Business Insurance®

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WILLIS CHIEF JOE PLUMERI ON LEADING THE BROKER DURING TIME OF CHANGE / PAGE 6

In Brief

Ohio comp bureau launches rates probe

A special investigation unit of the Ohio Bureau of Workers Compensation is examining whether rates the bureau charges employers have been "inappropriately manipulated," a spokeswoman said. The Ohio Bureau of Workers Compensation is a monopoly insurer, providing coverage for more than 288,000 employers in the state. The spokeswoman declined to provide details on how rates may have been manipulated.

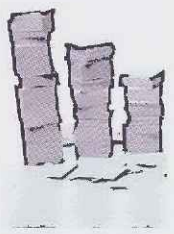
Flagstone Re plans $175 million IPO

Flagstone Reinsurance Holdings Ltd., a reinsurance holding company, has filed an initial public offering of its common

See **NEWS IN BRIEF** page 38

SPOTLIGHT

Securities class-action filings are on the decline, but some are skeptical that the trend will continue; Side A-only DIC coverage programs require careful crafting to avoid pitfalls and to ensure protection; med mal rates still high but stable; real estate market changes pose E&O risks; U.S. litigation trends crossing border into Canada–and its E&O market.



USI mulls private ownership

Brokerage says it has received buyout offer from private equity firm

By SALLY ROBERTS

BRIARCLIFF MANOR, N.Y.—USI Holdings Corp. is mulling whether to once again become a privately held company—a move observers say could ultimately benefit the brokerage, which recently has struggled to meet the expectations of equity analysts.

With private equity ownership, Briarcliff Manor, N.Y.-based USI could focus more on shoring up its financials and building the brokerage without the distractions and compliance costs associated with being a publicly traded firm, they say.

And such attention to building a better business would likely benefit buyers, they add.

USI's announcement last week that it has formed a special committee of outside directors to review a buyout offer it received from a private equity firm also reflects growing interest by private equity investors in the retail insurance brokerage business, observers say (see story, page 35).

The news comes less than a week after USI agreed to pay $83 million to acquire Seattle-based brokerage Kibble & Prentice Holding Co.—the second largest deal in USI's history behind its 2005 acquisition of Summit Global Partners for which it paid $119.9 million in cash, stock and assumed liabilities.

With its diversified revenue mix of property/casualty broking, employee benefits broking and other financial services, Kibble & Prentice is expected to contribute approximately $37 million in annual revenues to USI.

Based on 2005 brokerage revenues, USI was the ninth largest

See **USI** page 35

USI AT A GLANCE

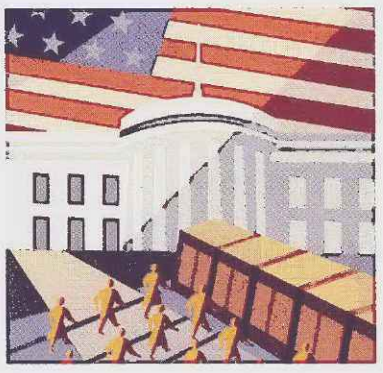
2005 brokerage revenues: **$504.3 MILLION**

2005 employees: **2,826**

Business breakdown for 2005:

- **82.6%** from commercial retail
- **6.5%** from personal lines
- **5.4%** from other services
- **4.7%** from wholesale
- **0.8%** from investment income

Source: BI survey



Key issues on the line in election

Mixed results seen from shift in power in one or both houses

By MARK A. HOFMANN

WASHINGTON—The election of a Democratic majority in either or both houses of Congress next week would have a mixed effect on insurance and risk management issues, according to Washington observers.

Election '06

For example, efforts to extend the federal government's terrorism insurance backstop—currently slated to end on Dec. 31, 2007—could get a boost if party control of one or both houses changed, say observers. But federal tort reform initiatives would probably be derailed, and attempts to streamline insurance regulation, including allowing insurers to seek a federal rather than state charter, would face an unknown future.

And a prime benefits issue—expansion of health savings

INSIDE: Election coverage continues

RRG expansion effort faces uncertain future. **PAGE 36**

Some regulatory posts in play. **PAGE 37**

List of significant ballot initiatives. **PAGE 37**

See **ELECTIONS** page 36

Ruling in IBM cash balance case has big impact on bias debate

Lower courts follow 7th Circuit decision; other circuits to rule

By JERRY GEISEL

The weight of a landmark federal appeals court decision on cash balance pension plans is being felt just two months after the ruling was handed down.

In a decision that captured national attention, a unanimous panel of the 7th U.S. Circuit Court of Appeals in August reversed an earlier district court ruling that IBM Corp.'s cash balance plan was age discriminatory.

That broad ruling—the first time an appeals court ruled on the issue—was a huge victory for employers with the plans. Point by point, the three-judge panel detailed why all cash balance plans—not just IBM's 7-year-old plan—are not age discriminatory.

The decision was of direct interest to the more than 1,000 employers, including many of the nation's largest corporations, that now sponsor cash balance plans. The plans—so named because benefits are expressed and are available as a cash lump sum rather than only as a monthly annuity—had been the fastest-growing defined benefit plan until they became the target of age discrimination lawsuits a few years ago.

The appeals court ruling already has been cited in the dismissal of age discrimination charges in two decisions handed down since the Chicago-based court vindicated IBM's plan.

The first post-IBM ruling involves a suit against PricewaterhouseCoopers L.L.P. by three former PwC employees. Last month, Judge Michael Mukasey of the Southern District of New York rejected the age discrimination charge by the plaintiffs. Citing a central point in the IBM ruling, Judge Mukasey, who has since retired from the court to become a partner with the law firm Patterson, Belknap, Webb & Tyler L.L.P. in New York, said the terms of a cash balance plan are age-neutral "because each participant receives the same pay credit and interest credit each year."

The other post-IBM decision

See **CASH BALANCE** page 38

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How can you get control of your risk data?

Ask Aon.

As your organization undergoes mergers, acquisitions, divestitures and other changes, your risk data may be unmanaged and underused. An effective and efficient risk data strategy helps you consolidate relevant risk information in one place using a common language and platform that allows you to analyze and understand your business exposures and lower your total cost of risk.

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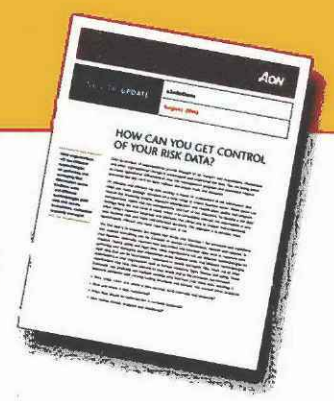
– Kathy Burns, *CEO of Aon's eSolutions Group in Aon Risk Services – Americas*



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On the Web

RISK MANAGER OF THE YEAR®

Nominate risk mangers for *BI*'s annual award

Nominations are currently being accepted for the *Business Insurance* 2007 Risk Manager of the Year®. The new nomination process for this award makes it easier to nominate qualified risk managers. A nomination form is available at *www.BusinessInsurance.com/rmoy*.

QUESTIONS & ANSWERS

Willis' Joe Plumeri talks about changes at broker

Joe Plumeri marks his sixth anniversary this month as chairman and chief executive of Willis Group Holdings Ltd. and

speaks at length with *BI* Editor Regis Coccia about the changes and growth at the brokerage. The full text of the interview–an abridged version of which appears on Page 6–is available at *www.BusinessInsurance.com/QandA*.

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Business Insurance

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Aon sells underwriting unit in $85M deal

Sale to Old Republic continues broker's plan to trim sector business

By SALLY ROBERTS

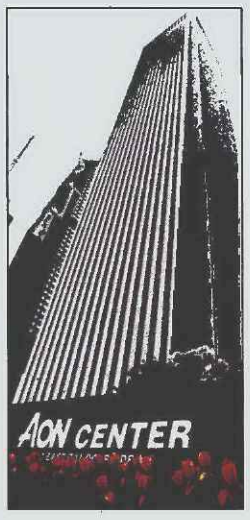
CHICAGO—Aon Corp. has agreed to sell its managing general underwriting unit Construction Program Group to Old Republic Insurance Co. for $85 million in cash.

The move, announced last week, is the latest in the Chicago-based brokerage's plans to exit much of its underwriting business.

Aon agreed in June to sell its Aon Warranty Group and Virginia Surety Co. Inc. units to Toronto-based investment firm Onex Corp. for $710 million (*BI*, July 3).

As part of the CPG transaction, Aon will transfer about $300 million of unearned premium and claim reserves on the books of Virginia Surety that relate to business previously written through CPG, Aon said in a statement.

The sale of CPG and the previously announced sale of Aon Warranty and Virginia Surety are expected to be completed in the fourth quarter, Aon said. Aon continues to operate Combined Insurance Co. of America, its accident, life and health insurance unit.



In a related move, Aon said it will strengthen the reserves of its remaining specialty property/casualty business, which it placed in runoff earlier this year, by about $100 million.

A majority of the reserve strengthening relates to National Program Services, a defunct Hanover, N.J.-based independent managing general underwriter, which wrote habitational risks on behalf of Virginia Surety, Aon said.

NPS Principal Vito Gruppuso pleaded guilty in 2004 to state charges that he pocketed more than $78.8 million in client property premiums intended for several insurers, including Virginia Surety.

Virginia Surety sued NPS for fraud after terminating the program in 2002 and has continued to report losses on the runoff of NPS business (*BI*, June 7, 2004).

Zurich to pay $7 million to settle Ohio charges over business practices

State alleged insurer worked with broker to inflate premiums

By RUPAL PAREKH

COLUMBUS, Ohio—Zurich American Insurance Co. has reached another settlement in connection with investigations into its business practices, agreeing to pay $7 million to resolve charges of noncompetitive business practices and improper use of finite insurance products leveled by Ohio insurance regulators.

Under the terms of the settlement agreement announced last week, the insurer—a unit of Zurich, Switzerland-based Zurich Financial Services Group Inc.—will pay the office of Ohio Attorney General Jim Petro $6 million, including $4 million in civil penalties and $2 million for reimbursement of attorneys' fees and investigative costs.

In addition, Zurich agreed to pay the Ohio Department of Insurance a civil penalty of $1 million, and to implement various business reforms, including: a ban on providing false quotes and entering into so-called pay-to-play arrangements under which insurers compensate brokers for being included on a list of companies from which the brokers solicit bids or quotes; enhanced disclosure to consumers regarding the compensation Zurich pays to insurance producers, including brokers; and appointing a compliance officer to oversee a compliance program to ensure Zurich adheres to the terms of the settlement agreement.

Zurich admitted no wrongdoing as part of the settlement.

The settlement comes in response to allegations that Zurich, along with other insurers, conspired with New York-based broker Marsh & McLennan Cos. Inc. to "eliminate competition, mislead customers and inflate premiums paid for commercial casualty insurance policies in Ohio," Mr. Petro and Ohio Department of Insurance Director Ann Womer Benjamin said in a joint statement.

AP WIDE WORLD

Ohio Attorney General Jim Petro had alleged that Zurich conspired with Marsh to "eliminate competition."

The Ohio regulators alleged that insurers who took part in the scheme submitted fictitious and artificially inflated premium quotes to deceive clients into believing that the winning quote was the best available premium as determined by a competitive process.

The lines of insurance affected by the alleged conspiracy were purchased primarily by business and governmental entities, and include umbrella, excess casualty, directors and officers, errors and omissions, and commercial auto insurance, the regulators said.

Such agreements among competitors to divide markets or customers represent a violation of Ohio's antitrust law, The Valentine Act, while the use of misleading, unfair or deceptive practices by brokers or insurers to manipulate insur-

See **ZURICH** page 34

State high court ruling favors CGL insurers in construction suit

Decision is likely to be cited in cases outside Pennsylvania

By JOANNE WOJCIK

HARRISBURG, Pa.—In a setback for policyholders, Pennsylvania's highest court has ruled that faulty workmanship cannot be considered an accident in order to establish coverage under a commercial general liability policy.

The opinion, issued last week by the Pennsylvania Supreme Court, overturned a 2003 Pennsylvania Superior Court ruling that had awarded coverage to a contractor, the Kvaerner Metals Division of Kvaerner U.S. Inc. of Bridgewater, N.J.

Kvaerner was sued in 1997 for breach of contract and breach of warranty by Bethlehem Steel Corp., a customer to which Kvaerner had sold equipment that underwent a faulty installation.

In its decision, the lower court determined that defense cost coverage should be granted to Kvaerner because the cause of the defect was in dispute, and one of the possible causes could have been torrential rains that occurred during installation of the coke oven battery, which would have been a covered peril under the CGL policy.

However, because Bethlehem Steel's lawsuit alleged only breach of contract and breach of warranty and not improper installation or damage due to weather, there was no coverage under the CGL policy, the Pennsylvania Supreme Court ruled in an appeal brought by National Union Fire Insurance Co. of Pittsburgh, Pa., a unit of American International Group Inc.

