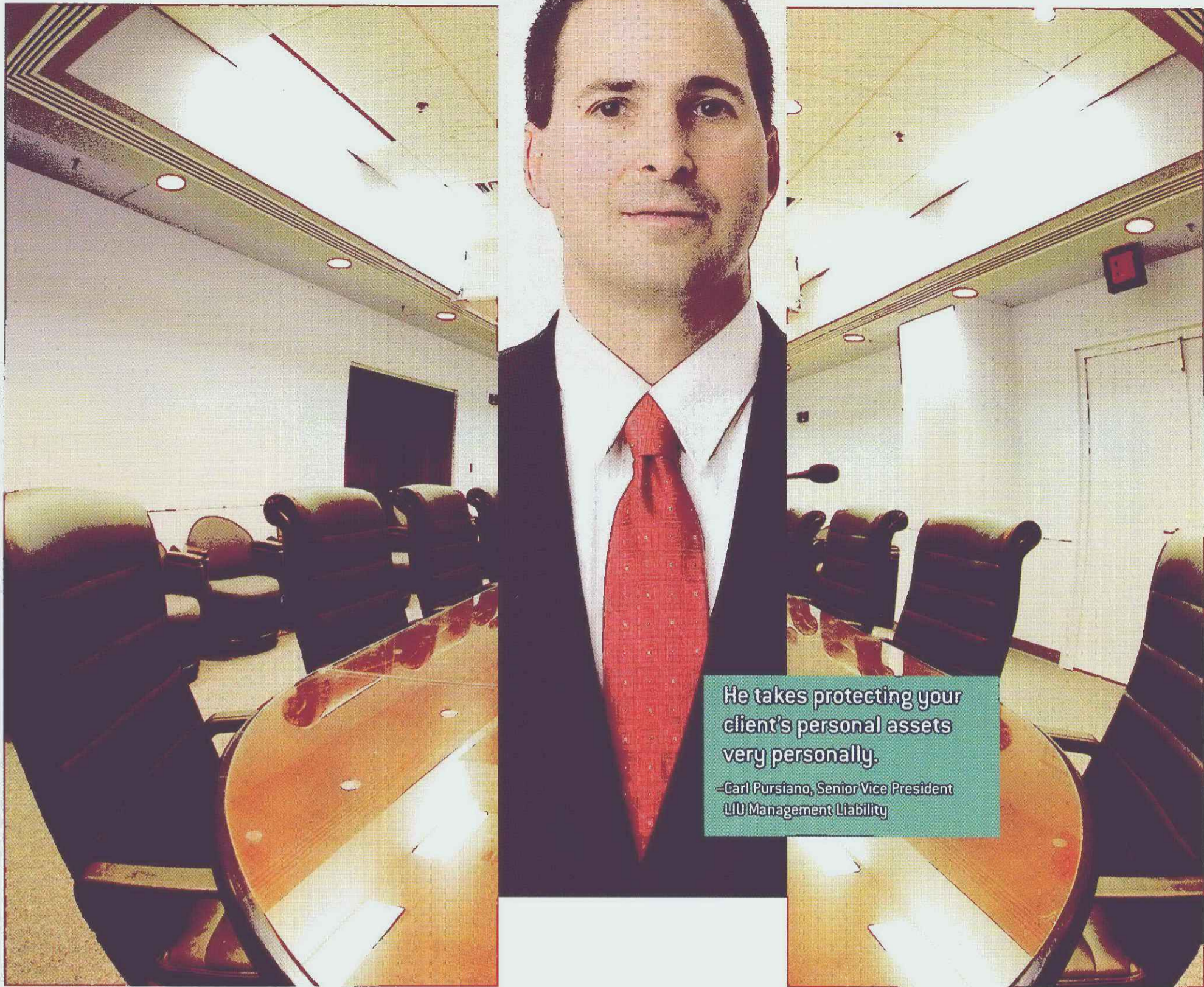
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# Hedge funds' involvement in industry likely to continue

*Reinsurers, investors see benefits in hedge funds*

By JUDY GREENWALD

Hedge funds' involvement in the reinsurance industry is likely to wax and wane depending upon the investment opportunities presented by the market, say observers.

But even if potentially highly lucrative investment opportunities disappear with a softening market, hedge funds are likely to maintain

some involvement in the industry as they seek to take advantage of the expertise they have already acquired, some experts say.

The relationship between hedge funds and reinsurers is often seen as mutually beneficial: Reinsurers get much-needed capital, including retrocessional capacity, whether in the form of sidecars, catastrophe bonds or equity from the hedge funds. And the hedge funds for their part diversify their investments and get returns on investments that are uncorrelated with their other stock, bond or currency market investments.

Hedge funds' involvement has helped the market, say observers. "Through sidecars and other temporary capital vehicles, our clients are able to secure more capacity" than they would have otherwise, said Paul Schultz, president of Chicago-based Aon Capital Markets.

Before hedge funds' involvement in the industry, it was almost impossible to obtain a cat bond below an 80- or 90-year frequency-of-loss expectation, "which meant that cat bonds were an extreme catastrophe product," said Chris O'Kane, London-based chief executive officer of Aspen Insurance

Holdings Ltd., whose company has hedge fund backing.

Today, though, it is possible to buy a cat bond for a one in 50-year event. This has made cat bonds "a more vibrant, more useful market, which I think is a useful adjunct to the cat capacity," said Mr. O'Kane.

Both insurers and reinsurers are increasingly "going down to lower risk layers, or riskier tranches," said Judy Klugman, managing director and head of distribution at Swiss Re Capital Markets in New York.

"Those types of securities are being purchased by hedge funds because it's similar to a natural fit

for them in terms of a diversification to their general business, and it has a return profile that's very attractive" compared with other opportunities, said Ms. Klugman.

"We think there's a fairly good match between the current hard market for catastrophe risks and the investors who are taking advantage of that market," said Bruce Ballentine, vp and senior credit officer at Moody's Investors Service in New York. "The hard market may be relatively short-lived, and the investors are providing capacity through vehicles that are meant to be short-lived—sidecars and cat bonds—so it's a short to medium response, probably, to a short- to medium-term opportunity."

**The capital market's capacity 'is more flexible to come and go than a traditional reinsurer would be.'**

Bruce Ballentine,  
Moody's Investors Services

Investors make a commitment, whether it be through a sidecar or a cat bond, through a certain date, "so both parties can watch the market develop, watch the business develop and plan for an orderly exit or, if both parties see a continuing opportunity, they can negotiate it, and perhaps extend or supplement the transaction," Mr. Ballentine said.

The capital market's capacity "is more flexible to come and go than a traditional reinsurer would be," he said. "It's hard for a traditional company to shut down or retrench dramatically as an opportunity fades."

Cat bonds and sidecars are "a form of capital that comes in in the hard market and leaves in a soft market," said Steven K. Bolland, president of reinsurance intermediary Gill & Roeser Inc. in New York. "The problem in the industry has always been overcapitalization in a soft market," which pushes prices down.

Hedge funds' involvement means "that probably we will not see the high peaks and the low troughs that you've seen in the cycle in the past, because capital is exiting the business very rapidly," said Mr. Bolland.

Many observers say hedge funds will be increasingly involved in the industry, at least in the short-term.

Given how attractive the returns were for investors this year, "I think there'll be an appetite for investors to continue to participate in this sector, and so I anticipate we'll see an increased flow of capital supporting insurance risks," said David Priebe, CEO-Europe for New York-based reinsurance intermediary Guy Carpenter & Co., a unit of Marsh Inc.

Investors that entered the market in the past year have "done very well, and they probably will want to

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# Returns: Investor appetite remains as hedge funds see few losses so far

CONTINUED FROM PAGE 22

continue to do this class of business for the coming year," while their success will attract more new entrants, said Morton N. Lane, president of Wilmette, Ill.-based Lane Financial L.L.C., an independent reinsurance consultant.

But some believe hedge funds' involvement in the industry may have already peaked.

There are two ways to look at it, said Steve McElhiney, president of Dallas-based EW Inc., a reinsurance intermediary: Will more capital come in and seek the phenomenal returns hedge funds have earned so

far, "which is an aberration" or "will firms move onto other opportunities?" Mr. McElhiney said he believes the latter will be the case.

Others also say they believe hedge funds are not in the market for the long haul.

"I think as companies rebuild their balance sheets somewhat and as people's memories of '05 and the '05 hurricanes decline and there is more pressure on premium rates," hedge funds will find the reinsurance sector less attractive, said Mark Rouck, senior director at Fitch Ratings in Chicago. "I think from a hedge fund perspective, it all comes down to a risk-return relationship,

and I wouldn't see them as necessarily long-term investors."

John Wicher, principal of John Wicher & Associates in San Francisco, said, "When the hedge fund pricing models turn upside down, they're going to be gone. That's just the way the capital markets work."

Observers point out that hedge funds have had few losses thus far.

Robert DeRose, assistant vp at Oldwick, N.J.-based A.M. Best Co. Inc., said that although the relatively inactive 2006 hurricane season has enabled hedge funds to make a lot of money, an earthquake "could happen at any time, and it'll be interesting to see, if there is a loss,

how they react to that scenario. Time will tell."

The hedge funds can meet their obligations in terms of financing claims payments, said Pierre Ozendo, Armonk, N.Y.-based CEO of Swiss Reinsurance Corp.'s Americas division. "The question is, how many times will that happen, and are they committed to the marketplace? I don't think so," said Mr. Ozendo. "I don't see them having any longstanding impact on the need to mitigate exposure over the long haul."

But others say they believe hedge funds are in the reinsurance market to stay—at least to some degree.

Hedge funds "will want to keep their toe in the water in case other opportunities arise," said Mr. Lane. The relationship has "worked out well this time, and it may be needed again. I think once a relationship is established, it becomes a part of the menu of alternatives that management will consider," he said.

Christopher McGhee, managing director at MMC Securities Corp. in New York, an affiliate of reinsurance intermediary Guy Carpenter & Co. Inc., said it should be kept in mind that when hedge funds have "invested time and energy into understanding an asset class, there is some inertia about maintaining a presence in that class. You've learned about it, and you've studied it." As a result, "I think it's unlikely there would be a complete removal from the marketplace."

Instead, Mr. McGhee said he expects hedge funds' involvement "to ebb and flow with the perceived opportunities, which is not necessarily a bad thing, because we know capital in the business has not always moved in and out as efficiently as possible to meet market conditions."

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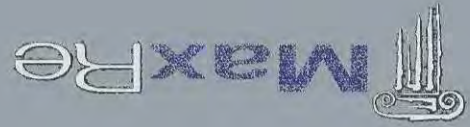
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# TALENT EXPANDS POSSIBILITIES



## REINSURANCE ALTERNATIVES

Over the past several years, alternatives to conventional reinsurance and retrocessional coverage have emerged and are taking up an increasing portion of the market. The three most popular alternatives are: sidecars, catastrophe bonds and industry loss warranties. Observers say that each of the alternative vehicles has its own attractions and uses depending on what the buyers and sellers of the coverage want to achieve.

**Sidecars** are special-purpose vehicles often capitalized by hedge funds that provide capacity to existing reinsurers by assuming risk, typically through multiyear quota-share reinsurance contracts. The sidecar assumes a percentage of premiums in return for assuming a percentage of the risk, which is generally property catastrophe reinsurance.

**Catastrophe bonds** are risk-based securities that provide coverage once defined losses exceed a certain limit. Capital market investors can participate in the reinsurance market through the purchase of the bonds.

**Industry loss warranties** are financial instruments that are tied to an index of industry losses. The coverage is triggered once the loss figure for the entire industry surpasses the amount agreed upon for each contract. Through ILWs, reinsurers may trade risk capacity among themselves or purchase it from others, including hedge funds or investment banks.

# Reinsurance vehicles differ in design, but all provide form of risk transfer

*No single product dominates industry's menu of alternatives*

By JUDY GREENWALD

Reinsurers will turn increasingly to sidecars, catastrophe bonds and industry loss warranties to obtain more capacity, but no single vehicle has taken a dominant position in the alternative sector, say observers.

While each option has its supporters, the capacity boosters actually used will depend on the reinsurer's particular needs, experts say.

"I'm not sure that any one of those vehicles is going to be more dominant across the entire industry," said Patrick J. Denzer, president and chief executive officer of reinsurance intermediary John B. Collins & Associates Inc. in Minneapolis.

"I think they all serve a purpose,

and they will all be viable alternatives to certain types of buyers that have a certain type of objectives," he said.

The various products all provide some form of risk transfer (See box).

"Whether you're transferring the risk for natural catastrophes through sidecars, or whether backing it with equity or buying it in a cat bond, buying a fixed income asset, or you're selling protection through an ILW, it's all in effect the same thing. It's just the form is different by which you're participating," said Judy Klugman, managing director and head of distribution at Swiss Re Capital Markets in New York.

Pete Thomas, executive vp and managing director for Willis Re Inc., who is based in McLeansville, N.C. agreed. "It's a question of which is most appropriate," he said. "They're all intended to spread risk" and allow investors different ways to manage their exposures.

James Veghte, Stamford, Conn.-based executive vp and chief executive of reinsurance general operations for Bermuda-based XL Capital Ltd., said he sees a mix of the three options. "If you look at the spreads in the cat bonds and the way they've moved over the last five months, they clearly have reacted to ILW pricing, for example, which has skyrocketed over the last nine months," he said.

"I don't think one will emerge over the exclusion of other instruments. It depends on the individual company" and what they are trying to achieve, "but I clearly see" all of these instruments "having an active involvement in the business," Mr. Veghte said.

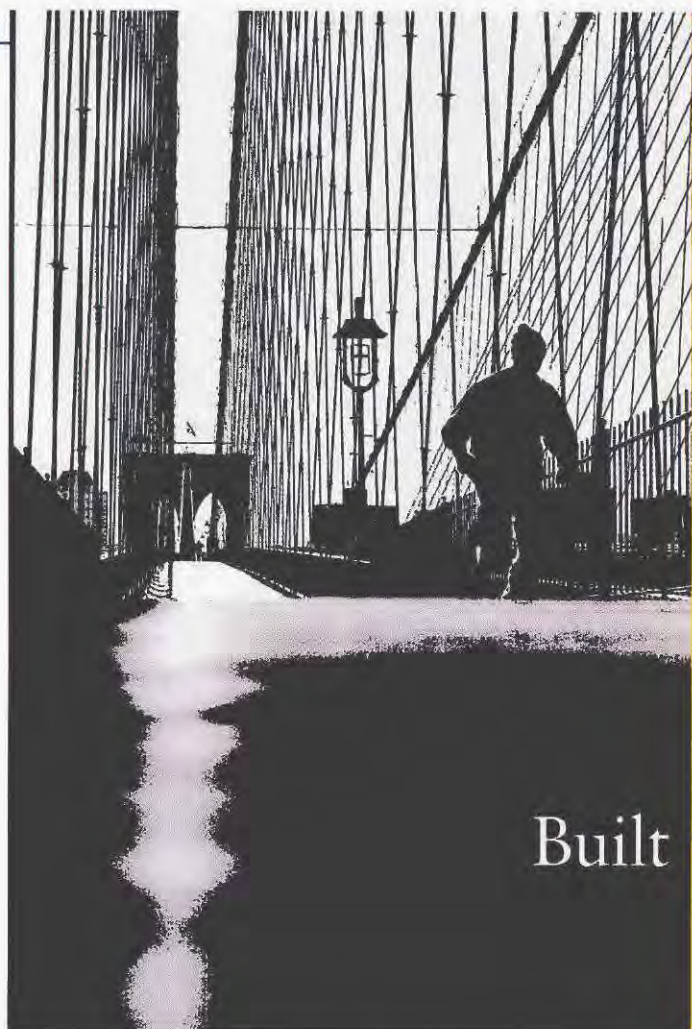
Industry estimates of the size of these vehicles vary. According to Chicago-based Fitch Ratings, through September, \$2.4 billion of cat bonds had been issued and five new sidecars, with roughly \$2 billion of capital, were formed.

According to Collins, while the size of the ILW market is hard to determine because many deals are done on a private placement basis, there is an estimated aggregate of \$3 billion to \$4 billion in force.

Hedge funds, private equity funds and investment banks have been active in supporting alternatives, as well as in making equity investments with reinsurers, say observers.

Stephen K. Bolland, president of reinsurance intermediary Gill & Roeser Inc. in New York, said sidecars "are the perfect opportunity for a hedge fund. It has an expected maturity of one or two years, and it expects to liquidate after that time," he said. "It's very easy to start them up and it should be fairly easy to shut them down and get your money out," which is what hedge funds want.

