

**Firming market fosters
increase in fraud / 2**

**IRS offers guidance
on catch-ups / 3**



Business Insurance

October 29, 2001

Entire contents copyright © 2001 by Crain Communications Inc. All rights reserved.

\$4

Swiss Re sues over WTC loss amid debate on policy terms

By DOUGLAS McLEOD

NEW YORK—The legal battle erupting over the World Trade Center's property insurance coverage reveals a huge rift between the trade center's leaseholder and its largest insurer over the most basic terms of a program that still wasn't finalized on the day the terrorists struck.

As property insurers agreed last week to pay a \$75 million advance on WTC claims, a unit of Swiss Reinsurance Co. filed suit in U.S. District Court in New York for a rul-

ing on whether the destruction of the twin towers was one event or two under the \$3.55 billion insurance program.

While Silverstein Properties Inc., the WTC's leaseholder, argues that the attack on each tower was a separate event, entitling it to double the limit, Swiss Re's suit says it was a single occurrence under the provisions to which it had agreed.

In making their cases, though, the two sides cite entirely different sets of coverage terms. Swiss Re says it is bound under a property form

that broker Willis Group Ltd. developed and that features a restrictive definition of "occurrence" that precludes the two-event argument.

Silverstein, on the other hand, contends the entire program is governed by a form used by a primary insurer, Travelers Property/Casualty Corp., that does not define occurrence. Under these circumstances, it says, New York law would treat each tower's loss as a separate event.

Muddying the waters further, insurance and legal sources say that

other insurers on the program may have used other variations of coverage wordings on their own participations, including different definitions of occurrence.

While Allianz A.G. Holding, the third-largest participant on the program, had issued a policy before the attacks, most others—including Travelers and Swiss Re—had not, and Swiss Re says it was still negotiating certain terms on Sept. 11.

Yet another problem, Swiss Re charges in court papers, is that Sil-

See WTC/page 27

Late News



American Airlines to claim \$2.3 billion

AMR Corp., the parent of American Airlines, expects to recover \$2.3 billion from its insurers for losses arising from the Sept. 11 terrorist attacks in the United States. Two American Airlines jets were hijacked in the attacks: one was crashed into the World Trade Center, and the other hit the Pentagon. Soon after the attack, the federal government announced a financial aid package for the nation's airlines that included a provision limiting the liability of airlines whose aircraft were used in the attacks to the limits of their liability coverage. In its quarterly financial statement filed with the U.S. Securities and Exchange Commission last week, Fort Worth, Texas-based AMR said that it expected the claims paid by its insurers to total \$2.3 billion. American Airlines' lead insurer is Global Aerospace Underwriting Managers Ltd. in London.

Bermuda insurers seek to raise capital

Two Bermuda-based insurers, ACE Ltd. and PartnerRe Ltd., plan to raise capital to increase capacity in a tightening market. ACE said it plans to



raise \$1.15 billion by issuing up to 32.9 million common shares at \$35 per share. "ACE intends to deploy the new capital by, among other things, expanding its net underwriting capacity, either through internal growth and/or through acquisitions of lines of business or companies," the Hamilton-based insurer announced. PartnerRe, meanwhile, plans to raise \$350 million through issues of trust preferred and convertible preferred securities before year end.

Commissions on canceled policies

U.K. insurance brokers have been asked to return commissions earned on policies issued by the

See LATE NEWS/page 2

Anthrax prompting employers to take precautions on mail

Vigilance increasing on bio-terrorism risks

By SALLY ROBERTS

As the United States comes to grips with the latest terrorist attacks within the country—anthrax-laced letters sent via U.S. mail—risk managers are taking steps to make sure their companies are prepared for such a bio-terrorism threat.

As of late last week, nearly 50 people in Florida, New Jersey, New York and Washington, D.C., had been infected or exposed to the anthrax bacteria through contaminated mail; at least three people—two postal workers and an employee of a tabloid newspaper—have died from inhaled anthrax. So far, the anthrax attacks have been aimed at the United States government and media outlets.

Crisis consultants specializing in bio-terrorism advise employers to

See ANTHRAX/page 31



PHOTO: AFP

As hazardous-material workers in Washington and other cities look for anthrax, many companies are taking steps to protect employees.

Health plans face cost spike next year

Hewitt projects sharpest
increases since early '90s

By JERRY GEISEL

Employers next year will be hit with the biggest health care cost increases seen in a decade.

This year, group health care plan costs rose 10.2% to an average of \$4,778 per employee, according to a new study by Hewitt Associates L.L.C. Preferred provider organization costs this year increased the most—up 14% to an average of \$4,834 per employee—while health maintenance organization costs climbed 10.1% to \$4,522 per employee, and point-of-service plan costs rose 8.7% to \$4,857.

Based on the budgets employers have set and the health care premi-

See COSTS/page 20

International:

U.K. FINDS J&H LIABLE FOR CLIENT'S LOSSES

Begins on page 23



To Subscribe Call
1-888-446-1422 in the U.S. or
1-313-446-0450 outside the U.S. or
go online to www.businessinsurance.com

Inside

Lloyd's, regulators strike funding deal

Following a series of conflicting public announcements, Lloyd's of London and U.S. insurance regulators reached a compromise on Lloyd's reinsurance trust-funding requirement for its liabilities related to the Sept. 11 terrorist attacks.

Page 4

Time to take action on terror relief

It is time for the government to move to create some sort of terror reinsurance backstop—or witness the consequences of inaction, this week's editorial says.

Page 8

Business lobbies for federal terror cover

The business community last week went before Congress to urge action to establish some sort of reinsurance mechanism to respond to terrorist losses.

Page 27

CIAB sees increases across all P/C lines

Across-the-board rate increases are the order of the day for all lines of commercial property/casualty insurance, according to a survey released by the Council of Insurance Agents & Brokers.

Page 29

Reporting weekly on corporate risk, employee benefit and managed health care news

Departments

Advertiser Index	31
Books & Ideas	10
Classifieds	26
Comings & Goings: Industry	18
Commentary	6
For the Record	28
Insurance Services Guide	24
International	23
Legal Briefs	10
Letters	8
Opinions	8

Business Insurance (ISSN 0007-6864) Vol. 35, No. 44, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, IL 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 965 E. Jefferson Ave., Detroit, MI 48207-9970. \$4 a copy and \$97 a year in U.S. \$130 in Canada and Mexico (includes GST). All other countries \$230 a year (includes expedited air delivery). Canadian Post International Publication Mail Product (Canadian Distribution) Sales Agreement No. 0293512, GST No. 136760444. Printed in U.S.A. Copyright © 2001 by Crain Communications Inc.

CONTINUED FROM PAGE ONE

failed Independent Insurance Group P.L.C. The British Assn. of Insurance Brokers confirmed that PricewaterhouseCoopers, Independent's provisional liquidator, wrote to about 1,500 brokers, asking them to return commissions earned on canceled policies. PwC canceled most of Independent's policies after the company went into liquidation in June 2001 (BI, June 25). In its letter, PwC asked brokers to return what it dubbed "unearned" commissions on 12-month Independent policies that were sold in January 2001 and subsequently canceled.

Hearing rules delayed

The Occupational Safety and Health Administration has delayed for one year the effective date of several provisions in its recordkeeping rule for work-related hearing loss. The provisions, which will become effective Jan. 1, 2003, include the OSHA criteria for recording hearing loss and the definition of "musculoskeletal disorder." All other recordkeeping provisions take effect Jan. 1, 2002. Details on the provisions are available at www.osha.gov.

Hewitt takes over

MetLife Inc. is exiting the stand-alone 401(k) plan recordkeeping business and has endorsed Hewitt Associates L.L.C. as successor administrator for the 26 MetLife

clients, mostly large employers, receiving the services. The exit of New York-based MetLife from the stand-alone 401(k) recordkeeping business is not surprising, observers say, given its relative small size in the market and the intense competition. By contrast,

Late News

Hewitt is one of the largest administrators of 401(k) plans for major employers. In all, Hewitt administers defined contribution plans, including 401(k) plans, for employers with 4.3 million employees. Lincolnshire, Ill.-based Hewitt expects the implementation and conversion of client services from MetLife to be completed by the end of 2002. MetLife will continue to provide a full range of defined contribution plan administration services for small and medium-size employers.

WellPoint boosts numbers

WellPoint Health Network Inc.'s membership growth in two states and its acquisition of Blue Cross & Blue Shield of Georgia contributed to large gains for WellPoint during the first nine months of 2001. The Thousand Oaks, Calif.-based health care company recorded a revenue in-

WELLPOINT

crease of about 33%, to \$9.01 billion, for the nine months ending Sept. 30. Net income for the nine-month period grew more than 20%, to \$304.9 million. Membership in WellPoint plans totaled nearly 10 million at the end of the third quarter, compared with 7.7 million at the same point last year.

Parity extension advances

On a near party-line vote of 216-

214, the House of Representatives approved a broad economic stimulus package last week that would extend a federal mental health care benefits parity law and provide federal health insurance subsidies for the unemployed. The measure, H.R. 3090, would extend through Sept. 30,



2003, a recently expired 1996 law that bars group health care plans from offering lower annual and lifetime dollar limits on mental health care expenses than they use for medical and surgical expenses. The House bill also would eliminate the normal 10% penalty on preretirement distributions from 401(k) plans if the funds were used by an unemployed individual to pay health insurance premiums.

CNA reversal

CNA Financial Corp. is overhauling its strategy to rekindle growth, according to a report in *Crain's Chicago Business*. The turnaround plan reverses the program laid out two years ago, when the Chicago-based insurer decided to focus on its core property/casualty lines and to divest life and health insurance businesses. Now, with the property/casualty lines sputtering, CNA has decided not only to hold onto the life and long-term health businesses but also to expand them. Property/casualty, hammered by losses, is retrenching under new management. An execu-

Check out Businessinsurance.com

To get breaking news as it occurs, visit *Business Insurance's* free online *BI's Daily News*, at www.businessinsurance.com. Sign up for your daily e-mail of breaking news.

All the material in *BI's Daily News* column, as well as other content in this week's issue, is generated from daily news postings that appeared on the Web site in the previous week.

Tightening market sets stage for arrival of bogus insurers

Property/casualty capacity crunch likely to bring out opportunists, experts warn

By DOUGLAS McLEOD

A dramatically tighter property/casualty market promises a resurgence of an old risk management headache: fraudulent insurers.

Bogus insurers and reinsurers, formed expressly to swindle policyholders and vanish within a few years, flourish in markets where buyers are desperate for capacity and lower rates. As the current market hardens, con artists are likely to re-emerge after several years of relative quiet.

Regulators already see signs that known scam artists in the London market "are geared up and excited about creating offshore companies and entering the market again," said Betty Cordial, an insurance liq-

uidation consultant and fraud expert based in Glenview, Ill.

"The market is hardening, so the crooks should be coming out pretty soon," agreed Robert L. Brace, a partner with the law firm of Hollister & Brace in Santa Barbara, Calif., who has represented U.S. liquidators of fraudulent companies.

The characteristics of the frauds—such as the choice of domicile for a phony insurer—may change, but the aim of separating policyholders from their money will be the same.

Buyers can protect themselves from the inevitable losses by taking a few basic precautions, experts advise. These include knowing the track record and management of insurers they intend to use, and being

suspicious of drastically cheaper products.

"If it's cheap, it's worthless," Mr. Brace said bluntly.

The last two decades have shown insurance con artists to be consummate opportunists, shifting their focus to whatever area of the market seems ripe for scams.

The liability insurance crisis of the 1980s, which produced such innovative start-ups as ACE Ltd. and XL Capital Ltd., also spawned dozens of fly-by-night operations in domiciles from the Caribbean to Europe to tempt buyers with seemingly broad coverage at low rates.

The most notorious of these was a syndicate of bogus insurers and reinsurers managed by the late con man Alan Teale, whose activities

became the subject of a U.S. Senate investigation and who died in prison in 1994.

AIG profit falls

Losses stemming from the Sept. 11 terrorist attacks helped reduce American International Group Inc.'s net income by 27.7%, to nearly \$3.50 billion for the first nine months of this year. Revenues for the first nine months increased 10.2%, to \$46.0 billion. AIG's third-quarter net income plummeted 80.8%, to \$326.8 million, despite a 12.9% revenue increase, to \$15.73 billion. AIG currently estimates its net pretax losses associated with the attacks at \$820 million. AIG wrote \$14.90 billion of net general insurance premiums worldwide during the first three quarters, up 14.4% from a year ago.

Briefly noted

Arch Capital Group Ltd. announced a \$750 million capital infusion last week, bringing its total capitalization to more than \$1 billion. Arch Capital, which operates several insurance and reinsurance units in Bermuda and the United States, said it will receive a \$500 million investment from New York-based E.M. Warburg, Pincus & Co. L.L.C. and \$250 million from San Francisco-based Hellman & Friedman L.L.C. IPC Holdings Ltd. reported a loss of \$24.2 million for the first nine months of 2001, compared with a profit of \$28.3 million in the same period in 2000. The Pembroke, Bermuda-based catastrophe reinsurer's gross written premiums increased 41.9% to \$125.7 million in the first nine months, due to higher rates, new business and reinstatement premiums following the attack on the World Trade Center, said James P. Bryce, president and chief executive officer.

CNA

IRS catches up on 401(k) rules

Employers get new guidance in how tax law changes affect retirement plans

By JERRY GEISEL

WASHINGTON—Employers now have the official guidance on implementing a tax law provision that will allow older employees to make "catch-up" contributions to their 401(k) plans.

That provision in the tax law enacted earlier this year allows employees age 50 and older to add an extra \$1,000 to 401(k) and certain other types of defined contribution plans beginning in 2002. The maximum allowable catch-up contribution will increase annually in

\$1,000 increments until it reaches \$5,000 in 2006.

"Employees will embrace this. Ultimately, just about every 401(k) plan in the country will have a catch-up feature," predicts Tom Buterworth, a consultant with Hewitt Associates L.L.C. in New York.

Until now, lack of guidance from the Internal Revenue Service

on myriad technical and legal questions about the provision has prevented employers from adding a catch-up feature in their 401(k) plans. That guidance now is available in proposed regulations in the Oct. 23 Federal Register. While those regulations don't answer all questions, employers have enough guidance to add catch-up provisions, benefit experts say.

"Overall, the IRS made an im-

pressive effort to make catch-up administratively feasible," said David Cantor, a consultant in the Charlotte, N.C., office of William M. Mercer Inc.

"In all, I think this is good news. The rules give employers a fair amount of flexibility in how to administer this provision," concurred Marilyn Scalia, a principal in Fort Lee, N.J., with Unifi Network, a unit of PricewaterhouseCoopers L.L.P.

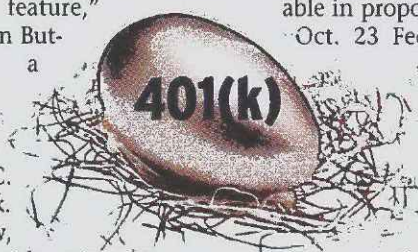
Due to the timing of the regulations this late in the year, many employers will not have enough time to add a catch-up provision to their

401(k) plans by Jan. 1. Even so, if they add a catch-up provision later in the year, eligible employees will be allowed to make the full \$1,000 catch-up contribution. "There is nothing to stop a company from offering this beginning in mid-year," said Mr. Cantor.

For companies that do want to add a catch-up feature, below are some of the most frequently asked questions and the IRS' answers:

Q: How old must an employee be to make a catch-up contribution?

See IRS/page 31



Ruling favors policyholders

Court limits pollution exclusion

By MICHAEL PRINCE

PITTSBURGH—In a closely watched pollution coverage case, a split Pennsylvania Supreme Court has ruled in favor of a policyholder in a case that hinged on the meaning of the "sudden and accidental" pollution exclusion.

In its 3-2 decision, the Pennsylvania high court overturned lower court rulings that pollution exclusions containing the words "sudden and accidental" bar coverage for pollution that occurs gradually. Two of the court's justices recused themselves.



The high court stated that, when the insurance industry submitted a memorandum to the Pennsylvania Insurance Department in 1970 seeking permission to add the words "sudden and accidental" into CGL policies, insurers declared that the new language would not substantially change existing insurance coverage. As a result, the court found that insurers could not later contend that this wording has changed the policies to exclude coverage for gradual pollution.

One of the insurers submitting the 1970 memo was Boston-based Liberty Mutual Insurance Co., the lead defendant in the *Sunbeam* suit.

"The memorandum appears to state that coverage was to be continued for both gradual and abrupt pollution or contamination as it had therefore been provided in existing comprehensive general liability policies," the majority opinion states.

The case arose from claims submitted by appliance maker Sunbeam Corp. of Fort Lauderdale, Fla., to clean up 11 polluted sites nationwide. Insurers named as defendants are Liberty Mutual; First State Insurance Co.; Lexington Insurance Co., a unit of American International Group Inc.; and Pennsylvania Manufacturers Assn. Insurance Co.

The insurers contend that Sunbeam's predecessor companies generated the pollution during routine business operations and are therefore not covered by the general liability policies. The insurers' arguments swayed the trial court to dismiss Sunbeam's suit. The ruling was upheld on appeal.

In presenting its case to the state Supreme Court, Sunbeam argued that when insurers presented their 1970 memorandum to state regulators, they maintained that adding the words "sudden and accidental" would not change the scope of CGL policies, which had previously covered pollution that was unintended.

Citing the doctrine of regulatory estoppel, the high court ruled that Sunbeam's suit should not have been dismissed.

"In essence, the doctrine prohibits parties from switching legal positions to suit their own ends," the opinion states. "Thus, having represented to the insurance department, a regulatory agency, that the new language in the 1970 policies 'sudden and accidental' did not involve a significant decrease in coverage from the prior language,

See SUNBEAM/page 29

FERMA CONFERENCE

Modeling programs help companies understand risks

By RODD ZOLKOS

BARCELONA, SPAIN—An effective risk modeling program not only can help a company better understand its risks and make informed insurance purchasing and risk management decisions, but also can facilitate communications between risk management and the company's top executives.

Chris Temple, vp risk management at Invensys P.L.C., a London-based automation and controls company, said he's found that with the risk assessment model his company has crafted, "you're actually getting a management presentation now that's easy to discuss."

"What we've found with this is, it gets their attention," he said.

Speaking at the Federation of European Risk Management Assns. Risk Management Forum 2001 ear-

lier this month in Barcelona, Spain, Mr. Temple said one reason his company developed a risk modeling program was to involve senior management in the risk management process.

"We always struggle with aggre-

ferma 
Managing risks
for sustainability / 12
Terror attacks
change market / 13
Obstacles to enterprise
risk management / 14

gation of risk in the business, but also with what happens if two, three or four risks occur at the same time," Mr. Temple said. "The heart of the model is trying to understand what happens when an event occurs. We also have to understand performance indicators...and how do the risks link in?"

Olivier Sorba, director of risk management at Paris-based Legardere Group, noted that banks frequently employ the concept of "value at risk" when calculating their potential exposures. Modeling techniques such as the Monte Carlo simulation are ways of calculating value at risk, based on a probabilistic model of risk factors and an economic model of the portfolio in question, he said.

Paul Maitland, leader of the Re-metrics software team at Benfield-

See MODELS/page 12

Insurers cry unfair Advantage

Subsidiary of Utah workers comp fund seeks to compete in Idaho

By JUDY GREENWALD

BOISE, IDAHO—Workers compensation insurers are fighting with the Workers Compensation Fund of Utah to block a for-profit fund subsidiary from selling workers comp insurance in Idaho in competition with private insurers.

In a dispute that may ultimately wind up in state court, insurers and the fund disagree over whether Idaho law prohibits the subsidiary of the Salt Lake City-based fund from operating in the state.

Idaho Insurance Director Mary L. Hartung is expected to issue a decision on the issue within the next few weeks.

The Utah fund is seeking to continue to write workers compensation insurance in Idaho through a

for-profit subsidiary, Advantage Workers Compensation Insurance Co., a shell company it acquired in 1998. Advantage has authority to write workers compensation business in 42 states.

Idaho law prohibits any insurer, "the voting control or ownership of which is held in whole or in substantial part by any government or governmental agency, or which is operated for or by any such government or agency," from doing business in the state. The Utah fund contends that Advantage does not meet this definition.

The Idaho Insurance Department is concerned that if the Utah fund's directors are appointed by the state, and the fund owns 100% of Advantage, it may be violating Idaho law by doing business in the state, said Shad Priest, the depart-

ment's administrator.

Meanwhile, an Idaho Insurance Department administrative hearing was held last week on the issue of whether insurers and insurance organizations could act as intervenors in the dispute, which would entitle them to submit briefs on the issue to the Idaho Insurance Department and to sue if they are unhappy with the department's ruling.

Petitions to intervene were filed by the Des Plaines, Ill.-based National Assn. of Independent Insurers, the Downers Grove, Ill.-based Alliance of American Insurers, New York-based American International Group Inc. and Liberty Northwest Insurance Corp., a unit of Boston-based Liberty Mutual Group. A decision is expected this

See IDAHO/page 28

NAIC, after reversal, forges compromise with Lloyd's

By SARAH VEYSEY

LONDON—After a series of conflicting public announcements, state insurance regulators and Lloyd's of London late last week reached a compromise over the market's trust fund requirements for its U.S. reinsurance liabilities.

Early last week, the National Assn. of Insurance Commissioners withdrew a recommendation previously made by its reinsurance task force to grant Lloyd's temporary relief on its reinsurance trust fund obligations (*BI*, Oct. 22). That relief proposal would have allowed Lloyd's to fund only 60% of its

gross U.S. reinsurance liabilities related to the Sept. 11 terrorist attacks by Nov. 15—down from the 100% funding level normally required for alien reinsurance—with the remainder to be funded at some later date. Instead, the NAIC said, Lloyd's would be required to place the full amount in trust by Nov. 15.

In the compromise deal subsequently reached with New York insurance regulators—which the NAIC will follow—Lloyd's will be allowed to place in trust 60% of its gross Sept. 11 reinsurance liabilities by the November deadline and raise that funding level to 100% by March 2002.