The decision could have wide implications in other construction-defect coverage cases in Pennsylvania because the issue of what constitutes an occurrence triggering coverage under CGL policies has been widely disputed in the state, according to Deborah M. Minkoff, an attorney at Cozen O'Connor in Philadelphia, who represented the insurer in the case.

"Whether faulty workmanship can constitute an occurrence is a very hot topic right now," she said. "Policyholders were successful in arguing that it was an accident because it was unexpected and unintended. Courts then were wanting to stretch coverage."

Now however, "with this decision, Pennsylvania holds that claims of faulty workmanship are not covered by commercial general liability policies. Many construction-defect claims and other insurance coverage disputes will be affected by this opinion," Ms. Minkoff said.

The case is also likely to be cited in jurisdictions outside of Pennsylvania because contractors nationwide have been challenging the definition of occurrence under CGL policies, according to Charles T. Young, a policyholder attorney at McNees Wallace & Nurick L.L.C. in Harrisburg, Pa., who was not connected to the Kvaerner case.

"This case will be cited in other jurisdictions, but it's obviously not controlling. So it will have some splash outside the state of Pennsylvania, but not huge," he said. "But it's the last word in Pennsylvania."

In ruling against the policyholder, the Pennsylvania Supreme Court took a narrow approach to interpreting two common insurance coverage principles: the extent of the insurer duty to defend and whether CGL policies cover contractual liability in addition to tort liability, said Ed Joyce, a policyholder attorney with Heller Ehrman L.L.C. in New York, who also was not involved in the Kvaerner case.

In ruling in favor of the policy-

See **CGL** page 6

APWIDEWORLD

Plaintiffs Mark Lewis (left) and Dennis Winslow seek same the rights and benefits for committed same-sex couples as heterosexual couples.

N.J. court OKs rights for same-sex couples

Ruling unlikely to affect employers' benefit plans

By JUDY GREENWALD

TRENTON, N.J.—A New Jersey Supreme Court's ruling last week that committed same-sex couples must be given the same rights and benefits enjoyed by opposite-sex couples is unlikely to have a major impact on the benefit plans of large employers operating in the state.

Observers note that even if the New Jersey Legislature decides to take the ultimate step of recognizing same-sex marriage—which is considered unlikely—the law would not apply to self-insured employers' benefit plans. That is because a federal law—the Employee Retirement Income Security Act—pre-empts state laws and rules that relate to employee benefit plans. ERISA preemption, though does not apply to benefit plans employers purchase from insurers.

Furthermore, as in Massachusetts, where same-sex marriage became legal in 2004, employees would remain ineligible for benefits, like 401(k) plans, authorized under federal law.

New Jersey's Legislature approved a Domestic Partnership Act in 2004, but that law does not apply to self-insured employers and explicitly does not require employers to provide health dependent coverage to an employee's domestic partner.

The New Jersey Supreme Court said in its decision last week, "We have decided that our State Constitution guarantees that every statutory right and benefit conferred to heterosexual couples through civil marriage must be made available to committed same-sex couples."

The decision gives the Legislature 180 days to either amend the state's marriage statues or enact an "appropriate statutory structure."

The ruling says that "you don't have to call it 'marriage' if you don't want to, but you have to give gay couples the ability to enter into unions that, for all practical purposes, offer the same rights and privileges as marriage," said J.D. Piro, Norwalk, Conn.-based chair of Hewitt Associates Inc.'s health law consulting practice.

Currently, the only state that offers same-sex couples all of the state-level rights and benefits of marriage is Massachusetts, though such couples can enter into state-level civil unions in Vermont and Connecticut, according to the Washington-based Human Rights Commission.

Most of New Jersey's larger employers will likely see little impact.

Mid- to large-sized employers typically are self-insured, and any legislative action would apply to employers that are not self-insured and to state workers, said Andy R. Anderson, of counsel with Morgan, Lewis & Bockius L.L.P. in Chicago.

Ilse de Veer, a principal with Mercer Human Resource Consulting in Norwalk, Conn., said if New Jersey lawmakers do decide to legalize same-sex marriage, the impact "would be very similar to the impact in Massachusetts," where employers are basically stuck between the conflicts in state and federal law.

If the lawmakers decide to create a separate-but-equal category along the lines of civil union, it will have less impact, "simply because New Jersey already has a domestic partner registry," she said.

Under current New Jersey law, domestic partner benefits are tax-

See **RULING** page 37

ERRORS & OMISSIONS

A story in the Oct. 16 issue, "Study: Health Care Costs to Rise 7.7% in 2007," omitted several paragraphs at the end of the article. The full version appears online at *www.BusinessInsurance.com/cgi-bin/article.pl?articleId=20058&a=a&bt=Health+costs*.

Claims severity increases: Study

Tort reforms impact claims frequency

By DAVE LENCKUS

While the frequency of hospital medical malpractice liability claims has stabilized, the severity of claims continues to grow, though at a slower rate, according to a study by Aon Risk Consultants, a unit of Chicago-based Aon Corp.

Claim frequency in 2005 remained at 2.6% of acute care bed equivalents, the same as in 2004 and down slightly from 2.7% in 2003, according to the "2006 Hospital Professional Liability and Physician Liability Benchmark Analysis," which was co-sponsored by the American Society for Healthcare Risk Management.

In 2000 and 2001, the claim frequency rate was 3.0%.

The drop in frequency is greatest in California, Florida, Pennsylvania and Texas—all of which have enacted some tort reform designed to limit plaintiffs' damages, the study noted.

The severity of claims, however, increased by 6% on average last year, according to the study. Much of that cost is attributable to defense costs, which increased by 17% on average last year. Indemnity payments to claimants increased 3% on average last year.

From 2003 to 2005, severity grew between 6.5% and 7.5% annually, according to the study.

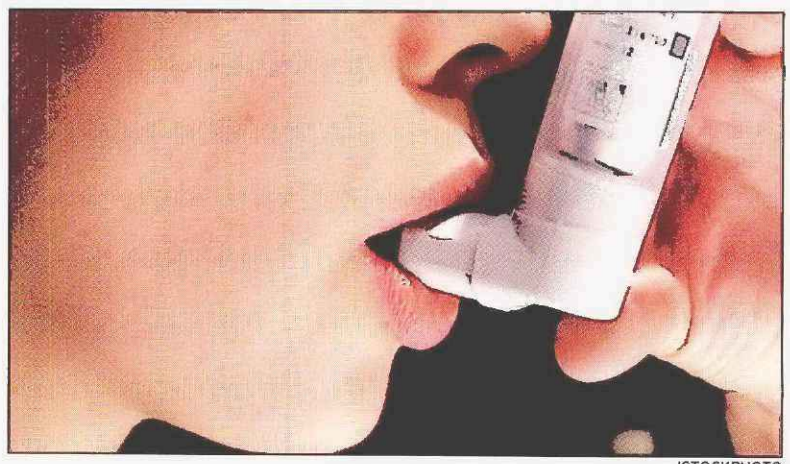
The study for the first time also established a link between mortality rates and professional liability claims. The study found that hospitals with lower-than-average mortality rates in 2004 experienced lower-than-average professional liability claims. It also found that hospitals with higher-than-average mortality rates also had abnormally high professional liability claims.

A copy of the study may be purchased by ASHRM members for $250 and by nonmembers for $350 by calling ASHRM at 800-242-2626 and requesting item No. 178701.

Insurers urge medical compliance

Financial incentives, communication tools central to efforts

By GLORIA GONZALEZ



ISTOCKPHOTO

Blue Care Network of Michigan came to an alarming realization last year that its members suffering from asthma were not as compliant as they should be in taking their prescribed medications.

A key driver for the lack of compliance, the insurer discovered, was that asthma controller inhalers designed for daily use were available only as high-priced brand products, said Kim Tonkavich, the director of pharmacy health centers for BCN of Michigan, the health maintenance organization subsidiary of Blue Cross Blue Shield of Michigan. In fact, internal pharmacy data pointed to a tendency for asthma sufferers to purchase rescue inhalers rather than controller inhalers because the rescue drugs had lower copayments, he said.

In response, the company launched an initiative this year to alleviate the copay burden for its members with the hope that this would spur increased medication compliance, Mr. Tonkavich said.

BCN of Michigan is one of several health insurers stepping up their efforts to improve member compliance with prescribed drug therapies, creating targeted programs to address specific disease classes or offering financial incentives to motivate patients to properly take their medications.

In January, the Detroit-based insurer launched generic copayments for all asthma drugs. In April, the company began allowing members to purchase 90-day supplies of asthma medications at retail pharmacies but pay only two copayments instead of the usual three copayments.

By utilizing both programs, members can save more than $300 annually in out-of-pocket prescription drug costs, Mr. Tonkavich said. "It's just an incentive to members to try to improve compliance with drug therapies," he said.

Other insurers have launched their own medication compliance programs.

Bloomfield, Conn.-based CIGNA Pharmacy Management implemented a nationwide diabetes compliance program last year after a pilot program demonstrated that members who adhered to prescribed drug regimens had more successful health outcomes. The

See **COMPLIANCE** page 29

Softer insurance market looming as losses shrink, capacity expands

Panel says discipline needed to ensure continued stability

By LOUISE ESOLA

CHICAGO—With Hurricane Katrina losses fading into memory and no major disasters so far in 2006, the insurance market—now swimming in capital—is bound to soften, according to industry experts.

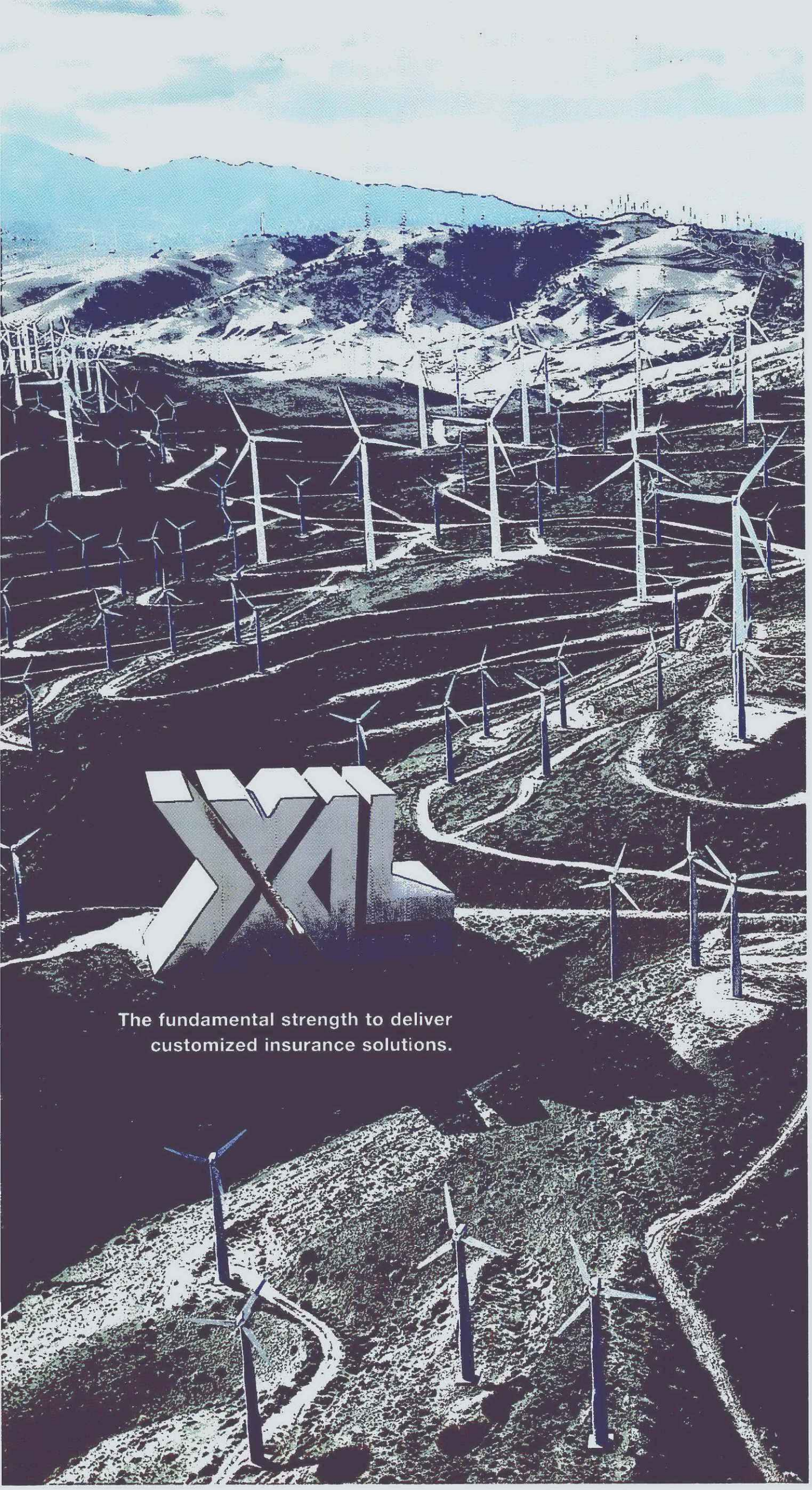
"We're at the peak right now," said Adam Klauber, director of equity research for Cochran Caronia Waller in Chicago, to more than 300 risk management executives and industry analysts who attended the 16th Annual Insurance Executive Forum hosted by Illinois State University's Katie School of Insurance and Financial Services in Chicago last week.