"I think sidecars will be the 'vehicle du jour,' so to speak," said John Gwynn, managing director at Memphis, Tenn.-based Morgan Keegan



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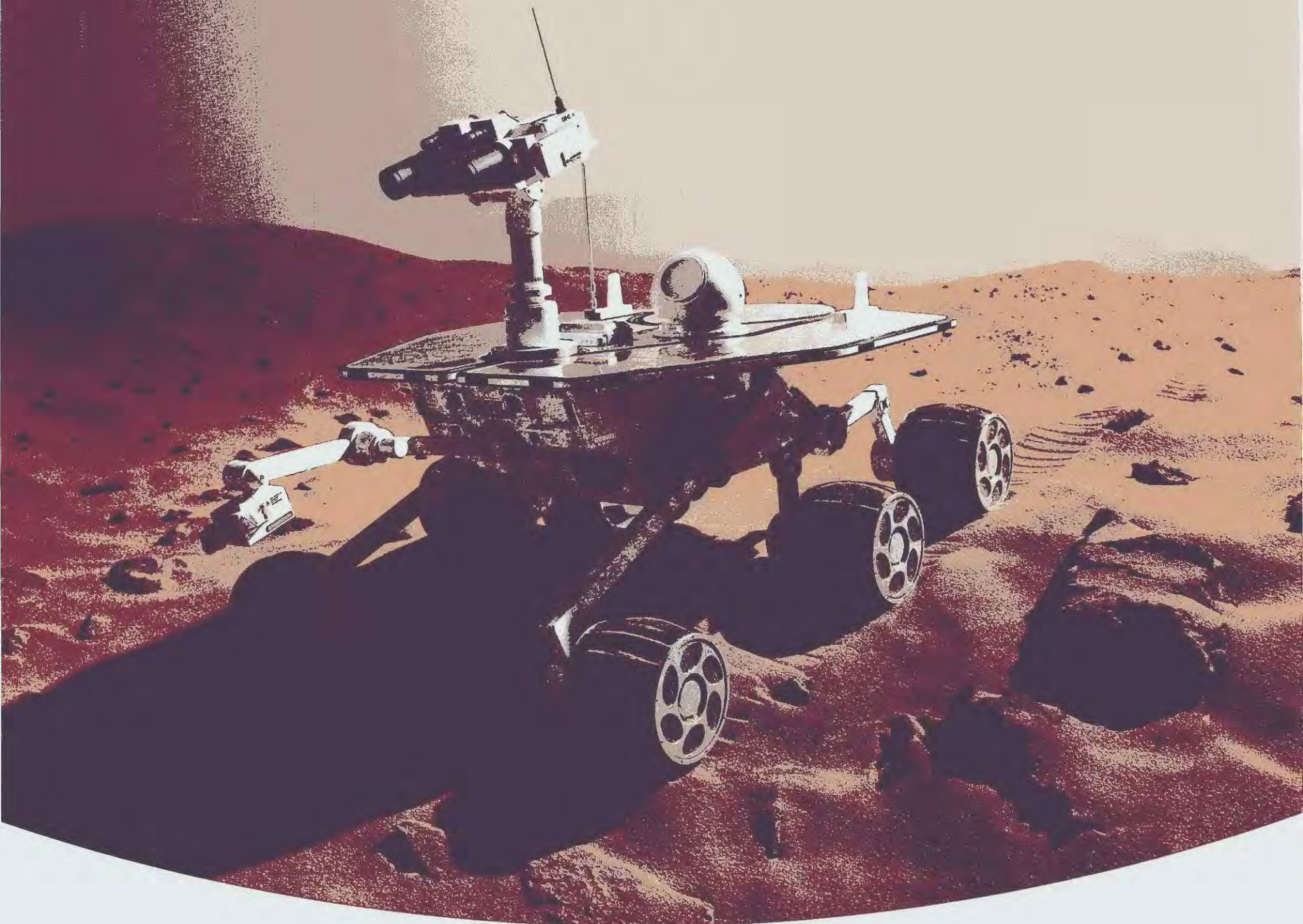
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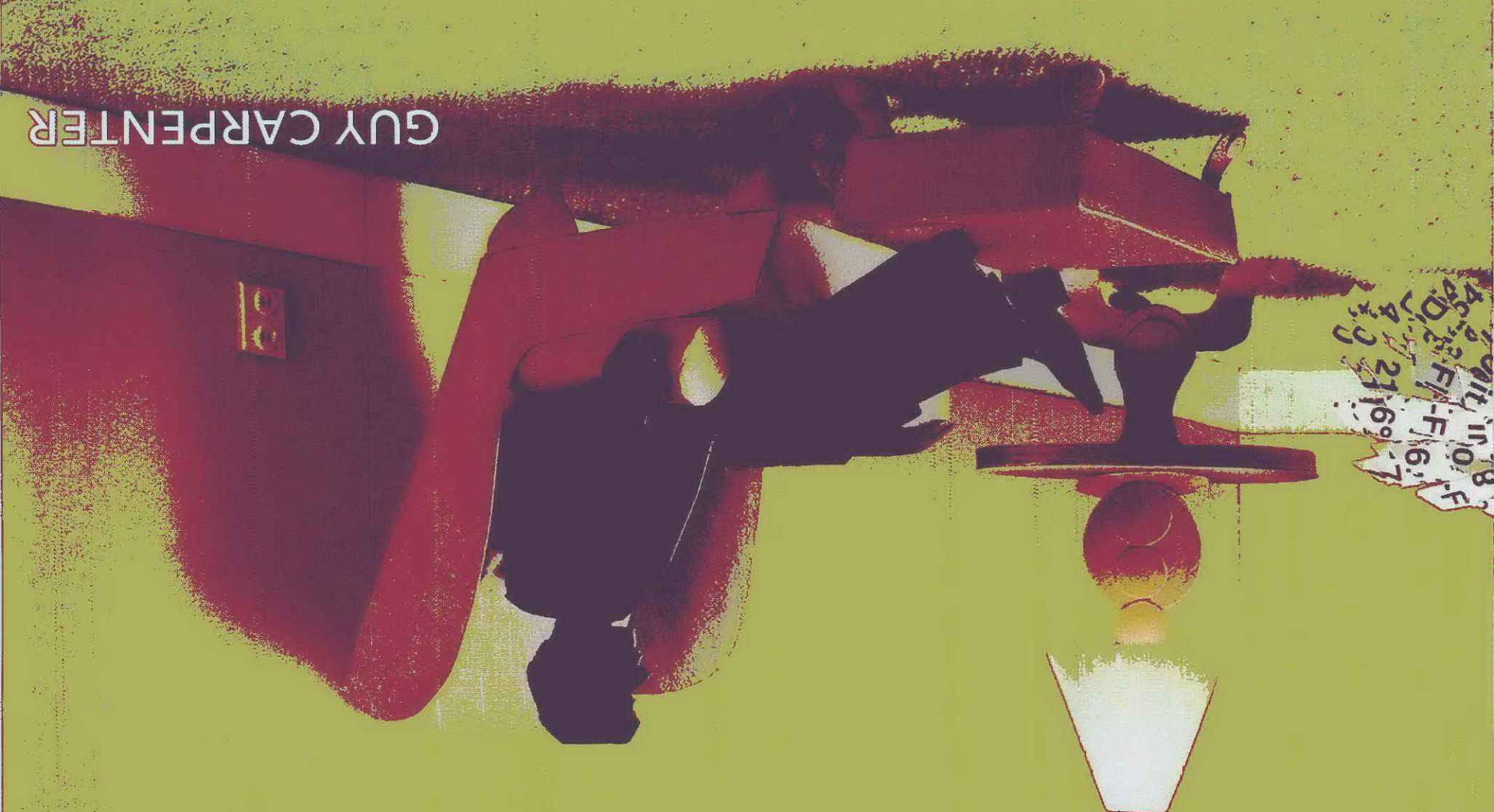
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GUY CARPENTER



# Vehicles: Reinsurance alternatives have their own distinct attractions

CONTINUED FROM PAGE 26

& Co. They can be set up "on fairly short notice with a good-sized chunk of money."

Sidecars "are the way to get capital into the market when capacity's constrained, and they are the way to get capital out of the market when the returns are no longer commensurate with the risk," said Mark Rouck, senior director at Fitch. "In theory, vehicles like that should help kind of smooth out the cyclical nature of the rate environment in reinsurance."

Sidecars "probably offer equity returns that are larger, and you're

not as tied to one particular risk" which is the case with cat bonds, said Gary Martucci, a director at Standard & Poor's Corp. in New York. "With a sidecar, you're more following the fortune of the reinsurance company."

John L. Warc, CEO of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm that specializes in the insurance industry, said, "I think the ideal investment platform of choice will be to continue to back existing underwriting teams with new sources of capital. In my view, the sidecar plays most effectively to that," he said.

It "allows existing underwriting

**'I think sidecars will be the "vehicle du jour," so to speak.' They can be set up 'on fairly short notice with a good-sized chunk of money.'**

John Gwynn, Morgan Keegan & Co.

teams to reload and continue to make investments in the market,

and the expertise and the knowledge of the market is a skill that's in great demand," Mr. Ward said.

Paul Karon, CEO of Benfield Group Ltd.'s U.S. division in Minneapolis, also said sidecars will be the most often-used option. "Cat bonds are good for risks that occur once every 100 years," he said. Sidecars "tend to play lower down, closer to the loss."

However, sidecars' growth may slow because of the number that have already been created, suggested J. Paul Newscome, vp and senior equities analyst at A.G. Edwards & Sons Inc. in St. Louis.

"Recently, there was just an enor-

mous wave of the creation of these sidecars post-Hurricane Katrina, and at this point there are so many of them there it's hard to find a significantly sized Bermuda reinsurer that doesn't have one," he said.

Other industry watchers said cat bonds will see great use.

"Cat bonds are transactions which are tailor-made for the issuing reinsurer," then distributed in a "fairly standardized, conventional bond market form" to investors, said Morton N. Lane, president of Lane Financial L.L.C., an independent reinsurance consultant in Wilmette, Ill. "But because they have to conform to certain bond market forms, sometimes they're not as flexible as the issuers would like."

However, Christopher McGhee, managing director at MMC Securities Corp. in New York, an affiliate of reinsurance intermediary Guy Carpenter & Co. Inc., said, "I think it is likely that you'd have a more stable, long-term cat bond marketplace than you would a sidecar marketplace."

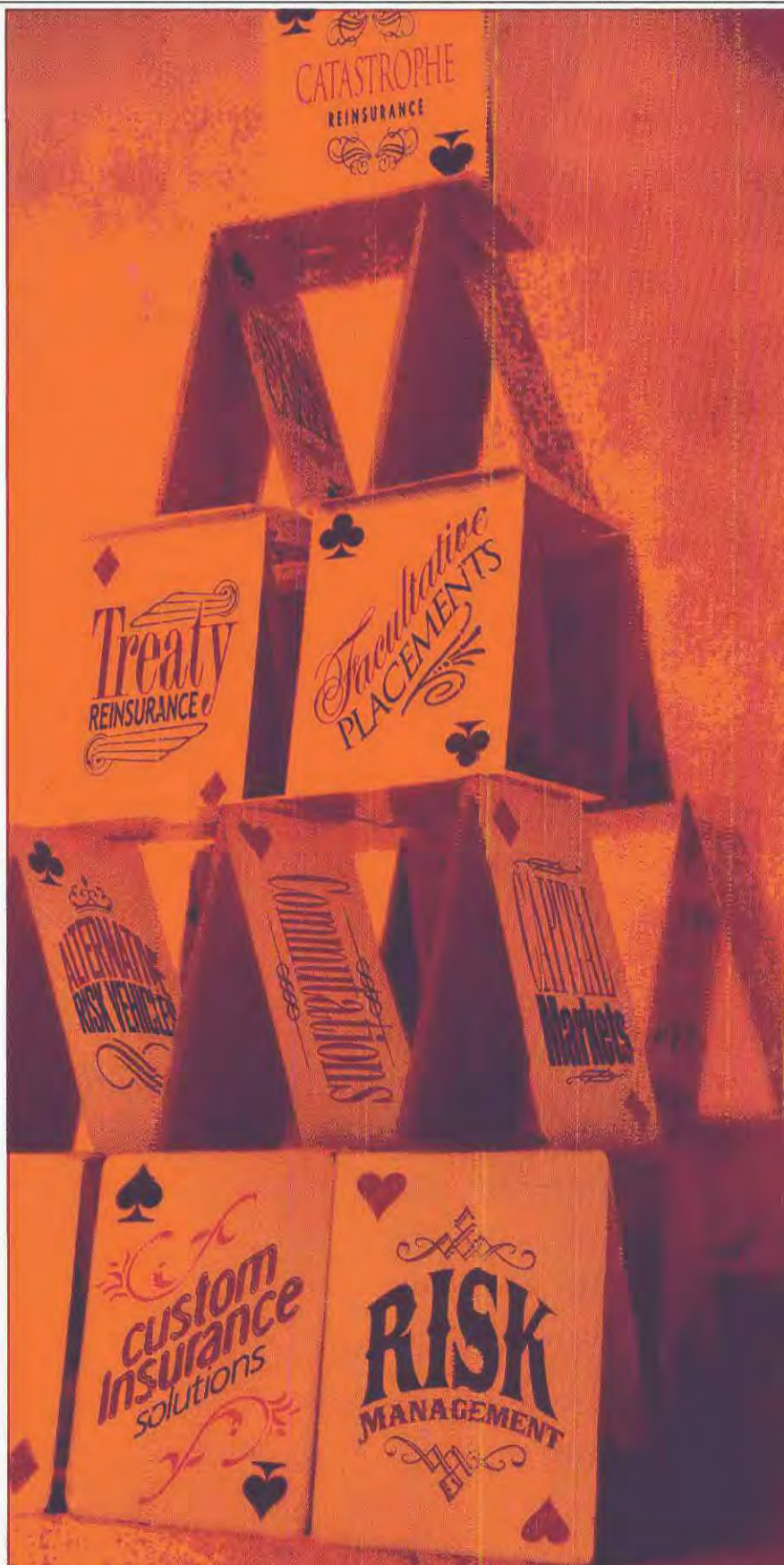
Diane Coogan-Pushner, a portfolio manager with Philo Smith & Co., a Stamford, Conn.-based investment banking firm, said she expects cat bonds will be a bigger subsector of the market than sidecars five years from now "because they're simpler structurally than sidecars, and they're more transparent and, therefore, more desirable to investors."

ILWs also have their own distinctive attractions. Reinsurers may not be able to perfectly hedge their risk with ILWs because a reinsurer's particular experience may not correlate with the industry's, however, the speed with which ILWs can be arranged is an advantage. "It's a good way to get things done more quickly," said Mr. Martucci.

"There's always going to be people that prefer that method of execution because you can call up your broker and have an ILW done that same day if you want," said Paul Schultz, president of Chicago-based Aon Capital Markets.

"However, I think in terms of just the size of capacity, I would say sidecars and cat bonds will exceed that of the ILW market," Mr. Schultz added.

Chris O'Kane, London-based CEO of Aspen Insurance Holdings Ltd. said, for instance, that while there could be a \$100 million cat bond, "ILWs probably have to build up in little units" of \$5 million or \$10 million and the terms of the individual ILWs may be nonconcurrent.



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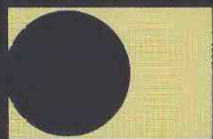
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# U.S., Europe debate U.S. reinsurance collateralization rules

The National Assn. of Insurance Commissioners is expected to decide next month whether state regulators should change the current collateral requirements for reinsurers doing business in the United States.

The current dual approach to reinsurance regulation has been the focus of much debate pitting U.S.-licensed ceding insurers and reinsurers, which generally favor the current system, against reinsurers that are not part of the U.S. licensing and regulatory regime, which favor a more flexible approach.

Under the current system, reinsurers that are

licensed in the United States do not face a collateral requirement, while other reinsurers must post collateral equal to 100% of their U.S. liabilities before a ceding company can take full credit for the reinsurance.

In general, those in favor of the current system say collateral requirements protect cedents and U.S. policyholders against the risk of unrecoverable reinsurance; non-licensed companies say the current rules increase frictional costs and inhibit better capital utilization, and that reforming the rules may increase capital.

After years of discussion and debate, NAIC

leaders in June adopted a motion to explore the feasibility of an alternative ratings approach.

On Nov. 8, interested parties are expected to discuss the most recent ratings proposal from a drafting group of the NAIC's Reinsurance Task Force. The proposal would create an organization called the Reinsurance Evaluation Office that would analyze the financial strength of reinsurers doing business in the United States, irrespective of where they are domiciled. State insurance regulators, through the REO, would establish procedures for the evaluation of the financial strength and operating integrity of reinsurers and, based on the

outcome of the evaluation, will assign a rating to each reinsurer. Collateral requirements, if any, would then be based on the rating.

Key players in the debate over reinsurance collateralization are the American Insurance Assn., which opposes changes to the existing requirements, and the International Underwriting Assn., which represents London market reinsurers and is arguing for reform to the system.

Business Insurance Senior Editor Sally Roberts and Business Insurance Europe Deputy Editor Stuart Collins recently spoke with representatives of both organizations.

## Q: What is your position on U.S. regulators requiring unlicensed reinsurers to provide collateral for U.S. policyholders' risks?