Under U.S. law, all alien reinsurers operating in the United States must hold 100% of their gross U.S. liabilities in credit-to-reinsurance trust funds. Because Lloyd's trust funds are held in New York, they fall under the jurisdiction of state regulators there.

Analysts and Lloyd's officials have warned that requiring Lloyd's to fund 100% of its liabilities would cause a severe liquidity strain on the market.

The compromise deal came after Lloyd's officials and New York insurance regulators held crisis talks, prompted by Lloyd's confusion about U.S. regulators' intentions.

When the NAIC announced last week that it had withdrawn its reinsurance task force's offer of temporary relief, John Oxendine, head of the task force, said that the move did not mark an about-face on the issue.

"The official rule is 100% (funding of U.S. liabilities), and Lloyd's will put up whatever they have available. If it is less than 100%, then the task force is prepared to

See NAIC / page 28

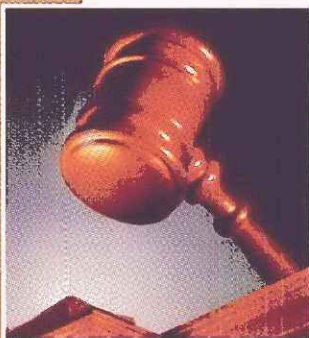
Plaintiffs call it *mismanaged care.*



Right or wrong, red-lighting benefits can green light litigation against a managed healthcare entity. So can an insured's misconception about coverage, a provider's alleged negligence, or an innocent administrative error.

Litigation against managed healthcare organizations has reached epidemic proportions.

And no amount of due diligence creates immunity.



This is no surprise to Lexington Insurance Company. Working together with our program manager, Sherwood Insurance Services of Washington, Inc., we have been a leading insurer of managed healthcare organizations of all types for more than 25 years.

We know well the risks of your managed care environment. We know you can expect the unexpected. And so we designed our Managed Care Liability Insurance to help shield your managed care organization, its directors, officers, staff and professionals in today's broad spectrum of claims—both those you anticipate and those you don't.

Our coverage is broad, flexible and—combined with the services of our managed care loss control specialists, claims experts and attorneys—it helps keep managed care entities ahead of the latest E&O liabilities, and lets you remedy claims that do occur quickly and cost-effectively.

Lexington Insurance Company is rated A++ (Superior) by A.M. Best and AAA by Standard & Poor's.

Coverage is available through Sherwood Insurance Services of Washington, Inc., an insurance program manager open to all licensed insurance agents and brokers.

To learn more, contact Bob Kelley or Jake Powel at Sherwood Insurance Services of Washington, Inc.
403 Columbia Street, Suite 300
Seattle, WA 98104-7074
206-340-8499
fax: 206-382-1409

SI

And it can cost you. *Lexington Insurance Company*

Souter promoted in NYC

NEW YORK—Gavin Souter, formerly *Business Insurance's* New York bureau chief, has been promoted to assistant managing editor-news, Editor Paul D. Winston announced.

In his new role, Mr. Souter, 38, is *BI's* chief news editor, coordinating and assigning stories for both print and online reporting. In his previous position, he handled online reporting assignments, as well as having reporting duties.

Mr. Souter joined *Business Insurance* in January 1991 as an associate editor in the magazine's London bureau, and he then moved to the

New York

bureau in April 1993. He was promoted to New York bureau chief in 1996.

Previously, he was editor of Reinsurance magazine in London

Mr. Souter

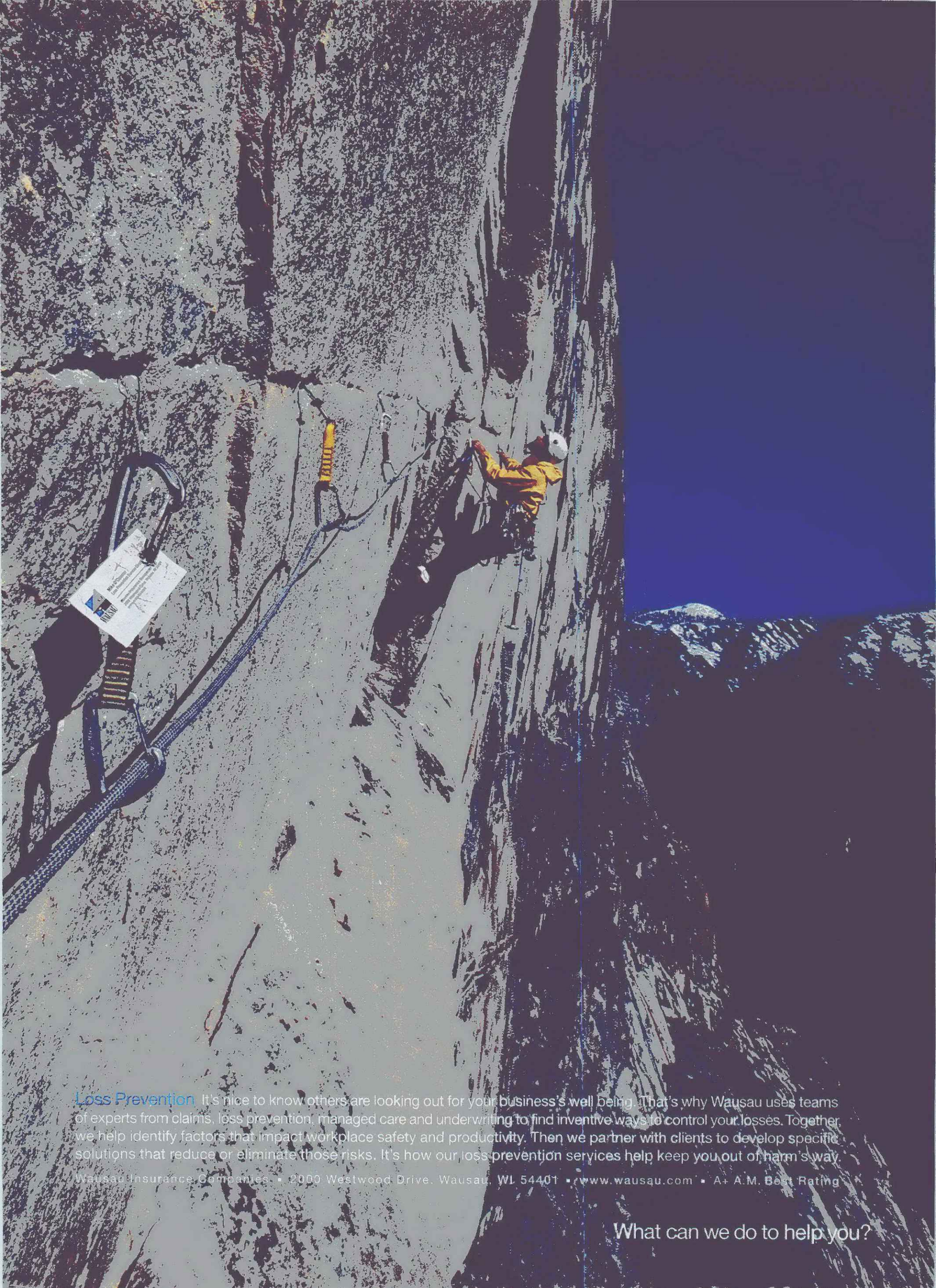
from 1989 to 1991. Prior to that, Mr. Souter worked as a reporter at Post Magazine from 1988 to 1989, and he also served as assistant editor of Stockbroker & City Investor magazine.

Mr. Souter graduated in 1985 from the University of Nottingham, England, with a bachelor's degree in theology.

He can be reached at 212-210-0288, or by e-mail at gsouter@crain.com.

PHOTO: DOUG GOODMAN





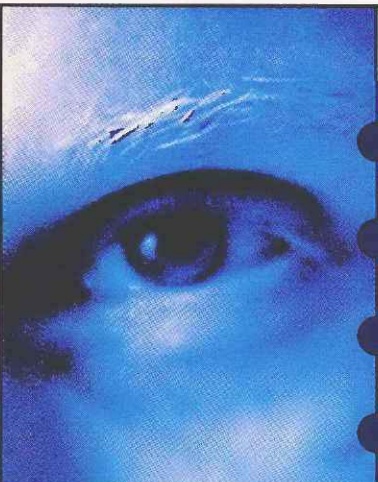
Loss Prevention It's nice to know others are looking out for your business's well being. That's why Wausau uses teams of experts from claims, loss prevention, managed care and underwriting to find inventive ways to control your losses. Together, we help identify factors that impact workplace safety and productivity. Then we partner with clients to develop specific solutions that reduce or eliminate those risks. It's how our loss prevention services help keep you out of harm's way.

Wausau Insurance Companies • 2000 Westwood Drive, Wausau, WI 54401 • www.wausau.com • A+ A.M. Best Rating

What can we do to help you?

KEEP AN EYE OUT FOR THIS

BI Special Report:



YEAR IN REVIEW

ISSUE: DECEMBER 24/31 • AD CLOSE: DECEMBER 12

BI's December 18/25 Spotlight Report, **Year-in-Review**, will be a powerful issue for the more than 134,000* top level executives who read *BI* each week.

Year-in-Review will provide a wrap up of this year's most significant industry trends and look back at some of the biggest news stories of 2001 ...

- Surging health care costs, Medicare HMO turmoil and battles over patient bill of rights
- Sweeping pension reforms

- Biggest losses ever from WTC terrorist attacks
- Controversy over ergonomics rules
- Aviation industry rocked by soaring premiums
- Asbestos claims swamp companies

This highly-anticipated issue will be referred to by our readers well into next year. Make an impact now by reserving your space in *Business Insurance* today.

*Includes pass-along readership

Business Insurance
www.businessinsurance.com

NEW YORK: 212.210.0133 / CHICAGO: 312.649.5276 / LOS ANGELES: 323.370.2456 / BOSTON: 617.292.4856

OUR DEEPEST SYMPATHIES

TO THOSE AFFECTED BY THE EVENTS

OF SEPTEMBER 11, 2001.

OUR RESPECT AND ADMIRATION

FOR THOSE WHO SACRIFICED IN

THE RESCUE EFFORT.

OUR COMMITMENT TO

HELP IN THE REBUILDING.

McLARENS TOPLIS

INTERNATIONAL ADJUSTERS, SURVEYORS AND ADMINISTRATORS

233 South Wacker Drive Suite 2420 Chicago Illinois 60606-6308 312.648.1300

Commentary

Turning the page to a new chapter

When *Business Insurance* Publisher Al Malecki appointed me editor in 1980, I was 28 years old, with 3-1/2 years at *BI* under my belt. People chided me then: "You're too young to be editor of *Business Insurance*."

Now, as I approach my retirement from *BI* at year end, on my 25th anniversary here and just days before I turn 50, people are scolding me, "You are too young to retire."

Obviously, I was not meant to live by conventional schedules.

Yet, many people persist in grilling me on why I am retiring now.

I've tried a whole slew of other snappy answers, including, "You can never be too rich, too thin or too young to retire." That sounds too smug.

A dear friend suggested that I say I am emulating Michael Jordan and leaving at the top of my game. But now that Michael has returned to basketball, that one's out.

Failing to come up with any better explanation, I am going to tell you the whole, and quite simple, truth.

After 25 years of working as hard as I could to help make this the very best publication, I am retiring to enjoy a much more leisurely life with my husband of 18 years, Ronald Jacks. After a distinguished career in insurance and reinsurance law, Ronald retired four years ago at the age of 62. Since then, his arbitration work has kept him too busy to be a proper house husband. Still, I envy his newfound freedom and flexibility and want to share it with him, all the time.

Some people who know me for the A-type I am have expressed grave concerns that I will go bonkers out of boredom without "a real job." But my closest friends will confirm that I am never bored and find challenges and rewards in life outside of the world of publishing and insurance. Indeed, my husband says I have only two speeds no matter what I am doing: full on and full stop.

For the next year, at least, I am going to be full on. For the first several months of 2002, we will be living in our home in New Zealand, soaking up the ever-changing beauty of the sea on the rugged east coast of the North Island. When I'm not chasing our cattle from one chewed-out paddock to more lush pasture, pulling weeds from our gardens or fixing a break in the farm watering system, I will be playing at the sports that New Zealand summer offers in abun-

dance. I'll ride my horse, play golf and swim, but I'll leave the bungee jumping to others.

When spring returns to the Northern Hemisphere, so will we, but we'll be returning to a new home in Annapolis, Md. We're moving from Chicago to historic Annapolis, where we have many friends and look forward to sailing the vast Chesapeake Bay. We're also going to sail beyond the Chesapeake, to explore the coves and harbors of the East Coast aboard our sailing yacht "Yankee," which we crew ourselves: Ronald is the skipper, and I'm the navigator. (There is a plaque of my dreams on board that reads: "He may be the Captain, but I am the Admiral." Little does he know that I think this is the truth.)

I can assure you that I am ready for this new life because I have given my all during my 25-year career

at *BI*—as a reporter, then an editor, then a publisher and editorial director, and most recently as publishing director. I considered trying to count up the news stories, editorials and columns I have written and the conferences I have attended over the past 25 years to prove that I have paid my dues to retire, but I don't have the patience to do

that. Trust me, they number more than enough. One milestone that testifies to earning my stripes is that I have logged more than 2 million miles on American Airlines.

While I am sincerely looking forward to a more relaxed life with my family and friends in the years to come, I must admit that it is not easy for me to leave *BI*. After all these years, I finally just moved into the most elegant office with a great view of the Chicago River. It's a bummer to give it up.

Seriously, this has never been just a job for me; it has been a very significant part of my life. I value the people that I have worked with, and you, the readers, I have worked for.

I have had the great fortune to work side-by-side with very talented people who love this publication as much as I do. While some of our days together were too long and too stressful, more often than not we have had a lot of fun together. We're not just colleagues at *Business Insurance*; we're family. I love them all.

As for you, the readers of *BI*, I have always thought of you as my dear neighbors, because I consider *BI* a community newspaper. We're not a geographic community; we're a community of people bound by

See FAREWELL/page 30



Kathryn J. McIntyre

Now is the time to talk about strength.



Times like these demand compassion. But sometimes simple facts can offer the greatest reassurance. We have over 100 years of experience, surplus in excess of \$8 billion and more than \$60 billion in assets. Policyholders, agents and brokers should feel confident in knowing that we will stand behind every single one of our commitments.

PROPERTY & CASUALTY • LIFE & LTC • GROUP BENEFITS • REINSURANCE

For more information, see an independent agent or broker, or visit www.cna.com
CNA is a service mark and trade name of the CNA Financial Corporation. Copyright 2000-2001. All rights reserved.

Business Insurance

Vice President/Publisher: Martin J. Ross III
(New York)

Vice President/Publishing Director: Kathryn J. McIntyre, A.R.M. (Chicago)

Editor: Paul D. Winston (Chicago)

Editor-at-Large: Jerry Geisel (Washington)

Managing Editor: Regis J. Coccia (Chicago)

Assistant Managing Editor - Graphics: Kathy L. Barnes (Chicago)

Assistant Managing Editor - News: Gavin Souter (New York)

Senior Editors: Meg Fletcher, A.R.M. (Chicago);

Judy Greenwald (San Jose); Mark A. Hofmann

(Washington); Dave Lenckus (Tucson); Douglas

McLeod (New York); Edwin Unsworth (France);

Joanne Wojcik (Denver); Rodd Zolkos (Chicago)

Bureau Chiefs: Roberto Cenicerros (Los Angeles)

Associate Editors: Michael Bradford (New

Orleans); Michael Prince (New York); Sally

Roberts (Denver); Sarah Veysey (London);

Copy Desk Chief: Matt Scroggins (Chicago)

Copy Editors: Mary B. Nick (Chicago); Joe Walker

(Chicago)

Directory Editor: Kevin P. Edison (Chicago)

Assistant Graphics/Online Editor:

Amy R. Kepka (Chicago)

Assistant to the Publishing Director: Karen

Brown Tucker (Chicago)

Editorial Cartoonist: Roger Schillerstrom

(Chicago)

Advertising Director: Kenneth F. Luker Jr.

(New York)

Midwest Advertising Manager: Robert L. Niesse

(Chicago)

District Managers: Chris Crain (New York); Lori

Lieberman (Los Angeles); Robert B. Murray (New

York); John L. Phillips (Chicago); Jennifer Powers

(Boston)

Classified Advertising Manager: Irais Amleshi

(Chicago)

Assistant to the Publisher: Pat Ghazvini (New

York)

Advertising Traffic: Stephanie Cress (New York)

Production Manager: Cheryl Magiera (Chicago)

Director of Communications: Ronnie I. Drachman

(New York)

Promotion Coordinator: Barbara O'Brien (New

York)

EDITORIAL: Chicago: 312-649-5398;

Denver: 303-698-7601; London: 207-457-1400;

Los Angeles: 323-370-2455; New Orleans: 504-

364-1908; New York: 212-210-0100; San

Jose: 408-774-1500; Tucson: 520-579-1937;

Washington: 202-662-7200;

ADVERTISING: Boston: 617-292-4856;

Chicago: 312-649-5276; New York: 212-210-0228;

Los Angeles: 323-370-2456

COMMUNICATIONS: New York: 212-210-0132

SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by Crain

Communications Inc.

Chairman: Keith E. Crain

President: Rance Crain

Secretary: Merrilee Crain

Treasurer: Mary Kay Crain

Executive Vice President/Operations:

William A. Morrow

Senior Vice President/Group Publisher:

Gloria Scoby

Group Vice President/Technology, Circulation,

Manufacturing: Robert C. Adams

Corporate Circulation Director: Maxx

MacConnachie

Corporate Director/Production & Manufacturing:

Dave Kamis

G.D. Crain Jr. Founder (1885-1973)

Mrs. G.D. Crain Jr. Chairman (1911-1996)

S.R. Bernstein Chairman-executive committee

(1907-1993)

Published weekly at 360 N. Michigan Ave.,

Chicago, Ill. 60601-3806, Fax 312-280-3174, E-mail:

biweb@crain.com, Offices: 711 Third Ave., New

York, N.Y. 10017-5806, Fax 212-210-0704, CRAIN

COM NYK; 473 Fairfield Ave., Gretna, LA 70056,

Fax 504-364-1337; Suite 814, National Press

Building, Washington, D.C. 20045-1801, Fax 202-

638-3155; 6500 Wilshire Blvd., Suite 2300 Los

Angeles, Calif. 90048-4947, Fax 323-655-8157;

967 Bermuda Court, Sunnyvale, Calif. 94086-

6750, Fax 408-774-1155; New Garden House, 78

Hatton Garden, London EC1N 8LD England, Fax

207-457-1440; 4 Grande Rue, 49140 Jarze,

France; 8157 N. Torrey Way, Tucson, Ariz. 85743,

Fax 520-579-3476; 777 E. Speer Blvd., Denver,

Colo. 80203-4214; Fax 303-733-2244, \$4 a copy

and \$97 a year in U.S. \$130 in Canada and Mexico

(includes GST). All other countries \$230 a year

(includes expedited air delivery). Don Mierendorf,

circulation manager. Four weeks' notice required

for change of address. Send subscription

correspondence to Circulation Department,

Business Insurance, 965 E. Jefferson Ave., Detroit,

Mich., 48207-3185, or phone 888-446-1422 or

313-446-0450, Fax 313-446-6777. Microfilm

copies available: University Microfilms, 300 Zeeb

Road, Ann Arbor, Mich. 48013. Microfiche copies:

Bell & Howell, Micro Photo Division, Old Mansfield

Road, Wooster, Ohio 44691. Portions of the

editorial content of this issue are available for

reprint or reproduction in other media. For

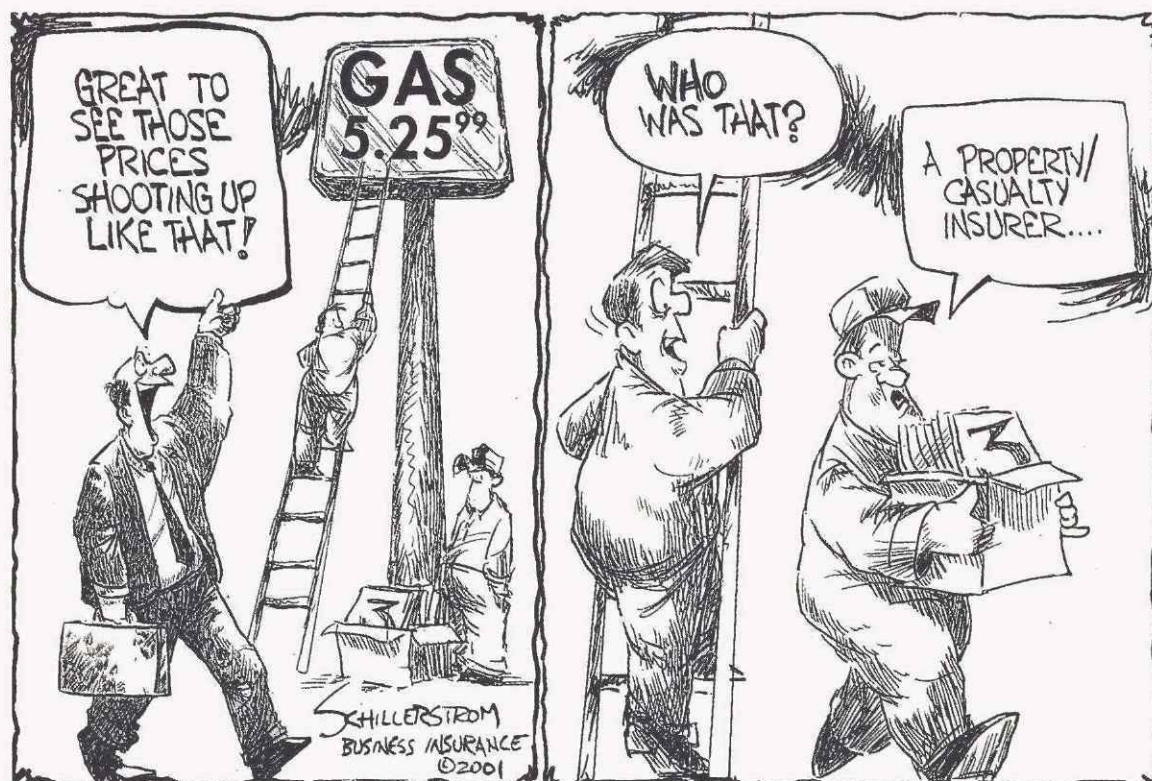
reprints or reprint permission: KAREN BROWN

TUCKER, Business Insurance, 360 N. Michigan

Ave., Chicago, Ill. 60601-3806, 312-649-5319, Fax

312-280-3174.