"What goes up must come down," said Mr. Klauber, who was on panel of industry experts that discussed a wide range of topics including the state of the insurance market, the future of TRIA and the aftermath of the Spitzer investigations into insurance industry practices.

Regarding the future of the market, maintaining a high level of profitability will require disciplined underwriters who offer coverage based on exposures, and not resort to cutting rates to win market share, according to Wendy Baker, president of Lloyd's America Inc. in New York.

Ms. Baker attributed this sort of discipline as the tool that helped the industry see profits in 2005, despite the losses from Hurricane Katrina. "We have someone who puts their foot on the brake," she

See **OUTLOOK** page 30



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CGL: State high court rules for insurers

CONTINUED FROM PAGE 3

holder, the lower court took into consideration other potential coverage triggers that were not identified in the underlying complaint—namely the rainstorm—to grant defense coverage to the policyholder, but the Supreme Court did not, he pointed out.

"To the extent that there can be a narrow interpretation of the duty to defend—which in and of itself is a broad duty—Pennsylvania is coming in on the side of the classic old school, 'Don't go outside the four corners of the complaint,' " Mr. Joyce said.

Secondly, "more courts don't make the contract-tort distinction," he added, referring to the narrow definition of occurrence applied in this case.

"The policy doesn't say, 'we only cover tortuous liability.' If all contractual liability were not covered, per se, then why would you have limited exclusions about certain types of contract activity. It wouldn't make any sense. You wouldn't need to do it," Mr. Joyce said.

Attorneys at Kirkpatrick & Lockhart Nicholson Graham L.L.P. in Pittsburgh, who represented policyholder Kvaerner in the case, were not available to comment.

Kvaerner Metals Division of Kvaerner U.S. Inc. et al. vs. Commercial Union Insurance Co. et al. Case No. J-161-2004. Supreme Court of Pennsylvania Middle District. Oct. 25, 2005.

BI adds staffer in Chicago office

Ms. Esola

CHICAGO—Louise Esola has joined *Business Insurance* as an associate editor in its Chicago office.

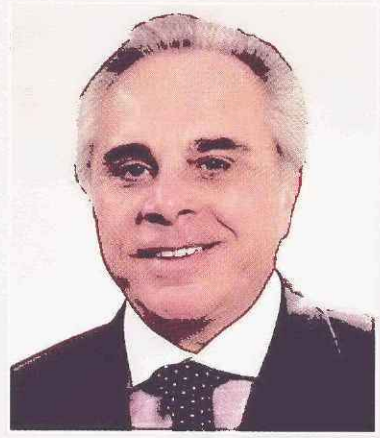
Ms. Esola will report on risk management and benefits management issues for both the weekly newsmagazine and *BI*'s Breaking News on the Web at *www.BusinessInsurance.com*.

For the past four years, Ms. Esola was a reporter at North County Times, a daily newspaper in San Diego where, among other things, she led the paper's education coverage. Ms. Esola had previously worked on newspapers in Virginia and as a stringer for The Associated Press.

Ms. Esola holds a bachelor of arts degree in journalism from Pennsylvania State University in State College, Pa.

She can be reached by phone at 312-649-5282 and by e-mail at *lesola@businessinsurance.com*.

Questions Answers



Joe Plumeri marked his sixth anniversary this month as chairman and chief executive officer of Willis Group Holdings Ltd. In that time, he has been at the center of a whirlwind of change and growth at the brokerage. He spoke recently with Business Insurance Editor Regis Coccia about where he's taking Willis

Flying the Willis flag

Q: What achievements are you proudest of at Willis?

You've always got to be proud of results and the stock price, but I am most proud of the culture we've built here. The Willis pin means a lot to us here. The culture is one where people work together, it's cooperative. "One flag" means something. Being a global company is insignificant if it's just about flags and countries, because then it's nothing but a geography lesson. What's significant about being a global broker is everybody around the globe works with each other in the best interest of the client.... There's no more beautiful sight than people who are very good at what they do enjoying working together, all going in the same direction with the same dream.

Q: One thing that makes Willis different is it lacks a consulting operation. Is that by design?

That's what you're supposed to do. I was once getting my shoes shined and I said to the guy, "How long have you been shining shoes?" And he said, "I don't shine shoes." I asked, "What do you do?" He said, "I'm a shoe-ologist." "You're a what? What the heck is that?" He said, 'I consult you about your shoes, whether you need new laces or not, I'll repair scuffs, tell you about your heels, your soles. That's more than just a shoeshine person, but I'm going to charge you for the shine." If I start a consultation department, I'm telling my brokers "Just place the transaction. You're the commodity and you're the people with the brains." That's ridiculous and why, on purpose, we don't have a consulting operation.

Q: In June, Willis announced a Willis Quality Index to benchmark insurers. Why?

This is an initiative where we're trying to work with the carriers that are our partners because we need them to underwrite business. We want to see where we can find, by a measure along a lot of different categories, where they can improve in the service of our clients.... The whole idea for everything we do in this business is to be aspirational and heroic, which is to say raise our game. That's what Willis is all about. That's what Chapter 3 is about: it's called Shaping Our Future.

It's not about yesterday, it's about tomorrow. It's not about memories, it's about dreams. That's why we're selling our building in London. That's a memory, that was yesterday. The new building, that's tomorrow. Chapter 1 was about execution and performance—going from acting like an LBO to our IPO—building our sales culture and working together to build shareholder value. Chapter 2 was about making investments for our future in what was a very chaotic market in 2005. These chapters were about putting strong financial and cultural building blocks in place at Willis and now that we've got those we're looking ahead to taking Willis from a good, distinctive company to a great company, with breakout growth and performance.

THE FULL TEXT of this abridged *BI* interview is at *www.BusinessInsurance.com/QandA*

Q: You've been outspoken on contingency payments and Willis was the first to cease accepting them, but Marsh, Aon and Willis have revised their agreements so they can accept payments as managing general agents. Not everybody understands the distinction. How have you explained this to clients?

We haven't had any questions about whether we've changed our stance at all. I've been on record as saying, even when I gave my RIMS speech a couple years ago, as long as you tell people who you represent, that's fine. My issue is the conflict that you have while representing one person and getting paid by somebody else.... By the way, I am on record as being against them before Spitzer. I thought they were props in the industry, and people said, "Why didn't you give them up then?" Because I would've put my company at a competitive disadvantage if I did.

We need to embrace the client/broker relationship in such a way where my sole form of compensation and growth comes from how you the client evaluate me. If that breaks down and I'm getting paid all over the place, I am never going to break my back to be creative, imaginative and work really hard to make sure I do a great job for you.... That's the fabric of why I don't like them, because it breaks down where the relationship should be. That stifles creativity and stunts growth in the industry.

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Business Insurance OPINIONS

Failure to communicate is no laughing matter

THE SIGNATURE LINE from "Cool Hand Luke"—"What we've got here...is failure to communicate"—can draw a bemused chuckle under most circumstances. But there's nothing funny about failed communications applied to workplace emergency plans.

Consider a new Harvard School of Public Health study about preparations for an influenza pandemic. The study found that only 19% of workers surveyed said their workplace had a plan for dealing with a pandemic while 63% said there was no plan in place, and the remaining 18% of the roughly 1,100 workers surveyed said they did not know if there was a plan or not.

Having an emergency plan in place is critical to emergency recovery.

And a survey undertaken for *Business Insurance* by Greenwich Associates found that while an overwhelming majority of employers felt that they had at least partially developed emergency plans in place, their insurers and brokers took a far more skeptical view of just how well those plans were developed. And fewer than half of the employers said they had communicated their plans to employees—a far cry from the recommendations of 94% of the insurers who urged that employees be made aware of the plan (*BI*, Oct. 9).

While we feel the Harvard study's finding that nearly two-thirds of workers say their employer doesn't have a pandemic flu plan to be more than a little disturbing, we find the fact that nearly one-fifth don't even know whether there's a plan to be troubling as well. Having an emergency plan in place is critical to emergency recovery. Failing to communicate the specifics of the plan renders it worthless—a failure to communicate that's no laughing matter.

U.S. ties a disadvantage for liability exposures

THE CLOSE ECONOMIC RELATIONSHIP between the United States and Canada has advantages for both countries, but—as some Canadian companies are finding out—there are some distinct disadvantages, too.

As we report in our Spotlight on professional liability risks, some Canadian companies that have U.S. exposures are finding it increasingly difficult to secure coverage in their home market. Canadian insurers are wary of U.S. plaintiffs, and policyholders that do business in the United States often have to shop their risks outside of their home market in order to obtain errors and omissions coverage.

While everyone should have access to the courts, the unwillingness of some foreign insurers to even touch a risk that has U.S. links is yet another sign, if one was needed, that something needs to be fixed in the U.S. tort system.

On a more positive note, Canadians can at least take solace that their own courts are doing something to keep a cap on rising litigiousness north of the U.S. border while still allowing their citizens to have their day in court.

In Quebec, for example, an appeals court has made what we would regard as a common-sense ruling that a plaintiff that wants to initiate a class action against a group of defendants must have a cause of action against each defendant.

While it would be more than a little optimistic to think that such a ruling would ensure that all plaintiffs direct their litigation at the people who have harmed them rather than whoever has the deepest pocket, it at least goes a little ways along that road.

Letters

'Women to Watch' a popularity contest

To the editor: Although I applaud *Business Insurance*'s attempt to give attention to women leaders in the insurance industry in the Oct. 9 "Women to Watch" issue, these "people to watch" lists appear to be nothing more than popularity contests and marketing opportunities by the dominant players in the industry. From what I read, there appears to be very little substance in the criteria used to select these leaders.

These contests leave me wondering "why" these women should be watched. I don't see any basis for suggesting they will "change" the industry. Most will likely protect their company's market share and avoid change so that they keep the entrenched positions intact. The changes that many of these companies promote are incremental. These women may likely be the next women promoted up the corporate ladder, so perhaps this list can be called a "women on the fast-track" list, but I don't buy that many of them will change the industry in any meaningful way.

I would like to see *BI* do a more thorough examination of the marketplace and identify a handful of women (or men) who are truly doing things to improve the industry in dramatic ways. This would give more substance to such cherry picking. My pick for the person who most changed the industry over the past year: New York Attorney General Eliot Spitzer. Now there's a change agent who altered the industry for the better in one big swoop!

Corby Pelto
President and Chief Executive Officer
Pelto Group Inc.
Minneapolis, Minn.

Write us

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Online Poll at www.businessinsurance.com

How would you view further consolidation of the brokerage industry?