A: Our position consistently has been the important issue of effective regulation of reinsurance. Where there are issues where reinsurance can be more effectively and efficiently regulated, we would support such changes. As far as the current system, it allows an option for all entities that want to sell reinsurance in the U.S. to either be regulated by U.S. regulators or, if you choose not to, you can post collateral. We believe that's a prudent and reasonable response to the issue.

You could create a system where only regulated reinsurers could sell reinsurance in the U.S. market. That's the system that they have in most European countries. Allowing for collateral allows more capacity in the U.S. market. So we believe it's a very pro-competitive option for all reinsurers whether they are U.S.-based or foreign-based.

## Q: Why isn't it time for a change?

A: We cannot see any crisis or problem right now that this is in response to, so we don't believe it's time for a change. With that said, anything that would help improve the regulation of reinsurance, we would be in favor of. But what we would first need is some particular specific problem to be identified and then work toward a solution. But as far as collateral, I don't think a problem has been identified yet that this is in response to.

## Q: If more foreign reinsurers were allowed access to the U.S. market—through the easing of collateral requirements—wouldn't that benefit primary insurance buyers as the ultimate capacity for U.S. risks would likely increase?

A: It's speculation, but a good argument is that that would hurt capacity in the primary market. If all that was being offered to U.S. primary insurers was uncollateralized reinsurance offered by entities not regulated, it might be financially prudent for primary insurers to reduce their amount of reinsurance purchases because there would be more questions on solvency. If U.S. primary insurers purchase less reinsurance, they offer less primary insurance in the U.S. markets.

So if they change the collateral system from what it currently is, a possible scenario would be reduced capacity in the U.S. primary market, which I don't believe any regulator is looking to create.

## Q: Do you view the ratings approach, which regulators are exploring, as a feasible alternative to the current collateral requirement?

A: First off, we don't believe it's responding to any particular problem or crisis. Any time you make a change, you would think a change would be responding to a specific problem and would be offering a solution. We don't believe this is a solution, but we also do not see what problem it's responding to.

As far as the specifics to the proposals, there are lots of questions as to how it would operate in practice. For example, how are they going to rate all the different reinsurers—both U.S.-based and foreign-based reinsurers? That's hundreds and hundreds of entities. How would they have credible ratings when they're also looking at subjective issues like the country of origin and

## Q: Why should state regulators in the United States change their collateral requirements for non-U.S. reinsurers?

A: Gross funding of U.S. liabilities for foreign reinsurers is in the billions of dollars and this is unsustainable. There is a real need for efficient and effective regulation of reinsurance. The current U.S. system is too skewed toward consumer protection and does not allow reinsurers to be cost-effective and competitive enough in the marketplace.

The regulation is also costly and the regulatory burden of compliance in the U.S. is more than any other jurisdiction that I have come across. Intellectually, you would think that with the elimination of inherent cost, the product would become cheaper. If the regulatory burden is costing money and those costs reduce, the product should be cheaper.

Also, current collateral rules do tie up capital. If that capital were available, then reinsurers would be able to offer more capacity to U.S. cedents. There is a capacity crunch in Florida at the moment and the Florida supervisor is considering a rating proposal to attract more capacity for cedents in the state.

## Q: What would European reinsurers like to see U.S. state insurance supervisors change?

A: Assuming there will continue to be a collateral system, we would like to see that collateral required on an as-needed basis. Collateral should be based on risk assessment and not the mailing address of the reinsurer. We would like to avoid one-size-fits-all.

## Q: What outcome does the European reinsurance sector expect and what does it think about the ratings solution favored by the National Assn. of Insurance Commissioners?

A: The rating approach appears to be the focus of U.S. regulators at the moment. And that is the outcome that we are expecting. However, we would prefer in the long run that the U.S. cedent (rather than the regulator as proposed by the NAIC in its rating-based approach) takes responsibility for the evaluation of the credit risk of their reinsurer, as is the case with European regulation. But we will go with what we get.

## Q: Is the rating approach an amicable compromise for all sides?

A: There has been plenty of opportunity for everyone to make their views known as this has been going on for six years. Some proposals have been amended to address the concerns of U.S. insurers and regulators. For example, the rating-based approach calls for a prospective (and not retrospective) change, only affecting the collateral requirements for new policies and not historical policies. That was a concession—as was the introduction of a sliding scale for reducing collateral requirements gradually, rather than straight down to 50% of liabilities as originally hoped for by European reinsurers.

## Q: Why is now the time to seek these changes?

A: The European (Union's) Reinsurance Directive has helped address U.S. concerns over varying levels of regulation in Europe by establishing a single standard of reinsurance regulation in the E.U. More importantly, there is a greater awareness and understanding of regula-



Steven A. Bennett is assistant general counsel for the American Insurance Assn. based in Washington.



Dave Matcham is chief executive of the London-based International Underwriting Assn. He also is chairman of the reinsurance working party for the international committee at the Paris-based Comité Européen des Assurances.

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## Bennett: Lacking crisis, change not needed

CONTINUED FROM PAGE 32

how it influenced insurance regulation? It seems like there would be a lot of subjective decisions being made on insufficient data that I would have some real questions about the operational aspects.

Another problem, even once you got past the practical issues, is that all the risks are borne by the U.S. primary insurance industry. If a reinsurer is downgraded, the U.S. primary insurer loses its credit for its reinsurance and the reinsurer doesn't really face the problem. They would be requested to put up more collateral for the downgrade, but if they refuse to do that or fail to do that, all the risks and penalties are borne by the U.S. primary insurers.

In addition, when there is a

downgrade in the financial condition of a reinsurer and it is required to post new or additional collateral, that would be at the worst time for the reinsurer, which is not in a financial position to post collateral.

It seems it would not actually work in practice very well

**Q: Why do you believe your position on collateral requirements is in the best interest of policyholders?**

A: I think it's in the interest of all stakeholders—policyholders, U.S. primary insurers, reinsurers, regulators and U.S. taxpayers—to have an efficient effective reinsurance system. Something that would create potential insolvency or lessen a chance of repayment of reinsurance would have a deleterious effect on all the stakeholders in the system,

including U.S. policyholders. It would not be good for U.S. policyholders if U.S. primary insurers have problems collecting their reinsurance. There could be a solvency crisis and liquidations, and certainly when there are liquidations it's bad for U.S. policyholders because they have to (recover) from a guaranty fund system. And when that happens, there are increased assessments and tax liabilities on U.S. taxpayers.

As a general statement, a smooth, well-run reinsurance system is good for taxpayers and good for policyholders and good for regulators. We believe that reducing collateral for reinsurers that choose not to be regulated would add a lot more risk to the reinsurance industry, which would then trickle down to U.S. policyholders and taxpayers.

## Matcham: Current U.S. rules tie up capital

CONTINUED FROM PAGE 32

tory regimes and much greater dialogue between U.S. and European regulators. And that has built trust. Also in that time, we have seen large catastrophes such as 9/11 and Hurricane Katrina. These have shown the value of the non-U.S. reinsurance market.

**Q: If collateral requirements are changed, do you see this as the start of more cooperation and ultimately mutual recognition between the U.S. and European regulators in the long-term?**

A: I do believe that is the case, but not at this stage. The European Commission has commented that this is a

priority. And a step-by-step approach should lead to mutual recognition, and we support that. Cooperation between the U.S. and E.U. regulators is already way ahead of where it was years ago, and at the International Assn. of Insurance Supervisors they are working together on standards and guidance. Mutual recognition is the ultimate goal.

## More startups needed? Observers raise doubts

*Market practitioners differ on prospects for M&A growth*

By JUDY GREENWALD

Business is booming for the so-called Class of 2005 reinsurers that formed in Bermuda in the wake of last year's U.S. hurricanes, but industry observers expect little near-term activity from new entrants or mergers and acquisitions.

James Veghte, Stamford, Conn.-based chief executive of reinsurance general operations for Bermuda-based XL Capital Ltd., said, "I've heard rumblings that there may be as many as three new ones being formed."

He added, "Frankly, I'm not sure that there's a massive need for any additional reinsurers, but I'm sure the investment groups who are forming them have their own strategy and rationale for doing it."

Michael D. O'Halleran, chairman and CEO of Chicago-based reinsurance intermediary Aon Re Global, a unit of Aon Corp., said some new reinsurers may form by the end of the year, but "I think there won't be

many because I think the marketplace demand for the new capacity will be relatively specialized, as opposed to broad-based."

Mr. O'Halleran pointed to the formation of sidecars, which are special-purpose reinsurance vehicles. "Certainly, when you look at what the impact of some of these sidecars have done in terms of their new capacity in the market, it's a fairly efficient form for existing players to be able to broaden their base of business without taking an undue amount of additional exposure," he said. "But in effect, it's not creating a new company. It's writing off the back of existing carriers."

Mark Rouck, senior director at Fitch Ratings in Chicago, said he sees few new sidecars being formed this year or next. "I think if capital comes in, it'll come into the entities that have already been formed," he said.

Even if new capital comes into the market, "it won't have a huge influence on the marketplace" because of the "capital required, and the diversification and scope required" to write a significant amount of property cat business,

See **MERGERS** page 36

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## Mergers: Observers differ on reinsurer M&A forecast

CONTINUED FROM PAGE 34

said Pierre Ozendo, Armonk, N.Y.-based CEO of Swiss Reinsurance Corp.'s Americas division.

There has been limited M&A activity this year.

### LIMITED M&A SO FAR IN 2005

Only two major reinsurance acquisitions have been made in 2006.

**JUNE 2006:** Swiss Reinsurance Co. bought GE Insurance Solutions for more than \$7 billion.

**OCTOBER 2006:** Berkshire Hathaway Inc. bought the U.S. operations of Converium Holdings Ltd. for \$295 million.

Last month, Zug, Switzerland-based Converium Holding Ltd. said it had reached a \$295 million deal to sell its U.S. operations, which are in runoff, to a unit of Berkshire Hathaway Inc.

XL's Mr. Veghte cited Swiss Re's acquisition earlier this year of GE Insurance Solutions from General Electric Co. "I don't know whether that necessarily represents a lead indicator that a lot more of this is

yet to come," Mr. Veghte said.

"I think as the market softens, and it gets more and more difficult from a competitive standpoint, that might be the conditions under which you'd have an increase in M&A activity," said Mr. Rouck, who said those conditions are not likely to emerge in the short term.

"Picking up smaller companies would not necessarily bring huge value," said Mr. Ozendo.

Citing Bermuda reinsurers formed in 2001 and 2002, Chris O'Kane, London-based CEO of Aspen Insurance Holdings Ltd., said, "I think most people in that class feel that they've reached critical mass—that they don't need to be taken over."

However, William J. Adamson, CEO of reinsurance intermediary Carvill America Inc. in Chicago, said, "I think the prospects for M&A activity are probably increasing, simply because a lot of the new entities were brought into focus initially on shortages in the (property/casualty) arena" plus rating agency pressure to either "build or buy."

"I see there is going to be a growing interest in acquisitions by some of the new companies to obtain a broader diversification," Mr. Adamson said.

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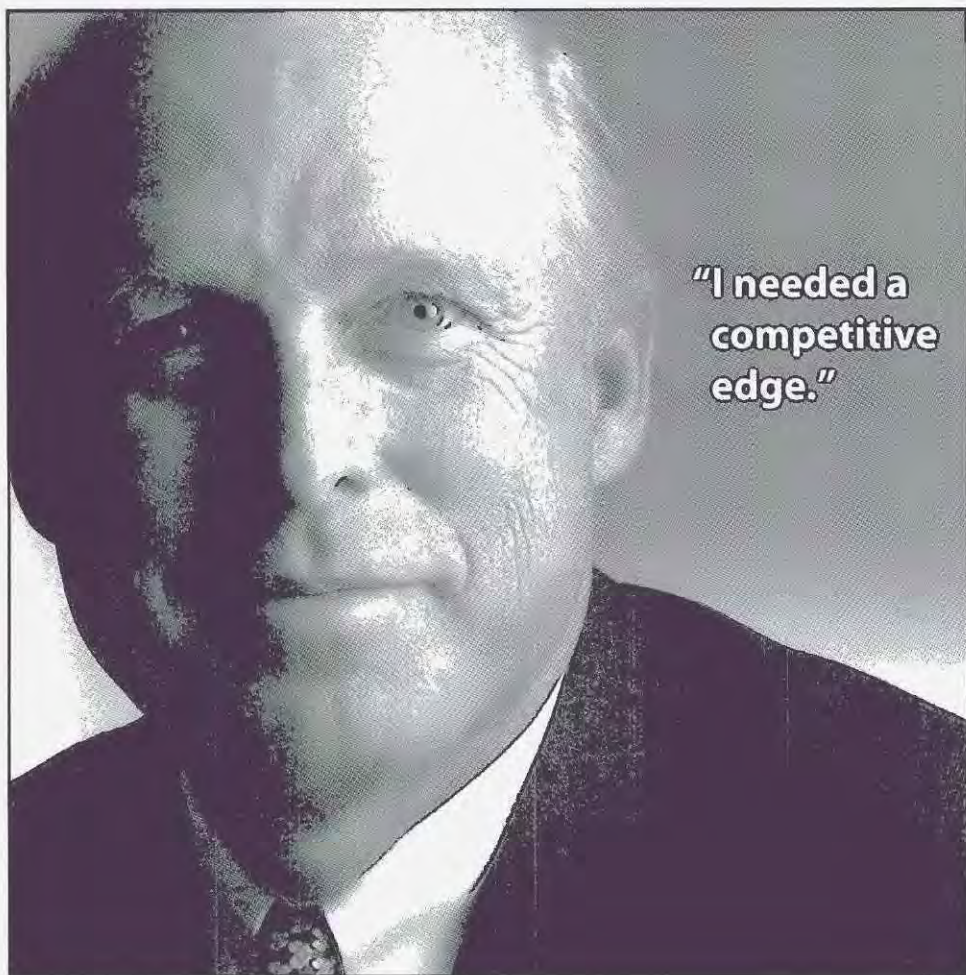
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Many legal observers say that it's too early to know the size and extent of reinsurance litigation related to Hurricane Katrina.



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## Reinsurers face variety of litigation in early absence of Katrina suits

*Lawyers see surge in side agreement, late-notice claims*

By DOUGLAS McLEOD

Few reinsurance disputes are emerging over Hurricane Katrina losses only a year after the storm came ashore, but cedents and their reinsurers are engaged in a variety of other legal battles—some new and others a reprise of long-standing disagreements, legal experts say.

Among the relatively new issues being arbitrated is the enforceability of allegedly improper side agreements in finite reinsurance contracts, lawyers say.

Recent months have also seen a surge of late-notice claims by reinsurers after several years in which they had largely forgone such claims.

Insurers and reinsurers continue to complain, meanwhile, about the growing cost and slow pace of arbitration—originally envisioned as a faster, cheaper alternative to litigation—though arbitration proponents are making efforts to streamline the process, legal sources report.

Interest also is growing in mediation, a simpler alternative to arbitration, particularly for smaller disputes, some say.

Reinsurance coverage battles may yet develop over Katrina claims, though most of the legal fights so far have been between policyholders and insurers, primarily over the issue of coverage for flood damage, lawyers say.

A small regional insurer under political pressure to pay claims, for example, could run afoul of a reinsurer that contends the insurer's payments were "ex gratia" and not actually covered by the underlying policies, noted Dean Hansell, a lawyer with LeBoeuf, Law, Greene & MacRae L.L.P. in Los Angeles.

Nationwide Mutual Insurance Co. won a court ruling in August that water damage from Katrina's storm surge is not covered by an insured's homeowners policy; more such rulings could limit any subsequent disputes between insurers and their reinsurers, noted Lawrence I. Brandes, a lawyer with Cadwalader, Wickersham & Taft L.L.P. in New York.

"To the extent insurers reduce their liabilities, it's less likely they

See LITIGATION page 40

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1 Medical costs paid at 12 months, 2005 ESIS Industry Book.  
2 NCCI Research Brief, July 2006. Workers Compensation Prescription Drug Study 2006 Update.

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# Litigation: Legal observers see surge of lawsuits related to side agreements

CONTINUED FROM PAGE 38

will be in fights with their reinsurers," Mr. Brandes said.

Most legal observers agree that it's too early to know the size and extent of Katrina-related reinsurance litigation.

"Even when there is no tail on losses, it's going to take some time

before there's any litigation," said David Raim, a lawyer with Chadbourne & Parke L.L.P. in Washington.

Meanwhile, another issue produced a key federal court decision this summer on the extent of a reinsurer's right to challenge a ceding company's claims settlements, including allocation of losses to dif-

ferent policy years.

A U.S. District Court judge in New York granted summary judgment in July to National Union Fire Insurance Co. of Pittsburgh, Pa., against American Re-Insurance Co., which had challenged National Union's settlement of a group of personal injury claims under policies covering a manufacturer. National Union, a unit of American International Group Inc., had accepted the policyholder's allocation of losses between two policies, one of which was reinsured by American Re, which has since been renamed Municipal Reinsurance America Inc. The court ruled that the reinsurer failed to show that National Union had acted with the "extraordinary" level of bad faith required to overcome American Re's duty to follow the fortunes of its ceding company. Even if National Union had agreed to the allocation to maximize its reinsurance recoveries, it was under no duty to American Re to minimize those recoveries, the court found.