Schillerstrom



Editorial

Action needed now on terror relief

THE INSURANCE INDUSTRY has said about all it can say in lobbying for federal relief from future terrorism losses. Now it is time for the government to heed that call by moving swiftly to create some sort of terrorism reinsurance backup—or witness the consequences of its inaction.

The insurance industry has shown tremendous resiliency in continuing to offer various lines of insurance in spite of facing more than \$30 billion in losses from the terrorist attacks last month. But it will no longer offer terrorism coverage without some form of government backup. Without such a guarantee, though, businesses that require insurance as financial proof of their ability to withstand unforeseen losses would be idled or collapse. The consequences would be another damaging blow to a weakening economy.

Industry representatives have appeared on Capitol Hill frequently in the weeks since the Sept. 11 terrorist attacks. Brokers, insurers and reinsurers have banded together for this cause in a rarely seen display of unanimity and have crafted legislative suggestions for keeping this terrorism coverage intact and policyholders in business.

They have been joined by representatives of the business community at large as well. Business leaders who are generally and quite understandably skeptical of government economic intervention understand that

this is not an insurance industry issue. This is an issue will affect the whole economy.

Unlike the airline industry, which won swift financial relief from Congress, the insurance industry is not asking for handout. Instead, it's seeking a temporary promise of access to emergency funding—for which it would pay—as part of a private sector initiative to cover the losses of future terrorist outrages.

But unlike the airlines, the insurers have yet to win congressional support for their request, even though their situation could end up no less dire than that of the airlines. Fortunately, there are some signs that lawmakers will push ahead with a plan.

As we report this week on page 27, Sen. Christopher Dodd, D-Conn., said it would be "highly irresponsible" for Congress to fail to act, given the stakes. Sen. Dodd and others have been working to craft legislation that would provide the guarantees that the insurance industry—and the economy as a whole—needs.

They need to do so quickly so that a mechanism is in place in time for the January reinsurance renewals. Insurers aren't looking for a handout—they're looking for a temporary backstop, nothing more.

Congress should grant that reasonable request. Otherwise, you can bet that a lot more industries and out-of-work employees will be lining up for handouts as the economy falters even further because of an avoidable insurance availability crisis.

BI's new look

We are excited to bring you a new look for *Business Insurance* this week, after months of planning and preparing for this redesign.

Last week, we told you to expect a new design, with different fonts, graphics and layouts. No doubt in the weeks to come, we will continue to tweak and adjust our

appearance until we get it exactly right.

We hope you enjoy the redesigned magazine, and would welcome your feedback. Send your comments to Editor Paul Winston at pwinston@crain.com.

In conjunction with the redesign of our weekly print magazine, in a few weeks we will

roll out significant improvements in our Web site, www.businessinsurance.com. Those changes are designed to deliver more resources to readers and enhance the value of subscribing to *Business Insurance*.

As the signs say: "We are open during remodeling, and appreciate your business!"

Letters to the Editor

Article sends mixed messages

I read with curiosity the Oct. 15 Perspectives piece, "Employer's Aim to Limit Liability Overlooks Value of Risk Control." I have two problems with the article.

First, it seems to suggest that the impossibility of creating the "ideal environment" sometimes gets in the way of employers taking reasonable steps to address known problems.

The fallacy with this line of reasoning is that the courts do not generally require a perfect environment in order for an employer to avoid liability. Rather, employers are expected to have reasonable policies and procedures in place; and once a problem situation has been identified, they are expected to take reasonable steps to address the concern.

With few exceptions, a "hostile work environment" is not created simply as a result of one or two instances of idiotic behavior by an employee.

To imply that the employers are expected "to do the impossible" to avoid liability is a mischaracterization of the law, and perhaps acts to discourage employers from taking reasonable steps to alleviate harassment in the workplace.

The second faulty premise in the article has to do with the beliefs by the executives, used as examples, that somehow they could protect the organizational assessment from discovery simply by not accepting the report.

Aside from the obvious problems with not addressing known situations, the employers may actually be worse off in a court of law if it is later discovered through a subpoena directed to the consultant that there was a report and the executive "didn't want to know what was in it." It would seem to me that this would be a far worse result than if the executive had received the report and taken reasonable actions in response.

In any case, whether intended or not, the article seemed to send some confusing and mixed messages about what employer obligations might be in response to harassment in the workplace.

Tom Grundhoefer

General Counsel
League of Minnesota Cities
Insurance Trust
St. Paul, Minn.

To subscribe call 888-446-1422
or 312-446-0450
outside the United States.

www.businessinsurance.com



Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments.

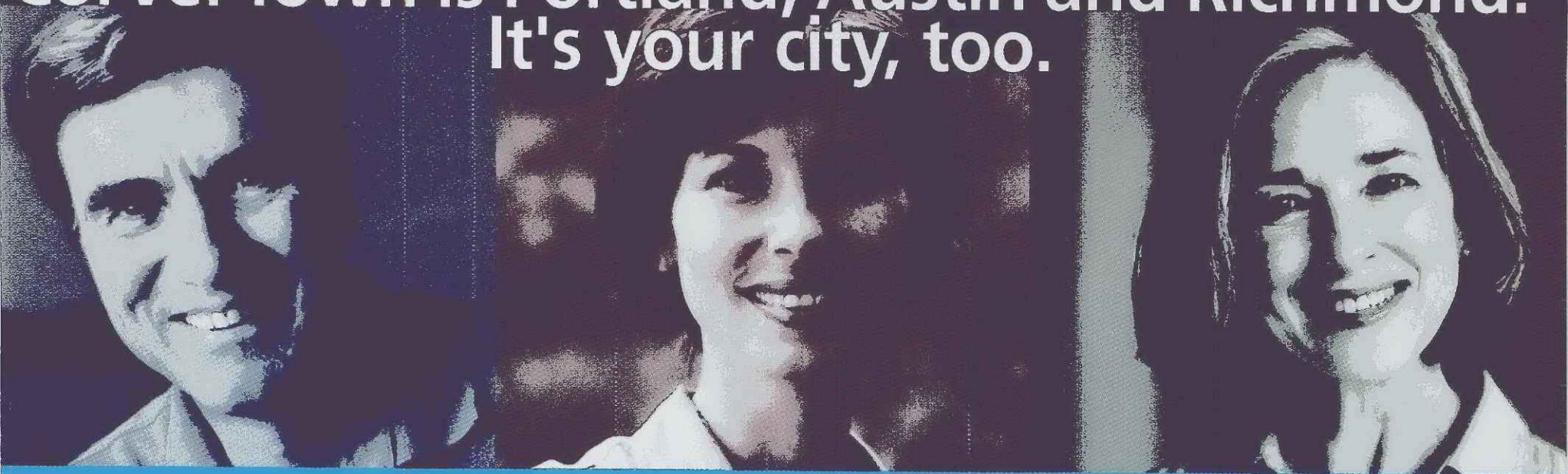
We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to: Letters to the Editor, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: pwinston@crain.com

CORVEL TOWN
CITY LIMIT
POP 3000

10
TAKING CARE
OF YOU
SINCE 1991

THIS IS A
Caring
COMMUNITY

**CorVel Town is Portland, Austin and Richmond.
It's your city, too.**



CorVel Town is just about everywhere. It's the name we give to CorVel's extensive network of care that connects employers, insurers, doctors and patients across the United States through advanced technology and good old-fashioned onsite care. This community is linked by a simple mission: to deliver patients the quality healthcare they need to get back to work, back to their families, friends, and their communities. This mission is delivered by CorVel's 3000 citizens across the country who provide employers the healthcare management services they need to assist employees and the communities in which they live. The communities of CorVel Town.

A Community Connected By Care.

CORVEL®

Visit www.corvel.com or call 888.7.CORVEL

Book offers broad view of comp issues

By MEG FLETCHER

"Blueprint for Workers Comp Cost Containment"

By Martin F. McGavin

Published by International Risk Management Institute Inc.

\$49

12222 Merit Drive, Suite 1450, Dallas, Texas 75251; 800-827-4242 outside of Dallas; 972-960-7693; www.irmi.com.

Managers who recognize the significance of workers compensation costs and want to reduce them should find some new ideas among the 30 different topics discussed in this book.

The book takes a comprehensive approach to offering theoretical and as well as practical guidance in establishing an insurance program. It also offers insightful advice about how to create a team to implement a company's workers comp program, which may include a broker or agent, insurer, claims adjuster and investigators, doctors, lawyers and

rehabilitation counselors.

Author Martin F. McGavin is certainly experienced, having managed safety programs and claims for more than 20 years. Mr. McGavin has worked as a plant human resources and safety manager, a claims adjuster and as a corporate workers compensation manager. For the past 18 years, he has worked for Johnson Controls Inc. in Milwaukee, for which he now manages safety and claims nationwide.

He writes of his belief that "workers compensation results can be improved quickly and significantly with a modest commitment of resources...by applying common business principles," such as planning, preparation and follow-up.

A detailed index in the book makes it easy to locate specific topics among the 30 chapters that detail the tasks involved in laying a firm foundation for a workers comp program. Those tasks include designing the overall program, finding a claims management partner, managing medical care, establishing an effective return-to-work program, getting results

from vocational rehabilitation, managing litigation and settlements as well as encouraging safety.

The book's analysis goes beyond the theoretical by offering specific examples of useful guidelines for understanding loss development triangles as well as reading medical reports.

The book also includes a few useful checklists including claim audit topics and employers' obligations under federal laws and regulations. Readers also may find useful a few sample forms, including an employee injury report and medical release, as well as a report form that a doctor can use in evaluating an employee's workers comp injury.

Mr. McGavin's book also includes specific questions a corporate risk manager should ask in various situations, such as choosing a company doctor and analyzing a state's occupational disease law.

In discussing somewhat controversial topics—such as integrated disability management—Mr. McGavin outlines both advantages and disadvantages so the reader can

make up his or her mind about the appropriateness of the approach in his or her work environment.

However, in the author's discussion of managing workers comp medical care, he offers only a cursory, two-paragraph discussion about medical privacy laws. While legal and regulatory uncertainties may make discussing this issue difficult to do—as the author notes—more analysis is needed by employers about the ramifications of this significant topic.

In addition, the author inappropriately categorizes all unusual or unconventional diagnoses that do not respond to treatment—including reflex dystrophy syndrome and fibromyalgia—as characteristic of "subconscious malingering." While managers need to be skeptical about unusual worker ailments, such claims must be considered on a case-by-case basis and not categorically dismissed.

Meg Fletcher is a senior editor of *Business Insurance* in Chicago.

Death benefits denied to nondependent partner

The Supreme Court of Nevada ruled that the state Legislature did not intend to provide death benefits to dependents that did not have a legally recognizable relationship with a deceased worker.

Robert and Annabelle Banegas were married in 1955 and divorced in 1981. They eventually reconciled and began cohabiting in 1990 but never remarried. From 1990 until Mr. Banegas' death from a work-related lung disease in 1994, they lived in Ms. Banegas' house, with Mr. Banegas paying for all of the living expenses other than the cost of housing. Following Mr. Banegas' death, Ms. Banegas applied for workers compensation death benefits as a dependent of Mr. Banegas. Her claim was denied because she was not a designated dependent related by blood or marriage. She sued the state but lost in the trial court.

On appeal, Ms. Banegas argued that the state Legislature intended to provide death benefits to any person who is factually dependent upon the deceased at the time of the injury. The court said that to read the state law to broaden the class of dependents to include any individual who is factually dependent upon the deceased employee, in the absence of any legislative guideline to aid in administering payments to such unspecified dependents, would constitute an invalid delegation of legislative power that would compromise the constitutionality of the statute. The trial court decision was affirmed.

Banegas vs. State Industrial Insurance System, Supreme Court of Nevada, March 16, 2001. (BI/05/N.-\$10)

Thefts ruled separate occurrences

The 5th U.S. Circuit Court of Appeals held that two thefts by two employees working separately and independently constituted two occurrences under a store's employee dishonesty insurance policy.

Legal Briefs

Ran-Nan Inc. operates a convenience store in Plano, Texas, that includes a Western Union and check cashing business. Ran-Nan purchased employee dishonesty coverage blanket policies issued by General Accident Insurance Co. of America. Each policy had a limit of \$25,000 with a \$500 deductible. Ran-Nan's owners learned that the store had been the victim of employee dishonesty and submitted a claim. Two employees caused losses through entirely independent thefts. One employee stole a total of \$32,250, and the other stole a total of \$31,600. The thefts occurred during both the fourth and fifth renewal periods in roughly proportionate amounts. The insurer paid the policy limit less the deductible on the fifth renewal but refused to pay anything on the fourth renewal. The insurer reasoned that there was only one occurrence of employee dishonesty. Ran-Nan sued the insurer for breach of contract. The trial court ruled for Ran-Nan.

On appeal, the insurer argued that there was only one loss, Ran-Nan's loss of a single sum of cash. The court said that the definition of "occurrence" in the policy—all loss caused by or involving one or more employees—signified that a group of employees conspiring together to steal would be a single occurrence. Here the court said that two independent causes existed for Ran-Nan's total loss. "Because there are two causes," the court said, "there have been two occurrences of employee dishonesty." The court held that Ran-Nan was entitled to recover for both occurrences. The trial court decision was affirmed.

Ran-Nan Inc. vs. General Accident Insurance Co. of America, 5th U.S. Circuit Court of Appeals, May 24, 2001. (BI/04/N.-\$10)

Court clarifies definition of 'total disability' in LTD policy

A group long-term disability policy's definition of "total disability" as "you are not working at any job" warranted denial of benefits for a working individual, regardless of whether that individual's return to work was due to financial necessity arising from the initial denial of his claim, according to the 8th U.S. Circuit Court of Appeals.

After suffering a second heart attack in 1997, attorney James J. Galman applied for benefits under his law firm's long-term disability plan. The insurance plan was funded by a group insurance contract issued by The Prudential Insurance Co. of America.

Mr. Galman maintained that the stress of litigation and trial work aggravated and accelerated his coronary artery heart disease, rendering him totally disabled. Prudential initially denied his application, and Mr. Galman sued, claiming wrongful denial. In the meantime, he returned to work, claiming that the initial denial forced him to return for financial reasons. The trial court ruled for Prudential.

On appeal, Mr. Galman argued that his returning to work at the law firm did not conclusively establish that he was not disabled.

The 8th Circuit stated that public policy does not prevent employers from declining to grant total disability benefits to employees who are willing and able to risk returning to work. Furthermore, the appeals court said that the long-term disability insurance plan language—stating "you are not working at any job"—was plain and unambiguous and that such provisions in the Employee Retirement Income Security Act plans must be enforced in accordance with their terms. The trial court decision was affirmed.

Galman vs. Prudential Insurance Co. of America, 8th U.S. Circuit Court of Appeals, June 28, 2001. (BI/02/N.-\$10)

Carpal tunnel is compensable as accidental injury

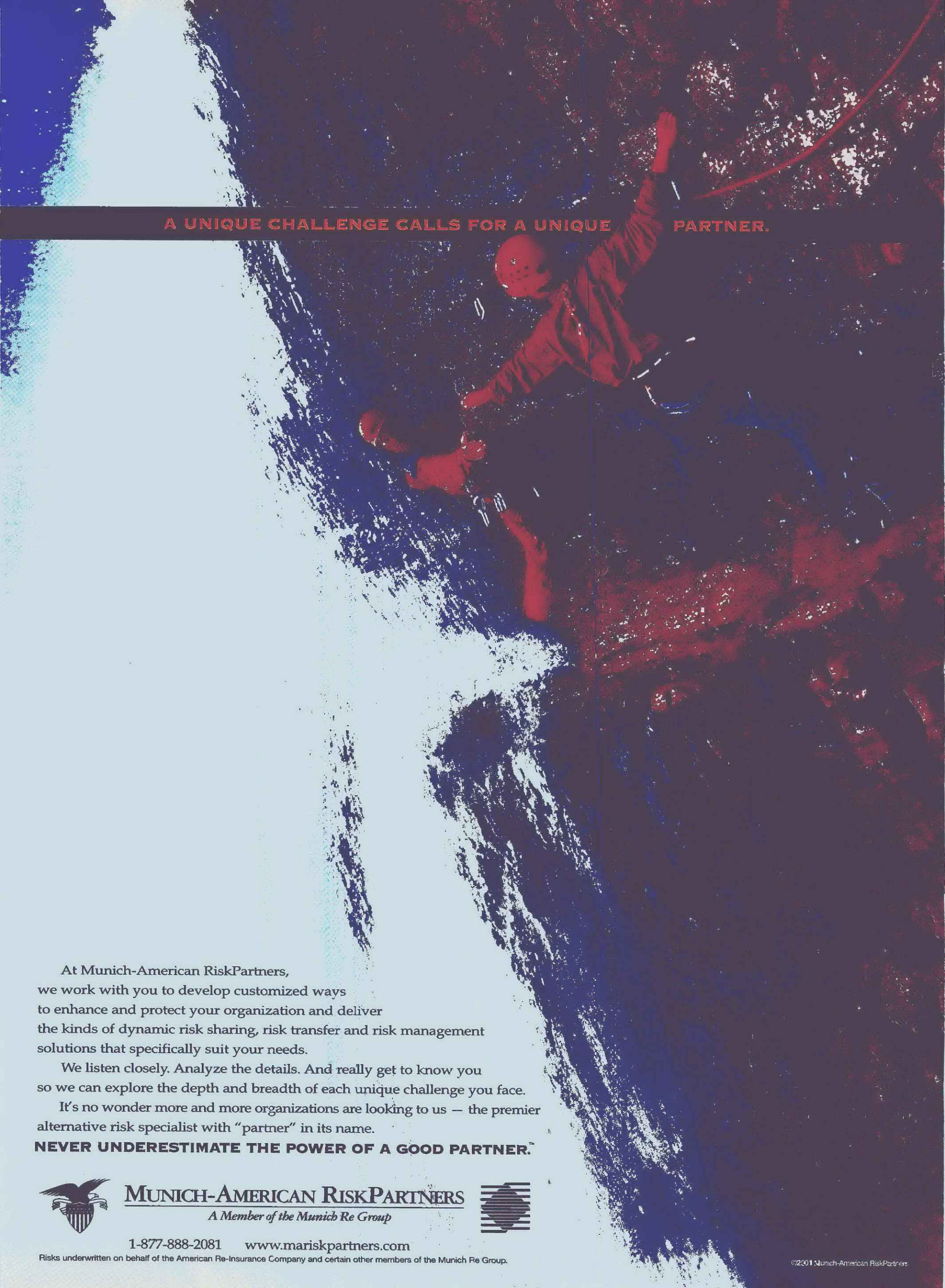
In a case of first impression, the Court of Appeals of South Carolina ruled that carpal tunnel syndrome was compensable under the Workers Compensation Act as an injury by accident.

AVM Inc. employed Miriam Pee in various capacities beginning in 1987. Each of her jobs involved the repetitive use of her hands. By spring 1995, she experienced tingling and numbness and was diagnosed with CTS in both wrists. She underwent corrective surgery on her left wrist on June 16, 1995, and was authorized to return to work at the end of July 1995. In January 1996, the symptoms returned in her left wrist, and the symptoms in her right wrist were worsening. Her physician removed her from work beginning April 20, 1996. Ms. Pee filed for and was awarded workers compensation. Her employer appealed.

On appeal, AVM argued that CTS is not an injury by accident because it is not unexpected in either cause or result, and it has no definiteness in time as to either cause or result. The court said that a slip, fall or other fortuitous event or accident in the cause of an injury is not required in order to establish an "injury by accident" under the Workers Compensation Act. The court said that, though Ms. Pee experienced symptoms for some time and during repetitive work activity, there was no indication that she expected or intended the resulting condition of median nerve compression. The court affirmed the award of compensation.

Pee vs. AVM Inc., Court of Appeals of South Carolina, Jan. 8, 2001, *Rehearing Denied* March 12, 2001. (BI/01/N.-\$10)

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



A UNIQUE CHALLENGE CALLS FOR A UNIQUE PARTNER.

At Munich-American RiskPartners, we work with you to develop customized ways to enhance and protect your organization and deliver the kinds of dynamic risk sharing, risk transfer and risk management solutions that specifically suit your needs.

We listen closely. Analyze the details. And really get to know you so we can explore the depth and breadth of each unique challenge you face.

It's no wonder more and more organizations are looking to us — the premier alternative risk specialist with "partner" in its name.

NEVER UNDERESTIMATE THE POWER OF A GOOD PARTNER.™



MUNICH-AMERICAN RISKPARTNERS

A Member of the Munich Re Group



1-877-888-2081 www.mariskpartners.com

Risks underwritten on behalf of the American Re-Insurance Company and certain other members of the Munich Re Group.

©2001 Munich-American RiskPartners

FERMA CONFERENCE

Environmental liabilities drawing greater attention

By SARAH VEYSEY

BARCELONA, SPAIN—The continual emergence of new and complex risks requires that risk managers find ways to manage their exposures in a sustainable way, environmental risk experts say.

Especially with regard to the environment—which is an increasingly important concern within the European Union—risk managers must look at ways to manage their exposures, two speakers said during a session at the recent biennial conference of the Federation of European Risk Management Assns. in Barcelona, Spain.

The session sought to explore how risk managers can harness the concept of sustainability. The concept refers to practices designed to perpetuate a given condition, such as economic growth, without depleting natural resources or polluting the environment.

"Risk management and sustainability have a lot in common," said Walter Stahel, vice secretary general for the research project on risk management at the Geneva Assn., a Switzerland-based risk and insurance economics think tank. "They

focus on loss prevention and waste prevention," he said. "And they both take the approach that prevention is better than the cure."