NEXT WEEK'S POLL: *Does your organization have an emergency plan for dealing with an influenza pandemic?*

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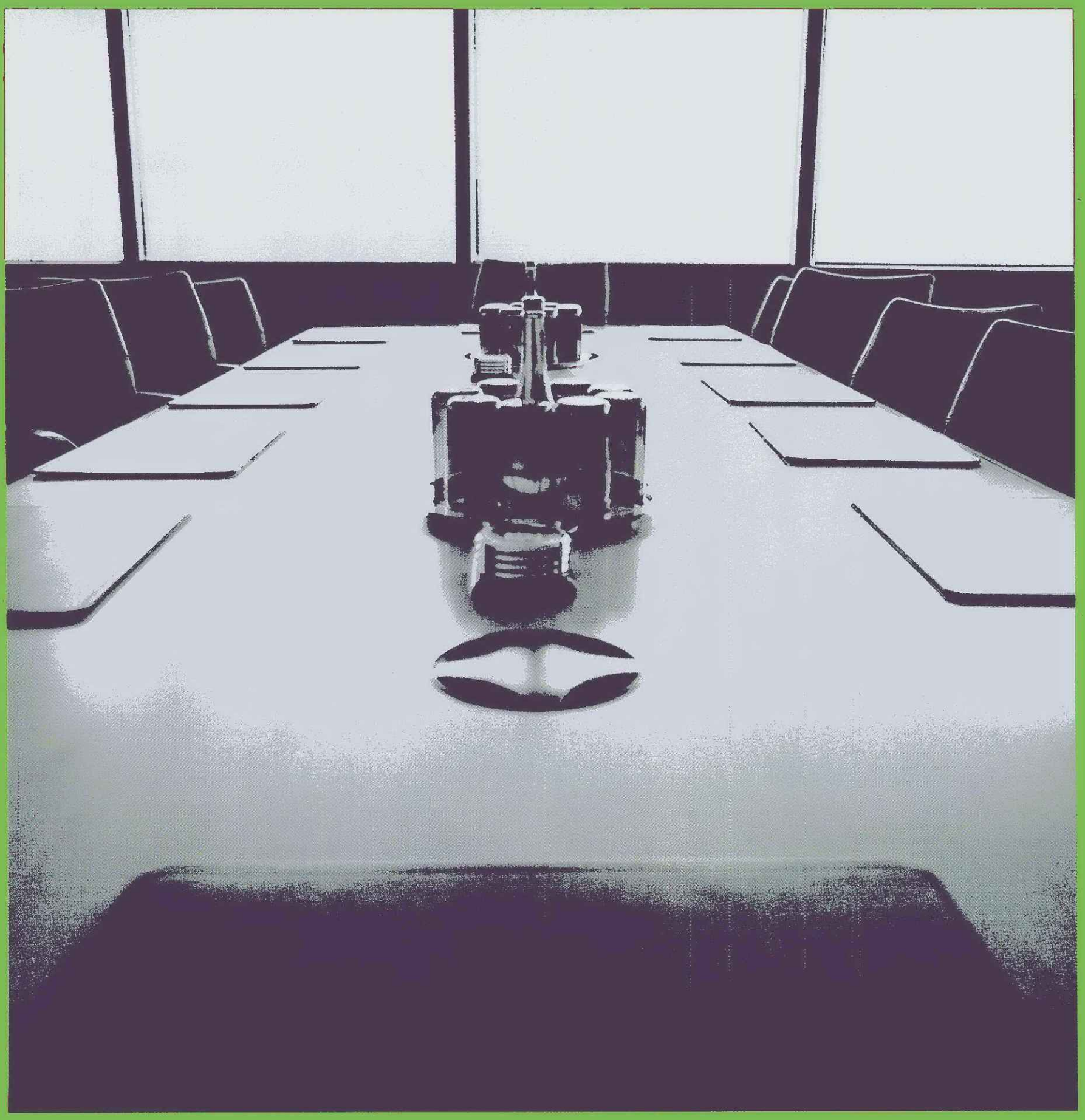

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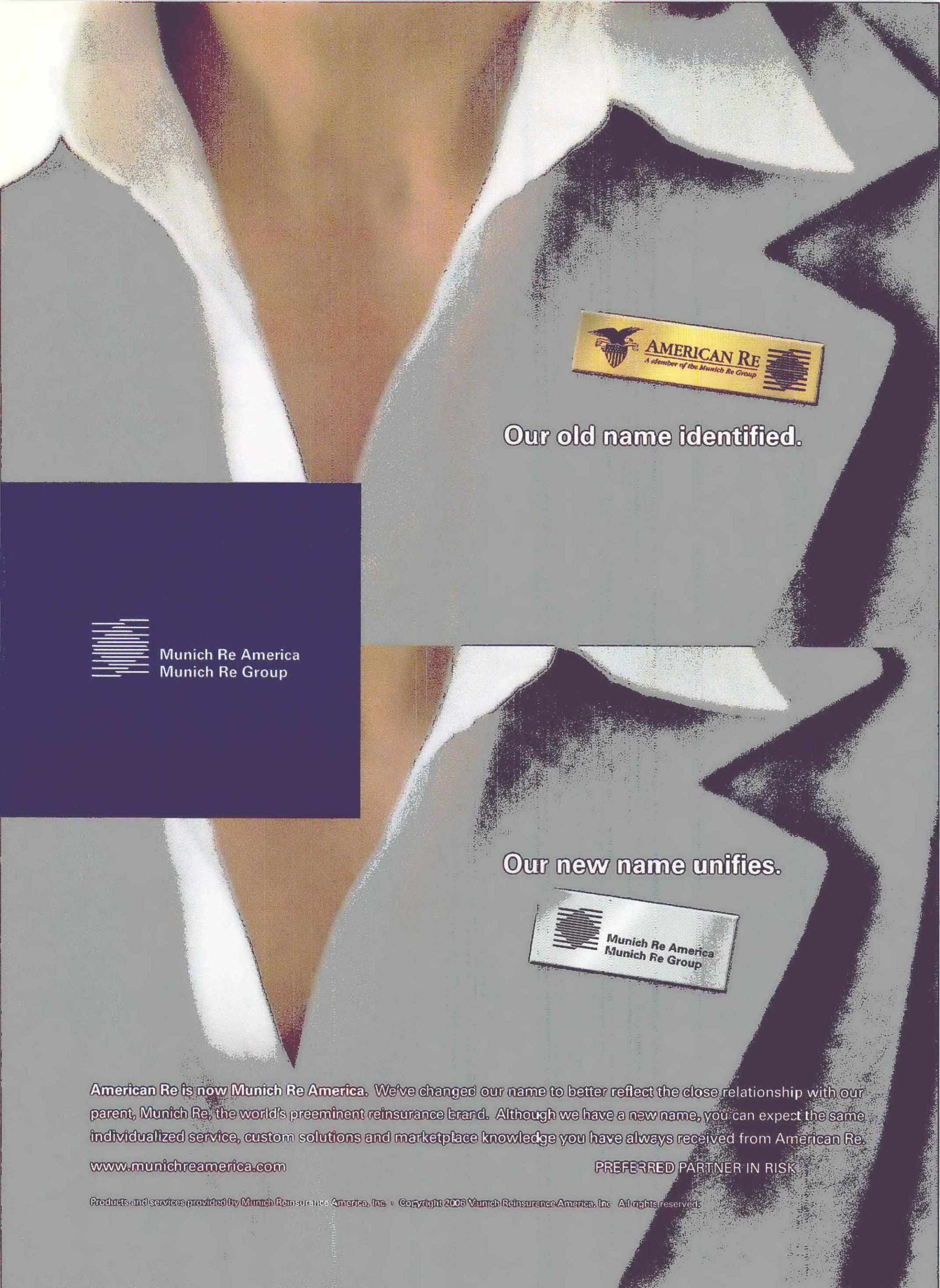
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FALLING D&O CLAIM RATES: A TREND OR JUST A BLIP?

Professional Liability Risks

SPOTLIGHT

By DAVE LENCKUS

As risk managers prepare for their January 2007 directors and officers liability coverage renewals, they have some evidence that securities class action litigation problems are no longer spiraling out of control.

That evidence, however, is uncertain at best and fleeting at worst, according to D&O insurance market observers.

The good news for insurance buyers, potential defendants and D&O underwriters is that—unlike most of the past 10 years—claim frequency has dropped significantly over the past two years, according to claim tracking organizations.

For example, research by the Stanford Law School Securities Class Action Clearinghouse of Palo Alto, Calif., in cooperation with Cornerstone Research of Boston, shows that claim filings this year are on pace to number fewer than 119, compared with 194 on average each year from 1996 through 2005. In 2005, 176 new claims were filed, compared with 213 the year before (see story, page 14).

Various factors might be converging to suppress claim filings, said some attorneys, insurers, brokers and consultants. Among them are tighter regulations designed to prevent fraud, smaller market capitalization losses and the legal troubles being juggled by a leading plaintiffs' law firm.

But many observers are not convinced that the two-year drop in claim frequency is a trend, or that it will continue.

"Many of those factors are not permanent, and therefore it seems highly unlikely that the reduced level of securities class action filings will continue for an extended period of time," said Dan A. Bailey, a partner with Bailey Cavalieri L.L.C. of Columbus, Ohio.

"Much like the dramatic reduction in securities class action filings during the two years immediately following enactment of the Private Securities Litigation Reform Act of 1995, this recent reduction in securities litigation activity is likely to be temporary," Mr. Bailey said.

John Gould, a vp with Cornerstone, is not ready to call the drop-off in filings a trend. Indeed, referring to the average of 200 annual filings during the past 10 years, he said: "It's hard for me to think that's not going to continue" just because of the number of filings over the "last six months to a year."

To Carol A.N. Zacharias, senior vp and underwriting counsel for ACE USA in New York, the drop-off appears to be part of a long-term "pattern of dips."

That means reacting to those numbers would be "a dangerous path" for insurance buyers to travel, said Gary Dubois, a New York-based executive with Ariel Reinsur-

See D&O next page

IN OUR NEXT SPOTLIGHT, NOVEMBER 6: REINSURANCE TRENDS & ISSUES

D&O: Settlement severity still on the rise

CONTINUED FROM PREVIOUS PAGE

ance Co. Ltd. of Bermuda. "I think it's too early for risk managers and their in-house clients—directors and officers—to make any presumptions that this is a long-term trend."

Underscoring that assessment, many observers noted that claim severity bucked all of those factors and continued to rise dramatically through year-end 2005.

While the factors holding down claim frequency might begin working eventually on severity, they also might prove to be no match against the forces that are driving up the average cost of claims, observers said. Those forces include a growing percentage of lead plaintiffs that are institutional investors with fiduciary responsibilities. Compared to individuals, institutional investors have the financial strength to reject a quick settlement and wait for a much larger offer or force their cases to go to trial, where awards typically exceed settlements.

A Stanford Clearinghouse official concurs that claim frequency has fallen over too short a period to label the reduction a trend.

But Stanford Clearinghouse Director Joseph Grundfest said the "strongest theory" that would explain the drop in claim frequency is a "changed governance and litigation environment" since the Enron Corp. and WorldCom Inc. scandals.

Those scandals and the resulting Sarbanes-Oxley Act on corporate financial responsibility "have caused corporations to engage in less activity that would stimulate class action litigation," said Mr. Grundfest, who is a former commissioner of the U.S. Securities and Exchange Commission.

Market cap losses down

That is a partial explanation for the recent dramatic reduction in market capitalization losses, according to the Stanford Clearinghouse and Cornerstone. The researchers found that the so-called disclosure dollar loss—or the market capitalization loss that investors sustained the day after an organization announced it had misrepresented its financial reports—dropped markedly the first half of 2006 and for all of 2005 compared with losses from 1996 through 2004 (see chart).

Also contributing to the market loss reduction is that suits over the boom and bust of U.S. equities starting in the late '90s largely have been resolved and the U.S. stock market has been far less volatile in recent years, the researchers said.

But, Mr. Bailey asserted, Sarbanes-Oxley likely has had only limited impact on the frequency of securities class action filings.

"The number of restatements by corporations continues at near record levels, which suggests that misleading financial disclosures by companies are far from rare," Mr. Bailey noted.

Indeed, Sarbanes-Oxley eventually could become a helpful tool for plaintiffs' attorneys, said Carl Pursiano, a New York-based senior vp of management liability at Liberty International Underwriters, a unit of Liberty Mutual Group Inc.

For example, some companies' inability to comply with the section of the law on internal controls will become an important element of plaintiffs' cases, Mr. Pursiano predicted. In effect, he said, "SOX will map the way for plaintiffs."

As for the reduction in market capitalization losses, several D&O market observers said those losses will spike again.

"It's a matter of time until the market shifts to a bear market mode and/or a recession occurs," Mr. Pursiano said.

Another factor several observers say has contributed significantly to the reduction of claim filings is the legal troubles that have beset leading plaintiffs' law firm Milberg Weiss Bershad & Schulman L.L.P. of New York. Los Angeles federal prosecutors in May indicted the firm and two partners for allegedly paying $11.3 million in illegal kickbacks to individuals for serving as plaintiffs in numerous cases. Numerous attorneys have since left the firm.

Insurance brokerage executive Steve Shappell noted that Milberg Weiss typically was the claim filings volume leader among all plaintiffs' attorneys. In 2005, Milberg Weiss filed 91 cases, or more than half of

See D&O page 14

'DISCLOSURE DOLLAR LOSSES' REGISTER A DECLINE

The annualized market capitalization losses that investors sustained the day after an organization announced it had misrepresented financial reports is well off its peak in 2000. In billions of dollars.

Source: Stanford Law School Class Action Clearinghouse and Cornerstone Research

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D&O: Claims numbers falling, but severity still increasing

CONTINUED FROM PAGE 12

the 176 securities class action cases. Through the first half of 2006, the firm represented plaintiffs in 17, or 27.9%, of case filings.

"So for them to be distracted is a very substantial factor," said Mr. Shappell, a managing director in Denver in the legal and claim practice at Aon Corp.'s Financial Services Group.

But Mr. Bailey disagrees. "In virtually all securities class actions, several different plaintiff law firms separately file a complaint and then compete against each other for the role of counsel for the lead plaintiff," he said. "The absence of Milberg now simply means that other plaintiff law firms have a better chance of being designated as counsel for the lead plaintiff."

A plaintiffs' bar representative said the drop-off in securities class action filings is an aberration that would rebound to historical levels.

Plus, when considering the number of related shareholder derivative action lawsuits and cases that allege violations of the Employee Retirement Income Security Act, securities fraud litigation has grown during the current decade, said Kevin P. Roddy, president of the Washington-based National Assn. of Shareholder & Consumer Attorneys.