The ruling, which followed sim-

ilar decisions in two other cases by the 2nd U.S. Circuit Court of Appeals in 2005 and 2004, was "probably the most significant reinsurance decision of the past 12 to 18 months," said Mr. Raim, noting that the burden it places on reinsur-

**'Because arbitration has become so litigation-like...it is no longer a cheaper and more efficient avenue for resolving disputes.'**

Matthew Wulf,  
Reinsurance Assn. of America

ers to prove that a settlement is in bad faith "is certainly a high threshold."

Some insurers and reinsurers, meanwhile, have launched arbitrations over a new issue: the enforceability of side agreements in finite-risk reinsurance deals.

Several insurers and reinsurers have faced legal action by regulators or have been forced to restate their

financial results in the past year because of undisclosed side agreements that allegedly eliminated risk from finite contracts, making reinsurance accounting treatment of the contracts inappropriate.

Some companies have commenced arbitration to enforce the side agreements despite regulators' objections to the deals, said Lawrence S. Greengrass, a lawyer with Mound Cotton Wollan & Greengrass in New York.

Mr. Greengrass and other lawyers familiar with such cases declined to identify companies involved in these arbitrations.

An older issue that has resurfaced in recent months is late-notice disputes, in which reinsurers deny recoveries on the grounds that they were not properly notified of pending claims, Mr. Greengrass and other lawyers report.

These disputes are growing more common, especially in cases where reinsurance contracts include a clause giving reinsurers the "right to associate" in the defense of claims, he said. When reinsurers have not been given this right, they may invoke a late-notice defense, he said.

Mr. Greengrass expressed surprise

See **LITIGATION** page 42

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A copy of a report on the terms of the Scheme prepared by an independent expert in accordance with Section 109 of the Act and a statement setting out the terms of the Scheme and containing a summary of that report may be obtained free of charge from the offices of CX RE at The London Underwriting Centre, 3 Minster Court, Mincing Lane, London EC3R 7DD or at the offices of CICL at 77 Gracechurch Street, London EC3V 0DL, or by emailing [igi@cxre.com](mailto:igi@cxre.com)

The application is directed to be heard before the Applications Judge at the Royal Courts of Justice, Strand, London EC2A 2LL, England on 18 December 2006. Any person (including any employee of CX RE or CICL) who alleges that he or she would be adversely affected by the carrying out of the Scheme may appear at the time of the hearing in person or by Counsel. Any person who intends so to appear and any policyholder of CX RE or CICL who dissents from the Scheme but does not intend so to appear are requested to give written notice, not less than two clear days prior to the date of the hearing, of such intention to dissent to one of the solicitors named below.

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## Litigation: Arbitration becomes more protracted, costly

CONTINUED FROM PAGE 40

over the increase in late-notice cases, since the tactic had largely died out over the past decade. He speculated that reinsurers that have commuted retrocessional protections may be more inclined to try the defense when they are suddenly facing claims that they will have to pay without retrocessionaires' contributions.

The arbitration process itself, meanwhile, remains a focus of ceding insurer and reinsurer frustration, though some observers say its shortcomings are being addressed.

Intended as an alternative to lengthy and expensive litigation, many arbitrations have become as costly and protracted as court cases, with voluminous discovery and proceedings that can extend for years, lawyers say.

"I think it's gotten worse," Mr. Brandes said. "My experience has been (that there is) more and more discovery, more and more irrelevant discovery, lots and lots of motion practice."

"Because arbitration has become so litigation-like...it is no longer a cheaper and more efficient avenue for resolving disputes," said Matthew Wulf, assistant vp and assistant general counsel with the Reinsurance Assn. of America in Washington.

One disturbing development, Mr. Brandes said, is consolidation of arbitration cases, in which—for example—a ceding insurer begins proceedings against one reinsurer and, after a panel is selected, moves to consolidate other reinsurers involved in that loss.

The practice is "fundamentally unfair," since parties consolidated

into an existing arbitration get no opportunity to select panel members, he noted.

Courts hearing challenges to the practice have decided in some cases against consolidation but in other cases have let the arbitration panel decide the matter for itself, Mr. Brandes said.

Not everyone agrees that arbitration has lost its advantages, though.

Vincent J. Vitkowsky, a lawyer with Edwards Angell Palmer & Dodge L.L.P. in New York, said arbitration still strikes a fair balance between speed and the need to provide both sides with due process.

Insurers and reinsurers are also taking steps to streamline the process, said Mary A. Lopatto, a lawyer with Chadbourne and current chairman of the AIDA Reinsurance and Insurance Arbitration Society, based in Mount Vernon, N.Y.

While conceding that arbitration can be as expensive as litigation, Ms. Lopatto noted that companies are adding language to arbitration clauses allowing for summary adjudication of claims in lieu of presentation of a full case; allowing for the

random selection of an umpire through ARIAS when the parties can't agree on a selection; and providing that smaller disputes be heard by a single arbitrator rather than a panel.

Still, frustration with arbitration is leading some insurers and reinsurers to consider another alternative: mediation.

Mediation, though nonbinding, is an abbreviated process in which the parties file limited submissions to a single mediator who may hear the dispute in a single day, said Joseph G. Grasso, a lawyer with Thacher Proffitt & Wood L.L.P. in New York.

While it could theoretically be used in disputes of any size, mediation is more common in smaller disputes, said Mr. Greengrass.

While most insurers and reinsurers believe in arbitration's benefits, the growth of mediation "obviously stems from dissatisfaction and frustration with the process," said Mr. Greengrass, whose firm launched a reinsurance mediation group in 2000.

## Finite deals drop off in number as scrutiny increases

*Cedents seek other options to replace structured coverage*

By RUPAL PAREKH

Heavy regulatory scrutiny of finite reinsurance products has hampered the popularity of such deals, but they won't disappear from the marketplace completely, industry experts and observers say.

Some demand for the products remains, but those finite transactions that are completed now undergo far more rigorous analysis to ensure that they will pass muster with regulators, they say.

Widespread probes by insurance regulators—who since 2004 have zeroed in on the alleged misuse of finite contracts to smooth earnings and mask true financial results—have spurred a flurry of insurer and reinsurer earnings restatements for improper accounting of finite deals, as well as regulatory settlements to resolve allegations of finite risk-related abuse.

The investigations have also led to criminal indictments of former executives at American International Group Inc. and General Reinsurance Corp., and even prompted the exits of top officers, including the former chief executives of AIG, RenaissanceRe Holdings Ltd., and just last week, Max Re Capital Ltd.

*Fewer deals*

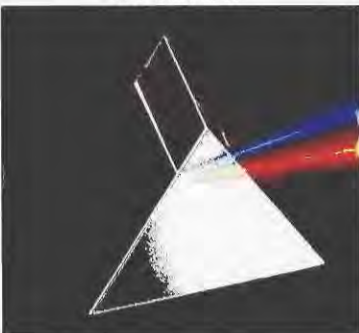
"Pressures from regulators" have resulted in a drop in the number of overall finite risk transactions, said John Andre, vp, reinsurance and alternative market ratings for Oldwick, N.J.-based A.M. Best Co. Inc.

"Less of what we consider to be finite deals are being done," said Mr. Andre, who noted that the term "finite reinsurance" has multiple definitions.

Especially in cases where there is a question about whether a particular finite risk contract should be accounted for as a deposit rather than insurance, "those deals are being approached with more skepticism by cedents, and the transaction flow has diminished considerably," according to Robert DeRose, assistant vp, reinsurance ratings, at Best.

While there can be legitimate uses of finite products—for instance, a loss-portfolio transfer that allows companies to "cap the potential impact on discontinued

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See FINITE page 44

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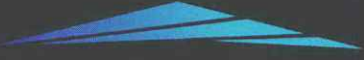
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# Finite: Products can provide economic benefits and not distort earnings

CONTINUED FROM PAGE 42

business" and "to focus on the ongoing business"—a large portion of "finite deals were not meant to do anything beneficial from a financial perspective; it was just window dressing" according to Brian Schneider, director, insurance, at Chicago-based Fitch Ratings.

According to Mr. DeRose, many who historically purchased finite contracts "are just going uncovered, or purchasing traditional reinsurance protection instead."

"If they are using traditional reinsurance, it is likely costing them more by virtue of the fact that there

is more risk transfer in a traditional structure than a finite one," Mr. DeRose said.

"These things really had their best use because they were deceptive," Mr. Schneider said. "The attention the industry has experienced...has reduced demand for such finite products," he said, though, "there is still a market out there."

"There's always going to be people who want or need something other than the traditional market," said Dan Malloy, executive vp at Benfield Inc. in New York with responsibility for specialty lines, including alternative risk transfer

## FINITE RISK REINSURANCE

Contract under which the ultimate liability of the reinsurer is capped and on which anticipated investment income is expressly acknowledged as an underwriting component. Also known as Financial Reinsurance because this type of coverage is often bought to improve the balance sheet effects of statutory accounting principles.

Source: Insurance Information Institute

and structured reinsurance. "People always want alternatives."

"Finite has been associated with bad reinsurance...largely due to misuse by interested parties," according to Mr. Malloy. But certain factors such as cost, breadth of coverage and confirmed capacity for more than 12 months are among the reasons that finite reinsurance will remain attractive to a portion of the market, he said.

Among other things, certain finite reinsurance products can offer ways to "improve capital efficiency and risk management efficiency," said William Anderson, head of structured reinsurance solutions for

Swiss Reinsurance Co. in New York. "Clearly, the demand dropped...but the actual execution (of finite deals) fell off more," said Mr. Anderson.

Mr. Malloy noted that underwriters who continue to offer finite reinsurance can only do so with increased due diligence. "Every reinsurer that's offering these products has to have at least one additional step in their underwriting process to make sure that what they are offering is reinsurance."

Benfield—which places finite products including loss portfolio transfers associated with a sale or discontinued line, quota shares across several lines of business and aggregate stop loss covers—"has had rating agencies, regulators, auditors vet the deals that have been done in the past 12 months," Mr. Malloy said.

"Even if the regulators were to try and get rid of all uses of finite, I think it would be very difficult," said Fitch's Mr. Schneider. "You'll always see degrees of it here and there to the extent that it's an economic benefit to both parties, and doesn't distort economic statements."

And among the companies that continue to use products that fall under the finite reinsurance umbrella, "I don't think you're going to see some of the abuses (of the product) anymore," Mr. Schneider predicted.

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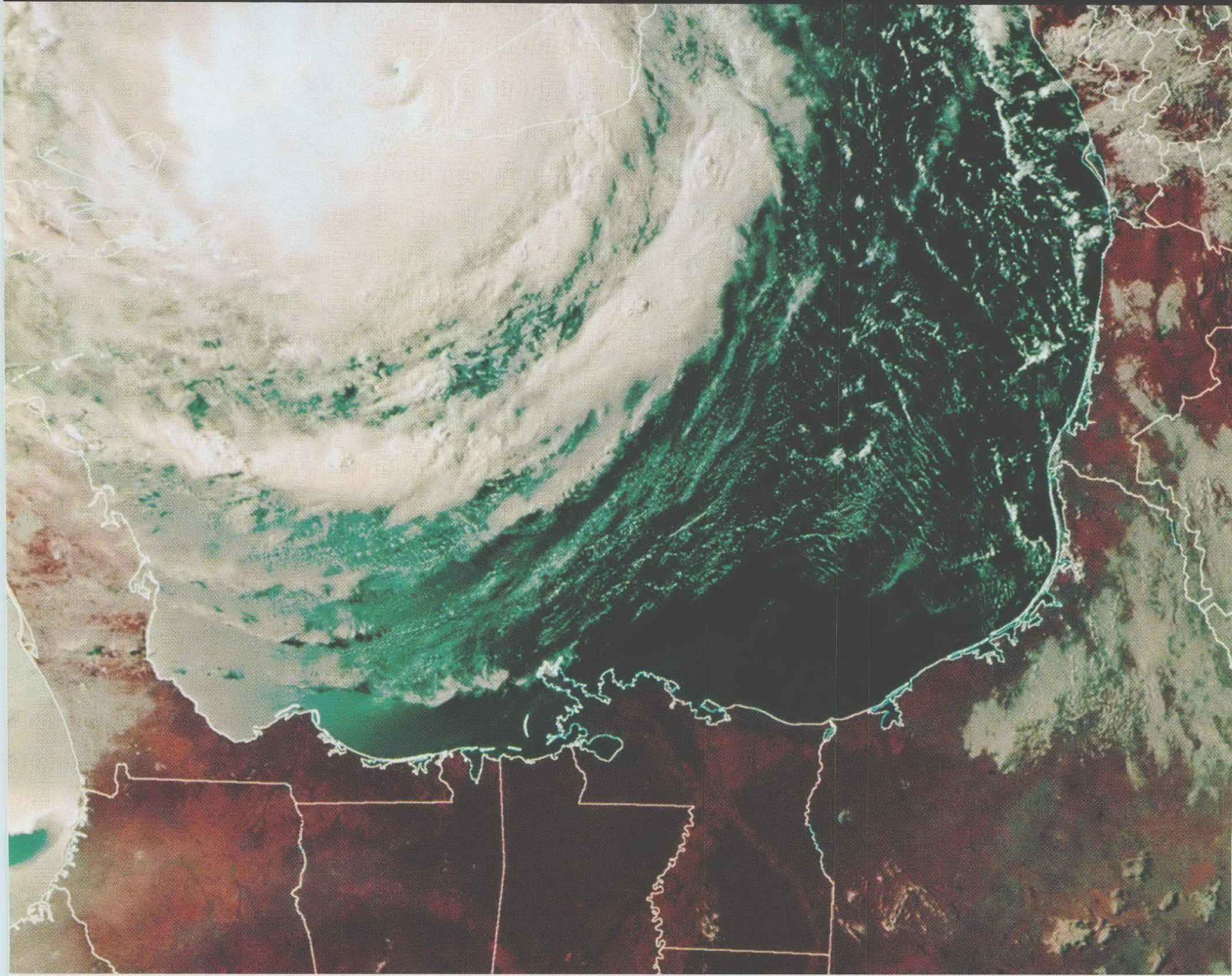
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**ACTUARY**  
 The Office is seeking a self-motivated professional interested in working with a dedicated team to assist in the regulation of the ever-changing and dynamic property insurance market in Florida. The applicant must be willing to work in a fast-paced environment dealing with state and national insurance issues that affect Florida consumers. Florida leads the nation in its use of information technology for regulatory purposes, thus the applicant must be willing to use the many user-friendly web-based applications the industry uses to submit information to the Office. The Office chairs several important NAIC Catastrophe and Property & Casualty Committees, having a national impact on the property market in this country. The applicant must be someone who desires the opportunity to work with the Office to formulate and shape these national initiatives.  
**Requirements:** A bachelor's degree from an accredited college or university with a major in mathematics, statistics or insurance and five years of professional actuarial experience. Must be a member of the Society of Actuaries or the Casualty Actuarial Society; or in accordance with Florida Statute 112.63(1), must be an enrolled actuary.  
 Interested candidates should send resume to:  
 Denielle Petty, 200 East Gaines Street, Tallahassee, FL 32399-0330, email to [Denielle.Petty@fdifs.com](mailto:Denielle.Petty@fdifs.com) or fax to (850) 922-3865.

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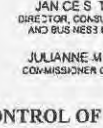
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 JULIANNE M. BOWLER  
 COMMISSIONER OF INSURANCE

**IN THE MATTER OF THE ACQUISITION OF CONTROL OF COFACE NORTH AMERICA INSURANCE COMPANY BY CAISSE NATIONALE DES CAISSES D'EPARGNE ET DE PREVOYANCE**

Docket Number F2006-01

**NOTICE OF PUBLIC HEARING**

Pursuant to M.G.L. Chapter 175, § 206B, an application has been made to the Massachusetts Commissioner of Insurance (the "Commissioner") by Caisse Nationale des Caisses d'Épargne et de Prévoyance (the "Applicant") for approval of a proposal to acquire control of Coface North America Insurance Company (the "Insurer"), a Massachusetts domestic insurance company. The Applicant, a French corporation, proposes to acquire control of the Insurer pursuant to a combination of certain subsidiaries and businesses of it and Banque Fédérale des Banques Populaires, the Insurer's current ultimate parent. This proposed transaction would result in the Applicant owning 34% of the capital stock of Natexis Banques Populaires (to be renamed "Netlix"), which is the Insurer's indirect parent.

The Commissioner will conduct a public hearing pursuant to M.G.L. c. 175, § 206B, to determine whether to approve the proposed acquisition of control. The hearing will commence on November 7, 2006 at 2:00 p.m. at the Division of Insurance, 5<sup>th</sup> Floor, One South Station, Boston, MA, 02110. Documents filed in connection with this proposed acquisition of control are available for public inspection at the Division of Insurance, One South Station, Boston, Massachusetts, 02110.