"As we all know, environmental issues are becoming more and more important," especially within the European Union, said Kathleen Dwyer, a vp of Zurich Specialties in London and an assistant vp with Zurich Financial Services Group Inc. "Brussels is concentrating more and more on business' liability for the environment."

Ms. Dwyer told delegates that en-

vironmental insurance is one tool that could be used both to satisfy social and ethical concerns and to smooth out the balance sheet.

"It helps in securing investment. It helps to manage costs, and it provides secure protection to companies undertaking brownfield projects," she said.

Ms. Dwyer addressed the notion that the purchase of environmental insurance might cause a moral hazard and allow companies to think that simply buying the coverage is enough. Most environmental un-

derwriters require that policyholders manage their environmental exposure and accept responsibility for it, she said. Most environmental underwriters also insist on site inspections and plan reviews, among other measures, she said.

Regarding environmental exposure, Ms. Dwyer said risk managers face two choices: they can do nothing and accept unknown environmental exposures, or they can transfer the risk. She noted that environmental insurance provides risk managers not only with claims

management tools but also risk management support in the form of risk analysis.

The issue of sustainability is becoming more important, said Mr. Stahel. "If we don't come to grips with cultural issues, we can forget about sustainability—and perhaps also risk management," he said.

When seeking to operate ethically, said Mr. Stahel, companies must take account of the countries in which they operate. Ideas of what constitute ethical business practices vary across the globe, he noted.

Models: Making informed decisions

Continued from page 3

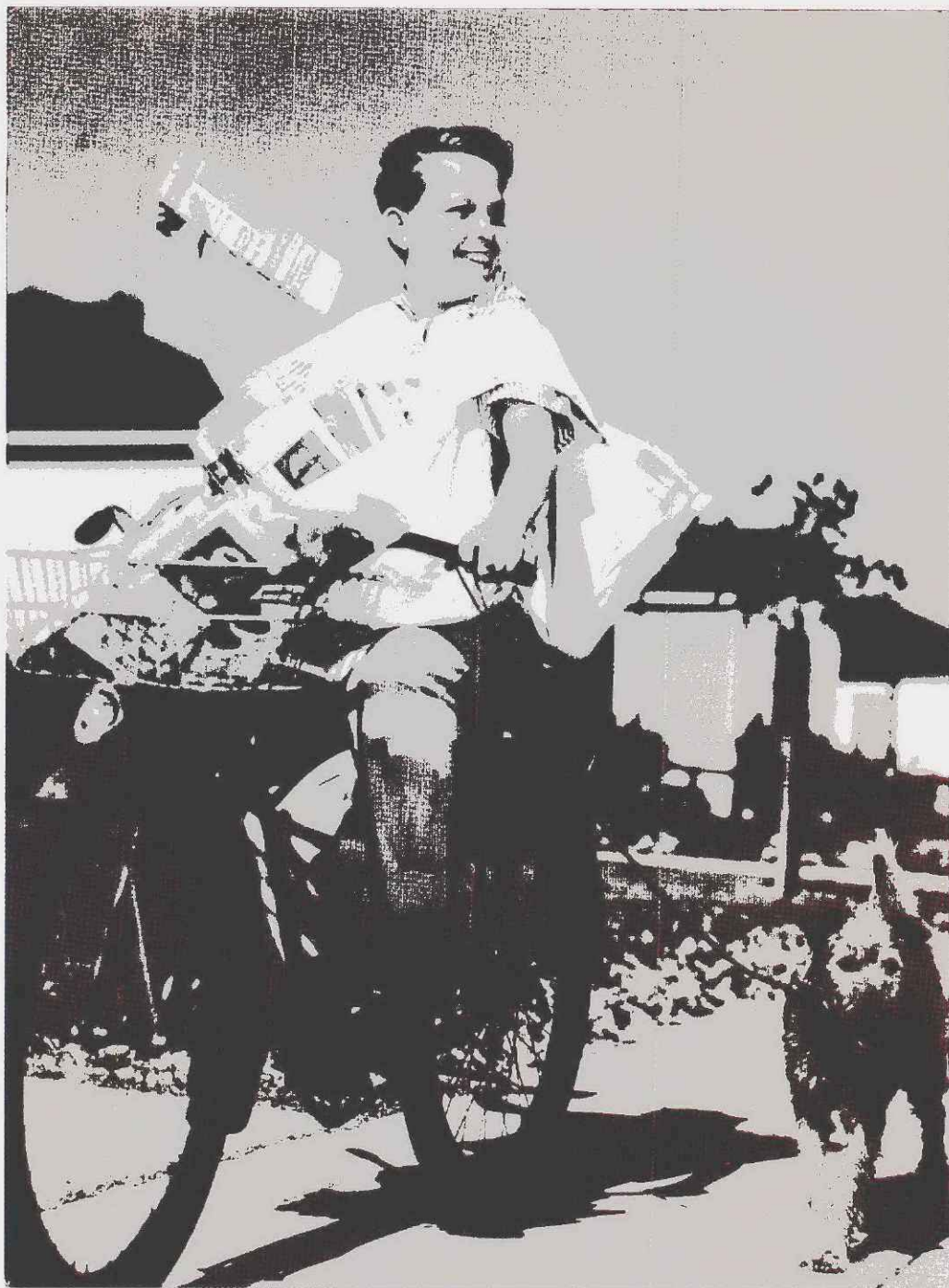
Greig Ltd. in London, said his company developed such modeling tools in order to help reinsurance customers answer exposure questions and set reinsurance strategies, as well as to help them make general business decisions.

"One of our main goals is looking at whether the cedent should take insurance program A or insurance program B," Mr. Maitland said. The intermediary also uses the software model to determine the appropriate technical price for a program.

Flexibility is important in any modeling program, Mr. Maitland noted, because it's important to be able to use the program to address new questions or exposures that might arise. Transparency is another important quality, he noted, "When you have results you don't expect, you need to be able to dig into the model and find out what the cause of the unexpected results was."

Mr. Temple emphasized that a risk assessment model isn't an end in itself.

"Don't get me wrong. No one is saying that the model is giving you answers," the Invensys risk manager said. "The model is giving you information in a different form than the normal roundtable conversations, which you can then use to find answers."



FERMA CONFERENCE

Attacks set off marketwide changes, executive says

By SARAH VEYSEY

BARCELONA, SPAIN—The events of Sept. 11 "really did shake the foundations of the U.S. and the world as we know it," said an executive of a major U.S. property insurer.

"The reaction has been one of terror and fear," said Ruud Bosman, executive vp of Factory Mutual Insurance Co., speaking at the Federation of European Risk Management Assns.' biennial conference in Barcelona, Spain. The Johnston,

R.I.-based insurer does business as FM Global.

Insurance policies will pay out and reinsurers will meet their obligations, however, Mr. Bosman assured risk managers.

"Make no mistake, this is a reinsurance event," he said. "It is their balance sheets that will feel it, and it is going to change the marketplace." He estimated that "about 75% of the property loss will end up in the reinsurance market."

The impact of the disaster on the reinsurance industry, Mr. Bosman

said, must be seen in the context of operating results, which were already falling; the natural catastrophe experience—2001 saw the second-highest number of natural catastrophes in the first half of the year of any for the past 50; and the fact that reinsurers' investment returns have declined.

Capacity will be withdrawn, he predicted, noting this could be forced, as the result of regulatory or rating actions, or involuntary. But new capacity will enter the market, he said.

The cost of retrocessional reinsurance will increase, though retrocessional coverage will still be available, Mr. Bosman predicted.

Terrorism also likely will be excluded from many coverages—"no balance sheet can respond to an essentially unlimited exposure; therefore, action will be taken to limit exposure," he said.

But Mr. Bosman assured risk managers attending the FERMA conference that the reinsurance market will survive. "It is important to recognize that this is not a mid-

'80s-type event where the product disappears," he said. "The product will not disappear."

The Sept. 11 attacks also had a huge impact on the direct insurance industry, Mr. Bosman said. Among the consequences is a need for reinsurance, he said. "The thing about this event is that it doesn't affect the probability of the next one," he said. It is still the hurricane season in the U.S., for example, he noted. Insurers "will see our retentions go up, costs will go up, and the availability of capacity will go down," he said.

'Make no mistake, this is a reinsurance event. It is their balance sheets that will feel it, and it is going to change the marketplace.'

*Ruud Bosman
FM Global*

At one point, a flat tire was your biggest distribution hurdle.

AS YOUR BUSINESS BECOMES MORE COMPLEX,
SO DOES RECOGNIZING ITS RISKS.

Business Impact Analysis from FM Global helps you recognize business interruption exposures and identify ways to minimize potential loss.

From mergers and acquisitions to outsourcing and complex supply chains, change will impact your risk. At FM Global, we have evolved beyond the traditional solutions.

To find out more, log on to fmglobal.com.

Protecting the value business creates.

FM Global

Mr. Bosman said insurance rates will significantly increase. "Prices will move 75% to 100% in the property area," he predicted. Insurers may also change policy terms. "Many insurance companies will insist on policy terms of a year because reinsurance is bought on a yearly basis," he said. "I don't think that in the U.S. you will see many multiyear deals."

Mr. Bosman said he also expects that many insurers will now insist on using their own policy forms.

Now, many reinsurers likely will exclude terrorism from their coverages, he said. This provides a challenge for the insurance industry to either come forward with exclusions or sublimits, or develop some form of Pool Re-type structure to cover terrorism-related risks.

"Blanket limits will be used much more tightly," he predicted. And underwriters, particularly property underwriters, are going to look very closely at their risk selection, he added.

FERMA CONFERENCE

Gathering in Barcelona lures over 900

BARCELONA, SPAIN—The Federation of European Risk Management Assns. held its biennial conference in Barcelona, Spain, on Oct. 7-10.

More than 900 risk management and insurance executives from across Europe as well as from the United States, South Africa and Australia attended the FERMA meeting. This year's conference theme was "New Economy, Social Impacts: The Risk Management Response."

The next FERMA conference will be held in Rome in 2003. For information, visit www.ferma-asso.org; or e-mail Executive Manager Florence Bindelle at info@ferma-asso.org.

FERMA CONFERENCE

Enterprise risk management needed, but hindered

By RODD ZOLKOS

BARCELONA, SPAIN—A changing global business environment and ever more complex risks have created the need for a broader approach to risk management, even before the terrorist attacks of Sept. 11, insurance industry and risk management experts say.

But for some panelists examining business enterprise risk and the new economy at the Federation of European Risk Management Assns.' Risk Management Forum 2001 earlier

this month in Barcelona, Spain, there remain some significant obstacles to managing risks on an enterprisewide basis.

Thomas Kaiser, chief executive officer of Zurich Corporate Solutions in Zurich, Switzerland, suggested that globalization, corporate acquisitions and e-commerce are among several factors changing the nature of the risks companies face.

In the wake of Sept. 11, coverage will be more expensive and less available, and terms and conditions will change, forcing risk managers

to be more creative. And the different types of risks will have to be addressed on a continuum rather than individually, he said.

"These problems call for risk management solutions, not products," Mr. Kaiser said. "It takes a lot of different stakeholders around the table to build a solution," he said, and the risk manager's challenge is to provide leadership and bring all the necessary players to the table.

Barney Schauble, executive director of fixed income, currency and commodities at Goldman Sachs In-

ternational in London, said that in taking an enterprisewide approach, risk managers should not only identify the risks their organizations face but also the markets to which those risks might be transferred.

The capital markets can provide some risk transfer options, as has been demonstrated through risk-linked securities and in such areas as credit risk and weather risk transfer.

But, while some enterprise risk transfer techniques are promising in theory, in reality they may prove

lacking. One example is integrated risk transfer, Mr. Schauble said. In theory, a company should be able to benefit from hedging uncorrelated risks together, but "it's not clear it actually works out that way," he said. "In our experience, it has not."

It's difficult to find a single risk taker to assume an integrated risk portfolio, he said, and so any correlation benefit appears to be "unfortunately more of an academic theory than it is a reality."

Olaf Kastner, managing director at Bavaria Wirtschaftsagentur GmbH, a risk management unit of BMW Group in Munich, Germany, said he sees two major reasons to question the practicality of new risk

"'Named perils' is the name of the game. And in many cases, I believe the one peril (insurers) would like to name is fire."

*Olaf Kastner
Bavaria Wirtschaftsagentur*

"Our corporation wants a real offshore expert. Do you really return profits if we control losses?"

YES WE DO.

When you need proven alternative risk expertise, call Commonwealth Risk at 888.793.3732 ext. 1641.

Commonwealth Risk clients have received over \$225 million in underwriting profits and investment income over the past 20 years. As a member of the MRM family of companies, Commonwealth Risk provides large corporate accounts with access to the world's largest A.M. Best-rated rent-a-captive facility and the largest independent captive manager.

CommonwealthRisk

An MRM Company

Your best alternative.

www.accessMRM.com or email: art@accessMRM.com

Business Insurance®

• SERVICES •

REPRINT SERVICES

BI's Reprint Department can provide reprints, in quantities of 100 or more, of any article appearing in the weekly newsmagazine. Legal permission, complying with U.S. copyright laws, also can be purchased by companies wishing to reprint on their own, material appearing in the newsmagazine. For information, call or fax:

312/649-5319

Fax:

312/280-3174

The conglomerate took a risk divesting the nursing home chain.

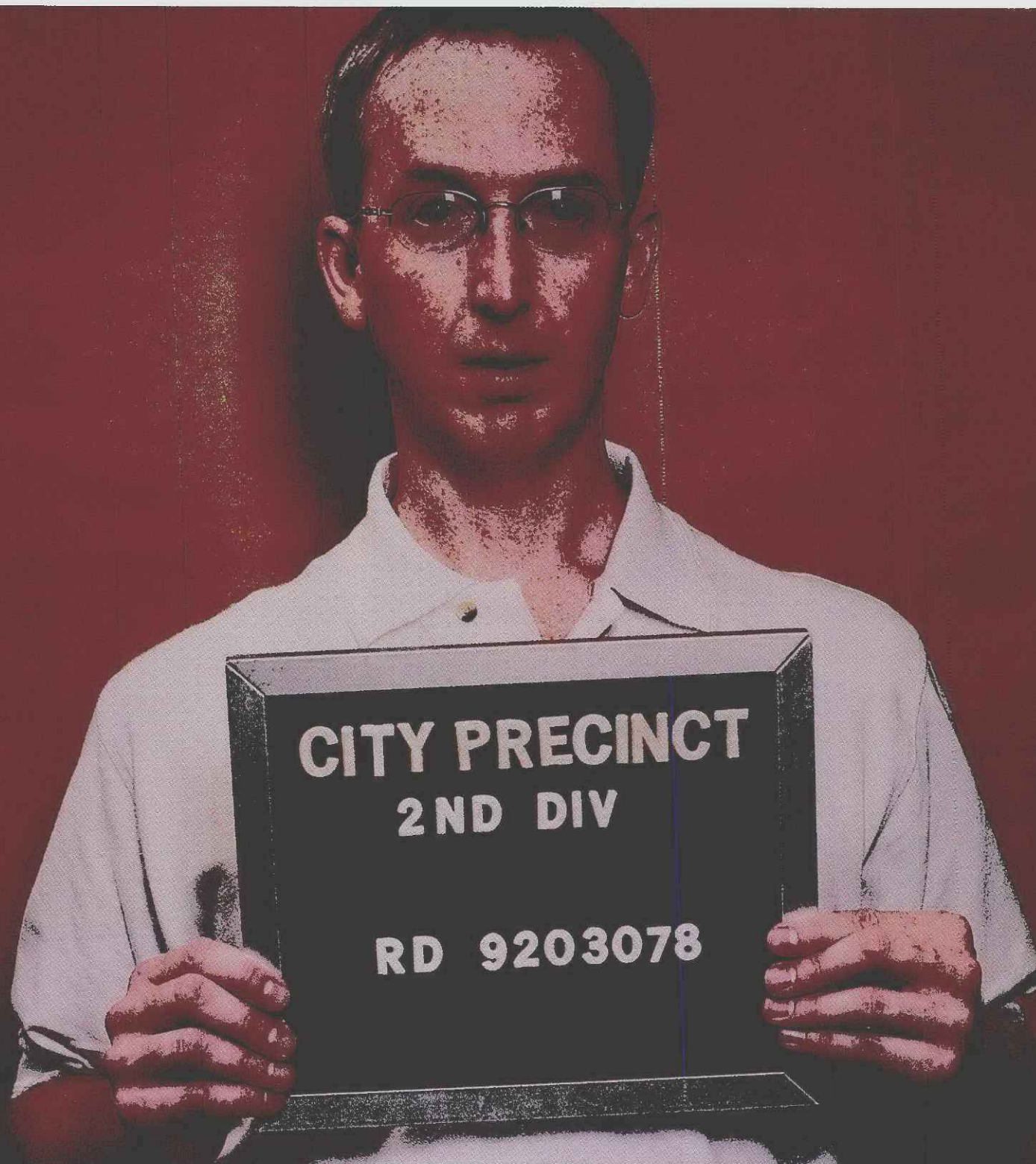
The attorneys took a risk writing the purchase & sale agreement for the nursing home chain.

The bank took a risk underwriting the sale of the nursing home chain.

The private equity firm took a risk acquiring the nursing home chain.

The nursing home took a risk hiring the orderly without a thorough background check.

And Marsh solved all these risks.



MMC Marsh & McLennan Companies

www.marsh.com

MARSH
The world's #1 risk specialist™



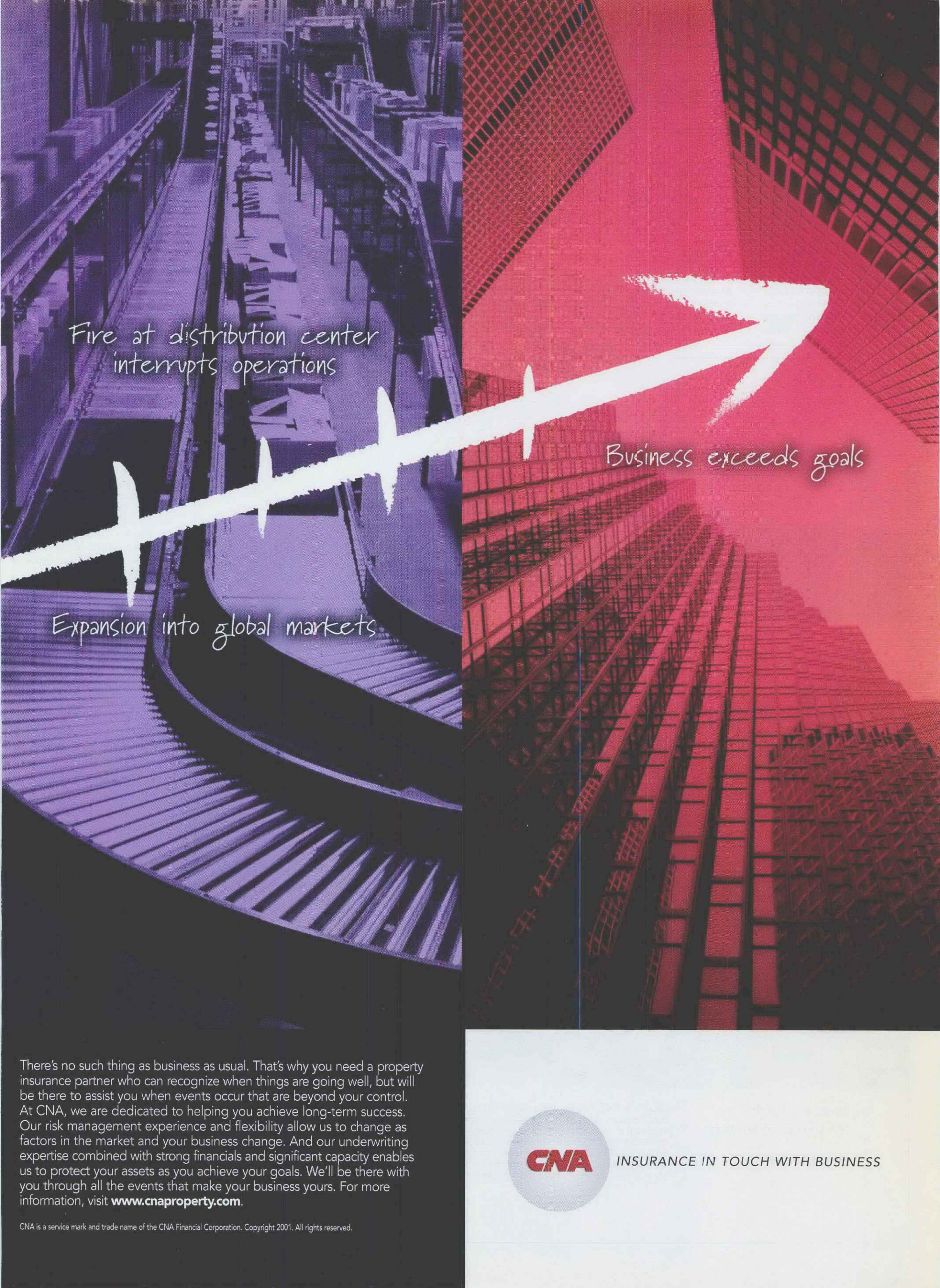
day in. day out. and into the future.

New product creates increased hazard;
engineering delivers immediate solution

Open for business

First year's sales exceed expectations

R I S K M A N A G E M E N T P R O P E R T Y



Fire at distribution center
interrupts operations

Expansion into global markets

Business exceeds goals

There's no such thing as business as usual. That's why you need a property insurance partner who can recognize when things are going well, but will be there to assist you when events occur that are beyond your control. At CNA, we are dedicated to helping you achieve long-term success. Our risk management experience and flexibility allow us to change as factors in the market and your business change. And our underwriting expertise combined with strong financials and significant capacity enables us to protect your assets as you achieve your goals. We'll be there with you through all the events that make your business yours. For more information, visit www.cnaproperty.com.

CNA is a service mark and trade name of the CNA Financial Corporation. Copyright 2001. All rights reserved.