In a recent white paper on trends in securities class action lawsuits, ACE's Ms. Zacharias noted that the number of pending federal court ERISA cases grew to 216 in 2004 from 134 in 2002.

Tony Galban, senior vp and global D&O underwriting manager at Warren, N.J.-based Chubb Specialty Insurance, a unit of Chubb Corp., agrees that "there aren't fewer cases per se." Instead, there has been a shift in the types of fraud claims filed against corporate executives.

Mr. Galban said he sees "a lot of parallels between this period and 10 years ago" after the passage of the PSLRA, when the number of securities cases filed in federal court dipped as some were moved into state courts. But, eventually, the number of federal filings "came back with a vengeance."

So, the drop-off in class actions means that plaintiffs' attorneys are still active and handling as many cases as their resources will allow, said Mr. Roddy, an attorney with Wilentz, Goldman & Spitzer P.A. in Woodbridge, N.J.

In addition, the attorneys who left Milberg Weiss will need time at their new firms "to get geared up and get results," Mr. Roddy said.

Class action securities suits drop to 10-year low

Though midyear 2006, fewer securities fraud class-action suits were filed than during any six-month period since the end of 1996, according to a study by the Stanford Law School Securities Class Action Clearinghouse of Palo Alto, Calif., in cooperation with Cornerstone Research of Boston.

The annualized estimate of 123 filings for 2006—based on the 61 new filings during the first six months of the year—represents a 36% drop from the historical average of 194 filings a year from 1996 through 2005, the study reports.

Since then, the frequency rate has dropped further, according to the researchers. Through the third week of October, 97 cases had been filed, which is fewer than 119 cases on an annualized basis.

The frequency of filings also dropped in 2005 to 176 from 213 in 2004, according to the clearinghouse and Cornerstone.

Tempering that positive news is climbing claim severity, which has continued unabated for a decade since the enactment of the Private Securities Litigation Reform Act, which was designed to prevent frivolous litigation.

The severity of settlements, however, depends on who is measuring them and which extraordinary cases they exclude from their figures to craft what they consider a true picture of claim severity.

For example, according to the Stanford Clearinghouse and Cornerstone, settlements on average last year spiked 15.9% to $28.5 million from $24.6 million in 2004. But, according to PricewaterhouseCoopers L.L.P. of New York, the average settlement was much worse—ballooning 156% to $71.1 million from $27.8 million a year earlier.

The two organizations are a little closer on their measurements of the median average, or the value at which an equal number of cases settled for more or for less. Stanford Clearinghouse and Cornerstone estimate that figure at $7.5 million in 2005, which is a 25% increase from $6 million in 2004. PwC estimates the 2005 median average at $9.25 million, which is a 37% jump from $6.75 million in 2004.

—By Dave Lenckus

How smart buyers shop for Side A-only DIC coverage

Use care to build broad protection of D&O exposures

By MARK A. HOFMANN

Side A-only difference-in-conditions directors and officers liability coverage can offer broad protection to valued executives and directors—but that protection's guaranteed only if the program is carefully crafted, say experts.

The coverage—which has been around for a couple of decades—responds only to non-indemnified losses by directors and officers, including shareholder derivative suits or in situations in which a company has declared bankruptcy.

Side A-only DIC policies generally offer broader coverage terms and much narrower exclusions than traditional D&O policies. Purchasing the coverage is way to attract qualified people who might otherwise shy away from corporate service for fear of having to pay losses out of their own pockets related to their jobs as corporate directors.

But experts warn that risk managers need to avoid pitfalls—including some that can render the Side A-only coverage virtually worthless—as they put together their programs.

Although Side A coverage was introduced in 1985 by Bermuda-based Corporate Officers & Directors Assurances Ltd., interest in it has picked up considerably just in the past three or four years for a variety of reasons, say observers.

"Lawyers consulting with board members" has helped drive the interest in the coverage, said Lou Ann Layton, managing director and national D&O practice leader for Marsh Inc. in New York. Board members hire law firms or outside consulting firms to find out how to make the D&O program best serve their needs, she said.

And board members obviously don't want to have to dig into their own pockets when the company can't or won't indemnify them, she said.

One of those occasions is bankruptcy, said Dan A. Bailey, a member of Bailey Cavalieri L.L.C. in Columbus, Ohio.

Under a standard D&O policy, the courts have generally held that the policy and proceeds are an asset of the bankruptcy estate if the company files bankruptcy, said Mr. Bailey. "Thus, the policy and its proceeds are frozen the moment the company filed bankruptcy and the directors and officers cannot access the policy for their own loss," he said, adding "that's the one point in time when they absolutely need to access the policy."

"A confluence of factors" has increased interest in the coverage in recent years, said Carol A.N. Zacharias, senior vp and counsel to ACE USA's Professional Risk Surety and Political Risk divisions in New York.

One is the rise of entity coverage that allows the entity itself to become an insured party under the D&O policy, which could allow the entity to exhaust the policy's limits, she said.

Another factor is claims severity, with the average securities class action case in 2005 being settled at $71.1 million, up from an average $27.8 million in 2004, she said, noting that the 2005 figure does not include WorldCom Inc. or Enron Corp. settlements.

TAKING SIDES

D&O policies offer coverage for various stakeholders

SIDE A: Indemnifies directors and officers

SIDE B: Reimburses entity for indemnifying directors and officers

SIDE C: Covers entity against losses for which it's liable

There's also been a jump in non-indemnifiable claims, notably stock option-related suits in which state law precludes indemnification of directors and officers, she said.

Situations also arise when "black hats and white hats" compete for policy limits, said Ms. Zacharias. When so-called "black hat" directors and officers are sued, the black hats may be sued more frequently, she said. That leads their counterparts to worry that "they're going to need that coverage fast, and they're going to need a lot of limits" out of fear the "black hats" will erode available limits.

One thing that does not present a problem is capacity, said Marsh's Ms. Layton.

"I never had a client come to us citing limits that we couldn't put together," she said.

Risk managers need to be aware of the nuances of the coverage as they structure programs, according to experts.

Each carrier tailors its policy a different way, said Mr. Bailey. Some Side A polices afford much broader coverage than others, he said.

"If you're a buyer, you want to make sure you know what you're buying. Make sure you get the broadest coverage possible," he said.

An excess Side A-only DIC ought to incorporate a variety of features, said Mr. Bailey. These include it being nonrescindable in whole or part for any reason as well as a very

See **SIDE A** page 18

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Side A: Grasping structure of DIC policy

CONTINUED FROM PAGE 16

narrow insured vs. insured exclusion. Such policies should not contain Employee Retirement Income Security Act or pollution exclusions, he said.

The broad DIC provision coverage should drop down if underlying insurers refuse to pay, cannot pay or are legally prohibited from paying, he said.

As risk managers attempt to put together layered programs, "you want to make sure you do it in a smart way and not trip up yourself," said Mr. Bailey. For example, the lowest level of the excess DIC Side A-only should be "treated conceptually as the primary policy for purposes of all of the other excess DIC Side A layers," he said. "That means that those other excess DIC policies should designate the base DIC policy—and not the true primary policy—as the 'followed policy,'" he said.

"Only the underlying Side A policy should be listed as 'underlying insurance' in the Side A policies excess of the base Side A policy," Mr. Bailey explained. "By doing so, the higher-level Side A policies will drop down on top of the base Side A policy whenever the base Side A policy drops down pursuant to its DIC provisions, regardless whether the policies underlying the base Side A policies are exhausted."

Mr. Bailey also said risk managers should pay careful attention to quota share Side A programs, which can result in unintended coverage limitations. That's because each insurer in the quota share program usually is liable only for its quota share percentage of the total loss covered on the quota share layer.

"The liability of any one insurer in the quota share program is not increased if another insurer in the quota share does not pay a loss for any reason," he said. "If an insurer in the quota share program does not pay a covered loss, a gap in coverage exists," a situation Mr. Bailey called "unacceptable."

"In my mind, it doesn't make good structural sense to purchase the DIC policy from the same insurers that participate in your underlying program. One of the risks you're trying to protect against is the underlying insurers being insolvent or unwilling to cover particular loss," he said.

Solvency is a key consideration, said an underwriter.

"We believe it's very important to first strongly consider the financial strength and claim paying reputation of the Side A insurer," said Jim Proferes, vp and deputy underwriting manager for D&O liability products in Warren, N.J.-based Chubb Specialty Insurance in Philadelphia.

"It is critical to assure that they are capable of performing when called upon," Mr. Proferes said.

Buyers need to consider what situations they might face that would make Side A DIC coverage critical, he added. "They should certainly focus upon the construction of the DIC feature as well as work with their agent or broker to consider scenarios which would trigger such a provision."

"You want to make sure you're getting the protection," said Marsh's Ms. Layton. "There are various Side A policies out there so you need to make sure you're getting one that has all of the components that make it special. You need to make sure you're negotiating all the right triggers."

"The first thing you want to look at is what the trigger is for the DIC. When does it drop down? You want to make sure it's dropping down to the primary," she said. "And then you've got to make sure everybody supporting that DIC has the same terms and conditions so there are no holes in it."

Finally, Ms. Layton said, risk managers need to make sure they're negotiating a fair price. "Pricing that product for what it does, how it does it and when it does it is very important."

Risk managers need to make sure they've adequately budgeted for the purchase, said ACE's Ms. Zacharias. She also noted that there's "a certain amount of delicacy in terms of the purchase" because the entity buys the coverage yet won't directly benefit from it.

Nevertheless, "it's a credibility buy," she said. "It's a solid, intelligent thing to buy."

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Medical malpractice rates stable, but still at 'very high levels'

Claims severity continues to increase, but at lesser rate

By LOUISE KERTESZ

Medical malpractice insurers are reporting improved loss ratios as a result of nearly steady frequency and moderating severity of claims. That means after years of skyrocketing rates, buyers can expect stable prices—even a slight reduction in some regions—and sufficient capacity for the coming year, insurers and brokers say.

However, the medical malpractice insurance crisis looks to be far from over.

Dr. Richard E. Anderson, chief executive officer of Napa, Calif., insurer The Doctors Co., likened medical malpractice insurance rates to record flooding in New Orleans following Hurricane Katrina. "It's like saying the problem was over when the flood waters stabilized. Rates are stable—at very high levels," he said.

'The prime driver (of rising premiums) has always been claims costs'...which have been increasing by about 6% a year.

Larry Smarr,
Physician Insurers Assn. of America

In Pennsylvania, "rates have found a new plateau," said Richard P. Kidwell, associate counsel and director of patient safety and risk management at the University of Pittsburgh Medical Center. "The big insurer here, PMSLIC, didn't raise rates this year for the first time in four to five years, and I hope that's the start of a trend. The problem is that for the past four to five years, we've seen a 200% cumulative increase. Rates have leveled off at such a high rate, it's troubling for doctors," he said.

PMSLIC is a subsidiary of Norcal Mutual Insurance Co. of San Francisco.

Insurers now are profitable, so "we're in a hiatus," said Larry Smarr, president of Physician Insurers Assn. of America in Rockville, Md. But as long as paid claims continue to rise, "there will be no end in sight to rising premiums," he said. "The prime driver (of rising premiums) has always been claims costs," which he said have been increasing by about 6% a year.

According to Aon Risk Consultants' "Hospital Professional Liability and Physician Liability Benchmark Analysis," while claims frequency is holding steady, claims severity continues to increase even though it is at a lesser rate.

"It's not that (hospitals and doctors) can't find someone to provide coverage if they want it, but have we done the best we can?" asked Frank Dodero, senior vp at Aon Healthcare in Chicago. "I think there's work to be done in tort reform, improving quality and improving risk profiles."

Paul Greve, senior vp and senior consultant at the Willis Healthcare Practice in Nashville, Tenn., said, "Starting last year and continuing this year, many individual physicians and groups are beginning to see slight single-digit decreases in premiums."

However, Mr. Greve said it's too soon to tell whether the small decrease will draw doctors back to the profession they left because their malpractice premiums grew unaffordable and they feared being sued.

A 2004 American Medical Assn. survey found nearly all of the 27% of its member physicians who stopped providing certain services during the previous 12 months cited medical liability pressures as affecting their decision.