The purpose of this public hearing is to afford those persons identified in M.G.L. c. 175, § 206B(d)(2) the opportunity to present evidence, to examine and cross-examine witnesses, to offer oral and written argument and, in connection therewith, to conduct discovery proceedings in the same manner as in the Superior Court Department of the Trial Court. Any discovery proceedings shall be concluded no later than three days prior to the commencement of the hearing.

Any person identified in M.G.L. c. 175, § 206B(d)(2) who wishes to participate in the November 7, 2006 hearing must submit, on or before November 3, 2006, a Notice of Intent to Participate, setting forth the statutory basis for participation. The Notice of Intent must specify the basis for the asserted interest in the proposed acquisition of control, if applicable, as well as whether the person intends to make an oral statement, present evidence or cross examine witnesses.

If the Commissioner determines that a person's interest may be affected by the proposed acquisition of control, that person may participate at the hearing following presentations by the Applicant and the Insurer, and before any other persons the Commissioner may recognize at the hearing. The length of any oral statements, presentations of evidence or examinations of witnesses may be limited at the discretion of the Commissioner. Written argument may be submitted at any time prior to the conclusion of the hearing.

All submissions, including the written Notice of Intent, must be sent to: Docket Clerk, Hearings and Appeals, Division of Insurance, One South Station, Boston, MA 02110-2208, and must refer to Docket No. F2005-01.

*Julianne M. Bowler*  
 Julianne M. Bowler  
 Commissioner of Insurance

Dated: October 26, 2006

## HEARING NOTICE

**NOTICE OF FINAL IMPLEMENTATION OF SOLVENT SCHEME OF ARRANGEMENT**  
 IN THE HIGH COURT OF JUSTICE (OF ENGLAND AND WALES)  
 CHANCERY DIVISION  
 COMPANIES COURT  
 NO.2832 OF 2004  
 IN THE MATTER OF  
**THE PRUDENTIAL ASSURANCE COMPANY LIMITED**  
 (REFERRED TO BELOW AS THE "SCHEME COMPANY")  
 AND IN THE MATTER OF THE COMPANIES ACT 1985, SECTION 425

NOTICE IS HEREBY GIVEN that the solvent scheme of arrangement (the "Solvent Scheme") made between the Scheme Company and its respective Scheme Creditors (as defined in the Solvent Scheme) pursuant to section 425 of the Companies Act 1985, which was sanctioned in the High Court of Justice in England and Wales on 5 July 2004 and became effective on the same date, has been finally implemented.

Final implementation of the Solvent Scheme occurred on 31 October 2006, when the Scheme Manager, Whittington Insurance Services Limited ("Whittington") provided written confirmation to the Scheme Company that all Scheme Liabilities had been adjudicated or otherwise determined and all Established Liabilities had been paid in full (or deemed to have been satisfied in full) in accordance with the terms of the Solvent Scheme.

Should you have any questions regarding this Notice, please contact John Leppard of Whittington, at 33 Creechur Lane, London EC3A 5EB (email: [john.leppard@whittingtoninsurance.com](mailto:john.leppard@whittingtoninsurance.com); telephone: +44 (0) 20 7220 1851; facsimile: +44 (0) 207 929 1315) or [PriceWaterhouseCoopers LLP at prpearlscheme@uk.pwc.com](mailto:PriceWaterhouseCoopers LLP at prpearlscheme@uk.pwc.com).

## LEGAL NOTICE

**LEGAL NOTICE**

**IN THE HIGH COURT OF JUSTICE**  
 CHANCERY DIVISION  
 COMPANIES COURT  
 No. 8622 OF 2006  
 IN THE MATTER OF  
**EUROPÄISCHE RÜCKVERSICHERUNGSGESELLSCHAFT IN ZÜRICH (EUROPEAN REINSURANCE COMPANY OF ZÜRICH)**  
 AND IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an order dated 30 October 2006 made in the above matter, the Court has directed that separate meetings of those Scheme Creditors with Notified Outstanding Claims and those Scheme Creditors with IBNR Claims (each as defined in the scheme of arrangement hereinafter mentioned) of the above named company (the "Scheme Company") be held on 20 December 2006 at PRO Insurance Solutions Limited, One Great Tower Street, London EC3R 5AA, commencing at 11.00 a.m. (London time) (the "Scheme Meetings"). All Scheme Creditors are requested to attend at such place and time either in person or by proxy.

The purpose of the Scheme Meetings will be for each class of Scheme Creditors to consider and, if thought fit, to approve (with or without modification) a scheme of arrangement proposed to be made between the Scheme Company and the Scheme Creditors pursuant to Section 425 of the Companies Act 1985 (the "Scheme").

The Chairman of the Creditors' Meeting will address Scheme Creditors generally on the Scheme and on issues relevant to voting immediately prior to the commencement of the Creditors' Meeting.

Scheme Creditors may vote in person at the Creditors' Meeting or may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

The proposed Scheme and the explanatory statement required to be provided to Scheme Creditors pursuant to Section 426 of the Companies Act 1985, together with a Voting Form for use at the Scheme Meetings have been circulated to known Scheme Creditors as well as all brokers in the London market and other intermediaries. Copies of these documents, as well as blank Voting Forms may be obtained by attending at, or on written application to, the Scheme Manager, c/o PRO Insurance Solutions Limited at Bruton Court, Bruton Way, Gloucester, GL1 1DA, marked for the attention of Kevin McAtee or Dave Armstrong during normal business hours on any day (other than a Saturday or Sunday or public holiday) prior to the day appointed for the said Scheme Meetings. They may also be downloaded and printed from the website [www.rgmpool.com](http://www.rgmpool.com).

Scheme Creditors are requested to lodge the completed Voting Form with the Scheme Manager, c/o PRO Insurance Solutions Limited at Bruton Court, Bruton Way, Gloucester, GL1 1DA, United Kingdom, Fax: +44 (0)1452 310 171 or email [pro\\_rgmpoolhelpline@pro-ld.co.uk](mailto:pro_rgmpoolhelpline@pro-ld.co.uk) marked for the attention of Kevin McAtee or Dave Armstrong, by no later than 5:00 p.m. (London time) on 18 December 2006. Forms may also be handed in at the registration desk prior to the commencement of the Scheme Meetings. Faxed Voting Forms will be accepted if legible but Scheme Creditors are requested to send the originals, to be received by the Scheme Manager, c/o PRO Insurance Solutions Limited at the above address by not later than 2 Business Days after the date of the Scheme Meetings.

Each Scheme Creditor or his proxy will be required to register his attendance at the Scheme Meeting(s) prior to its commencement. Registration will commence at 10:00 a.m. (London time) on the day of the Scheme Meetings.

The Court has appointed Lee Christopher Brandon or, failing him, Robert Kingston both of PRO Insurance Solutions Limited, to act as Chairman of each Scheme Meeting and has directed the Chairman of each Scheme Meeting to report the result of each Scheme Meeting to the Court.

If approved by the requisite majority of Scheme Creditors, 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 the Scheme Manager c/o PRO Insurance Solutions Limited (Attention: Kevin McAtee or Dave Armstrong), Bruton Court, Bruton Way, Gloucester, GL1 1DA, United Kingdom, Telephone/Fax: +44 (0)1452 310 171; email: [pro\\_rgmpoolhelpline@pro-ld.co.uk](mailto:pro_rgmpoolhelpline@pro-ld.co.uk).

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# International NEWS

## JLT continues efforts to restructure company

London brokerage combines units, shuffles executives

By **STUART COLLINS**

**LONDON**—Jardine Lloyd Thompson Group P.L.C. has announced further restructuring that includes the formation of a new unit through the merger of its risk solutions business with its Lloyd's of London broker, Agnew Higgins Pickering.

The London-based broker placed its reinsurance broking business into a separate company, JLT Reinsurance Brokers Ltd., in January. Earlier this month, JLT completed the sale of its property and casualty insurance and employee benefits brokerage businesses in the United States to Alliant Insurance Services Inc.

In its latest move, JLT is to merge JLT Risk Solutions, which provides insurance broking services to large corporate clients, with its separately branded Lloyd's energy broking subsidiary, Agnew Higgins Pickering, to form Jardine Lloyd Thompson Ltd.

In the first half of 2006, JLT Risk Solutions reported revenues of



Mr. Burke

£61.2 million (\$112.7 million), while AHP posted revenues of £9.6 million (\$17.7 million).

The restructuring is part of an operational review instigated earlier this year by Dominic Burke, chief executive of the JLT Group.

As part of the deal, Andrew Agnew will become chairman of Jardine Lloyd Thompson Ltd., Mark Drummond Brady will become deputy chairman and Martin Hiller will become chief executive.

In a statement, JLT said that the specialty marine and energy reinsurance operations of AHP will transfer to JLT Re, under the existing leadership of Alan Griffin.

See **JLT** next page

## European reinsurance buyers to see stable Jan. 1 renewals

Retro capacity crunch seen by attendees at Baden-Baden

By **SARAH VEYSEY** and **RICHARD MILLER**

**BADEN-BADEN, Germany**—European buyers of reinsurance can expect "stable" conditions at the upcoming Jan. 1 renewal, barring any major catastrophes, according to sources at the recent Baden-Baden reinsurance meeting.

Many participants at the meeting were "playing their cards close to their vests," noted Tom Wafer, managing director for international catastrophe business at Hamilton, Bermuda-based Harbor Point Ltd.

But the consensus among brokers and reinsurers was that there are unlikely to be large movements on European reinsurance rates. At the same time, reinsurance prices for U.S. catastrophe-exposed business are likely to increase because there have been rises in primary rates, noted Jean-Michel Lewis, director of reinsurance at broker Heath Lambert Group in London.

But international business should see rate decreases, noted Seymour Matthews, managing director of reinsurance at Heath Lambert.

"It is not the many paying for (the losses of) the few any more," he said.

"As far as European buyers are concerned, we don't see any major increases," Mr. Lewis noted.

Property rates are likely to increase very slightly at the renewal, according to Thomas Witting, head

of Swiss Reinsurance Co.'s Central, Eastern and Northern European operations. "For the nonproportional business, we would talk about an increase in the higher one-digit percentage area," he said.

On proportional business, it is less clear what will happen to rates, given that primary results have generally been good recently, he noted.

"It is a quiet, normal renewal," said Wolfgang von Wasielewski, chief executive manager for Central and Eastern Europe at Munich Reinsurance Co.

The reinsurance market in Europe is "very stable" and it will be "an almost flat renewal depending on loss experience," according to Frank Schaar, executive vice president of Converium Holding Ltd.'s German operations.

Although for U.S.-exposed catastrophe business, the prices at July 1, 2006—which largely increased compared with Jan. 1, 2006—are being seen as a "benchmark," European buyers of reinsurance are likely to experience a flat renewal, said Frank Rieder, executive vp at Cooper Gay Steele & Co. Ltd. in New York.

Property catastrophe rates for Europe generally will remain stable, noted Adrian Clark, managing director at reinsurance broker Benfield Group Ltd. in London.

Rates for property catastrophe business in France, for example, are likely to remain stable or fall slightly, he said.

Generally companies in Italy, Greece and Israel will not see rate increases just because there are increases on U.S.-exposed business, because business is much more

local, and there is plentiful reinsurance capacity, noted Giulio di Gropello, head of the Italy, Greece and Israel operations of Willis Re, a unit of Willis Group Holdings Ltd.

It is likely that some companies will seek to diversify in the coming months, he noted.

It will be interesting to see if some of the newer reinsurance companies—such as those set up in Bermuda in recent years—seek to diversify into lines such as European casualty business, noted Mr. Lewis.

Casualty rates will remain more or less stable, predicted Swiss Re's Mr. Witting.

Capacity is generally adequate in the reinsurance market, brokers said, with the only real "crunch" being for retrocessional cover.

The decision of Swiss Re not to continue the retro book previously underwritten by GE Insurance Solutions, which it acquired this year, has significantly reduced the amount of available retrocessional capacity, noted Mr. Lewis.

Some of the newer Bermudian companies are writing retro business, and in some cases industry loss warranties are taking the place of retrocessional cover, he noted.

Capital market solutions also could be "serious competition" to retrocessional capacity, he added.

If retro prices increase any further, the cover will be unaffordable, he said, and buyers will no longer purchase it.

The scarcity of retro cover will mean that reinsurers are even more careful about where they put their capital, said one broker who asked not to be named.

## Catlin Group offers \$1.01 billion for Wellington Underwriting

Deal one of many acquisitions in the London market

By **STUART COLLINS**

**LONDON**—Hamilton, Bermuda-based Catlin Group Ltd. is set to become one of the largest players at Lloyd's of London, following its £532 million (\$1.01 billion), offer to acquire Wellington Underwriting P.L.C.

The deal is one of several recent

acquisitions in the Lloyd's market, including the announcement late last week that Cathedral Capital P.L.C. will be acquired by investors for about £113 million (\$214.6 million).

If Catlin's acquisition of Wellington goes ahead, Catlin will be one of the largest managing agencies at Lloyd's of London. The combined company would be responsible for about £1.2 billion (\$2.28 billion) of Lloyd's capital in 2006. Currently, Amlin P.L.C. tops the ranking of largest insurers in the market, with £1 billion (\$1.90 billion).

### RECENT ACTIVITY

Catlin Group Ltd. has made a \$1.01 billion offer for Wellington Underwriting Ltd. The combined entity would have a capacity at Lloyd's of \$2.37 billion.

Cathedral Capital P.L.C. has accepted a \$214.6 million offer from Disciple Holdco Ltd., a newly incorporated company funded by Alchemy Investment Plan.

The combined group is expected to have gross premiums of £2.4 billion (\$4.56 billion) and capacity at Lloyd's of up to £1.25 billion (\$2.37 billion) in 2007.

As part of the acquisition, Catlin will close down Wellington's syndicate 2020, with effect from the end of 2006. The corporate capital provided by Wellington to support 2020 next year will be transferred to Catlin's syndicate 2003.

According to a spokesperson for Catlin, the deal would be good for policyholders as it will create a financially stronger and more

diverse player in the insurance market. "The deal means that we will be a stronger company with a more diverse product mix. The combination will allow us to give additional solutions to our client's problems and offer additional products," he said.

The spokesman also confirmed that Catlin is working to complete the merger by Dec. 31.

Meanwhile, Cathedral's independent directors have recommended that shareholders in the company

See **MERGERS** next page

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# Emerging Risks STRATEGIES

## Risk pro knows value of networking

By John J. Hampton



John J. Hampton's columns on Emerging Risk Strategies appear in Business Insurance. An archive of his columns as well as interviews and discussions with risk management and insurance industry leaders is available online at [www.BusinessInsurance.com/EmergingRiskStrategies](http://www.BusinessInsurance.com/EmergingRiskStrategies). To post questions or comments about the issues raised in Emerging Risk Strategies, please visit BI's Community Forums at [www.BusinessInsurance.com](http://www.BusinessInsurance.com).



Susan Meltzer is the assistant vp of risk management for Aviva Canada Inc. in Toronto. She has performed the risk management function at a number of major corporations, including Sun Life Financial.

Periodically, *Emerging Risk Strategies* highlights the achievements of a successful risk manager. The story today is of risk manager Susan Meltzer, chairman of the International Federation of Risk & Insurance Management Assns.

In September, Susan Meltzer took the podium in Singapore as the keynote speaker for the annual conference of the Federation of Asian, Pacific & African Risk Management Organizations. As the risk manager for an insurance company in Canada, how did she get invited to an event half a world away?

The story begins at Carleton

**ONLINE DISCUSSION:** How can risk managers ensure they are involved when top management discusses risk issues? Log on to [forums.BusinessInsurance.com](http://forums.BusinessInsurance.com) to share your views, experiences and advice.

**ARCHIVE:** John J. Hampton's Emerging Risk Strategies columns and interviews can be read online at [www.BusinessInsurance.com/EmergingRiskStrategies](http://www.BusinessInsurance.com/EmergingRiskStrategies)

University in Ottawa, Ontario, where she graduated with a bachelor's degree in English and no knowledge of risk management or insurance. She found a job with an insurance brokerage and later jumped at an opening in risk management. It is one thing to jump. It is another thing to have the skills to do the job. Ms. Meltzer has learned that success in risk management is based upon knowledge, relationships and sharing best practices.

Fast forward to 2000. After a stint as president of the Risk & Insurance Management Society, she got involved with the International Federation of Risk & Insurance Management Assns. By this time, she had spent her career encouraging insurers, brokers and risk managers to keep current on risk trends. She defined such knowledge as having a global perspective and forged relationships with peers around the world. That is what led FAPARMO to invite her Singapore, where she shared several important lessons.