INSURANCE IN TOUCH WITH BUSINESS

Comings & Goings

Alan Jay Kaufman has assumed the roles of president, chairman and chief executive officer of Farmington Hills, Mich.-based wholesaler Burns & Wilcox Ltd., following the Aug. 13 death of his father, Herbert W. Kaufman, who was the company's founder.

Alan Kaufman also will serve in the same capacity for Burns & Wilcox's parent company, the Kaufman Financial Group.

David W. Whittington was named senior vp of underwriting

and policy issuance at M.E. James Surplus Lines Insurance Brokerage Inc. of Alpine, Calif. He was formerly senior vp of underwriting at Public Livery Insurance Services Inc.

Brokers:

Walter L. Smith was promoted to senior vp, general counsel and secretary of Hilb Rogal & Hamilton Co. in Glen Allen, Va. Mr. Smith, who joined HRH in 1988, most re-



Mr. Kaufman



Mr. Davis

manager and chief operating officer of subsidiary Adams Safety Management Services. Before joining T.J. Adams, he was chief operating officer of Houston Casualty Corp. Employer Services Inc. in Houston.

Reinsurance:

cently was vp, general counsel and secretary.

Anthony Pulgine was named chief marketing officer of Oak Brook, Ill.-based T.J. Adams Group L.L.C. He previously was general

Ken Lavigne has been named vp and manager of Mutual Boiler Re, a Malvern, Pa.-based business unit of Factory Mutual Insurance Co., which does business as FM Global. He formerly was operations

vp and client service manager for FM Global's Montreal operations.

Jon Kocourek has joined the San Francisco office of Willis Re Inc. as executive vp. Mr. Kocourek, who formerly was with Benfield Blanch, will have responsibility for new business production on the West Coast.

Managed care:

Magellan Health Services Inc. named **Daniel S. Messina**, the behavioral health care management firm's president, to the additional role of chief executive officer. Mr. Messina succeeds **Henry T. Harbin**, who will remain chairman of Columbia, Md.-based Magellan.

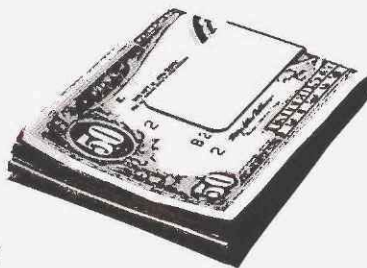
Other suppliers:

John C. Hardwick Jr. joined Kilpatrick Stockton L.L.P. as a partner in the labor and employment practice in Washington. He formerly was with Venable, Baetjer, Howard & Civiletti L.L.P.

Donald B. Davis Jr. was named a partner in the Insurance and Financial Institutions Practice Group in the Baltimore office of Saul Ewing L.L.P. Prior to joining the firm, Mr. Davis was assistant vp and group general counsel to the Global Specialty Products group of The St. Paul Cos. Inc.

Don't let loss costs
get away from you.

Keep them contained with
ESIS risk management services.



esis

Our Services:

Claim Management

Risk Control

Risk Management
Information Systems

Recovery Services

In today's world, the number and types of business risks are growing. Companies are taking on a bigger portion of those risks. Controlling loss costs is getting harder all the time. In short, a risk manager's job is tougher than ever.

With ESIS, you can put the clamps on risk and protect your bottom line. We start by benchmarking your company's performance against businesses like yours. We suggest which of our complete set of risk management tools you can use to reduce your exposures. We work with you to design and implement an aggressive risk management program. All with the goal of helping you achieve loss costs better than your industry peers.

ESIS is the risk management services affiliate of ACE USA. We've been helping companies limit their exposure to risk since 1953, and we're a recognized leader today.

Contact your broker for more information. You can also call ESIS at 866-357-3797.

Take away the risk
and you can do anything.™

www.esis.com

Organized in 1953, ESIS, Inc., (ESIS) provides sophisticated risk management services designed to reduce both claim frequency and loss costs. ESIS' Risk Management Information, Risk Control, and Claim services can be used individually or collectively as part of a risk management program. ESIS is part of ACE USA, headquartered in Philadelphia. ACE USA is the U.S.-based operating division of the ACE Group of Companies, headed by ACE Limited (NYSE: ACE). ACE USA provides insurance products and services through the U.S. operating subsidiaries. The ACE Group of Companies provides insurance and reinsurance for a diverse group of clients around the world. Additional information can be found at: www.esis.com and www.ace-usa.com.

"Be sure that you return it."

If you're racing through this issue of *Business Insurance* because you "borrowed" it from a colleague, you should have your own subscription. Then you'll be first on the list. You can take as much time as you like with all of *Business Insurance's* exclusive worldwide news of corporate risk, employee benefit and managed health care every week.

To subscribe, use the card in this issue or call
1-888-446-1422
toll free.

Subscription rates
in U.S. dollars for
1 year, 52 issues.

U.S.	\$97
Canada*/Mexico	\$130
All other countries by expedited air	\$230

* Price includes Canadian GST.

Ask about our special 20% off
group rate for five or more
subscriptions.

Business Insurance
www.businessinsurance.com

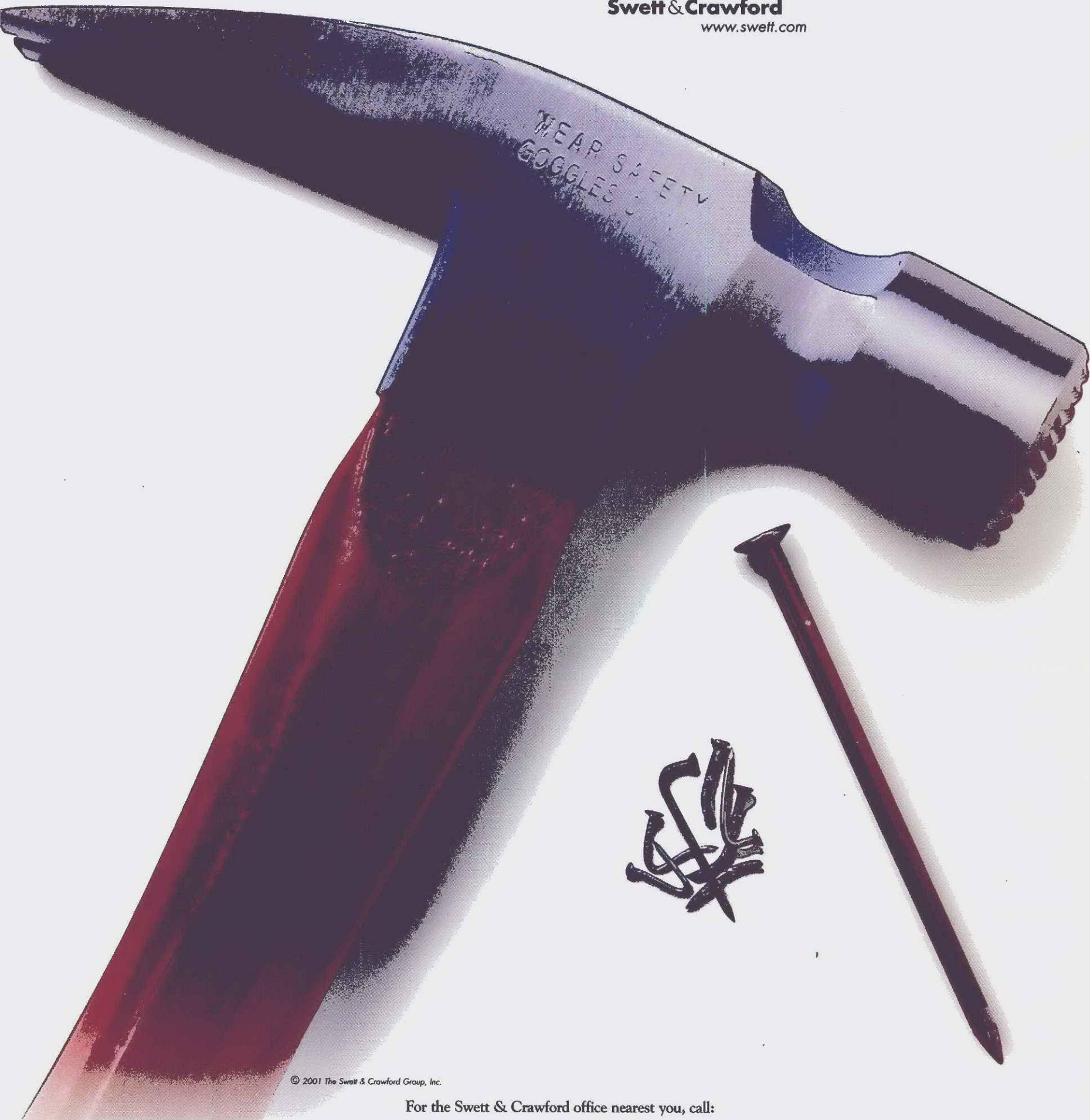
Subscription Dept.
965 E. Jefferson
Detroit, MI 48207
Outside the U.S.,
call (313) 446-0450

think bigger!

When you want to nail down a piece of business, look beyond your insurance agency's in-house resources to the powerful strategic alliances you can build that will make your firm more knowledgeable, more creative and more productive. Make contact with your local Swett & Crawford office when you need to place specialty risks of any size. As the nation's largest wholesaler, we can deliver unequalled experience, market access and clout, underwriting know-how and reinsurance expertise that can't be matched by any other local or national specialty risk broker. Give us a call and we'll help you pound out the winning position.

Swett & Crawford

www.swett.com



© 2001 The Swett & Crawford Group, Inc.

For the Swett & Crawford office nearest you, call:

Atlanta, GA (404) 240-5200 • Bellingham, WA (360) 671-0500 • Boise, ID (208) 376-1161 • Boston, MA (617) 757-3300 • Cincinnati, OH (513) 768-7600 • Clearwater, FL (727) 536-1006
Coral Gables, FL (305) 461-8500 • Dallas, TX (214) 747-1200 • Denver, CO (303) 755-5775 • Detroit, MI (248) 333-0500 • Fresno, CA (559) 261-3300 • Glens Falls, NY (518) 792-4228
Greensboro, NC (336) 852-7882 • Honolulu, HI (808) 545-2401 • Los Angeles, CA (213) 439-3400 • Minneapolis, MN (612) 333-0361 • Newport Beach, CA (949) 737-7300
New York, NY (212) 791-9745 • Pennsauken, NJ (609) 488-5545 • Philadelphia - North, PA (215) 576-1500 • Philadelphia - West, PA (610) 891-7171 • Phoenix, AZ (602) 867-4100
Portland, ME (207) 774-3857 • Portland, OR (503) 253-3245 • Reno, NV (702) 323-8828 • Richmond, VA (804) 934-0320 • Salt Lake City, UT (801) 266-5199 • Seattle, WA (206) 448-9400
St. Croix, U.S. Virgin Islands (340) 778-0449 • St. Louis, MO (314) 231-9470 • Woodland Hills, CA (818) 348-7026

COST INCREASE FORECAST BY PLAN TYPE

	2002*	2001	% change
Traditional indemnity	\$6,817	\$5,928	15%
Point of service	5,489	4,857	13
Preferred provider organization	5,463	4,834	13
Health maintenance organization	5,336	4,522	18

* 2002 FIGURES ARE PROJECTIONS
SOURCE: HEWITT ASSOCIATES L.L.C.

GRAPHIC BY ADAM DOI

Costs: Largest increase in years

Continued from page 1

um increases they have received as of Oct. 1, Hewitt projects that next year's overall increase will average 15.6%, bringing the cost per employee to \$5,524. Hewitt forecasts that employers will receive rate increases averaging 18% for HMOs, and 13% for both PPO and POS plans.

While actual increases could be a couple of percentage points lower than those projections—if, for example, employers drop certain HMOs or if greater cost-shifting to employees reduces utilization—em-

ployers still will be hammered with the highest cost increases seen since the beginning of the 1990s.

While cost increases began to recede markedly in the early and mid-1990s, as employers aggressively began pushing employees into managed care plans and as HMOs held down rates to build market share, there is nothing to suggest that the current rate of cost increases will soon abate.

Health care costs "are a runaway train with a lot of track in front of it. We don't see things getting better anytime soon," said Kenneth

Sperling, a Hewitt consultant in Norwalk, Conn.

For now, the best that employers can hope for is that cost increases will stabilize, albeit at an unacceptably high rate, Mr. Sperling said. "Longer term, there will have to be radical changes in plan design, management and delivery for costs to cool. We are going to have to get creative," he said.

Hewitt's study is based on information that the Lincolnshire, Ill.-based benefit consultant compiled from about 300 employers, whose workforces average about 5,000 employees. Health care costs include employer and employee premium contributions—but not copayments—for medical, hospital and prescription drug coverage.

Several factors continue to drive up costs, including greater use of prescription drugs, the higher cost of some drugs, the ability of doctors and hospitals to obtain bigger rate increases, and a shift in pricing strategy by managed care plans. Such plans now are more interested in boosting margins through higher rates than in improving market share by keeping rates down.

And these cost drivers do not show any signs of easing. For example, while managed care plans once could force doctors and hospitals to cut rates significantly if they wanted to be in the plans' networks, the balance of power over the last few years has dramatically shifted.

As provider groups have consolidated, plans are far less likely to negotiate with individual doctors and hospitals and instead must deal with large physician groups and big hospital chains, which the plans need to keep their networks intact. "The providers are saying to plans, 'You need us more than we need you,'" Mr. Sperling said.

Until recently, amid a tight labor market and a strong economy, employers have absorbed the brunt of cost increases. In 2002, however, Hewitt expects many companies to pass along about 25% to 30% of the cost increases to employees.

But in 2003, there could be an acceleration of cost-shifting, he said, noting that decisions employers made for the 2002 plan year often occurred this spring, when the economic climate was considerably different.

Copies of Hewitt's annual health cost study are available on the company's Web site, www.hewitt.com.



WITH AN ALL-STAR LINE-UP IN KEY POSITIONS,
OUR TEAM IS SET TO DELIVER
AN OUTSTANDING WINNING PERFORMANCE



QBE Reinsurance Corporation
QBE Insurance Corporation

www.qbe.com

HEALTH PLAN COSTS ACCELERATING

cost per employee	
2002	\$5,524*
2001	4,778
2000	4,335
1999	3,961
1998	3,674

* PROJECTED
SOURCE: HEWITT ASSOCIATES L.L.C.

Our job?



Help you
find the thorns.

Every business has its hidden risks. And it's your job to anticipate. Plan. Prepare. At Zurich North America, we go beyond insurance to help you meet the diverse risk and financial management challenges you face today. With comprehensive solutions to minimize loss. Focused specialists with firsthand experience in your industry. And e-business capabilities for instant information. As part of the Zurich Financial Services Group, we have the resources and financial strength to help you manage any kind of risk. Anywhere in the world. And come out smelling like a rose. *Connecting here. To there.*



ZURICH

www.zurichna.com
1-800-382-2150

You've opened the door to a new

Business Insurance®

www.businessinsurance.com

Now the industry's most formidable source for news and information will be bringing you the same authoritative reporting you've come to rely on for 34 years, but with a new look.

Because our nearly 134,000* readers — leading corporate executives in the commercial insurance, risk management, employee benefits and health care marketplace, along with thousands of agents, brokers, consultants, insurers, reinsurers and other service providers — always come first, our redesign has made *BI* an even more important first-read every Monday morning, always delivering the benefits of better coverage.

*Includes pass-along readership.

EDITORIAL

NEW YORK	212-210-0288
CHICAGO	312-649-5319
WASHINGTON	202-662-7244
NEW ORLEANS	504-364-1908
LOS ANGELES	323-370-2455
NO. CALIFORNIA	408-774-1500
DENVER	303-698-7601
TUCSON	520-579-1937
LONDON	011-44-207-457-1425

IN PRINT &
ONLINE, *BI*
PROVIDES
THE
BENEFITS
OF BETTER
COVERAGE.

SALES

NEW YORK	212-210-0133
CHICAGO	312-649-5276
BOSTON	617-292-4856
LOS ANGELES	323-370-2456

PRODUCTION

CHICAGO	312-649-5337
---------	--------------

CIRCULATION

DETROIT	313-446-1662
TOLL FREE	888-446-1422

Lords hold brokerage liable for losses after contract voided

J&H negligent in advising Bermuda reinsurer, U.K. highest court rules

By CAROLYN ALDRED

LONDON—A House of Lords ruling that a broker is liable for a client's full losses on a reinsurance contract because of negligent advice may change the way intermediaries conduct business.

In addition, the ruling will drive up the price of brokers' professional indemnity coverage, one lawyer says.

The House of Lords, the United Kingdom's highest court, ruled last week in *Aneco Reinsurance Underwriting Ltd. vs. Johnson & Higgins Ltd.* that Johnson & Higgins must pay the full losses on a 1988 proportional reinsurance treaty covering certain Lloyd's of London syndicates, which J&H had placed on behalf of Aneco. J&H is now part of New York-based Marsh & McLennan Cos. Inc., and Bermuda-based Aneco is in liquidation.

Aneco argued in court that J&H had negligently advised it of the availability of retrocessional reinsurance for Aneco's own liabilities from the treaty. Aneco also said J&H was aware that Aneco was not prepared to cover the syndicates without

such reinsurance. A retrocessional reinsurance contract that J&H placed on behalf of Aneco was later voided because of misrepresentations, according to the court. Among the losses on the treaty Aneco wrote for the syndicates were several catastrophes, including Hurricane Hugo and the Exxon Valdez oil spill.

J&H argued it was liable for only about \$11 million of losses on the voided reinsurance contract, but the Law Lords upheld a 1999 U.K. Court of Appeal ruling that J&H must reimburse Aneco for all the losses on the proportional treaty. The Law Lords' decision is not subject to appeal.

Aneco's losses on the treaty may run as high as \$60 million, according to London law firm CMS Cameron McKenna, which represented Aneco's liquidator, PricewaterhouseCoopers.

This case "has important implications for brokers and their potential exposure when placing business," CMS insurance partners Mark Elborne and Andrew Symons said in a joint statement. "Although this decision ultimately turned on its



facts, it is the first time anyone has succeeded in a claim against a reinsurance broker for damages to compensate their client for the full measure of the losses suffered as a result of their negligence," the statement says.

The ruling will allow Aneco's scheme of ar-

See **LIABLE**/page 26

AILA CONFERENCE

Insolvency plan urged after HIH

By KATE TILLEY

GOLD COAST, AUSTRALIA—The Australian government's response to this year's collapse of HIH Insurance Ltd. is "neither equitable nor satisfactory," a U.S.-based attorney says.

Peter Axelrod, a partner with Reid, Axelrod, Ruane & McCormack P.C. in San Rafael, Calif., spoke recently at the Australian Insurance Law Assn. annual conference, held Sept. 26-28 on Queensland's Gold Coast. Mr. Axelrod, who frequently handles cases involving Australian and U.K. companies, told attendees that "the Australian Government had not contemplated the possibility and consequences of the failure of a major insurer."

Losses from HIH's collapse have ballooned to an estimated \$3.6 billion Australian to \$5.3 billion Australian (\$1.84 billion to \$2.71 billion).

"The status of pending litigation where HIH insured one or more of the parties remains in doubt, and larger insureds are without remedy of any kind. Public funds will be used to fill the gap created by private default. Despite all of this, there is

still no movement in the Parliament to provide a better result when the next failure occurs," he said.

Australia would benefit from adopting a system like those in the United Kingdom and the United States, which have for 30 years provided for the orderly resolution of insurer insolvency and the protection of policyholders without using taxpayer funds, Mr. Axelrod said.

HIH's collapse was not "a sudden underwriting casualty, such as a cyclone or major widespread disaster, creating an unusual increase in claims, but rather a combination of mismanagement, inadequate regulation and, it has been alleged, criminal conduct," he said.

He said the government's support plan addressed "some but far from all of the urgent needs of former HIH insureds, all at the expense of the Australian taxpayer. Many problems remain unresolved."

In addition to an investigation and tighter legislative controls, the Australian government has committed \$640 million Australian (\$326.7 million) for poli-

See **CONTROL**/page 24

Risk after attacks needs rethinking

Munich Re report calls for new look at underwriting

By CAROLYN ALDRED

Insurers and reinsurers must undertake a "fundamental rethink of their covers and underwriting policies" following the Sept. 11 terrorist attacks on New York's World Trade Center, according to the world's largest reinsurer.

A report by Munich Reinsurance Co. on the aftermath of the tragedy, which likely will rank as the largest insured loss ever, examines the scale of the loss—up to 50 buildings in Manhattan destroyed or damaged—and how insurers likely will alter underwriting in the future.

"The attack wrought hitherto inconceivable damage, highlighting the necessity of a fundamental reassessment of the risk situation with respect to the peril of terrorism," according to the Munich Re report, "11th September 2001, The Attack on the World Trade Center in New York from an Insurance Point of View."

In addition to the loss of at least 6,000 lives, the attack led to: the destruction of the twin towers at the World Trade Center, each 110 stories high; severe damage to 50 other buildings in Manhattan; the temporary and permanent loss of thousands of jobs; and a breakdown of the entire infrastructure in the area, with bridge, tunnel, subways and ferries all suspending operations.

According to the report, property insurance claims will come from property owners and tenants—including those with indirect damage from the buildings' collapse—as well as debris removal expenses and the cost of cleaning buildings, among

other losses.

Policies' coverage of financial losses, such as loss of rental value and business interruption claims, also will be hit.

In fact, Munich Re's report notes, experts believe that the business interruption losses will far exceed the sum of all the property losses.

However, insurers' and reinsurers' total liability will be less than the actual losses because few policyholders would have sought coverage for a total loss. "The building's total destruction was not considered a possibility in the past," the report states.

Calculations of the probable maximum loss, or PML, of skyscrapers in the past have not assumed a total loss, and certainly not of several buildings at once, according to the report.

"Never before have civil aircraft been used for terrorist attacks on skyscrapers, causing such unimaginable damage and resulting in such a loss accumulation. In (the) future, it will doubtless be necessary to take such scenarios into account when calculating the PML for covers under which terrorism is not excluded," the report states. In the past, the problem of accumulation losses has arisen primarily with natural hazards such as windstorm, earthquake and flood.