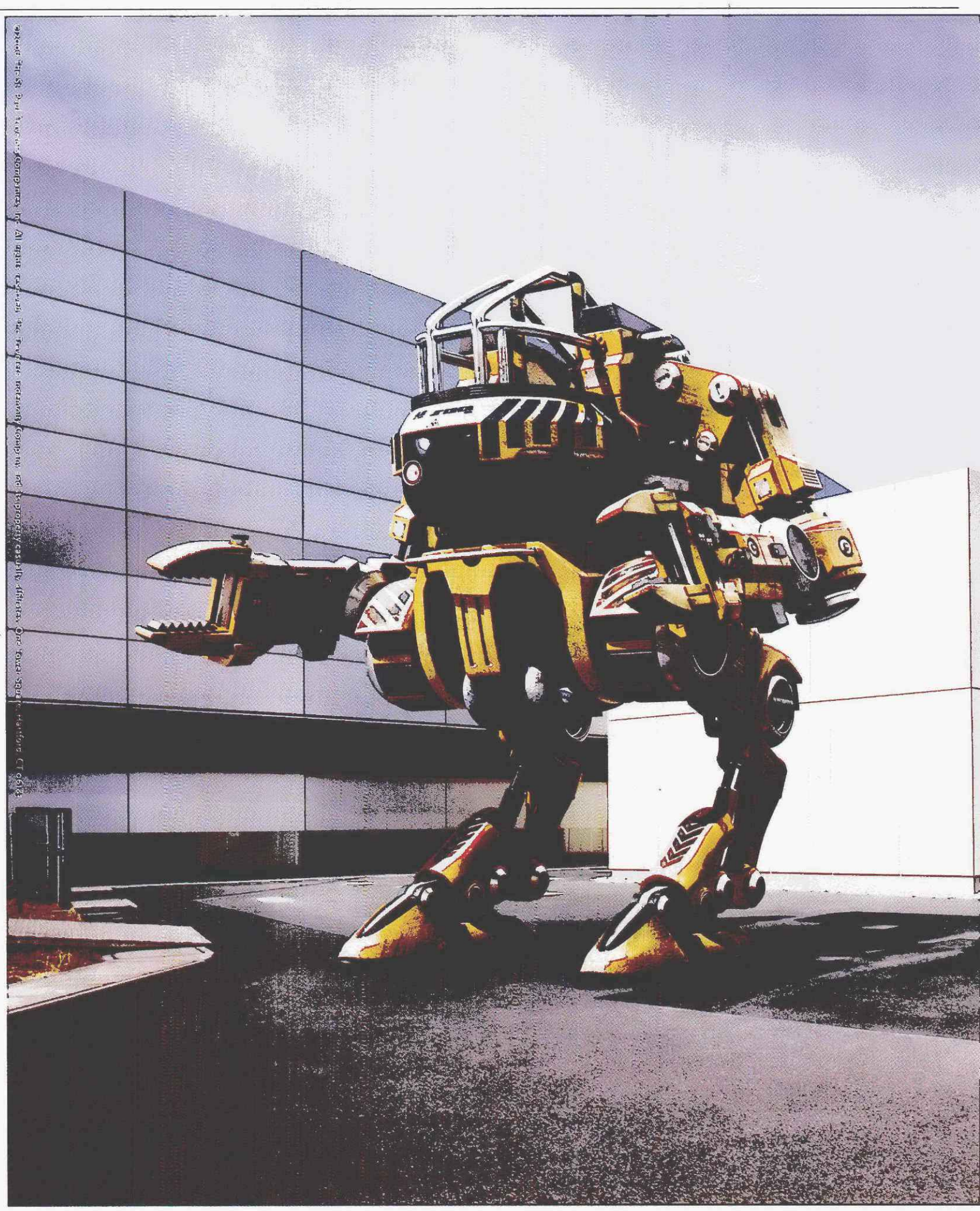
"We reduced rates in Dayton (Ohio) by 15% last year, and this year we're going to hold the line," said Bart Nyhan, president and CEO of NCG Enterprises in Auburn, Calif., which manages two doctor-owned malpractice insurers, Emergency Physicians Insurance Co. and Ohio Tristate Medical Insurance Co. "I think in states where there is meaningful tort reform, you will see doctors moving back in," Dr. Nyhan said.

Ohio is among states that have passed "major tort reform," The Doctors Co.'s Dr. Anderson said.

However, emergency room physicians are among specialties that insurers "aren't clamoring to write," and ER doctors' rates "are up dramatically over five years," Mr. Nyhan said. Unlike some hospitals and medical groups, ER doctors have implemented "very little if any patient safety work," leading EPIC to form the Auburn-based nonprofit Emergency Medicine Patient Safety Foundation to address this concern, he said.

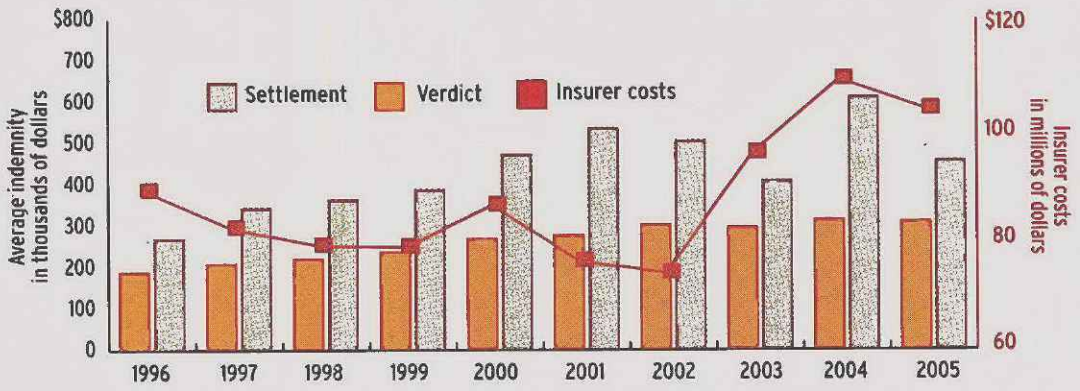
Other specialties that have curtailed their services include radiologists, obstetricians and neurosurgeons. Primary care physicians, whose income is lower than specialists, continue to be squeezed by high rates and lower reimburse-

Continued on next page



CLAIMS COMPARISON

Medical malpractice claims that result in plaintiff settlements and verdicts, and the cost to insurers to handle such cases.



Source: Physician Insurers Assn. of America

CONTINUED FROM PREVIOUS PAGE

ments, insurers say.

Premiums in states lacking reforms or with lesser or newer reforms are "high multiples" of premiums in states where more comprehensive reforms have been enacted, Dr. Anderson said.

About 25 states have passed various levels of reform. California and Texas are among states viewed as having comprehensive, solid reforms. According to the Texas Medical Assn., since reforms were anchored in a constitutional amendment, all major insurers have cut their rates, most by double digits; new players have entered the market; and the state has gained 3,000 new doctors since 2003.

Indiana also has a reform of many years' standing, said Daniel Landrigan, executive vp at The Medical Protective Co. in Fort Wayne. The state caps all damages at $1.25 million.

But longevity is no guarantee a state's reform will withstand challenges. In September, Louisiana's 30-year-old $500,000 cap on overall damages was struck down as unconstitutional. More recent reforms, including those in Illinois, continue to be challenged.

"The essence of what will determine the future environment is whether the state malpractice reforms are upheld," said Willis' Mr. Greve.

Brenda Osborne, senior underwriting officer and vp at AIG Healthcare in Boston, agreed. "Reform has a benefit, but not many states have strong tort reform; some have yet to be tested. So from an underwriting perspective, you can't necessarily rely on reform to limit your losses. We don't necessarily change our rates until we have confidence that there will be a reduction in losses."

"Economic damages continue at a high rate and that's not going away," Ms. Osborne said. "Medical advances have doubled life expectancy, and plaintiff attorneys are using life care planners and forensic economists to determine value. Every year that is increasing the economic value of the claims. Generally, most tort reform does not deal with economic damages."

However, she said, "on the hospital side you're always going to see more stability (in the market) because there's a lot more infrastructure in terms of risk management." Hospitals have built that infrastructure partly out of a need to better manage their risk in response to spiking prices beginning in 2000.

James D. Hinton, vp-risk and insurance for Nashville, Tenn.-based HCA Inc., said that as the multihospital organization began taking retentions higher than $5 million to obtain more favorable pricing for its excess coverage, the company also "poured a lot of dollars" into patient safety and risk management programs. Those efforts are "paying off," Mr. Hinton said in noting that "claim counts are down and severity is about flat" for HCA's captive insurer.

HCA now has a $15 million retention, and pricing was flat in its last renewal. In its upcoming January 2007 renewal, "we're hoping for a small decrease, but brokers are telling us (prices) will be flat," he said.

Aon's Mr. Dodero said huge damages awards are still being made, demonstrating that further safety improvements are necessary.

Despite improved risk management, "hospitals can't control jury verdicts within certain venues," AIG's Ms. Osborne said.

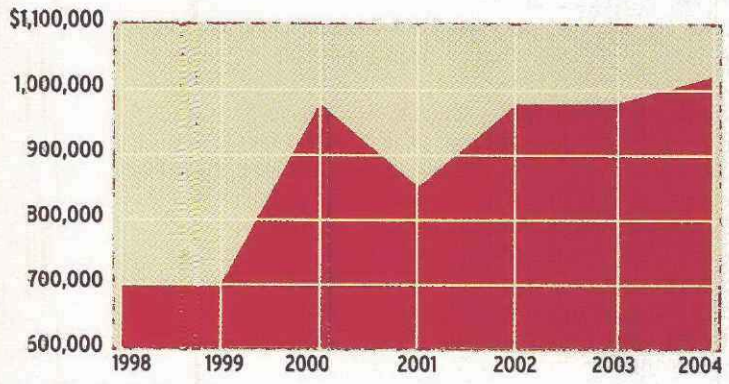
In venues with and without noneconomic damage caps, juries are awarding "enormous sums" for inflated medical costs, disabled children's lost wages and renovating homes for rehabilitation purposes, Dr. Anderson said.

In March 2005, a Dallas jury awarded more than $606.1 million to the daughter of a cancer patient

See **MALPRACTICE** next page

AWARD TRENDS

Median compensatory awards in medical malpractice cases 1998-2004.



Source: Jury Verdict Research

Malpractice: Insurance rates stabilizing

CONTINUED FROM PREVIOUS PAGE

killed by an overdose of chemotherapy drugs in 2003—a case filed just before Texas' tort reform legislation went into effect. The award was reduced to $2 million in part because of a high-low pretrial agreement.

More recently, a Tampa, Fla., jury awarded $216 million—$100 million of the total being punitive damages—in October to the family of a man who was left brain damaged when the stroke he had suffered was misdiagnosed. The case was filed before Florida imposed caps on some awards.

Such huge awards set the bar for settlements and verdicts, which have risen steadily since 1985. The large awards make it "harder for defendants to risk their day in court," said Dr. Anderson.

In addition, insurers' cost of handling court cases has risen significantly since 2000, said the PIAA's Mr. Smarr (See chart, page 21).

However, not everyone reads the market this way, including John P. Gismondi, founder of Gismondi & Associates in Pittsburgh, a plaintiff attorney and chairman of the medical malpractice section of the Pennsylvania Trial Lawyers' Assn.

"The statistics nationally bear out the fact that over a 25-year period, there hasn't been any great spike in jury awards or payments on claims...when adjusted for inflation," said Mr. Gismondi, who cited a Harvard School of Public Health study this year that found that most claims lacking merit were resolved without payment.

Mr. Gismondi argued that "the real cause of increased insurance rates is the insurance cycle and insurance mismanagement."

In a positive development for policyholders, Mr. Greve said that, according to defense firms, jurors favorable to defendants report that they have been affected by media reports about large damage awards.

The rub is that, "if the market is relatively stable in the next couple of years, the push for reform will be blunted," said UPMC's Mr. Kidwell.