Risk managers need to get the right tradeoff between quantitative and qualitative tools, she says. She also argues for a global perspective on risk. This is true even for non-complex organizations that operate in a single region. Do risk managers take the time to engage with risk experts across a broad spectrum and learn lessons from other

parts of the world? In her keynote, she said some areas of the world were ahead of others in addressing risk in an enterprise-wide framework. Europe and Australia are among the leaders in applying cutting-edge concepts and technology to mitigate risk in a world of terrorism, natural disasters and pandemics. Other parts of the world are lagging.

A curious observation was the position of the United States in the hierarchy of enterprise risk management. She placed U.S. risk management at the bottom of the list. Ms. Meltzer was not criticizing U.S. risk managers. She was observing a situation where many U.S. organizations do not support their risk managers in efforts to manage critical risks. Compliance is a focus, to be sure, thanks to Sarbanes-Oxley and stiff federal sentences. At the same time, compliance is not risk

management. Risk management is more than internal controls. It is the fiduciary duty of the board to join with institutional investors and regulators to demand that organizations achieve risk transparency, disclosure and risk mitigation for all stakeholders. That was her point.

### A hidden message

A hidden message in her presentation in Singapore was Ms. Meltzer's ability to network with risk professionals. She brought together a panel of three risk managers who are prominent in advancing the global agenda of risk management. They were Marie-Gemma Dequae, president of the Federation of European Risk Management Assns.; Jorge Luzzi, head of the Asociacion Latinoamericana de Riesgos y Seguros; and George Niwa, risk manager for Panasonic in Japan and president of the RIMS chapter in Japan.

Suffice it to say, risk management does not get interesting until risk managers join the discussion. That is a lesson Susan Meltzer knows well. Without excluding anyone from the exchange of information, she increased the chances for the risk manager to have a place at the table when risk is discussed with the CEO and other C-level officers and the board.

Susan Meltzer is arguably the best-known risk manager in the

world. It helps that she has ideas and propels them forward with energy and enthusiasm. Natural intelligence and a curiosity for problem solving are key ingredients. But her story has an extra component. She knows that bringing people together is the most important aspect of understanding how to achieve efficiency, safety and economy. Networking brings a broad perspective to risk management. She became a respected risk manager by interacting with risk managers in situations where they sought best practices. This was primarily through direct involvement in RIMS—not simply participating in annual conferences and the local Toronto chapter but by volunteering. First she was a student. Now she is a mentor. She teaches courses, puts together panels and interacts with everyone from senior risk manager to junior data analyst to claims administrator.

### Showing the way forward

Her efforts show the risk management community the way to bring in the next generation of risk managers. While she was risk manager at Sun Life, Ms. Meltzer encouraged her people to get involved with other risk managers at every opportunity and facilitated their networking opportunities. Niver Rubenyan, now director of operational risk at Sun Life, says, "Susan is keen on the training and development of her staff. She got me involved in RIMS, supported me when I joined the board of the local chapter and encouraged me to take up public speaking."

In retrospect, her most important accomplishment may involve her current role as chairman of the IFRIMA. Ms. Meltzer works tirelessly to bring together risk managers from around the world to share their best practices. In a time of technological changes, global warming, rapid economic development in third-world countries and complex logistical structures, risk managers need to cross borders with ideas just as companies cross borders with goods and services.

A career in risk management has the potential for challenge, excitement and making contributions to others. Ms. Meltzer, who received the 2001 Don Stuart Award for outstanding achievement in risk management and the 2005 Dorothy & Harry Goodell Award—RIMS' highest honor, reflecting lifetime achievement—has fulfilled that potential.

## JLT: Risk, wholesale units realign

CONTINUED FROM PREVIOUS PAGE

The company also said that Lloyd & Partners, JLT's wholesale broker, will continue to provide access to the London, Bermudian and European insurance markets for independent retail brokers. Lloyd & Partners will become responsible for JLT's insurance broking company in Bermuda.

The restructuring is subject to the Financial Services Authority's approval. JLT said in a statement that it expects to operate under this new corporate and management structure from January 1, 2007.

Mr. Burke said: "The recent sale of our U.S. retail business has enabled us to reconsider the structure of our London specialty and wholesale businesses. By focusing these London market operations on two companies with distinct and clearly defined specialist strengths, we will be able to retain and build on our very strong position in the London and international markets."

## Mergers: Catlin makes Wellington bid

CONTINUED FROM PREVIOUS PAGE

accept an offer from Disciple Holdco Ltd., a newly incorporated company funded by the Alchemy Investment Plan, which values Cathedral at £113 million (\$214.6 million).

Shareholders representing 71% of Cathedral Capital shares have already accepted the Alchemy offer, according to a statement released by Cathedral.

The company owns a Lloyd's managing agent and underwrites in the Lloyd's market through syndicate 2010.

In addition to the Catlin and Cathedral deals, earlier last month, Lloyd's insurer Canopus Group Ltd. announced that it would acquire the operations of Creechurch Underwriting Ltd.

Creechurch manages Lloyd's syndicates 1607 and 3786 for the 2006 year at Lloyd's, with combined premium capacity of £90 million (\$170.9 million).

### Business Insurance

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## Pollution: Vapor intrusion becomes growing concern

CONTINUED FROM PAGE 4

ued by Denver residents who claimed the contamination, although cleared, lowered property values, caused annoyance and discomfort, among other noneconomic claims. No health issues were included. Plaintiffs sought \$380 million, which included punitive damages. In 2004, a jury denied the loss of property value and punitive claims, but entered a verdict against Brown Retail for \$1 million in noneconomic damages.

Ms. Vasilevich said Brown Retail managed to avoid an expensive verdict because it hired a public relations firm to provide information and to communicate with residents immediately after the gases were discovered in 1994.

What became known as the "Redfield site" was considered the largest vapor intrusion case in the country. But it wasn't the only one, she said.

In early 2002, The Denver Post attracted national attention for publishing a series of groundbreaking articles that found flaws in the way the Environmental Protection Agency protects the public from toxic gases.

The articles, which Ms. Vasilevich credited as fueling the government's interest in vapor intrusion, featured areas nationwide where chemicals from factories resulted in a laundry list of health problems among those living nearby.

The articles claimed that the EPA at the time was lax in its procedures for testing and decontaminating homes, and at times blatantly ignored health complaints of residents.

Later in 2002, the EPA began outlining stricter guidelines for testing for vapor intrusion in homes, possibly as a result of the scathing news-

paper reports, Ms. Vasilevich said. In recent years, individual states have also started addressing problems with environmental testing in homes located in areas that may have been exposed to chemical leaks or spills.

As those guidelines and laws evolve, re-investigations into toxic areas once deemed "clean" according to old standards are becoming more commonplace, she said.

According to Ms. Vasilevich, companies and insurers should pay close attention to what's going on now in Endicott, N.Y., for example, where in 1979 IBM Corp. spilled 4,100 gallons of chemical solvent. At the time, the company worked to clean the areas, focusing on pumping and treating the groundwater, for fears that it could contaminate the drinking water supply.

That work, according to the state Department of Environmental Conservation's Web site on the Endicott spill, was deemed effective in preventing the chemicals from seeping into the water supply.

Then in 2004, the department discovered another threat: vapor intrusion from the ground soil under more than 470 homes and buildings in the vicinity of the plant.

The state has since ordered IBM—which no longer operates the plant—to fund that cleanup and to reimburse the state for its overhead costs.

According to a February 2006 article in the New York Times, which Ms. Vasilevich cited in her presentation, the bill was at \$40 million at the time. Several calls to the department for updates on the cleanup and the costs were not returned last week.

Kenn Anderson, senior vp of the Environmental Services Group with Aon Risk Services Inc. in Chicago, said in a recent interview that the risk of vapor intrusion hasn't made huge waves in the industry or in corporations, yet.

"I have certainly monitored it with respect to the concerns that are coming from EPA (and) I know the risk side of it," he said. "But have I been asked by corporate America to look at this? No."

According to Mr. Anderson, vapor intrusion is already part of the coverage form for most policies. "We don't have to specifically go to the insurance company and say, include vapor intrusion," he said.

"I think we are going to see the costs go up...if the insurance companies start suffering losses," he said.

Meanwhile, John Reynolds, chief executive officer for Willis Group Holdings Ltd.'s environmental practice in New York, said that vapor intrusion is a growing concern.

"I would classify (vapor intrusion) as in a revolutionary state," he said. "How the industry responds will be interesting to see. From an underwriting perspective, it is being seen as a greater risk, and from a risk management standpoint, it highlights the need for environmental insurance."

## Strategies used to avoid potential avian flu also help fight seasonal flu

*Series of steps help employers keep common virus at bay*

By LOUISE ESOLA

**ITASCA, Ill.**—There's a positive side effect for companies now making plans to handle a potential avian flu pandemic: Some of the same steps to avoid spreading a major flu virus among employees, put into practice now, can help keep the seasonal flu at bay in the workplace, experts say.

"A lot of the mitigation strategies are also effective when it comes to fighting the seasonal flu," said Dr. William Craig, senior vp of Marsh Inc.'s Risk Consulting Practice in Chicago.

Dr. Craig, who headed a workshop last month titled "The Potential Influenza Pandemic" at the recent Risk Management and Employee Benefits Conference and Exhibition in Itasca, Ill., said the threat is making its way to the forefront among companies that fear a wave of employee absences—a threat not immune to the seasonal flu that affects thousands every year during its peak season.

"Lots of people are asking us, 'What are you doing?'" he said. "There are things that companies could be doing now."

The recent strain of the avian flu first appeared in 1997, when an out-

break among poultry in Hong Kong caused 18 cases of avian flu among humans and resulted in six deaths. Since then, wild birds have helped spread the flu among poultry in 36 countries. The most recent statistics from the World Health Organization report that the virus has sickened more than 250 people in 10 countries and resulted in 152 deaths.

The virus so far has been spread only from bird to human. While it has not mutated into a human-to-human strain, Dr. Craig said it could be a matter of time before that happens.

The last major flu epidemic was in 1968 and 1969, when the Hong Kong flu caused 1 million deaths. Before that it was the Asian Flu in 1957 and 1958, which killed about 2 million people, and the Spanish Flu pandemic of 1918 and 1919, which killed at least 40 million worldwide, according to the World Health Organization.

"Experts say, yes, (it will happen again) because it's been a long time (since a major flu outbreak)," Dr. Craig said.

Meanwhile, this year's flu season is on the doorstep.

Dr. Craig said some of the basic strategies that employers could put into place to help avoid the spread of this year's flu—and potentially the deadly avian flu later on—in the workplace include the following:

- Practice social distancing. Provide employees with at least one

meter of personal space and avoid or reduce workplace meetings. Rely on videoconferencing and Internet conferencing. Provide employees with the option of telecommuting, and other alternative work arrangements, to avoid public transportation.

- Maintain good hygiene practices. Encourage employees to wash their hands. Provide offices and other common work areas with alcohol-based anti-bacterial hand sanitizer. Keep work areas clean.

- Impose travel restrictions for employees who travel often for work.

- Provide and encourage vaccinations. Although avian flu vaccines are unavailable, seasonal flu vaccines can help prevent the spread of that virus.

- Stockpile anti-viral drugs. Large businesses with in-house medical staff have been ordering and setting aside anti-viral drugs such as Tamiflu. Tamiflu maker F. Hoffmann-LaRoche Ltd., which has been promoting business stockpiling, says the effort has resulted in 60 orders.

- Screen employees and visitors for illness. Dr. Craig said the most effective way is to ask anyone entering the building if they have had a fever or been ill and, if they have, ask them not to enter and seek medical advice.

- Provide employees, particularly those working in hospitals and clinics, with breathing masks.

## Special events create complex risks

*All liabilities, security must be considered to secure proper cover*

By LOUISE ESOLA

**ITASCA, Ill.**—First-place runner Robert Cheruiyot was at the finish line of the 2006 LaSalle Bank Chicago marathon last month when he slipped and fell, hitting his head on the wet, slick ground.

After what many called a freak accident, the Kenyan runner, who crossed the finish line as he fell, reportedly spent two days in the hospital and told reporters that there was nothing wrong with the ground and that he "just fell."

However, with an aggressive lawyer, Mr. Cheruiyot could sue marathon sponsor LaSalle Bank, the company responsible for placing the rubber mats at the finish line, possibly the company that manufactured them, the City of Chicago, and numerous other companies and organizations associated with the event, said Ann Carroll, senior vp of the Insurance Services Division for Mesriow Financial in Chicago.

She was speaking at a session on

special events and publicity liability at the Risk Management and Employee Benefits Conference and Exhibition held in Itasca, Ill. last month.

Ms. Carroll along with Kathy Kaminsky, director of risk management for Chicago's Metropolitan Pier and Exposition Authority, told REBEX attendees that companies and organizations need to consult their insurance brokers, purchase well-rounded policies and study all risks before sponsoring special events or giveaways.

The process can be complex, said Ms. Kaminsky, whose organization manages one of Chicago's largest convention and entertainment venues.

Typically, special events coverage includes liability coverage for injury claims from participants, guests and spectators in corporate-sponsored events and cancellation coverage. Events requiring the coverage are broad and run the gamut: parades, employee athletic events, charity events, rewards and trip giveaways, holiday parties, traveling exhibitions and promotions.

Even conferences such as REBEX need the coverage, Ms. Carroll said.

"If somebody rips off and eats the eyeball of the REBEX teddy bear and

chokes, (REBEX) can get sued," said Ms. Carroll, holding up a stuffed toy given to attendees at prior conferences. In addition, the conference organizers could be held liable if the muffins and juice provided during breaks in REBEX sessions resulted in incidents of food poisoning, she said.

Risk managers also need to consider liability issues associated with the security aspects of special events, Ms. Kaminsky said.

For example, when the Chicago White Sox won baseball's World Series in 2005, the team displayed its trophy at various locations throughout the city in a traveling exhibit. When it made its way to Navy Pier, there were many risk management and insurance issues at hand, Ms. Kaminsky recalls.

"We had to think about security. We had to think about transport," she said. "Are we responsible for security, or does it come with security? What happens if the item causes damage to our property? There were so many items to think about."

Ms. Kaminsky said the city purchases special events insurance for all events and exhibits, but said the amount varies depending on the situation and the risks.

### REBEX event draws 370

**ITASCA, Ill.**—About 370 people attended the 2006 Risk Management and Employee Benefits Conference and Exhibition Oct. 26-27 at the Wyndham Northwest Chicago hotel in Itasca, Ill.

The event featured 29 seminars, covering a myriad of topics such as the potential avian flu pandemic, enterprise resiliency, crisis management and worksite wellness.

The annual regional gathering was jointly sponsored by the Chicago and Wisconsin chapters of the New York-based Risk & Insurance Management Society Inc.

Chicago chapter President Ron Cooley said plans for the 2007 event are still in the works.

For additional information, visit the RIMS chapters' Web sites at <http://chicago.rims.org> or <http://wisconsin.rims.org>.

—By Louise Esola

# Settlements: Broker compensation to be disclosed to customers

CONTINUED FROM PAGE 3

brokers and consultants "permitted compensation," as outlined in the agreement.

Under the settlement reached with California, UnumProvident agreed to: ensure that all compensation paid to brokers is disclosed to California customers prior to purchase; make the information publicly available on its Web site; not enter into any new financial relationships, including equity ownership and/or financing, with any brokers; and terminate existing loan relationships with brokers.

Moreover, UnumProvident no longer will be permitted to sponsor any production contests or similar award programs in California that provide compensation or remuneration such as trips, gifts or bonuses to brokers.

Under terms of both settlements, UnumProvident also agreed to cooperate with ongoing investigations into insurance industry producer compensation practices.

"The settlement eliminates incentives for brokers to act against their clients' interest, and ensures full disclosure of Unum's compensation arrangements," Mr. Spitzer said in a statement. "These reforms, many of which were conceived by

Unum itself, will help resolve the integrity of the market and promote competition."

"We have worked cooperatively with the New York attorney general since questions were first raised about the industry's compensation practices," said Thomas R. Watjen, president of UnumProvident, in a statement. "We responded immediately by establishing what ultimately were viewed as industry-leading disclosure practices. This agreement is a natural extension of that effort. During our discussions we proposed to the attorney general a new compensation plan which is simpler and more transparent. This agreement incorporates our new approach, which we believe can be a model for our industry."

With regards to the California settlement, Mr. Watjen said: "We are pleased we have resolved this with California in a way that is good for our customers and brokers. We have worked closely with the California Department of Insurance throughout this process and believe that this resolution, much like our settlement agreement with the New York attorney general announced earlier, can be a model for our industry."

"I am pleased that as a result

of this lawsuit a major insurer has agreed to tell its customers the amount and type of compensation it is paying to brokers and agents, and I call on all other insurers to follow suit," said Mr. Garamendi, California's insurance commissioner, in a statement. "As I have said since this department began investigating contingent commissions more than two years ago, brokers, agents and insurers owe their clients truth and honesty in their dealings."

Following the announcement of the settlements, New York-based Moody's Investors Service changed the outlook on UnumProvident's debt and financial strength ratings to negative from stable.