"It is clear from the dramatic events of 11 Sept., 2001, that the private insurance industry must completely and unconditionally rethink its policy on covering political risks and follow through with the requisite decisions," Munich Re states.

The accumulation of losses, not thought probable before, "necessi-

See **TERRORISM**/page 25

World Updates

U.K. government extends war risk cover

The U.K. government has extended its crisis aviation insurance package for 30 days. The government stepped in last month to offer airlines temporary war risk liability coverage after insurers canceled most of that coverage on Sept. 20. Government-provided excess insurance of up to \$1 billion for U.K. airlines will remain free until Nov. 24. As of Nov. 1, the attachment point of the government excess coverage will rise to \$100 million from \$50 million.

No charges brought in Paddington crash

The United Kingdom's Crown Prosecution Service has recommended that no criminal charges be pursued in the 1999 Paddington rail crash, which killed 33 people and injured more than 400. The CPS said it could not find evidence of negligence on the part of any senior managers at either Railtrack P.L.C. or Thames Trains, owner of one of the trains involved in the accident. The CPS said, however, that there were "deficiencies" in the training of the Thames Trains driver, who ran a red signal, causing the crash.

U.K., insurers in accord to not use genetic info

The London-based Assn. of British Insurers and the U.K. government have agreed on a five-year moratorium on the use of genetic test results by insurers in underwriting most policies, beginning Nov. 1. The House of Commons Science and Technology Committee had recommended a two-year moratorium, while the London-based Human Genetics Commission had suggested a three-year ban on the use of genetic test results.

Briefly noted

The Sydney-based Assn. of Risk & Insurance Managers of Australasia is calling for the establishment of a government-backed pool to act as an insurer of last resort for terrorism risks. ARIMA President Bruce Ferguson said that, in light of the Sept. 11 terrorist attacks in the United States, government assistance for terrorism coverage is "vital" for Australian corporations...Liberty Mutual Insurance Co. will increase the capacity of its London arm, Liberty Mutual United Kingdom, and its Lloyd's syndicates 190 and 282 for 2002. It will provide about \$220 million of extra capacity to Liberty Mutual UK and letters of credit worth up to \$316 million to support the 2002 underwriting capacity of the syndicates...Danny Craig has been appointed president of the Insurance Brokers Assn. of Ontario. Mr. Craig is a partner at Craig, McDonald, Reddon Insurance Brokers Ltd.



Emerging risks raise new challenges/page 24
Policy wordings spur conflicts/page 24

Control: Plan urged after HIH

Continued from previous page

cyholders whose claims are not being paid by HIH and has established a nonprofit company, HIH Claims Support Pty. Ltd., to manage claims. Corporate policyholders' claims, however, are not included in the support plan.

"More study and more government will not solve the problem or provide in any way for the next insurance company failure," Mr. Axelrod said. "Australia had no plan prior to the HIH failure and shows no signs of developing one, despite the lesson it should have learned," he said. "Since it is only a matter of time until the next failure in Australia, adopting some plan is a matter of urgency."

Joe Hockey, the Financial Services

and Regulation minister, defended the government's actions in a separate presentation at the AILA conference.

Amendments to the Insurance Act 1973 to increase insurers' minimum capital levels and force them to adopt risk-based capital standards were passed in August, he noted (BI, Oct. 1).

He was asked whether a conflict between shareholder and policyholder interests contributed to regulators' delay in investigating HIH's finances. He would not comment specifically on HIH, but said he didn't see those interests as competing.

The Sydney-based Australian Prudential Regulation Authority did not investigate HIH's financial status until three days before a provisional liq-

uidator was appointed. APRA came under fire from brokers and risk managers for failing to take action earlier, and an APRA spokesman admitted at the time that the regulator had been caught by surprise (BI, March 26).

"The insurance industry has, to be honest, lacked some leadership over the years and lacked the same level of accountability that's applied to banking and some other sectors of the economy. We were already underway (with tougher legislation) for insurance when the HIH collapse occurred," Mr. Hockey said.

The insurance reform legislation's twin aims were to provide better protection for policyholders and less intrusive regulation for industry, he said.

AILA CONFERENCE

Policy wordings generate conflicts

By KATE TILLEY

GOLD COAST, AUSTRALIA—The wording of many business interruption policies is unclear and contrary to the underwriter's intent, which makes claims handling a challenge, a claims adjuster says.

"There is often a major challenge to reconcile the intention of the cover with the literal application of the policy wording," Tony Morgan, national executive adjuster with Sydney-based GAB Robins Pty. Ltd., told attendees of the Australian Insurance Law Assn.'s annual conference, held Sept. 26-28.

Business interruption policies are complex because they deal with the hypothetical, he said. These policies contain several specific conflicts for which the market and the legal system have not yet found solutions, he said.

For example, the premium adjustment and the average clauses in typical business interruption insurance policies deal with underinsurance of a loss in different and potentially conflicting ways, Mr. Morgan said.

"The premium adjustment clause says if you overinsure, you will be entitled to a premium refund and, if you are underinsured, you pay more premium, which reflects that you may not always get it right," he explained.

The average clause, however, says "if you get it wrong, you will be treated as though you are self-insured for part of the risk; that is, you are penalized if you get it wrong," Mr. Morgan said.

The coexistence of both clauses on policies creates inequity, Mr. Morgan said. Insurers continue to issue policies containing both clauses, he said. Because the premium adjustment clause is generally ignored, the simplest solution would

be to get rid of it before a legal dispute arises, he advised.

Another contentious area in business interruption coverage is "time excesses," which are a form of deductible. Deductibles expressed as dollar amounts are unambiguous, Mr. Morgan noted, but it is common to see business interruption policies express them as "time excesses," especially in coverage for the engineering and mining industries.

Time deductibles have "led to multimillion-dollar disputes," Mr. Morgan said. There have been arguments, for example, about whether the "days" specified in the policy were calendar days or production days. "Time excesses should be avoided, but if they are in the policy, they should be very clearly defined."

Production losses also can create claim disputes, Mr. Morgan said. If a company is not operating at capacity when a loss occurs, the company has an opportunity for a windfall from insurance proceeds. If the policyholder had the option of making output instead of income as the measure of loss, there need be no actual loss in sales for a claim to be valid, he explained.

Coverage for the costs of preparing business interruption claims is also contentious, Mr. Morgan said. Although these expenses are covered under the policy, disputes often arise over what constitutes a reasonable cost or whether a claimed loss is "not otherwise recoverable."

Policyholders and insurers should agree in advance about what claims preparation costs will be covered, particularly if salaried staff are used extensively in claim preparation, thus incurring overtime or taking them away from their regular duties, he said.

AILA CONFERENCE

New liabilities pose challenges

By KATE TILLEY
and DAMIEN TOMLINSON

GOLD COAST, AUSTRALIA—As risk managers grapple with emerging exposures, the growth of enterprise risk management and how insurers respond to the Sept. 11 terrorist attacks in the United States are variables that will shape how new risks are addressed.

Speakers at various sessions of the Australian Insurance Law Assn.'s recent annual conference discussed several emerging risks—including those related to genetically modified products, e-commerce and mergers and acquisitions—as well as the responses of risk managers and insurers to such perils.

Rainer Zuefle, a lawyer with Munich, Germany-based GE Frankona Re, predicted that insurers would hold off on developing products for emerging risks until they have recovered from the Sept. 11 losses and have built up their capital again by concentrating on core lines.

Mr. Zuefle said that liability related to genetic engineering and genetically modified food products is one significant new exposure, but that massive losses from the terrorist attacks will curb the insurance industry's enthusiasm to become more involved in these and other emerging risks.

Genetic modification technology has allowed the development of crops that are more disease-resistant and are better able to withstand strong herbicides. But consumer resistance to genetically modified products could lead to increased liabilities, he said.

Mr. Zuefle said a survey found that more than half of European consumers will not buy genetically modified food "regardless" of the benefits. "This is a difficult environment for liability insurers to operate in, because those who distrust a specific technology are also quick to blame it for any damage," he said.

Events such as Aventis S.A.'s worldwide recall in 2000 of corn

tainted with its genetically modified Starlink corn product fuel public hysteria about genetically modified foods, he noted.

Some countries have responded to the growing liabilities by requiring companies involved in genetically modified products to have insurance. But because genetic modification technology is still an unknown, it is difficult for insurers to quantify the risks, Mr. Zuefle said. And potential losses could be enormous, he said.

Insurers face the problem that the two main components of risk assessment—loss probability and probable loss amount—are virtually unassessable in the case of genetic engineering risks, Mr. Zuefle said.

He said insurers should confront genetic engineering in the same way the industry has dealt with other contemporary risks, such as e-commerce exposures. Insurers should point out the limits of insurability but still attempt to provide coverage.

See **INSURE**/page 25

Products & Services Guide

To place your ad, contact **Irais Amleshi** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: iamleshi@crain.com
Business Insurance, Classified Department, 360 N. Michigan Ave., Chicago, IL 60601-3806. Call for details on blind box and internet advertising



Electronic Certificate Tracking
Oracle based Application Service Provider
Easy Internet Access
Paperless Archiving System
1.800.994.9440 • www.cmstrack1.nnng.com

Where Benefit Buyers meet Benefit Sellers

www.employee-benefits.com

CPCU® CIC and IIA candidates
I guarantee you'll learn more in less time with
The Burnham System - or your money back!
Ray Burnham, CPCU, ChFC, AIF, CLU, AFM, Au, Asst. Are
19 Everett St. Southbridge, MA 01550
Call 1-888-BURNHAM Now!

Any
Risk Management
Questions?
Ask
www.GeorgeLHead.com

**Mind Your
Business!**

Advertise in **BI's**
Products & Services Guide
Call 312-649-5340

Insure: Changing liabilities

Continued from page 24

Mr. Zuefle said insurers in some countries have begun developing insurance solutions for genetic engineering risks. "However, we must not close our eyes to the fact that, because of the potential loss scenarios involved, the limits provided under these models may be attained fairly quickly," he said.

In a separate presentation, John Richardson, chairman of Sydney-based Marsh Australia, a unit of Marsh Inc., said other emerging risks are prompting businesses to adopt enterprise techniques.

Companies that traditionally have divided risk management into separate departments are now bringing those operations under the control of one senior executive, Mr. Richardson said. Replacing the traditional "silo" attitude to risk with an enterprisewide view is allowing companies to better balance risk reduction and financing, he said.

Mr. Richardson said brand risk, mergers and acquisitions, professional liability and e-commerce are becoming major risks.

Brand risk is important, because the value of brands can account for up to 80% of a leading corporation's market capitalization.

Any risk management program that does not address brand risk is "incomplete. Every company has a brand it must protect to prosper," he said.

Mr. Richardson said mergers and acquisitions are another key risk. Failures in the due diligence process could have catastrophic effects.

He cited, for example, AMP Ltd.'s hostile takeover of GIO Insurance Ltd. AMP later discovered massive reinsurance liabilities in GIO's balance sheet.

In addition, professional liability risks represent a far greater risk today than they did a decade ago. People have become more willing to litigate, class actions are now allowed in Australia, and shareholder associations are more watchful, he said.

Changes in information technology also have exposed companies to new exposures, and the business interruption implications of such risks are significant, he said. Business interruption claims are growing in frequency and severity, as well as becoming increasingly complex, Mr. Richardson said.

Rob Moffitt, Sydney-based technology insurance director with The St. Paul Cos. Inc., Asia-Pacific division, said at another session that there is a lack of knowledge among insurers, brokers and risk managers about new information technology risks.

The Internet and e-commerce had created as many threats as it has opportunities, and risk managers and brokers must get involved in the game, Mr. Moffitt said.

"There is confusion among risk managers as to how their property liability insurance responds to technology exposures," he said.

Terrorism: Rethinking risk

Continued from page 23

tates a fundamental reorientation" of how the insurance industry handles such risks as terrorism coverage and concentration of values in its underwriting, Munich Re notes.

If private insurers are to continue covering terrorism, it should be "included on a restricted basis with lim-

its of indemnity, a deductible, an additional premium and a short period of notice," the report suggests. Insurers should also consider possible accumulation with other risks.

The report suggests that insurers and reinsurers should impose such requirements as:

- The definition of uninsurable

and uninsured political risks must be sufficiently clear and adjusted to the current circumstances and these risks must be excluded.

- Insured perils must be distinguished from uninsured risks.

- The definition of one event must be formulated unambiguously.

- Business interruption coverage

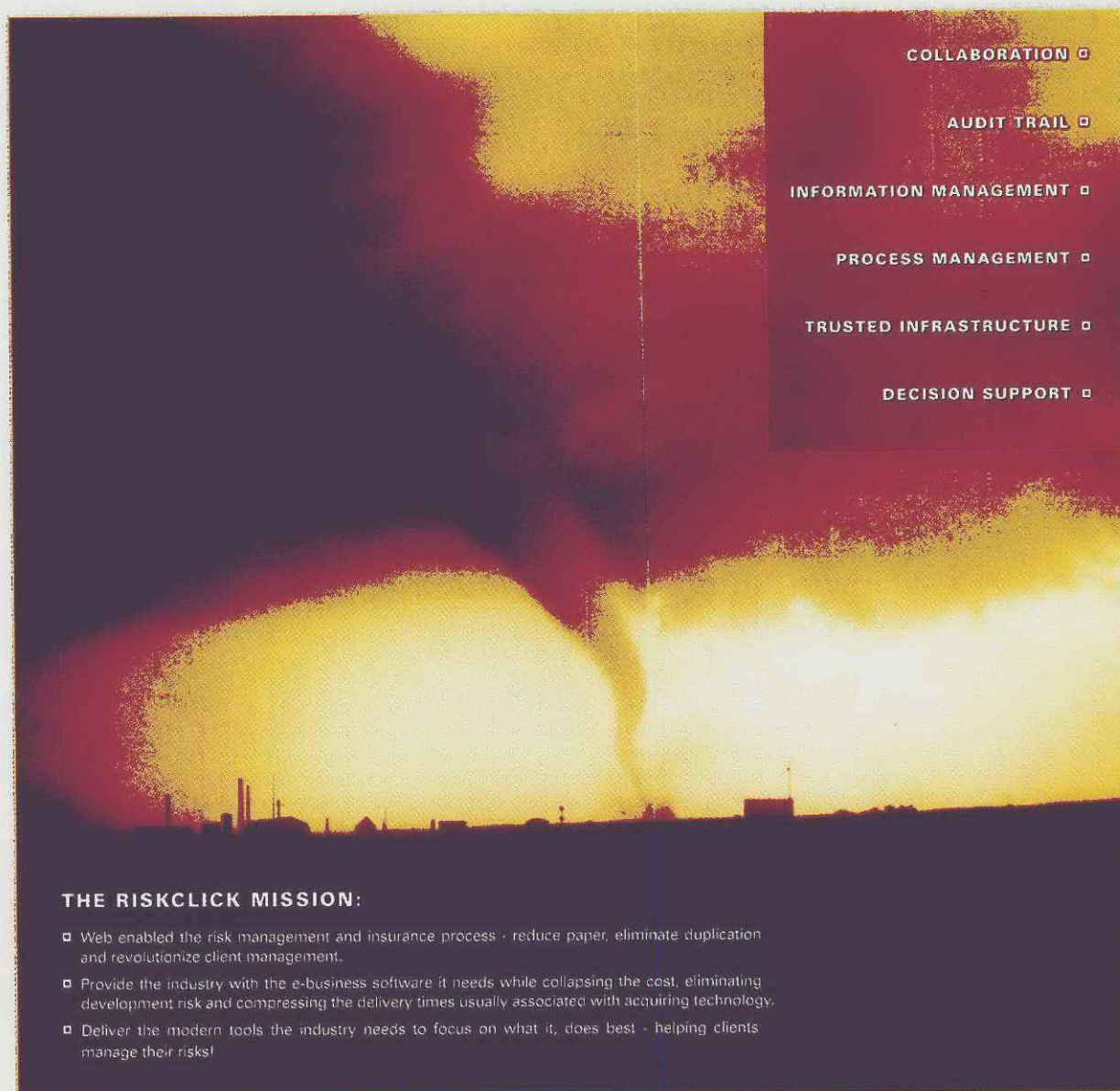
should be limited precisely to the direct economic consequences of the property damage caused by an insured peril; it should not include all possible consequences arising out of the insured peril.

- Compensation by governments that precedes indemnification by insurers must offset indemnification.

Copies of the Munich Re report are available on its Web site, www.munichre.com.

riskCLICK

collaborative e-business software for risk and insurance



COLLABORATION ▢

AUDIT TRAIL ▢

INFORMATION MANAGEMENT ▢

PROCESS MANAGEMENT ▢

TRUSTED INFRASTRUCTURE ▢

DECISION SUPPORT ▢

THE RISKCLICK MISSION:

- ▢ Web enabled the risk management and insurance process - reduce paper, eliminate duplication and revolutionize client management.
- ▢ Provide the industry with the e-business software it needs while collapsing the cost, eliminating development risk and compressing the delivery times usually associated with acquiring technology.
- ▢ Deliver the modern tools the industry needs to focus on what it does best - helping clients manage their risks!

For more information, call 1-877-747-5254, or visit www.riskclick.com

Liability Brokerage accountable for losses

Continued from page 23
rangement now to be put forward to creditors, according to Mr. Elborne.
“The scheme of arrangement had been held up pending the outcome of the court case,” said Mr. Elborne. “It was this reinsurance contract that was the catalyst that tipped the company over into liquidation,” he said.
“Our client is obviously disappointed with the outcome of the case,” said Stephen Lewis, insurance partner of London based Clifford Chance, which represented

Marsh.
Mr. Lewis added, “the judgment in no way threatens the financial stability of Marsh” noting that much of the loss will be covered by J&H’s errors and omissions insurance.
Other lawyers, meanwhile, have mixed views as to how the ruling will affect brokers and their relationships with clients.
Reinsurance underwriting, particularly in the London market, often involves one broker placing reinsurance with an underwriter and then placing retrocessional coverage for

the same underwriter that assumed the reinsurance with other reinsurers in the market.
As a result of the ruling, if the broker is found to be negligent in advising what retrocessional capacity is available, it could be liable for all the losses assumed by the client on the underlying reinsurance policy, attorneys say.
“The ruling will give real concern to brokers. If you are placing a reinsurance contract, and at the same time advising the potential reinsurer whether retrocessional protection is available, then, on this

ruling, you potentially take on the role of advising the reinsurer whether to accept the risk. That would present the broker with an enormous conflict of interest, and substantial exposure,” said Nigel Brook, a reinsurance partner with the London-based law firm Clyde & Co.
Brokers now may need to consider whether they should write formal engagement letters to their clients, outlining what the brokers are, and are not, responsible for, similar to those undertaken by accountants and lawyers, said Mr.

Brook.
Andrew Pincott, a partner with the London-based law firm Elborne Mitchell, pointed out that “most people were a bit shocked” after the earlier Court of Appeal ruling, but that it is “doubtful” that the ruling will change the way that brokers operate, particularly in the London market.
“There would have to be a sea change in the market for contracts of engagement to be written; and this case, which very much turned on its facts, will not do it,” he said.

Professional MarketPlace

To place your ad, contact **Irais Amleshi** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: iamleshi@crain.com
Business Insurance, Classified Department, 360 N. Michigan Ave., Chicago, IL 60601-3806. Call for details on blind box and internet advertising

BUSINESS OPPORTUNITY

ATTN: SMALL-MEDIUM WHOLESALERS/ E&S BROKERS/MGA's
Investment Group seeks to acquire small-medium firms in NY/NJ area. Interested parties should respond with general description of Company to:
Business Insurance • Box 3166
360 North Michigan Avenue
Chicago, IL 60611-3806

HELP WANTED

CONTROLLER
Immediate opening for qualified college graduate in complex insurance claims administration. We seek creative, analytical, take-charge, decisive individual with a minimum of 4-5 years experience in accounting, tax and business administration. Candidate must possess strong managerial and computer skills. Small, attractive office in downtown Embarcadero location. Interested applicants should forward resume, with salary requirements, to: Business Insurance, Box 3167, 360 North Michigan Avenue, Chicago, Illinois 60601-3806.

HELP WANTED

ASSISTANT CLAIMS MANAGER
Seeking an experienced property and casualty claims professional for the position of Assistant Claims Manager for a leading multi-lined risk management pool servicing NH schools, counties and municipalities.
The selected candidate will supervise and direct inside workers' compensation staff of eight, and property/liability claims consultant. The position will also be expected to have a limited liability and property caseload. Some NH travel.
Qualified candidates will possess at least 5 years multi-line claims experience including experience in field claims management. A results-oriented individual with strong interpersonal relationship skills are requirements for the position.
A NH multi-line adjusters license is required. Supervisory experience a plus. A four-year degree with insurance designations or course work preferred.
The people, technology and other aspects of the work environment excel.
Please submit resume and salary requirements to:
Pete Sheffer, Claims Manager
NH Public Risk Management Exchange
46 Donovan Street • Concord, NH 03301
EOE

HELP WANTED

INSURANCE WORKFORCE.COM
Where Talent and Opportunity Link

Looking for “QUALIFIED” help or the “HOTTEST” jobs in the industry?
Visit: www.InsuranceWorkForce.com

HELP WANTED

INSURANCE AND REINSURANCE CONTRACT SPECIALIST
Need an Insurance and Reinsurance Contract Specialist to negotiate, design and place Reinsurance Contracts for the insured companies, to submit to the reinsurer the summary of the business for design of the reinsurance contracts, to obtain quotes from international markets, to access financial support for the insured, to present quotations to the ceding company and after the order is obtained, to prepare the Reinsurance Contracts by offering the business to the rest of the market or to specialized markets and to review contracts forwarded to the ceding company. Bachelor of Business Administration with specialization in Insurance and 5 years of experience in job offered are required. 40 hrs./wk., 9:00 a.m. to 5:00 p.m.. Send resumes to Victoria Street Management Services, Inc., Attention: Carlos Ulloa, President, Fax (305) 567-0033.