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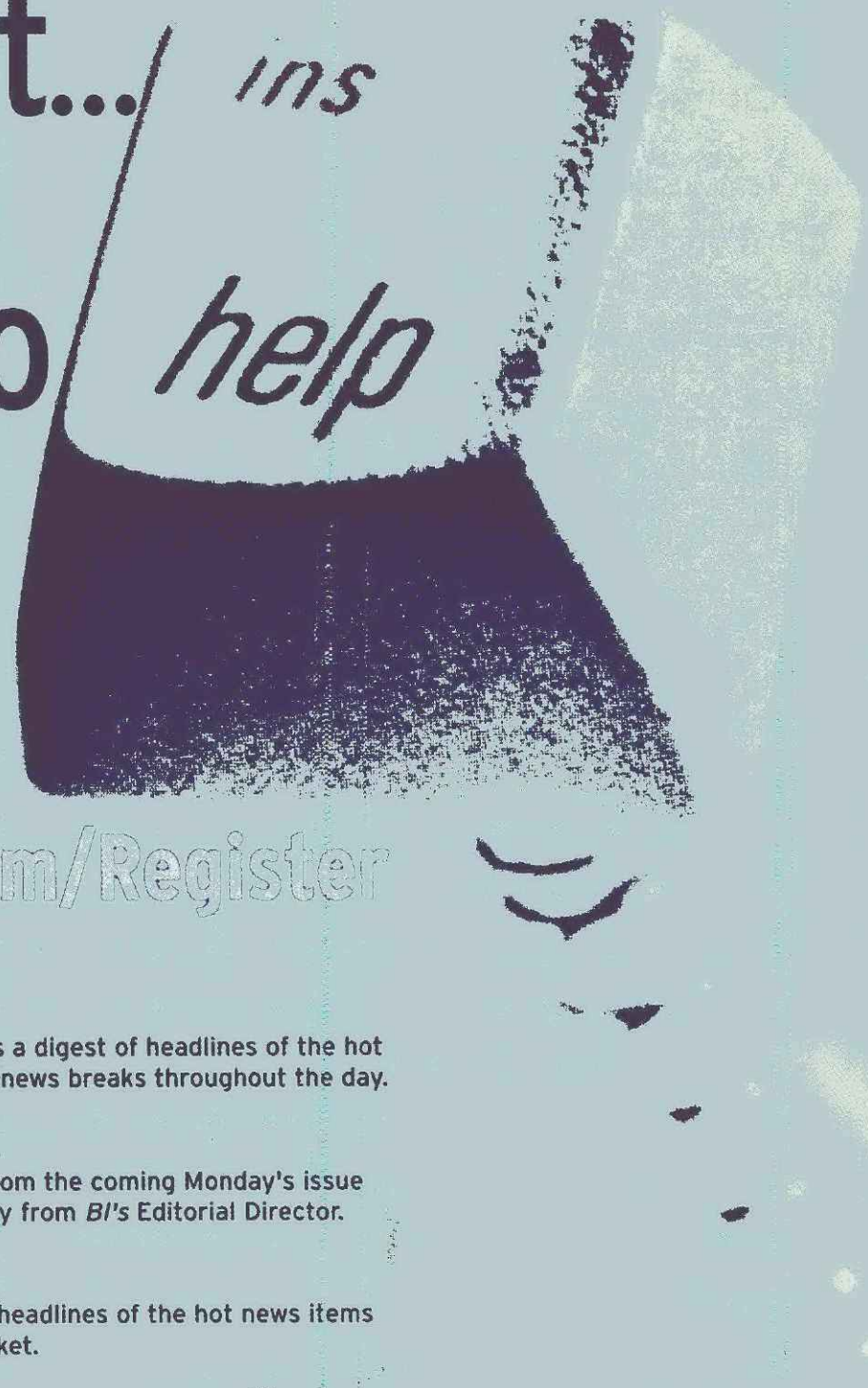

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Real estate downturn increases professional liability risks

E&O claims activity effected by slowed sales, smaller returns

By ROBERTO CENICEROS

A flagging U.S. housing market could spur errors and omissions claims against real estate industry professionals as reality catches up with a heightened demand that drove many deals, insurance observers say.

Some real estate-related professionals could generate E&O claims as they move into new business areas to try to make up for lost revenue but lack the expertise to properly service a new set of clients. Others could face claims as it becomes more difficult to fulfill promises made when the real estate market sizzled with sales activity, experts say.

In an Oct. 11 report, the Washington-based National Assn. of Realtors said it expects existing home sales to drop 8.9% this year to 6.45 million. Despite the downturn, 2006 is on track to be the third-strongest following record sales in 2004 and 2005.

The NAR also projected that new home sales would fall 17.3% nationwide with housing starts down 10.9% to 1.84 million for 2006.

That follows a late September statement by the Washington-based National Assn. of Home Builders that said the housing market is fairing "a bit rougher than the soft landing" that housing analysts had expected.

The NAHB noted that housing prices rose to a record level during the recent real estate boom, but prices have since been dropping under their own weight. The association forecast an 11.5% decline in housing starts this year followed by another 11.7% drop in 2007.

Also in September, the U.S. Department of Housing and Urban Development said that inventories of new and existing houses reached record levels.

Developers, design professionals, property appraisers, realtors and real estate attorneys all face increased risk in a down cycle, insurance industry observers say.

Developers and sponsors that raise money for condominium and mixed-use projects that combine retail and urban living units, for instance, now face sales that have slowed precipitously, notes Alexandra S. Glickman, area vice chairman for Arthur J. Gallagher Risk Management Services in Glendale, Calif.

Consequently, investment returns from condominium and mixed-used projects are in retreat. So developers and sponsors that made promises about certain returns for investing in such projects could now see lawsuits from investors when they can't deliver, Ms. Glickman said.

"There is so much money chasing

See HOUSING page 25

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Investment returns from condominiums and mixed-use projects that combine retail and urban living units have declined, which may lead to lawsuits from investors.

Housing: Slowdown may boost claims

CONTINUED FROM PAGE 24

so few deals that really make economic sense now," Ms. Glickman said. "If the yields don't come in that were projected, then there might be much greater pressure...to really go after the sponsors in terms of misrepresentation."

Bruce Eisler, senior vp in New York for Liberty International Underwriters, said claims related to the slowing real estate market have not yet materialized, nor has his professional liability book of business changed since the downturn began. But with the potential for further slowing, Mr. Eisler said he knows that he must now be extra vigilant as a professional lines underwriter that claims are likely to follow.

"That is something we are paying close attention to," Mr. Eisler said.

Past economic down cycles had a "profound impact" on certain professional liability claims activity, Mr. Eisler said. One of his concerns is that professionals attempting to make up for lagging business will move into new areas where they lack expertise.

"In the past if you look at claims against design professionals, often times the claims arise from when a design firm begins to take on work outside of their area of specialization," Mr. Eisler said. "That is what I am looking at."

Architects that until recently faced a backlog of designing high-end homes or condominiums, for example, may attempt to design office buildings or strip malls.

Attorneys that have specialized in handling real estate closings could now turn to handling wills, estates or other work where they lack experience.

"Odds are they will," he said.

Shutdown not all bad

For some real estate professionals, however, an economic slowdown could reduce their risks, said Judy Lowe, executive vp for Realty Executive Southern Arizona in Tucson.

A slowing of business would mean real estate professionals would have more time to make sure their business is conducted properly, said Ms. Lowe, who described current conditions as moving into a "more normal market."

'If the yields don't come in that were projected, then there might be much greater pressure...to really go after the sponsors in terms of misrepresentations.'

Alexandra S. Glickman,
Arthur J. Gallagher
Risk Management Services

Also, real estate agents who are new to the business, having jumped in when the market was hot and hoping to make quick and easy money, are likely to flee during tougher times, Ms. Lowe said. Newcomers are more likely to spur claims than seasoned professionals, she said.

When the housing market was hot, it also was rife with stories of buyers hurrying to beat escalating prices or competition by making hasty purchases without the usual inspections or careful deliberation.

That could mean that homeowners dissatisfied with deals they eagerly agreed to when the housing market was hot, "could be looking for someone to blame other than themselves for them being in the situation they are in," Ms. Lowe said. They, too, could become a source of claims, she said.

Similarly, when the real estate market was booming, developers and their partners were much more likely to see a project completion with everyone profiting, LIU's Mr. Eisler said. A developer might have even absorbed the cost of a problem caused by, for example, a design professional.

However, with the market slowing and profits thinning, developers faced with those situations are less likely to be so magnanimous and the filing of a claim is more likely, Mr. Eisler said.

Rising litigation trends increase demand for E&O coverage in Canada

Legal changes ease filing of class actions in several jurisdictions

By GLORIA GONZALEZ

Litigation trends in the United States are starting to have a major impact on Canada's errors and omissions insurance market, increasing demand for the coverage and possibly leading to a firmer pricing environment.

Major lawsuits and settlements related to professional services demonstrate that the U.S. trend of holding professionals responsible for financial losses or alleged misconduct in services they provide to companies has filtered into Canada.

"We're seeing what I'll call a ripple effect from the U.S. in this post-Enron era," said Donald McGarvey, an Edmonton, Alberta-based partner with McLennan Ross L.L.P. Mr. McGarvey specializes in commercial litigation and insurance and works on E&O claims involving several professionals, including lawyers, accountants, financial brokers and agents, and insurance brokers and agents. "People are so much more likely in Canada to point the finger and assume someone else is responsible," he said.

In December 2005, for example, Toronto-based law firm Torys L.L.P. agreed to pay about $30.3 million to media holding company Hollinger International Inc. to settle claims that Torys failed to offer proper legal counsel to Hollinger due to a conflict of interest arising from its simultaneous representation of former Chairman and Chief Executive Officer Conrad Black.

In February, the bankruptcy trustee for former retailer Dylex Ltd. in Toronto reached a $32 million Canadian ($28.4 million) settlement in a lawsuit related to the acquisition of the company by Hardof Wolf Group Inc. The lawsuit, alleging negligence and breach of fiduciary duty, was filed against Dylex's former board of directors, certain senior officers and Toronto-based Goodmans L.L.P., which acted as Dylex's legal counsel in structuring the acquisition agreement.

The litigation exposure for lawyers is one that Mr. McGarvey, chair of his firm's risk management committee, says he ponders constantly. "I have to think about it daily because we're trying to find the line in terms of a professional's conduct," he said.

The rising number of claims has led to an enhanced focus on risk management for Canadian professionals, including careful avoidance of any potential conflicts of interest, Mr. McGarvey said. "The heightened sense of diligence on the part of professionals can't be a bad thing," he said.

U.S. litigation trends have had a major impact on other professions as well. Canadian accountants, for example, are facing more lawsuits than ever before, driven by Enron/Arthur Andersen-type claims related to professional conduct, he said.

Systemic changes in the Canadian legal environment have had a "tremendous impact" on the rise in E&O claims—namely the passage of legislation in several jurisdictions that has allowed or facilitated the filing of class action lawsuits, Mr. McGarvey said.

'People are so much more likely in Canada to point the finger and assume someone else is responsible.'

Donald McGarvey, McLennan Ross L.L.P.

Because of the more litigious U.S. environment, a key risk for Canadian professionals relates to cross-border services they render, said Robert Lee, chief underwriting officer for MINT Canadian Specialty Underwriters in Toronto, a division of London-based Markel International Ltd. that writes miscellaneous E&O coverage in Canada. "I think that necessarily creates a heightened exposure for them just given the differences in the litigation climates in the two countries, with the U.S. being a more volatile climate," he said.

This has created a frustrating situation for E&O brokers, because Canadian subsidiaries of U.S. insurers often do not have the authority to write these types of risks, even though their parent companies frequently write the coverage, said Kelly MacDonald, assistant department manager of Aon Corp.'s professional services group in Toronto. "When Canadian risks have U.S. exposures, we have a difficult time getting Canadian insurers to write that," she said.

See **CANADA** next page

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Canada: Rising litigation risks increase demand for E&O coverage

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Generally, if brokers cannot secure coverage in Canada, they go to Lloyd's of London, Ms. MacDonald said. They would call U.S. insurers only on large risks because they tend to run into pricing issues when attempting to secure coverage in the U.S. market, she noted. While U.S. insurers have an appetite to underwrite the risk, they often view it through the prism of a much more litigious U.S. environment and offer price quotes that are unacceptable for Canadian buyers, she said.

While coverage may generally be available for certain risks, the Canadian market needs more capacity because brokers are often forced to go overseas when they cannot secure coverage in the domestic market, Ms. MacDonald said. "I find it very frustrating how conservative Canadian underwriters are," she said. "I'd love to see more capacity in the Canadian marketplace."

Canadian insurers, though, say the market has sufficient capacity due to an influx of new entrants. "I think the Canadian marketplace is reasonably well served by the insurance companies that are currently active here," MINT's Mr. Lee said.

Self-insurance

Certain professional groups have chosen to self-insure their risks. Lawyers, for example, generally secure E&O coverage through provincial legal associations, although some lawyers and firms purchase additional coverage on the commercial insurance market.

The Law Society of British Columbia, which operates a compulsory insurance program for 7,000 of the 10,000 lawyers practicing in the province, created its program in 1971 in response to an insurance crisis in the professional liability market that left lawyers in the province uninsured or underinsured, said Susan Forbes, director of the society's lawyers' insurance fund. The organization eventually established a British Columbia-domiciled captive in 1989 that provides $1 million Canadian ($888,889) in limits per occurrence and $2 million Canadian ($1.8 million) in aggregate for each participating lawyer, she said.

"We decided a captive would most effectively meet our needs of long-term price stability and program stability and allow us to completely control the scope of coverage and claims handling," Ms. Forbes said.

In the commercial market, limits up to $10 million Canadian ($8.9 million) are generally available although the amount of actual limits purchased may vary. For Canadian life insurance agents, the marketplace provides up to $5 million Canadian ($4.4 million) in limits while limits greater than $15 million Canadian ($13.3 million) are not uncommon for large property/casualty brokers, said Stephen Ritter, Canadian and U.S. life agents' product leader based in Toronto for Swiss Reinsurance Co.'s Commercial Insurance.

Increased demand

Demand for E&O coverage for lawyers and accountants has increased due to the rising prevalence of E&O litigation, but regulatory mandates contribute to the need for coverage for many professionals, including mortgage brokers in Ontario and paralegal professionals in Quebec, said Alison de Broux, vp, product line manager for professional liability for ACE Canada in Toronto. The company writes E&O coverage for a variety of professional segments, including learning institutions, lawyers—excess coverage above what they receive from professional associations—and financial services. "The regulatory environment has had a noticeable effect on the demand for E&O," she said.