New York's investigation of Unum began in 2004 as an outgrowth of the attorney general's ongoing investigation of insurance industry broker compensation practices.

A spokesman for the attorney general declined to say whether Mr. Spitzer's office is investigating such practices among other insurers or producers at this time.

"All I can say is the attorney general is continuing his investigation," the spokesman said.

California's settlement is also part

of the Insurance Department's continuing investigation and litigation involving such practices.

Following the settlement with UnumProvident, the California case, *John Garamendi vs. Universal Life Resources et al.*, will continue against defendants Metropolitan Life Insurance Co., Prudential Insurance Co. of America, Live Insurance Co. of North America, Connecticut General Life Insurance, CIGNA Healthcare of California, CIGNA Dental Health of California Inc., Hartford Financial Services Group Inc., Hartford Life and Accident Insurance Co. and Hartford Life Insurance Co.

Both New York and California sued Universal Life Resources, a San Diego-based broker that was one of the leading producers of UnumProvident's business. Mr. Spitzer's suit, filed in November

2004, alleged that as much as two-thirds of ULR's annual brokerage revenues of about \$25 million came from secret payments from insurers.

New York settled its suit against ULR and President and Chief Executive Officer Douglas Cox in December 2005 for \$2 million in policyholder restitution. ULR also agreed to: limit its brokerage compensation to a single fee or commission, ban contingent commissions and communication fees, disclose all forms of compensation to its clients prior to the purchase of insurance, and monitor its insurance-related practices for five years.

California, meanwhile, won a permanent injunction and consent decree against ULR.

ULR has since gone out of business.

## Ruling: No closure for cash balance plans

CONTINUED FROM PAGE 3

ee receives pay credits based on their completed years of service and the same interest rate is applied to each employee's account balance, that is not the yardstick by which to test, nor the means to avoid, age discrimination results."

What matters, Judge Baer ruled, is "simple arithmetic." When converting employees' account balances to a retirement annuity, that conversion results in a smaller benefit for older employees because they have fewer years in which to earn interest, he ruled.

Judge Baer's ruling dashes hopes that the age discrimination controversy would be put to rest soon. "We don't have closure. Two differ-

ent judges can have two very different views," said Nancy Ross, a partner with McDermott, Will & Emery L.L.P. in Chicago.

Pension attorneys say the decisive legal action will be at the appeals court level, with the final outcome perhaps two years away.

"Appeals courts will be the next legal battleground," said Christopher Rillo, a principal with the Groom Law Group in Washington.

"The action is going to be at the appeals court level," concurred Larry Sher, a principal and director of retirement policy at Buck Consultants Inc. in New York.

The next appeals court likely to rule on the age discrimination issue will be the 3rd U.S. Circuit Court of

Appeals, which next month will hear oral arguments involving a 2005 lower court ruling that dismissed cash balance plan age discrimination charges against Pittsburgh-based PNC Financial Services Group Inc.

Cash balance plan age discrimination cases also likely will be heard in the months ahead by appeals courts in Cincinnati and San Francisco.

And in New York, the 2nd U.S. Court of Appeals likely will review Judge Baer's decision as well as a conflicting ruling reached one month earlier in which now retired Judge Michael Mukasey dismissed cash balance plan age discrimination charges against PricewaterhouseCoopers L.L.P.

### CASH BALANCE RULINGS

How courts are ruling on the cash balance pension plan age discrimination issue

Name of case	Judge	Court	Date	Significance
<i>Eaton vs. Onan Corp.</i>	David Hamilton	U.S. District Court for the Southern District of Indiana	September 2000	First court ruling that cash balance plans are not age discriminatory
<i>Cooper vs. IBM Corp.</i>	G. Patrick Murphy	U.S. District Court for the Southern District of Illinois	July 2003	First ruling that cash balance plans discriminate against older employees
<i>Register vs. PNC Financial Services Group Inc.</i>	Legrome Davis	U.S. District Court for the Eastern District of Pennsylvania	November 2005	Lower court dismissed age discrimination charges; appeals court to consider in December 2006
<i>Cooper vs. IBM Corp.</i>	Frank Easterbrook*	7th U.S. Circuit Court of Appeals	August 2006	Reversed lower court; first appeals court to rule the plans do not violate age discrimination law
<i>Laurent vs. PricewaterhouseCoopers L.L.P.</i>	Michael Mukasey	U.S. District Court for the Southern District of New York	September 2006	First district court ruling to reject age bias charge after appeals court decision in IBM case
<i>JPMorgan Chase Cash Balance Plan Litigation</i>	Harold Baer Jr.	U.S. District Court for the Southern District of New York	October 2006	First district court to find that cash balance plans are age discriminatory since 7th Circuit ruling

\*Wrote opinion for the appeals court

## Products & Services

### Hanover, NER target heavy equipment theft

**WORCESTER, Mass.**—The Hanover Insurance Group Inc. and the National Equipment Register are teaming up to help contractors combat heavy equipment theft.

Through the partnership, Hanover will waive up to \$10,000 of a policy deductible if a piece of construction equipment registered with NER is stolen and not recovered within 60 days. Policyholders of Hanover also will receive a 20% discount on NER's theft prevention and equipment recovery services.

NER enables equipment owners to register each piece of equipment's serial number in a national database, giving police the ability to identify the owner of a piece of stolen equipment through a 24-hour hotline. Warning decals are provided to registered machines to caution thieves that the chances of being detected while moving, storing or selling equipment are greatly increased.

For more information, go to [www.stopequipmenttheft.com](http://www.stopequipmenttheft.com).

### Hartford enhances benefits Web site

**HARTFORD, Conn.**—Group benefits customers of the Hartford Financial Services Group Inc. have easier access to benefits information and tools through the insurer's recently enhanced Web site for group disability, life and accident insurance.

A new, personalized log-in feature is just one enhancement to The

Hartford at Work Web site at [www.thehartfordatwork.com](http://www.thehartfordatwork.com). The site has been updated with new tools for employees to set up direct deposit for payment of long-term disability claims, to use and print forms, and to access personalized benefits account information.

The Hartford at Work site allows employees to understand and manage their benefits at their convenience. Using the secure site, customers can file a short-term disability claim, check on the status of an existing disability claim, or check the status of an application for group life or disability insurance.

For more information, visit the site at [www.thehartfordatwork.com](http://www.thehartfordatwork.com).

### Swiss Re, London American launch utility program

**OVERLAND PARK, Kan.**—Swiss Reinsurance Co. and managing general underwriter London American Risk Specialists Inc. have launched a program for small to midsize private and public utilities. The program, which includes gas, electrical, water and sewer facilities, is active in 17 states.

Coverages include multiline general liability, property, crime, equipment breakdown, inland marine and auto.

General liability policies will have a \$1 million limit per occurrence with a \$2 million aggregate, while property limits will vary by location. Eligible states are Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Texas and Virginia.

For more information, contact London American Vp Larry Vickery at 901-312-9387 or by e-mail at [lvickery@londonamericantx.com](mailto:lvickery@londonamericantx.com).

We'd like to report on new risk management and employee benefit products and services offered by your company. Please send information about your new offerings to: Joe Walker, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; telephone: 312-649-5283; fax: 312-649-7801; e-mail: [jwalker@businessinsurance.com](mailto:jwalker@businessinsurance.com).

# Max Re: Founder exits amid oral agreement investigation

CONTINUED FROM PAGE 1

2006 and found that the three contracts in question did not violate federal accounting rules, and contained enough risk transfer to meet Financial Accounting Standards Board criteria to be booked as reinsurance. However, Max Re still decided to restate its results for several years.

Last week, Max Re said the finite risk probe was being relaunched after new data pointed towards the possibility of an oral side agreement that was applied to two of the three contracts in order to negate risk transfer.

The new information was provided by the counterparty on those two contracts, said Keith S. Hynes, Max Re's executive vp and chief financial officer. Mr. Hynes declined to identify the counterparty, but described it as "an investment-grade, A-rated reinsurance company."

"The available evidence does not allow for a definitive conclusion as to the existence of such an oral agreement," but "because some of

the evidence suggests such an agreement, the company believes there is an insufficient basis to conclude that there was risk transfer with respect to these two contracts," Max Re said in a statement.

Accordingly, the company for a second time within a year is restating its earnings for the years 2001 through 2005, as well as for the first half of 2006 (*BI*, June 5). The restatement's effect on prior earnings is not expected to exceed \$10 million, Max Re said.

Mr. Hynes declined to comment on whether Mr. Cooney's departure was related to the possible side agreement. "Bob volunteered to resign, and the board concluded that given the circumstances, it was in the best interest of the company for him to resign," Mr. Hynes said.

According to Cliff Gallant, an analyst at Keefe Bruyette & Woods Inc. in New York, Mr. Cooney's departure has potential benefits as

well as disadvantages for Max Re going forward.

"The reality is that (the finite issue) is a distraction for the company, and I think his departure means that the attention will be focused away from the company and on the individual," Mr. Gallant said.

At the same time, Mr. Gallant said: "Bob Cooney was a very good CEO, had a lot of relationships and was a good leader for the company."

In his absence, the company could see some difficulty in retaining underwriters, Mr. Gallant said. "Anytime you lose a senior executive like Bob, that's a risk you face. The new CEO is going to have to make sure he reaches out to these people."

Daniel Farrell, a New York-based insurance analyst at Fox-Pitt, Kelton Inc., in a research note to investors said, "the major concerns in the near term are possible action (fines, penalties) taken by the SEC or

potential for further management departures down the line."

"While the resignation of Mr. Cooney is a more significant issue than the economic ramifications of the earnings restatement, his resignation is interpreted to be a proactive measure to mitigate any potential future regulatory sanctions," Oldwick, N.J.-based A.M. Best Co. Inc. said in a statement.

Chicago-based Fitch Ratings placed its A financial strength rating of Max Re Ltd. and its Dublin-based subsidiaries, Max Re Europe Ltd. and Max Insurance Europe Ltd., under review pending an assessment of "any adverse impact on the company's franchise, reputation, competitive or financial position as a result of the company's further restatement."

Fitch also noted that it would need to evaluate "Mr. Becker and the management team's ability to continue to successfully execute the

## MAX RE MILESTONES

**JULY 1999:** Robert J. Cooney says he will leave XL Insurance Ltd. to form a Bermuda-based reinsurer.

**JANUARY 2000:** Max Re, which raised more than \$300 million in capital, opens.

**NOVEMBER 2004:** New York Attorney General Eliot Spitzer and other regulators probe insurers' use of finite risk products.

**MARCH 2006:** Max Re informs the SEC of potential problem with three finite risk retrocessional contracts written in 2001 and 2003; announces it may restate earnings for 2001 through 2005.

**MAY 2006:** Based on internal review, Max Re decides to restate results, although audit committee finds the three contracts did not violate federal accounting rules and contained enough risk transfer. The restatement, reducing shareholder equity at the end of 2005 by \$18.3 million, is well below the original estimate.

**OCTOBER 2006:** Max Re reopens internal probe due to information regarding two of the three contracts, raising the possibility of an oral agreement that would negate risk transfer. It said it plans to restate earnings by no more than \$10 million. Management changes include exit of Mr. Cooney, chairman and CEO.

# CVS: Caremark merger may pressure other PBMs

CONTINUED FROM PAGE 1

Entertainment Inc. "Perhaps there are some synergies they can recognize."

Another possible advantage of the merger that may benefit employers and their employees is the ability of the combined company to cross-promote services offered by the previously separate entities. For example, Caremark members may now be able to obtain additional services at CVS stores, such as using onsite health care clinics.

"Hopefully, (Caremark members) will have access to some specific CVS cost initiatives," said Sean Brandle, a vp at The Segal Co. in New York. "For Caremark clients, I think they can expect to see some enhanced service offerings in CVS stores, hopefully some reduced pricing."

A key issue arising from the merger, though, is the loss of one of the checks and balances in the prescription drug delivery system, Mr. Brandle said. Caremark has been driving lower pricing from retailers, and now CVS may not have an incentive to continue to offer deep discounts through Caremark, he said.

"I think plan sponsors are going

to have to keep a close watch on how this whole thing shakes out and what it means in terms of pricing and service," Mr. Brandle said.

CVS and Caremark executives cited the ability to improve clinical outcomes and better control health care costs for employers and health plans as a key advantage of the merger.

Payers will get more value for the dollars spent in terms of medical compliance and disease management programs, said Mac Crawford, who will be chairman of the combined company and now is Nashville, Tenn.-based Caremark's chairman, president and CEO.

"The payers are looking for solutions," he said during a conference call last week. "They want help. They want better health care for their employees and their families."

The ability of the new company—to be called CVS/Caremark Corp.—to bring together more information about consumers will help eliminate negative drug interactions, which will benefit plan sponsors, Ms. Vestal said.

The merger may give the combined company an advantage in its ongoing competition with Wal-

Mart Stores Inc., which recently began offering \$4 generic prescription drugs in several states, some say (*BI*, Sept. 25).

"They need to have the largest possible leverage as a merged company to get the lowest generic pricing from drug manufacturers," said Jim Crockett, manager of risk and benefits at Denver Water.

CVS and Caremark executives denied that either Wal-Mart's generic drug pricing program or a proposed settlement of a class action lawsuit related to the average wholesale pricing system for pharmaceuticals (*BI*, Oct. 16) had any influence on the decision to merge.

"These were actually just distractions during our discussions," said Tom Ryan, who will be the president and CEO of the combined company and now is the chairman, president and CEO of Woonsocket, R.I.-based CVS. "We've been talking about this for a long time."

Some independent observers, though, believe the deal was at least in part a reaction to Wal-Mart's recently launched generic program.

"For CVS, I think it played a pretty big part," Mr. Brandle said. "I think it puts some pressure on the

other big retailers."

CVS stands to benefit tremendously because it had been facing significant migration of prescription drug services to the mail-order business and now it will have a major mail-order delivery system, said Lisa Zeitel, a principal and a member of the managed pharmacy practice of Mercer Health & Benefits L.L.C. in Norwalk, Conn.

For Caremark, the move to consumer-driven health plans was likely a major part of the merger's appeal because the combined business will be better able to move services closer to consumers, she said.

The merger will likely put pressure on other retailers and PBMs to consider a similar move.

"I think other major retailers are going to be impacted by this and thinking about whether it makes sense for them to acquire a PBM. It could be a new form of industry consolidation," Mr. Brandle said.

Some, though, worry that the continuing consolidation in the health care industry could end up hurting employers.

But others say that the merger could put pressure on other retailers to be competitive on pricing.

# D&O: Court ruling on director misdeeds called 'a biggie'

CONTINUED FROM PAGE 4

that are expressly covered under their policy wording, on the theory on that the underlying claim seeks disgorgement of 'ill-gotten gains,'" said Peter Gillon, a shareholder in Greenberg Traurig L.L.P. in Washington, who was not involved in the case. "If the insurers' theory were to prevail, their policies in essence include a hidden exclusion that could exclude a substantial number of claims."

"You need to look through the pleading and—despite how the insurers may posture the claims—the insured can create issues that

give rise to coverage," said Michael Bruce Abelson, founding partner at Abelson Herron L.L.P. in Los Angeles, who represented Pan Pacific and Western. "It's not as quick and simple as the insurers would lead the insured to believe it is, where they can magically say it's all restitutionary and therefore no coverage."

He noted that it was the first time the 9th Circuit has addressed the issue that he called "a biggie" because of securities suits involving Silicon Valley companies.

The attorney for Gulf Insurance viewed the decision differently.

Although the case was remanded for further proceedings, "it does val-

idate the concept that professional D&O policies are really not in the business of financing mergers, and that 'bump-ups' in merger considerations should not be funded by the insurance industry," said David T. DiBiase, managing partner with Anderson, McPharlin & Connors L.L.P. in Los Angeles. "Gulf didn't end up with a complete victory yet, but still I think it's largely a good case and I largely agree with it."

"It's a good decision from the insurer's standpoint," said Stephen H. Sutro, a partner in Philadelphia-based Duane Morris L.L.P.'s San Francisco office, who represented Twin City. "If there's a settlement

payment made that seeks to compensate for increased consideration in the context of a merger, that payment is uninsurable as a matter of public policy and is not covered by directors and officers insurance," he said. "In the event there was such a suit, then the insurer is also not liable under this opinion to reimburse any defense costs spent defending those claims."

*Pan Pacific Retail Properties Inc. and Western Properties Trust vs. Gulf Insurance Co. and Twin City Fire Insurance Co.; 9th U.S. Circuit Court of Appeals, No. 04-56394. Oct. 26, 2006.*

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# News In Brief

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1. Mr. Garamendi said his latest recommendation is more than the 6.3% decrease recommended by the state Workers Compensation Insurance Rating Bureau and would bring the cumulative reduction in the cost of claims within the system to 59.4% since July 2003.

## HRH reports laptops stolen

Hilb Rogal & Hobbs Co. informed 10 clients that two password-protected laptop computers stolen from the broker's Plymouth Meeting, Pa., office contained some personal information. HRH said it notified national credit bureaus of the theft and arranged for a free 12-month membership to a credit monitoring service, which includes up to \$20,000 in identity fraud expense coverage for each person affected.