HELP WANTED

RISK ASSESSMENT OFFICER UP TO \$78,478/YR PLUS BENEFITS
San Bernardino County is recruiting individuals to perform risk assessments of county operations, programs, contracts, leases and agreements and lead the Risk Assessment Team in response to significant claims and incidents. Req's related college coursework AND 3 yrs exp in risk mgmt including exp administering or managing operations in one of the following areas: Risk Assessment/Risk Reduction/Claims Mgmt/Loss Prevention/Risk Analysis/Risk Financing. See announcement for details. Apply by November 16, 2001.
San Bernardino County HR
157 W. Fifth Street
San Bernardino, CA 92415
(909) 387-8304
www.abccounty.gov
EEO/ADA Compliant

Looking for QUALITY RESULTS?
Advertise in
Business Insurance
NEXT ISSUE: NOVEMBER 5
Closing: October 30
Call (312) 649-5340 to reserve your space.

HELP WANTED

Reinsurance Consultant/Producer
Towers Perrin Reinsurance, a leading reinsurance intermediary, has an exciting opportunity for a senior position in our Chicago Reinsurance office. As a producer in our reinsurance business, you will provide expertise in developing new business, creating reinsurance proposals and negotiating coverage and pricing terms with reinsurance markets. Other responsibilities include analyzing data for Requests for Proposals for new and renewal business opportunities, managing and growing our business in the mid-Western US area.
Qualified candidates will have a Bachelor's degree with 10 plus years of direct writer or intermediary experience. Strong communication and negotiation skills are required. Underwriting experience is a strong plus.
As a premier consulting firm, we offer opportunities for professional growth complemented by an excellent compensation package including tuition reimbursement and profit sharing. Please forward resumes with salary requirements to **Suzanne Seiders, Towers Perrin, 1500 Market Street, Centre Square East, Philadelphia, PA 19102.** Fax: 215-246-4660 or E-mail: seiders@towers.com. Job code SS-REINCHI must be included in the reference line.
Towers Perrin is an equal employment/affirmative action employer.

Towers Perrin
BUILDING RELATIONSHIPS • PRODUCING RESULTS

HELP WANTED

DIRECTORS OF CURRICULUM
The American Institute for CPCU/ Insurance Institute of America seeks to hire two program directors who will be respectively responsible for 1) financial education and 2) claims education. The successful candidates must have expert content knowledge and outstanding writing and editing skills. A Ph.D., J.D., or other graduate degree is strongly preferred. This position is located in Malvern, PA. Send resume & salary history to: HR, P.O. Box 3016, Malvern, PA 19355-0716; or Fax to 610-651-7645; or e-mail humanresources@cpcuila.org. EOE, M/F.

BI More classifieds online
www.businessinsurance.com

Business Insurance Classifieds

- Business Opportunities
- For Sale
- Help Wanted
- Legal Notices
- Request For Proposals

Whatever your needs in the Corporate Risk, Employee Benefit or Managed Health Care arenas, advertising in *BI* can help you fulfill them.

Call Irais Amleshi at
312-649-5340
Fax: 312-649-7937

Business Insurance
www.businessinsurance.com

Support grows for terrorism risk solution

By MARK A. HOFMANN

WASHINGTON—The business community has joined insurers in asking Congress to act quickly in establishing some sort of reinsurance mechanism to respond to terrorist losses.

If Congress does not act, the economy as a whole will suffer, insurers and employers told the Senate Banking Committee last week. And a quick response is crucial, given the economy's weakness even before the Sept. 11 terrorist attacks, they said.

The message received a sympathetic hearing. "For us not to act is too high a risk," said Sen. Christopher Dodd, D-Conn. "For us not to do something would be highly irresponsible."

Sen. Dodd is expected to introduce a bipartisan measure today that would create a federally backed terrorism insurance program.

The bill would require the property/casualty industry to pay a \$10 billion industry aggregate in claims

before a quota-sharing arrangement with the federal government kicked in, according to sources familiar with the measure. The government would pick up an undetermined percentage of the losses, probably 80% or 90%, they say.

The bill would provide a single definition of "terrorism" as covered by the plan. The arrangement would last only two years, although the program could continue for another year if deemed necessary by the administration. Sources believe that the measure would cover all lines of property/casualty insurance.

Sen. Dodd's office could not provide further detail Friday.

The insurance industry has advocated the creation of a state-chartered mutual reinsurance company that would purchase reinsurance from the U.S. Treasury to respond to terrorist losses (BI, Oct. 15).

Insurers foresee such a facility lasting for at least six years. A competing proposal from the Bush administration would create a pub-

lic/private partnership, in which the federal government would share a diminishing portion of terrorism losses over a three-year period (BI, Oct. 22). Treasury Secretary Paul O'Neill explained the plan to the committee last Wednesday at

'Without congressional action to provide a federal backstop for terrorism insurance, efforts to provide an economic stimulus could be ineffective.'

Leslie M. Baker
Wachovia Corp.

the first of two hearings.

Testifying before the committee at a second hearing a day later, Robert E. Vagley, president of the Washington-based American Insurance Assn. told the committee that "we are not wedded to the details of any proposal—including our own,

although we believe it is the best."

The second hearing's lead witness—Charlotte, N.C.-based Wachovia Corp. Chairman Leslie M. Baker—warned the committee that without "full cooperation between our government and America's private industries in support of insurance activities, there could be major disruption in the marketplace and harm to the economy."

"Without congressional action to provide a federal backstop for terrorism insurance, efforts to provide an economic stimulus could be ineffective," said Mr. Baker, who testified on behalf of the Washington-based Financial Services Roundtable.

Speaking as a banker, Mr. Baker said that banks would be far less willing to lend money without the guarantee of insurance coverage.

"Only the federal government can provide the insurance industry with the breathing room it needs to return to a stable, rational market. Without a federal backstop, businesses will have to self-insure,

putting their capital—and ours—at risk. Magnify that potential loss of capital across the domestic banking sector to gain an appreciation of the dramatic impact a loss of insurance could have on our economy," Mr. Baker said.

Thomas Donahue, president of the U.S. Chamber of Commerce, also warned of the impact of insurance coverage contraction on the economy.

"Bank loans for major construction project undertakings such as new power plants, pipelines and commercial office space would sharply decrease without coverage," he said.

"We do have an availability crisis in the making," said Ronald E. Ferguson, chairman of Stamford, Conn.-based General Re Corp., as he testified on behalf of the Reinsurance Assn. of America.

John T. Sinnott, chairman of New York-based Marsh Inc., also urged government action as he testified on behalf of the Council of Insurance Agents & Brokers.

WTC: Swiss Re seeks coverage ruling on twin towers

Continued from page 1

Silverstein underinsured the trade center, leaving the leaseholder unable to cover its rent and debt payments along with the cost of rebuilding. As a result, Swiss Re says it is unsure how to allocate claim payments among Silverstein, its lenders and the WTC's owner, the Port Authority of New York & New Jersey. The insurer has asked the court for a ruling on how to divide the payments.

Efforts by Silverstein and Willis to replace the WTC coverage began in early summer and aimed at having the program in place for the mid-July closing of Silverstein's 99-year lease of the twin towers and two adjacent buildings from the Port Authority.

Initially, Silverstein and Willis sought a total of \$5.05 billion in limits, covering the buildings' estimated \$3.94 billion replacement cost and \$1.11 billion for lost rental income over a three-year period, according to court filings and sources familiar with the program.

Silverstein later decided to cut the program to \$2.32 billion, but a week after closing the lease deal sought to increase the limits to \$3.25 billion and then—at the request of mortgage lenders—to \$3.55 billion, Swiss Re's suit says.

Silverstein cut back the initial \$5.05 billion goal in part because of the prohibitive cost of the added coverage and because capacity from insurers rated AA or better—demanded by the lenders—was not available above the \$3.55 billion level, a source familiar with the program said.

In addition, no one involved in the placement foresaw the devastation of Sept. 11, insurance and legal sources say. "It seemed unthinkable that both towers would collapse at

the same time, ever," one industry source said.

The final WTC program consisted of a \$10 million primary layer above a \$1 million retention, with 10 excess layers above the primary, sources familiar with the coverage say.

Participants on the primary layer were Lexington Insurance Co., an American International Group Inc. unit, for 50%; Liberty Mutual Insurance Co., 20%; Allianz, fronting for SCOR S.A., 10%; Royal Indemnity Co., 8%; Travelers, 8%; and Hous-

No one involved in placing coverage for the World Trade Center foresaw the devastation. 'It seemed unthinkable that both towers would collapse at the same time, ever.'

Insurance industry source

ton Casualty Co. for 4%, industry sources say.

London-based SR International Business Insurance Co. Ltd., a Swiss Re unit, was the largest participant on the overall program, writing 22% of each excess layer for total limits of \$742.2 million. This translates to 20.9% of the whole program, including the primary layer.

Exactly what coverage terms the insurers agreed to, though, have become a subject of sharp disagreement.

Swiss Re's suit says Willis submitted the WTC risk on June 25 using a proprietary policy form it calls "WilProp2000." This form defines "occurrence" as "damages that are attributable directly or indirectly to one cause or to one series of similar

causes. All such losses will be added together and...will be treated as one occurrence irrespective of the period of time or area over which such losses occur."

After some revisions—among them a provision giving Swiss Re the right to approve final policy wording—the insurer signed a placement slip on July 16, the suit says. When terrorist hijackers crashed two commercial jets into the Trade Center towers on Sept. 11, though, some coverage details had not been finalized, and Swiss Re—along with most, if not all, of the other insurers—had not yet issued policies, the lawsuit and other sources say.

Three days after the attack, Travelers issued a policy on its primary layer participation, and on Sept. 24, Silverstein and Willis filed a notice of loss with Swiss Re, saying that the Travelers policy language governs the program, according to the suit. Among several differences from the Willis form, the Travelers policy does not define "occurrence," the suit says.

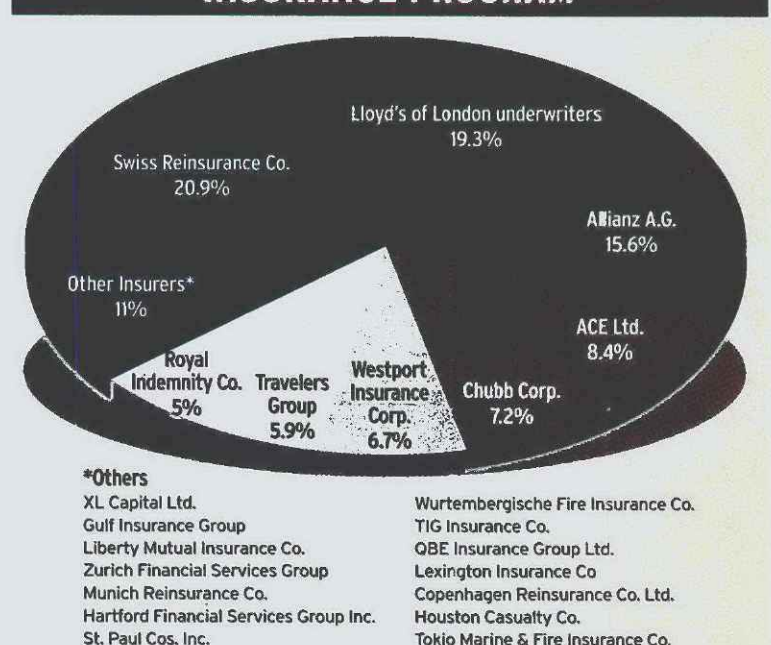
Swiss Re says that it never agreed to the Travelers policy language and that the occurrence definition in the Willis form it did agree to calls for treating the twin towers' destruction as a single event.

Silverstein representatives vehemently disagree: The Swiss Re complaint "has got its facts wrong and it's got its law wrong," said Herbert Wachtell, a partner with Wachtell, Lipton, Rosen & Katz, the leaseholder's lawyers.

The Willis form had been dropped from the placement effort in July, and the Travelers language became the basis of the placement slip, sources familiar with Silverstein's position say.

Absent the Willis form's occur-

INSURERS' SHARE OF WTC's PROPERTY/BUSINESS INTERRUPTION INSURANCE PROGRAM



GRAPHIC BY ADAM DOI

rence definition, New York law would look to the "immediate proximate cause" of the loss, which would be each jet striking each tower separately, Mr. Wachtell said. "The law is quite settled that in a situation such as this there are two occurrences."

Along with the dispute over coverage terms, Swiss Re alleges that Silverstein chose to insure the complex for less than the combination of its replacement cost and potential rental income losses.

As a result, any payments insurers make to cover Silverstein's rent payments to the Port Authority and mortgage payments to GMAC Commercial Mortgage will reduce the amount available to rebuild the

complex, the suit says. These payments could thus damage the insured interests of the Port Authority, GMAC and others named as additional insureds on the program, Swiss Re contends.

Lawyers for Swiss Re, meanwhile, face another challenge that extends beyond the actual coverage dispute: political pressure on the court to find coverage needed to rebuild a devastated lower Manhattan.

If the court finds that the restrictive Willis occurrence definition does not apply to the program, "it's really up for grabs," one lawyer said. "If there is no specific language, the court has an easier time finding more coverage, especially in a politically charged case like this."

NAIC: Lloyd's gets fund break

Continued from page 4

work with Lloyd's and work to get them up to the total 100% at some later date—which is what we have always planned to do," said Mr. Oxendine, who is the Georgia insurance commissioner.

The NAIC's move was met with disappointment and confusion in the Lloyd's market. Stephen Catlin, chairman of the Lloyd's Market Assn., argued the 100% requirement would not benefit the U.S. insurance industry in the long run.

"The insurance industry of America needs to have foreign insurers and reinsurers as part of their whole program," said Mr. Catlin, who is also chairman of Catlin Underwriting Agencies Ltd. "To create a false illiquidity—or an unnecessary illiquidity—for foreign insurers and reinsurers doesn't actually do the policyholders going forward much good," he said. "It certainly will make it more difficult for foreign insurers and reinsurers to offer to American policyholders the kind of limits that they want."

But late last Thursday, New York regulators announced that they had struck a deal with Lloyd's that would give the market until the first quarter of 2002 to fully fund its Sept. 11 reinsurance liabilities.

"The extraordinary and unanticipated nature of the events has resulted in a liquidity challenge that will prevent Lloyd's from being able to meet their full funding requirement by the (Nov. 15) deadline," New York Superintendent of Insurance Gregory Serio said in a written

statement.

After the New York compromise, Mr. Oxendine stressed this deal did not represent a second reversal of regulators' stance. The NAIC had always intended to work with Lloyd's, he said. "We had a couple of details we had to work out—basically, there were a few concerns."

He said that the NAIC decided

'To create a false illiquidity—or an unnecessary illiquidity—for foreign insurers and reinsurers doesn't actually do the policyholders going forward much good.'

Stephen Catlin
Lloyd's Market Assn.

upon the "drop-dead date" of March 2002 but had to "fine tune" the deal.

Lloyd's welcomed the compromise. "This has always been a question of short-term liquidity, not solvency," Lloyd's Chairman Sax Riley said in a statement. "We have a 300-year history of paying all valid claims, and nobody should doubt our ability and commitment to ensuring that U.S. policyholders are compensated swiftly and efficiently."

The extension would allow Lloyd's to make another cash call on investors to meet its funding requirements. Lloyd's can make only

one such levy per quarter; the next is scheduled for January. Lloyd's this month made a £780 million (\$1.13 billion) cash call to meet Sept. 11 liabilities.

Lloyd's reported recently that its total exposure, including reinsurance claims, to the Sept. 11 attacks is £5.4 billion (\$7.82 billion) and that it currently maintains U.S. trust funds of £1.2 billion (\$1.74 billion) for surplus lines and £4.1 billion (\$5.93 billion) for reinsurance claims.

Rating agency Fitch Inc., however, contends that Lloyd's gross losses would likely be higher, falling between £6 billion and £7 billion (\$8.55 billion and \$9.98 billion) and that the market's net loss would be at least £1.7 billion (\$2.42 billion).

"Given that the gross loss to Lloyd's will likely be approximately four times the market's net loss, the onerous nature of the gross funding requirement for U.S. reinsurance liabilities becomes very apparent," a Fitch statement said.

Mr. Oxendine said the NAIC would consider requests from other alien reinsurers for the same treatment as Lloyd's on a case-by-case basis.

Prior to the announcement of the compromise, a spokesman for the Reinsurance Assn. of America said that the association opposes any reduction in funding requirements for alien insurers and reinsurers. "Our view is that the trust fund is there for a purpose—to protect U.S. companies."

FTR

[For the Record]

Week of 10/22-10/26

This roundup of the news is generated by BI's daily news reporting during the previous week. To get breaking news as it occurs, log on to www.businessinsurance.com, or sign up online for free BI Daily News by e-mail.

St. Paul hit by cats

Catastrophe losses, including those from the Sept. 11 terrorist attacks, resulted in The St. Paul Cos. Inc. posting a net loss of \$352.3 for



the first three quarters of 2001, compared with a profit of \$800.1 million for the comparable period last year. The loss came despite revenues of nearly \$6.56 billion for the nine months ended Sept. 30, a 9.8% increase over the year-earlier period. St. Paul said the loss includes \$606 million in aftertax operating losses attributable to the Sept. 11 terrorist attacks. Pretax losses from the attacks reflect an increase in the company's Sept. 11 loss estimate to \$866 million from the \$700 million previously announced.

Pollution ruling



A federal appellate court has ruled that former landowners on contaminated property who did not contribute to the pollution are not liable for cleanup costs. The 8-3 ruling by the 9th U.S. Circuit Court of Appeals in *Carson Harbor Village* vs.

Unocal involved contaminated wetlands in Carson, Calif., that El Segundo, Calif.-based Unocal Corp. had used for petroleum production. It was owned and operated as a mobile home park, first by a general partnership—Carson Harbor Village Mobile Home Park—and later by Carson Harbor Village Ltd., which bought the property in 1983. Pollutants were later discovered on the site, and Carson Harbor Village Ltd. paid \$285,000 in cleanup costs. As a part of the complex litigation that ensued, Carson Harbor Village sued the general partnership under the Comprehensive Environmental Response, Compensation, and Liability Act to recover cleanup costs and damages arising from its inability to refinance the property.

Physician scorecard

Tufts Associated Health Plans Inc. has begun rating doctor groups on the quality of care they deliver, marking the first time a health plan in the Eastern United States has provided such information, the company said. Tufts compares provider groups to a national benchmark in six areas: access to specialty care, satisfaction with the primary care physician, waiting time for appointments, rate of breast cancer screening, rate of cervical cancer screening and rate of screening diabetic patients' eyes.

Carvill

Reinsurance Intermediary

INDEPENDENCE
INTEGRITY
SERVICE

CONSISTENT PHILOSOPHY & PERFORMANCE

SINCE 1977

Atlanta Bermuda Chicago London Norwalk

www.carvill.com

1-800-CARVILL

Idaho: State fund's expansion fought

Continued from page 3

week. Peter Gorman, San Francisco-based vp and western regional manager for the Alliance, said several other state funds have started to compete directly with private insurers in their home states. But Utah's is apparently the first state fund to seek to do business in other states with employers who are not based in their own home state.

Although Advantage is already writing insurance in other states, insurers are "drawing the battle lines in Idaho," Mr. Gorman said. "Advantage is nothing but a shell for the Utah state fund, and they should not be...certified to sell and operate in Idaho," he said.

The fund is not subject to the approximately 30% federal tax rate of other insurers. "That's just unfair competition," said Mr. Gorman. Not only does the fund have that advantage in Utah but "it's outrageous that they're expanding into other states as well, using their federal tax breaks to take business away from private insurers," he said. "They do steal market share."

But Lane Summerhays, the Utah fund's CEO, said, "The company doing business in Idaho is a tax-paying, for-profit insurance company."

As for the fund's tax exemption, he said "the industry has long debated whether that tax exemption is an advantage...when you consider you're the carrier of last resort." He said the state of Utah "does not have any liability for our operation, nor put any money or subsidy of any kind into our operation."

Tracy Whigam, risk manager for Boise-based Micron Technology Inc. and president of the Risk & Insurance Management Society Inc.'s Idaho chapter, said he can see both sides of the issue. State funds with tax-exempt status are a good deal for policyholders if the savings are passed along to them, he said.

"I also see the flip side of the argument, according to the insurers, which is eventually they'll all be forced out of the business" and then rates will be much higher and there will be a monopolistic-type situation, "and you don't want that," Mr. Whigam said.

CIAB reports rate increases across all property/casualty lines

By MARK A. HOFMANN

Across-the-board rate increases are the order of the day for all lines of commercial property/casualty insurance, according to a survey released Wednesday by the Council

of Insurance Agents & Brokers.

The 108 agencies and brokerages that participated in the CIAB's quarterly Commercial Insurance Market Index reported that most rate increases for selected commercial lines were in the 10% to 30%

range during the period July 1 to Oct. 1. Umbrella and property accounts were more likely to experience rate increases of more than 30% than were other types of coverage.

The CIAB survey also found that 19% of large accounts—defined as those generating more than \$100,000 in fees and commissions—experienced rate increases of between 30% and 50%, and 9% reported increases of more than 50%.

CIAB President Ken Crerar said that some of the rate increases may reflect the impact of the Sept. 11 terrorist attack. The attack "adds fuel to the harder market trends we have observed for over a year now. I believe our members are reporting a significant trend in the marketplace," Mr. Crerar said in a statement accompanying the release of the index.

Respondents also reported continuing rate increases for group medical accounts of all sizes, with increases of 10% to 30% being the most common.

For more information about the latest Commercial Insurance Market Index, visit www.ciab.com/council/FinalPressRelease.htm.

Sunbeam: Pollution exclusion rules

Continued from page 3

the insurance industry will not be heard to assert the opposite position when claims are made by the insured policyholders."

The Supreme Court returned the case to the trial court to determine whether insurers had accurately represented the exclusion's intent to regulators in 1970.

The case has attracted significant outside interest, in part, because it may give a boost to the doctrine of regulatory estoppel, said Andrew Roman, a director with Sunbeam's law firm, Cohen & Grigsby P.C. in Pittsburgh.

Mr. Roman said that only three states—West Virginia, New Jersey and Rhode Island—have previously ruled that the regulatory estoppel doctrine applies to the memorandum.

This ruling could have significant ramifications outside of Pennsylvania, because the 1970 memorandum was sent to regulators in every state, attorneys said.

Because Pennsylvania is home to a lot of heavy industry and pollution coverage suits, this decision adds significant weight to the growing trend of courts recognizing the

equitable estoppel doctrine, said Timothy Law, an attorney in the Philadelphia office of the law firm of Anderson, Kill & Olick.

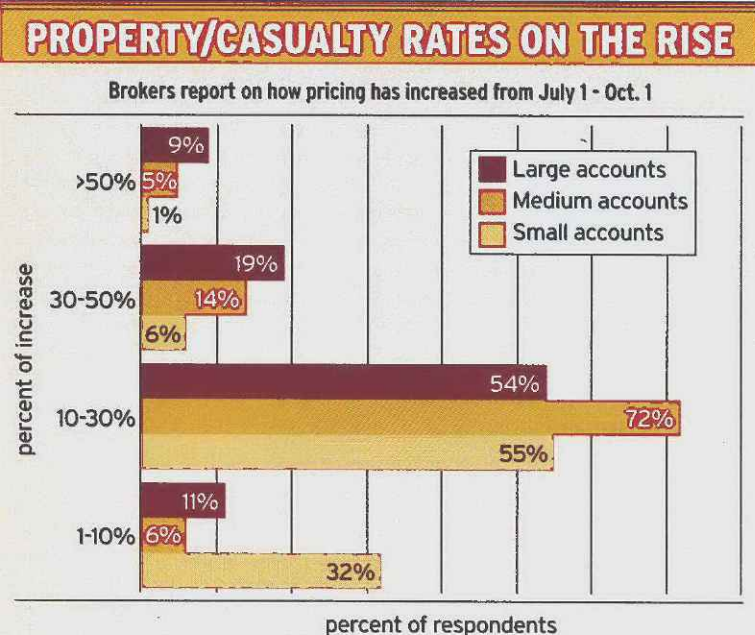
"More and more courts are realizing they cannot allow insurance companies to say one thing to regulators and another thing to policyholders," he said.

But Laura Foggan, a partner with Wiley, Rein & Fielding in Washington, said that because the decision involved procedural issues and did not involve the merits of the pollution exclusion, it's premature to say Pennsylvania has adopted the estoppel doctrine. Ms. Foggan, who is counsel to the Insurance Environmental Litigation Assn., which submitted an amicus brief on behalf of the insurers in this case, also dismisses the notion that the ruling gives momentum to the regulatory estoppel doctrine.

"The regulatory estoppel doctrine has been resoundingly rejected by courts in this country," she said.

Attorneys for Liberty Mutual would not comment.

Sunbeam Corp. vs. Liberty Mutual Insurance Co. et al., Pennsylvania Supreme Court; No. J-34-01.



SOURCE: COUNCIL OF INSURANCE AGENTS & BROKERS

GRAPHIC BY ADAM DOI

The future is unknown. What else is new?

AIA is proud to be a part of the property/casualty community. Working together with our insurer members, risk managers, regulators, and others, AIA is confident that our industry is equipped to deal with whatever lies ahead.

And we are positive that AIA and Business Insurance will continue to set the standards in providing needed representation and information to those within and outside of our industry.

From one forward-thinking organization to another, we congratulate Business Insurance on its new design.



American Insurance Association

Scam: Spotting fraud

Continued from page 2

Dow Chemical Co., Lockheed Corp., Ford Motor Co. and other Fortune 500 companies.

As unrecoverable reinsurance became an industry problem, spurring buyers to a "flight to quality," con artists moved on.

By the early 1990s, they had focused on California—drawn by the state's loose regulation of the surplus lines market—and attracted huge volumes of automobile and small business risks with low rates. State regulators later forced these companies out, tightening insurer financial requirements, but only after policyholders suffered tens of millions of dollars of unpaid claims.

In recent years, the offshore players have gravitated to a handful of niche markets, including marine and aviation business and stop-loss coverage for bogus self-insured group health plans. Some have specialized in financial guarantee products, often in support of unrelated investment scams.

In one such fraud, for example, offshore insurers were used to issue policies guaranteeing payments on bogus promissory notes sold by a Florida company that state prosecutors later described as a Ponzi scheme. The note issuer failed to repay many of its investors, and the insurers' financial guarantees proved worthless.

The soft commercial property/casualty market of the last decade—with its plentiful capacity and historic low rates—made it somewhat tougher for con artists to spot opportunities.

That may be changing.

Sharply rising rates and tight capacity across the market are expected to draw fly-by-night players back into general circulation.

Fraud artists will be "getting back into more of the traditional (commercial property/casualty) lines" and away from the limited niche markets they have inhabited recently, Ms. Cordial predicted.

Some aspects of emerging frauds are likely to be different. While Caribbean nations were domiciles of choice for the last wave of

bogus insurers, the globalization of financial services will bring potential new domiciles into the picture, including countries in Eastern Europe and South America, Ms. Cordial said.

Con artists will continue to target "areas where there is limited access to the (legitimate) market," she added. In the United States, these areas could include long-haul commercial trucking business, federal oversight of which has been reduced since the elimination of the

'Any substantial discount should raise a red flag...if (coverage) is super-cheap, then you've got to seriously question the product you're buying.'

Robert L. Brace
Hollister & Brace

Interstate Commerce Commission in 1995.

International targets could include insurers in emerging economies overseas that have little previous experience with reinsurance fraud, she said.

Other aspects of the scams will remain the same, though: Bogus insurers will continue to seek lightly regulated jurisdictions in which to base operations, and will continue to produce fraudulent financial statements reporting capital they don't actually have, experts agree.

Some doubt that that fraudulent insurance and reinsurance will become as widespread a problem as it was in the late 1980s and early 1990s.

The insurance industry and regulators are much more aware of the fraud threat than they were in the 1980s, observed John Wagstaff, a London-based insurance fraud expert.

"Supervision in Europe of insurance and reinsurance is now very tight," Mr. Wagstaff said. "I think people have learned their lesson from those sort of cases."

"The insurance industry is a smaller world (to-

day) with amalgamations. People tend to know who's in the market," he added.

However large the problem proves to be, experts agree that buyers can take simple steps to protect themselves.

First, experts say, those involved in covering a risk, from policyholder to reinsurer, should know something about the backgrounds of their business partners and be cautious with new players.

"Policyholders should do business with agents and agencies that have been in business for awhile and that don't look like they're going to be gone if the claim is unpaid," said Mr. Brace, the California attorney.

Agents, meanwhile, should ask simple questions of prospective insurers about their history and finances, and demand answers, he said.

"Seasoning is the most important component: How long have you been in business? Where have you been in business?" Mr. Brace noted.

"It's a track record, isn't it?" Mr. Wagstaff agreed. "It's a matter of knowing whom you are doing business with."

Examining insurer or reinsurer financial statements is also crucial, since these are sure to be deceptive in the case of fraudulent companies, Ms. Cordial and others say.

U.S. statutory accounting rules, for example, generally encourage asset diversification by prohibiting insurers from holding more than 10% of their surplus in any one investment.

Fraudulent companies, by contrast, have often reported large percentages of their net worth tied up in one or two hard-to-confirm investments, such as certificates of deposit or letters of credit from far-flung foreign banks.

While legitimate insurers typically buy government bonds or stock of recognized companies, scam insurers have frequently reported unusual—even bizarre—investments, including thinly traded penny stocks, unmined gold ore, government securities of nonexistent nations and patent rights.

The capital backing two offshore insurers that collapsed a decade ago included a "life mask" of Marlon Brando, purported to be worth \$1.5 million, 1991 Senate testimony showed.

Bogus insurers' financial statements often include clean audit opinions, but these shouldn't be taken at face value, experts add. Several such companies over the last decade have circulated purported audit opinions from the largest accounting firms that have turned out to be forgeries on the accounting firms' letterhead.

"Do an independent investigation of the company and its financial statements," Ms. Cordial advised.

Experts also raise the ages-old caution that if a deal—in this case, cut-rate insurance coverage—seems too good to be true, it probably is.

"Any substantial discount should raise a red flag about the viability" of the insurer, Mr. Brace said. "If it's super-cheap, then you've got to seri-

Willis faces suit charging bias

Class-action sought

By MICHAEL PRINCE

NEW YORK—Five women have filed suit against Willis Group Holdings Ltd., charging that the insurance brokerage has engaged in a pattern of discrimination.

The suit, filed earlier this month in the U.S. District Court in Manhattan, seeks class-action status. In the complaint, the plaintiffs charge that the London-based brokerage has discriminated against as many as 600 female employees. While the suit does not ask for a specific dollar amount, it requests monetary damages for the plaintiffs in the form of back pay, compensatory and punitive damages, and also seeks a change in the way Willis treats female employees.

"We have substantial evidence that this is a company from the very top that is filled with explicit bias against women," said Christine Webber, an attorney with Cohen, Milstein, Hausfeld & Toll P.L.L.C. in Washington, who represents the plaintiffs.

The main allegation states that women at Willis received lower salaries and bonuses than did men in similar positions, and that the company provides women with fewer resources and requires them to perform more work and meet higher goals.

Female employees were "set up to fail, and (Willis used) that as an excuse not to promote them or pay them," said Shelley Hnot, one of the plaintiffs, who worked at Willis from 1976 until she was laid off last year as a senior vp in New Jersey. The other plaintiffs in the suit are former Willis employees

Margaret Mahon, Heidi Scheller and Maria Traverso, and current Willis Assistant Vp Teresa Jimenez.

The complaint states that all women holding the positions of assistant vp, vp and senior vp in the company from Oct. 30, 1998, to the present were subject to discrimination and constitute the class of plaintiffs.

For example, in 1998 Ms. Mahon had a salary of \$115,000 as a senior vp in Willis' New York office, whereas men at a similar level in the same office had salaries ranging from \$140,000 to \$175,000, the complaint states.

Willis would not comment on the suit other than to state that its established corporate policies prohibit workplace discrimination.

The suit also claims that female workers were excluded from events at which their male colleagues entertained clients and insurers. "Typically, we were not told, so we could not go; but if I found out, we were told to not go," Ms. Hnot said.

The five plaintiffs previously lodged complaints about Willis with the federal Equal Employment Opportunity Commission, which attempted to negotiate a settlement, Ms. Webber said.

Ms. Hnot alleges in the complaint that she was demoted in September 1999, one month after she filed her complaint with the EEOC. She was then fired in April 2000, when she was the only employee let go during a restructuring exercise, the suit says.

Earlier this year, the EEOC issued letters stating that enough evidence existed for the plaintiffs to file their complaint in federal court, the suit states.

Commentary: Farewell

Continued from page 6

our interests in risk management, employee benefits and commercial insurance and reinsurance. Over the years, I have met so many interesting, dedicated and wonderful people, and I am proud to call many of them friends.

I'm so very thankful to be leaving *BI* in very good hands. Publisher Marty Ross and Editor Paul Winston each have toiled at *Business Insurance* for more than 15 years. Their experience is exceeded only by their dedication to this newsmagazine.

And they are supported by many other veterans. Indeed, subtracting my 25 years from *Business Insurance's* collective experience still leaves the existing staff with 418 years on the publication.

I was inspired to write this swan song this week by the debut of *BI's* redesign. I suppose you could say, "In with the new, out with the old," though I intend to keep writing my column until year end, my official retirement.

While I am retiring from *BI* and moving away from Chicago, I am not abandoning our professional community.

I am committed to my membership on several nonprofit boards affiliated with this business, as well as their fund-raising events. And I keep telling my friends that I now will have more time to visit with them than they will have to give to me—until they retire, too.

So, in the words of that wonderful World War II song that Ronald and I have sung for years with our dear Kiwi friends the Whetttons and Murphys on the eve of our annual departures from New Zealand for the United States: "I don't know where, I don't know when, but I'm sure we'll meet again, some sunny day."

Publishing Director Kathryn J. McIntyre's commentary appears fortnightly on the Web at www.businessinsurance.com. She can be reached at kmcintyre@crain.com.

Warning signs of fraud

Experts advise insurance buyers to be wary of insurance companies that are:

1. New to the market
2. Based in lightly regulated overseas domiciles
3. Capitalized with unusual, illiquid assets rather than widely traded bonds or stocks
4. Managed by people associated with previous insurer failures
5. Offering dramatically lower rates for the same or better coverage

IRS: Guidance issued on 401(k) catch-up rules

Continued from page 3

A: Employees are eligible to make a catch-up contribution beginning on Jan. 1 of the year in which they turn 50.

Q: Aside from age, what other criteria must employees satisfy?

A: Older employees are eligible to make catch-up contributions if they make the maximum deferral allowed that year to the 401(k) plan. For example, a 50-year-old employee who next year made \$11,000 in elective deferrals—the 2002 maximum—to his or her 401(k) plan automatically could make an additional \$1,000 in catch-up contributions.

The law also allows employees to make catch-up contributions if plan limits, such as those that enable plans to pass nondiscrimination

tests, prevent employees from making the maximum elective deferral. An employer might impose an \$8,000 limit on elective deferrals by highly compensated employees to pass nondiscrimination tests. Those employees, if they had made the full \$8,000 in elective deferrals, could also make a \$1,000 catch-up contribution.

Similarly, assume a 401(k) plan limited to 10% the maximum percentage of pay that highly compensated employees could defer. In actual dollars, that 10% cap limited, for example, a 50-year-old employee earning \$90,000 to a \$9,000 deferral. That employee, then, could defer an additional \$1,000 as a catch-up contribution.

Q: Must an employee wait until reaching the maximum deferral limit or plan limit be-

fore making a catch-up contribution?

A: No, additional deferrals can start at the beginning of the plan year. Indeed, benefit experts say that catch-up contributions should be considered more as a way for an eligible employee to make a greater deferral rather than a separate amount of money.

Q: What would happen to catch-up contributions in the case of a highly compensated employee who agreed to defer 10% of pay, but then in mid-year stopped 401(k) plan deferrals?

A: The IRS has provided an ingenious approach to resolve such problems, benefit experts say. Simply put, at the end of the plan year, the employer would determine if the employee was eligible to make a

catch-up contribution. If the employee was not, such as the above example of the employee who agreed to contribute 10% of pay but only contributed 5%, the catch-up contribution automatically would be "recharacterized" as an elective deferral.

Similarly, if an older employee deferred 10% of pay to the 401(k) plan, but after nondiscrimination testing an employer found that, to pass the tests, the employee only could defer 9% of pay, rather than return the difference to the employee, the money could automatically be recharacterized as a catch-up contribution.

Q: Must an employer with multiple 401(k) plans offer the catch-up feature in all its 401(k) plans?

A: The regulations generally re-

quire an "all or nothing" approach, i.e., an employer offers the feature in all of its 401(k) plans or not at all. That requirement could pose a temporary problem for an employer if, for example, one of its 401(k) plan administrators couldn't quickly implement the 401(k) catch-up provisions, while its other vendors could. In that situation, the employer would have to delay offering catch-up until it could be provided to all eligible employees. But there are exceptions. For example, notes Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington, an employer acquiring a company that didn't offer a catch-up feature in its 401(k) plan wouldn't have to make the feature available to employees in the acquired unit until the start of the second plan year after the year of acquisition.

Anthrax: Employers taking precautions on mail

Continued from page 1

remain calm but cautious. Employers must be vigilant about suspicious mail delivered to the workplace and be prepared to respond if such a threat were to occur.

"Caution needs to be the order of the day," said Steven Kuhr, senior consultant in the crisis and consequence management group of Kroll Inc. in New York.

"Right now, we're under assault, but we know, at least for today, that the targets are the government and the media," Mr. Kuhr said. All employers, however, should "be vigilant...and take the precautions to protect yourself and your employees."

In addition to implementing their own policies and procedures—including requiring the use of latex gloves to handle mail—risk managers also are turning to the United States Postal Service and the Centers for Disease Control for recommendations on how to identify suspicious mail and how to proceed if contaminated mail is found.

Jeffrey W. Pettigrew, vp-risk management and insurance for Westaff Inc. in Walnut Creek,

Calif., for instance, recently downloaded official and non-official recommendations off the Internet and drafted a one-page list of recommendations for clients of Westaff. A number of Westaff temporary staff employees are involved in mailroom facilities at client companies, he noted.

'With biological attacks, there's no big boom like when a bomb goes off. A biological attack is as quiet as an envelope being opened.'

Don Ponikvar
Defense Group Inc.

Among the recommendations, Mr. Pettigrew is suggesting that mail handlers wear latex or latex-type gloves, dust masks and long-sleeved shirts when handling mail. He noted that while he cannot make the recommendations mandatory he is receiving a lot of positive feedback from clients.

"In times of adversity, risk management really needs to step to the plate and do its best to define or redefine what people should do...that could mean a lot of different things from security to mail handling," Mr. Pettigrew said.

"Our focus right now is on the mailroom and tightening the security with regard to mail coming into our mailrooms," said Matt Jablonski, director of insurance at Charlotte, N.C.-based publishing giant The Hearst Corp.

Mr. Jablonski said that in addition to working with Hearst's head of security, he also is working with his casualty insurer to make sure that the network of doctors and pharmacists within Hearst's workers compensation program are qualified in identifying and treating anthrax cases.

"The one thing that became evident with the two (postal) individu-

als who died in Washington D.C., they had actually gone to the hospital for treatment, but it wasn't identified as inhalation anthrax until after they had passed away," Mr. Jablonski said. "I think it's important to have qualified individuals who focus on symptoms more closely than normal."

He said that he also is examining his property insurance policy to make sure Hearst would be covered for any business interruption claims should one of its facilities have to be shut down due to an anthrax threat.

Three recent anthrax-related scares at the Memphis City Public School System have caused John Britt, director of security, transportation, risk management and safety, to take a number of steps.

The school district, for example, recently held mandatory anthrax/bio-terrorism awareness training for all central office staff and specific training for its mailroom and warehouse employees, Mr. Britt said. It also conducted a public forum for educators to learn about the risks of anthrax exposure and the school system's protocol if an attack were to occur. Mr. Britt noted that he downloaded precautions and procedures from the Postal Service's and Centers for Disease Control's Web sites and tailored the information to his organization.

Among the specific steps the school district is now taking: mail handlers must wear latex gloves when handling mail. Masks are available, but optional, Mr. Britt noted.

"For us, we're taking it at a serious level, but still at a cautious low level type of approach," Mr. Britt said.

Crisis consultants offer other suggestions.

Jerry Bremer, chairman and chief executive officer of Marsh Crisis Consulting in Washington, said that it is important for employers to realize that mailed anthrax threats can go beyond those handled by the Postal Service. "It could come in

through one of the special delivery systems like UPS and FedEx," said Mr. Bremer, former U.S. ambassador-at-large for terrorism.

He also noted that the first thing employers should do is a threat assessment to determine if they are a potential target from someone either inside or outside the company. If they are a potential target for an anthrax threat, he suggests employers review the engineering controls of a building, including the air intake and filtration systems.

Anthrax "is a very, very fine powder and once it's suspended in air, it's like smoke; within a couple of minutes it will fill the room," said Don Ponikvar, vp-crisis response and analysis at Defense Group Inc., a Washington-based counter-terror-

ism technology and consulting firm. Mr. Ponikvar advises that if a piece of mail is suspected to be contaminated with anthrax, employers should immediately turn off all air conditioning systems and fans so anthrax-laced air is not circulated around the building.

"With biological attacks, there's no big boom like when a bomb goes off," Mr. Ponikvar said. "A biological attack is as quiet as an envelope being opened," he said.

And the reality is, "there are no devices to warn people ahead of time to exit the building or to put on a mask," Mr. Ponikvar said. "The only thing available if there's an indication that there is an attack occurring...is to start treatment right away," he said.

BI Stock Index [10/22 - 10/26]

Up-to-the-minute data for all 87 companies that comprise the BI Stock Index can be found at www.businessinsurance.com

Percentage change of BI Index vs. key indicators



BI Stock Index



Dow Jones



S&P 500

Largest Gains

AXA-UAP Group	15.98%
SAFECO Corp.	11.34%
Humana Inc.	9.59%
MBIA Insurance Group	9.01%
Wellpoint Health Networks	8.36%

Largest Losses

Seibels Bruce Group	-20.37%
PXRE Corp.	-8.76%
Argonaut Group	-7.51%
Acceptance Insurance Cos.	-6.31%
Tokio Marine & Fire	-5.81%

Weekly change by market segment

Brokers	3.20%
Insurers/Reinsurers	1.51%
Managed Care Organizations	3.79%

Source: CNET Investor (investor.cnet.com)

ADVERTISER

INDEX

Issue of October 29

ADVERTISER	PAGE #
AIG Corporate	32
American Assoc. of Orthodontics	24
American Insurance Assoc.	29
Business Insurance	6,22
CNA Corp.	7
CNA/Risk Management	16,17
Commonwealth Risk Service	14
CorVel Corporation	9
ESIS	18
FM Global	12,13
Lexington Insurance	4
Marsh Inc.	15
McLarens Toplis	6
Munich-American Risk Partners	11
Near North National Group	24
QBE Reinsurance Corporation	20
RiskClick	25
Swett & Crawford Group	19
Tufts Health Plan	22R
Wausau Insurance Company	5
Zurich NA	21



THE GREATEST RISK IS NOT TAKING ONE.SM

They gave up everything. Their families. Their friends. Their homes. The villages they were born in. They arrived with only the clothes on their backs. Vulnerable. Scared. But brimming with hope and determined that a better life was within their grasp. Today, risk takers don't have to go after their dreams alone. They can rely on a business partner to help guide them through uncharted waters. An organization with unsurpassed insight and financial resources. One with the ability and flexibility to design specific solutions to help minimize risk for almost any business undertaking. So the next time you decide to venture into new territory for an idea you believe in, call AIG. We're best equipped to help you manage the uncertainties that go along with the pursuit of hopes and dreams.

WORLD LEADERS IN INSURANCE AND FINANCIAL SERVICES

Insurance and services provided by members of American International Group, Inc., 70 Pine Street, Department A, New York, New York 10270.

AIG
WWW.AIG.COM