## Bermuda sees change in premier

Dr. Ewart F. Brown has been sworn in as Bermuda's premier. Dr. Brown defeated the incumbent, W. Alexander Scott—who had served as premier since July 2003—in a 707-76 vote at the Progressive Labor Party's delegates conference.

## APRA bars former Zurich Australian CFO

The former chief financial officer of Zurich Australian Insurance Ltd., which admitted last year to misrepresenting financial reinsurance transactions over a five-year period, has been barred from holding a leadership position in an insurance company. John Stancredge was disqualified by the Australian Prudential Regulation Authority from acting as director or senior manager of a general insurer, authorized or operating holding company or agent of a foreign general insurer. APRA said its assessment of others who may have been involved in the transactions is continuing.

## Lockton forms global benefits practice

Lockton Cos. Inc. said it has formed an international employee benefits practice to meet growing demand for

such expertise. Pam Enright, who has 15 years' experience in the benefits industry working with multinational organizations, will head the practice as vp-director of International Benefit Services. The practice will include strategic partnerships with leading international benefit and human resource consultants to provide a full range of global HR services, Lockton said.

## Maine comp board sued by employer

Bath Iron Works is suing the Maine Workers' Compensation Board in an effort to force it to establish a hospital fee schedule, something the state's largest employer asserts the board should have done 14 years ago. Since enactment of the Maine Workers' Compensation Act of 1992, the board has created a fee schedule for physicians but not one for hospital facilities and other medical providers. As a result, Bath Iron Works has paid for such services in accordance with a fee schedule promulgated under the federal Longshore and Harbor Workers' Compensation Act, which has resulted in a dispute with a hospital provider, according to the suit.

## Willis Re names U.S. executives

Paddy Jago has been named chief executive officer of the U.S. arm of Willis Re, the reinsurance division of Willis Group Holdings Ltd. Mr. Jago—who most recently served as president of Willis Re's U.S. unit—succeeds Peter Hearn, who in June was promoted to global chief executive for Willis Re. John Ehinger will step in as president for Willis Re in the United States and will continue in his current role of chief operating officer for that unit.

## Washington proposes comp relief in 2007

Employers in Washington state could save an estimated \$315 million in workers compensation premiums if a Department of Labor and Industries proposal to suspend rates for six months in 2007 is approved by the department. Under the plan, employers and workers would not have to make any payments into the state's Medical Aid Fund for the second half of 2007. This saving would come on top of an overall 2% decrease in the average premium rate, a change the department is also considering for 2007. If both are approved, employers and workers would save about \$345 million in 2007, the department estimates.

# Punitive: Ore. case argued

CONTINUED FROM PAGE 1

court also took into account harm allegedly sustained by other smokers who weren't parties to the Williams' lawsuit. Philip Morris appealed to the high court.

"It's one thing to produce a punishment that can be properly replicated in case after case without producing an excessive total punishment," said Andrew L. Frey, a partner in the New York office of law firm Mayer Brown Rowe & Maw

## PUNITIVE DAMAGES

Since 1993, the Supreme Court has moved toward restricting what it considers disproportionate punitive damages.

**1993: TXO Production Corp. vs. Alliance Resources Corp.** The court lets stand a punitive damage award that is 526 times the underlying compensatory damages award.

**1996: BMW of North America vs. Ira Gore.** Faced with a lower court's award of punitive damages 500 times that of the underlying compensatory damages, the Supreme Court rules for the first time that punitive damages can be so disproportionate to compensatory damages as to violate constitutional guarantees.

**2003: State Farm Mutual Automobile Insurance Co. vs. Curtis B. Campbell et al.** The Supreme Court rules that, under most circumstances, a punitive damage award of more than a single-digit multiple of the underlying compensatory award violates constitutional due process guarantees.

L.L.P., who presented Philip Morris' case before the high court last week. "It's another thing to punish in case after case for the same harms."

But Robert S. Peck, president of the Washington-based Center for Constitutional Litigation P.C., who presented Mrs. Williams' case, said that juries don't look at punitive damages as "multiples," adding that they shouldn't do so. Instead, he said, they are looking at misconduct.

The justices did not delve into question of what multiple can be used to determine the constitutionality of punitive damages, but rather focused on what instructions a jury should receive under Oregon law when dealing with punitives and whether the harm done to non-parties can be a factor in determining punitive damages.

"It kind of indicates to me that the court was confused by what a proper instruction would be to the

jury. I would think they would want to make it clear to the Oregon Supreme Court that injuries to third parties should not be part of the damage calculations. How the Oregon courts phrase the proper jury instruction is, of course, the critical issue, and that's where all the questions were," said Quentin Riegel, vp-litigation for the National Assn. of Manufacturers in Washington.

"They didn't really talk much about the ratio issue, so I think the general feeling is they will not address that," said Mr. Riegel. "That's an issue that's bound to come up in future cases anyway, but it will be less of a problem for business if the other issue in this case—third-party damages—is resolved properly."

"The question of what evidence is relevant in determining the amount of punitive damages is more important, because that arises in almost every case, where the question of ratios only arises when a jury makes an award in excess of nine-to-one," said Victor Schwartz, general counsel for the Washington-based American Tort Reform Assn.

"What struck me about the argument was they were focusing on pebbles on a beach without any real discussion of the beach itself when there were really two beaches," he said.

"The first would be whether the court meant in *State Farm* to say in the overwhelming number of cases, the ratio of nine-to-one was an absolute limit. We believe the ratio applies except in the unusual cases where the compensatories are modest and the defendant's conduct is particularly reprehensible," Mr. Schwartz said. "The other beach is to have a clear picture of what evidence is admissible or not admissible with respect to the defendant's conduct toward persons other than the plaintiff."

The senior staff attorney for the Boston-based Tobacco Products Liability Project said that the justices appeared in "general agreement" that there is an exception to the general single-digit multiplier rule set out in the *State Farm* decision. That exception takes into account the reprehensibility of the defendant's conduct, said Edward Sweda.

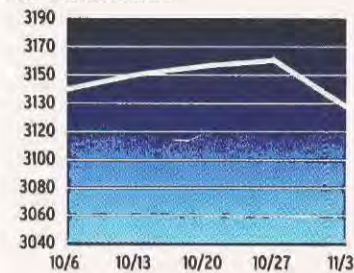
"It would be perfectly consistent with that *State Farm* standard to affirm the Oregon Supreme Court ruling," said Mr. Sweda. But he added that the *Philip Morris* case was unlikely to be vehicle for revoking or altering the basic formula set forth in *State Farm* as a general rule.

## Stock Index

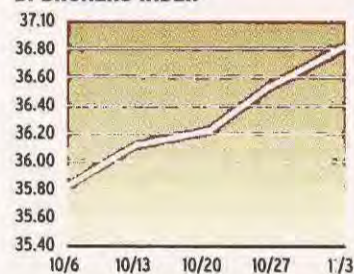
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Up-to-the-minute data for all 85 companies that comprise the BI Stock Index can be found at [www.BusinessInsurance.com](http://www.BusinessInsurance.com).

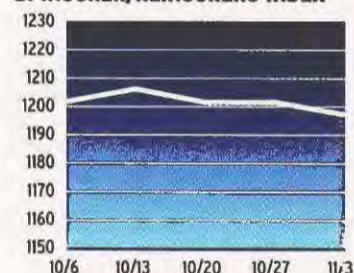
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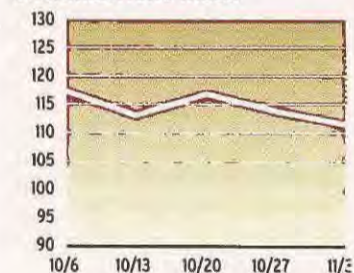
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### BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Indicator	Value	Change
BI STOCK INDEX	3128.76	-0.87
DOW JONES	11986.04	-0.86
S&P 500	1364.30	-0.96

### LARGEST GAINS

Clark Inc.	31.65%
Unitrin Inc.	4.95%
Markel Corp.	4.47%
Philadelphia Consolidated	4.41%
Willis Group Holdings	3.87%

### LARGEST LOSSES

Humana Inc.	-13.56%
Tower Group Inc.	-13.01%
Sierra Health Services	-7.91%
Axis Capital Holdings	-6.66%
HCC Insurance Holdings	-6.18%

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



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## Call first; eat later

Not quite sure whether you're eating right? With the cell phone diet, you can snap a picture of your food—assuming

your phone has a camera—and send it as a text message to a nutritionist, who will let you know whether to pick up that fork.

Unfortunately, your food might get cold or stale while you await the response, which generally takes about 24 hours.

Despite the wait, plan members aren't really expected to hold off cleaning their plates until they get the OK from their nutritionist, according to Mina Nguyen, a spokeswoman for the San Diego-based employee assistance program vendor that introduced GetFit Cell Phone Diet recently.

The idea is "to create an image or visual to see what they're putting into their bodies with the hope that they'll make better choices later on," she explained.

ACI Specialty Benefits Corp. created the cell phone offering to expand its AppleCore Wellness program product line, which includes health risk appraisals, disease management and onsite prevention activities.

Aside from nutritional content and an approximate calorie count of the food in the photo, cell phone dieters receive feedback on their food choices, as well as their body mass index and basal metabolic rate, both of which are determined in advance and stored in ACI's database.

# Business Insurance END PAGE

## 'Some girls take my money'

A dissatisfied Rolling Stones fan who can't always get what she wants is going after what she says she needs: a refund.

When the legendary rock band canceled its Oct. 27 New Jersey concert just hours before the show, Rosalie Druyan of Brooklyn filed suit accusing the Stones of fraud and bad faith for not notifying fans in time for them to cancel their non-refundable hotel bookings and airfares.

The suit, filed in Manhattan Supreme Court, seeks some \$51 million on behalf of Ms. Druyan, who bought a pair of tickets on the Internet for \$575 and reserved a \$300 non-refundable room at the Trump Taj Mahal, and thousands of other fans who were stood up by the Stones.

Ms. Druyan charges that lead singer Mick Jagger sought medical attention for a sore throat before the concert and knew he would not be able to perform, but

did not disclose that information in time for ticket holders to cancel their travel reservations.

Though not commenting on the suit, the Rolling Stones said the Atlantic City, N.J., concert had been rescheduled for Nov. 17 and Oct. 27 tickets would be honored.

The New Jersey show was one of a number of cancellations by the aging rockers during their 2006 Big Bang tour. A rare club appearance set for Halloween at New York's Beacon Theatre was delayed, the Stones said, on the advice of Mr. Jagger's doctor as were other gigs.

In August, two Stones shows in Spain were canceled due to Mr. Jagger's laryngitis. The European tour was already delayed several weeks so guitarist Keith Richards could undergo brain surgery after falling from a tree while vacationing in Fiji last April.

Contributing:  
Roberto Cenizeros,  
Louise Esola,  
Joanne Wojcik.



## Ink barely dry on law with a flaw

An Oklahoma law permitting tattooing doesn't come with any insurance provisions, but does include a \$100,000 surety bond requirement—a clause one state Department of Health official referred to as a major flaw in the newly enacted bill's language.

Tressa Madden, the department's director of consumer protection, said lawmakers are planning to revise the bill, which went into effect Nov. 1, when they meet early next year. The plan is to replace surety bond language with that requiring tattoo shops and artists to purchase liability insurance.

Ms. Madden said there are many problems with the bond requirement. One main concern, she said, is that the bond is too low. For example, if someone needed a liver transplant because they were infected with hepatitis from a tattoo needle, the \$100,000 would not cover a fraction of the medical bill, she said.

Despite the lack of insurance requirements in most states, insurance is a favored option for many tattoo businesses, said Susan Preston, president of the Professional Program Insurance Brokerage in Novato, Calif.

Ms. Preston said many tattoo operators obtain coverage because the industry is classified as high-risk. She said her business, which offers liability limits up to \$2 million, has more than doubled in the past two years.

Ms. Madden said tattoo artists who apply for Oklahoma licenses would likely opt not to buy insurance because they still will have to foot the bill for the \$100,000 bond.



The BMW ORACLE Racing team raced in the Allianz Cup finals late last month.

## Parallel tacks in branding

There are plenty of parallels between professional sailing and leading a financial services company, said Jan R. Carendi, member of the Board of Management of Allianz SE, Insurance NAFTA Markets.

Both require building a team with the right skills, state-of-the-art equipment and an ability to succeed in choppy waters.

That's part of the reason Munich, Germany-based Allianz Group found it appropriate to sponsor the Allianz Cup—the fifth stage of the World Match Racing Tour—that was held Oct. 25-29 in San Francisco, said Mr. Carendi.

Allianz also is a sponsor the BMW ORACLE Racing team, which Allianz says is "the only U.S. challenger for the America's Cup" in 2007.

Branding is another reason for Allianz's sponsorship of

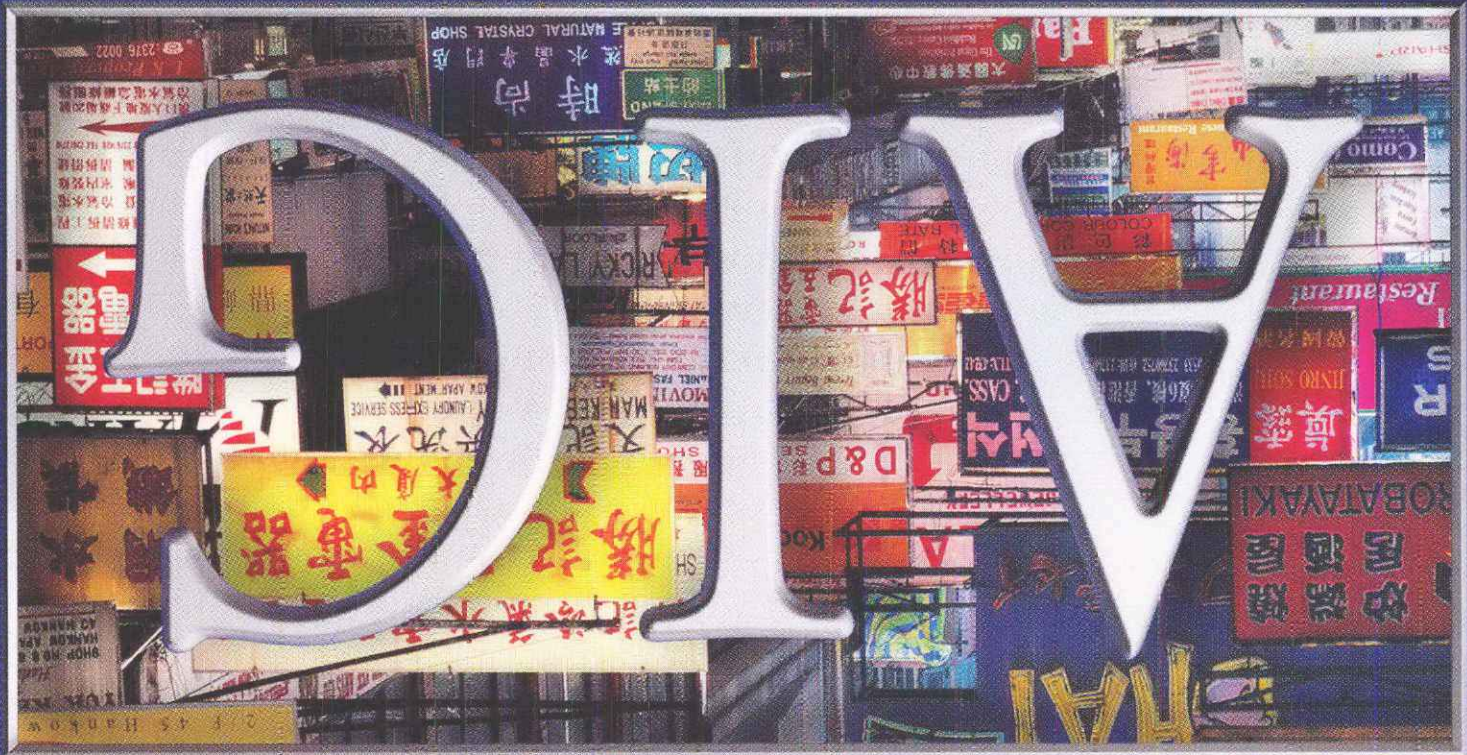
the match race and the BMW ORACLE Racing team. Sailboat racing attracts high net worth individuals. Their need for life insurance, annuities and other personal lines products currently represents an underserved market, Mr. Carendi said.

Both Allianz and Fireman's Fund Insurance Co., an Allianz subsidiary that enjoys greater U.S. name recognition than its parent company, provide products for those high net worth individuals.

Any doubt that competitive sailing attracts the wealthy? Larry Ellison, Oracle Corp.'s chief executive officer and member of the board of directors, is a BMW ORACLE Racing Team crew member.

Mr. Ellison ranks in the top 10 on Forbes' list of the wealthiest people in the United States.

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