Insurance agents and brokers are required in most provinces to carry E&O insurance, usually in the range of $500,000 to $1 million Canadian ($444,000 to $888,889), as part of regulatory licensing requirements, and may be subject to fines and penalties if they do not have E&O coverage, Mr. Ritter said.

In general, pricing for E&O coverage in Canada is stable to slightly softening, insurers and brokers say.

"I believe the Canadian market is a very stable market," said Ms. de Broux. "It's very consistent and it has been for the last five years. And I hope it continues to be consistent."

The increasing risk of litigation, though, may have an impact on future pricing. "I think the Canadian marketplace has been fairly stable from a price perspective in recent years, but I think longer-term some of the developments here will tend to keep rates fairly firm," Mr. Lee said. "I think that's why Canada is seen as an attractive place for insurers to come in and open their doors."

Underwriters view the Canadian E&O market as a very attractive market to deploy their capital because it is still much less litigious than the U.S. market. "Our legal climate is a lot less onerous than it is in certain jurisdictions in the U.S. such as Texas," Mr. Ritter said.

E&O experts, though, say they expect the trend of lawsuits challenging the work of professionals in Canada to continue to increase.

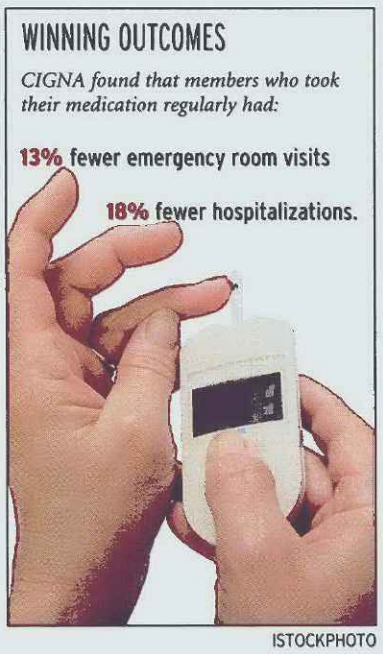
"Certainly, the U.S. lawsuits pose a far greater threat than Canadian ones, but I think it's only a matter of time before we start seeing more large lawsuits in Canada," Ms. MacDonald said.

Compliance: Insurers sharpen efforts to improve member behavior

CONTINUED FROM PAGE 4

pilot program participants who took their medications appropriately lowered their blood sugar levels, had 13% fewer emergency room visits and 18% fewer hospitalizations than in the six months prior to their participation in the program. Members who reached their recommended blood sugar goals also saw a 24% reduction in their medical costs.

A key feature of the CIGNA program is improved communication with physicians. The program identifies members taking drugs to treat the condition, examines their medical information and checks pharmacy claims data to see if they are taking their daily medications. If members are not adhering to the regimen or not achieving desired health target levels, the company forwards this information to the prescribing physician in a graph format, laying out the patient's prescription usage, hospitalization information and laboratory results.



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"It makes a clear correlation for the prescribing physician," said Thom Stambaugh, chief pharmacy officer for CIGNA Healthcare.

This is important because doctors do not always know if their patients actually fill their prescriptions, he said. When doctors are informed of the lack of compliance, they can talk to the patient about why they are not complying with the prescribed drug therapies and make adjustments if necessary, he said.

Targeted communication with both physicians and the members themselves on the importance of medication compliance is another approach for health insurers.

A study conducted by United Behavioral Health, a unit of Minnetonka, Minn.-based UnitedHealth Group Inc., tested the value of mailing educational materials to members being treated for depression and their physicians. The materials emphasized that antidepressant medications should not be discontinued without consulting a doctor, that the best treatment for depression included medications combined with psychotherapy visits and that ending treatment early increases the chance of relapse by 50%.

According to the study, members who were sent the materials received more psychotherapy services, more medications and had fewer days/lapses between treatments than those who did not receive the materials, which showed that members will change their treatment plans if insurers invest in sending them educational materials, said Archelle Georgiou, executive vp of strategic relations with Specialized Care Services, the specialty health and well-being division of UnitedHealth.

She stressed, though, that the materials must be specifically targeted to the member's condition and must have detailed information about the repercussions of noncompliance with prescribed medications and treatment. "Otherwise, you could be wasting time and resources," she said.

While insurers are sharpening their compliance efforts with regard to maintenance drugs treating conditions such as asthma and diabetes, they have been focusing on compliance with specialty drug regimens for many years because of their high cost, said John Malley, eastern region pharmacy benefit consulting practice leader for Watson Wyatt Worldwide based in New York.

Specialty drugs are used to treat a variety of conditions that include hemophilia and hepatitis C.

Compliance with specialty drugs is problematic because many have major side effects that cause patients to stop taking them, he said. "Clearly, the focus is much more on big-ticket items, but it's the same type of philosophy," Mr. Malley said. "It's more prevalent in specialty drug management."

Insurers say they are interested in expanding these programs to target more disease classes. CIGNA has already implemented similar programs aimed at asthma and cholesterol.

BCN of Michigan's program could be expanded to focus on diabetes and hypertension if the asthma program is successful, Mr. Tonkavich said. The insurer plans to review its claims data from the first half of the year and compare it to last year's data to see if there has been any increase in the ratio of controller inhalers to rescue inhalers, he said. The company hopes that increased use of control medications will also result in decreased ER visits and costs, Mr. Tonkavich said.

"Our goal is to look at the utilization patterns and see if we're having some impact on changing behaviors," he said.

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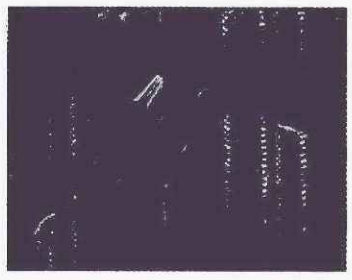

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
In re:
RELIANCE NATIONAL INSURANCE COMPANY (EUROPE) LIMITED
Case No.: 05-46232 (AJG)

PLEASE TAKE NOTICE that the hearing previously scheduled for February 27, 2006 to consider whether a permanent injunction order should be granted pursuant to 11 U.S.C. § § 105 and 304(b) has been rescheduled for 10:00 a.m. on December 12, 2006.

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

LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION
IN THE MATTER OF
ARION INSURANCE COMPANY LIMITED
and IN THE MATTER OF THE COMPANIES ACT 1981
NOTICE OF SCHEME CREDITORS' MEETING

NOTICE IS HEREBY GIVEN that, by an Order dated October 19, 2006, the Court has directed in accordance with Section 99 of the Companies Act 1981 that the creditors' meeting (the "Scheme Creditors' Meeting") of Arion Insurance Company Limited (the "Company") be held for the purpose of considering and, if thought fit, approving (with or without modification) a Scheme of Arrangement proposed to be made between the Company and the Scheme Creditors. The Meeting of the Scheme Creditors will be held at the offices of Appleby Spurling Hunter, Canon's Court, 22 Victoria Street, Hamilton HM EX Bermuda, on March 12, 2007 at 11:00 am.

Copies of the Scheme of Arrangement and copies of the Explanatory Statement required to be furnished pursuant to section 100 of the Companies Act 1981 of Bermuda are available from the office of PricewaterhouseCoopers LLP and from the office of Appleby Spurling Hunter. These documents are available free of charge to any person entitled to attend the Scheme Creditors' Meeting during usual business hours on any day (other than a Saturday, Sunday or a statutory holiday) prior to the day appointed for the Scheme Creditors' Meeting.

Scheme Creditors may vote in person at the Scheme Creditors Meeting or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place. A Form of Proxy and/or a blank Claim Form for use at the Scheme Creditors Meeting is available from PricewaterhouseCoopers LLP. Forms of Proxy and a completed and signed Claim Form should be lodged with the Company at Arion Insurance Company Limited, c/o Richmond Management Services (Bermuda) Limited, Suite 535, 48 Par-la-Ville Road, Hamilton HM 11, Bermuda, marked for the attention of Ms. Jocille Blakeney by no later than 5pm Bermuda time on February 7, 2007. Forms of Proxy may be sent by facsimile transmission to +1 441 292 1467 by the same time and date provided the original forms are handed to the Chairman of the Scheme Meeting at the meeting or posted to Arion Insurance Company Limited, c/o Richmond Management Services (Bermuda) Limited, Suite 535, 48 Par-la-Ville Road, Hamilton HM 11, Bermuda marked for the attention of Ms. Jocille Blakeney so as to be received by the Company by no later than 3 business days after the Scheme Meeting.

At the direction of the Court, Mr. Allan Dunkle shall be chairman of the Scheme Meeting. The Scheme of Arrangement will be subject to the subsequent approval of the Court.

Any inquiries relating to the Scheme and requests for copies of Scheme documentation should be directed to Saleem Malik of PricewaterhouseCoopers LLP, Two Commerce Square, 2001 Market Street, Philadelphia, PA 19103, tel. +1 267 330 2127, fax +1 813 329 9449 or email saleem.malik@us.pwc.com in the first instance.

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International NEWS

Lloyd's insurer confirms offer talks with rival

Bid for Wellington could create largest managing agency

By STUART COLLINS

LONDON—Lloyd's of London insurer Wellington Underwriting P.L.C. said last week that it is in discussions with rival Catlin Group Ltd. over a possible takeover bid by Catlin.

A combination of the two companies would create one of the largest managing agencies at Lloyd's, based on 2006 capacity. Wellington provides some £532 million ($914.4 million) of capital for 2006, while Catlin provides £450 million ($773.5 million), according to a Lloyd's spokesperson.

Lloyd's total capacity in 2006 is £14.80 billion ($25.44 billion), with Amlin P.L.C. topping the ranking of largest insurers in the market with £1.00 billion ($1.72 billion) in capacity.

In a statement, Wellington said that it is in discussions with Catlin that "may or may not" lead to a cash and shares offer being made for Wellington.

A spokesman for Catlin confirmed that discussions were taking place but declined to comment further, saying that the Hamilton, Bermuda-based company will make an announcement when appropriate. Wellington said that its board will need to be satisfied that the business plan for the enlarged group is likely to deliver greater value to Wellington shareholders than Wellington's standalone strategic plans.

"In the absence of an offer which satisfies this requirement, Wellington will continue to work towards the delivery of its stated strategic objectives as set out in its interim results for the six months ended June 30, 2006," the company said in its statement. In June, Wellington said that its priorities include growing its U.S. business and the development of new trading platforms to complement existing Lloyd's and U.S. operations.

Catlin has already developed new trading platforms outside the Lloyd's market, where it began in 1984 as Catlin Underwriting Agencies Ltd. In August 2002, the company opened Catlin Insurance Co. Ltd. in Bermuda. It also operates Catlin UK, a London market insurance company, U.S. unit Catlin U.S. and offices in various other countries.

Canadian court decisions may cut costs, class actions

Companies gain more protection against liability exposures

By GLORIA GONZALEZ

OTTAWA—Canadian companies and their insurers should gain some protection from the costs of fighting class action suits and from frivolous class action suits in Quebec as a result of two recent court decisions, experts say.

The court rulings are expected to decrease Canadian organizations' susceptibility and financial exposure to class action lawsuits by eliminating "risk premium" payments, also known as "cost premium" payments, to plaintiff lawyers in Ontario that take on cases where there is a risk that their fees may not be paid and raising the threshold for class action certification in Quebec, widely regarded as Canada's most plaintiff-friendly jurisdiction.

In *Walker vs. Ritchie*, the Supreme Court of Canada in Ottawa overturned a lower court's order that a losing defendant's insurer make a payment to the plaintiffs' lawyer, which was payable in addition to their legal fees. The additional fee was intended to reward the plaintiff lawyers for taking a case involving a poor plaintiff that began before Ontario permitted contingency fee arrangements and when there was a risk that they may not be compensated for their work.

According to the Oct. 13 ruling, however, the risk of nonpayment was not a relevant factor in determining the legal cost award that should be paid by the losing party under Ontario's "loser pays" legal system.

The decision overturns an increasingly common practice by Ontario judges to award risk premiums on top of the award of regular legal costs, lawyers say.

The Walker case was appealed to the Supreme Court by a unit of Zurich Insurance Co., which was ordered by the trial judge to pay the cost premium to the plaintiffs' lawyer. While the dollar amount, $192,000 Canadian ($170,496), was not a significant figure for Zurich, the potential for cost premiums being awarded in other cases was sufficient reason for the insurer to appeal the award, said Earl Cherniak, a partner with Lerners L.L.P. in Toronto who represented Zurich. "It was a very serious problem for insurance companies," he said.

A Zurich North America spokesman in New York said the company was pleased with the court's decision.

In its ruling, the Supreme Court also noted that awarding cost premiums on top of damage awards and regular lawyer fees raised the possibility that defendants would be pressured to settle cases even if they had solid defenses, which would in turn encourage plaintiffs to pursue claims with little merit.

Although the case involved a personal injury dispute, it has significant implications for class action disputes, legal experts say. Since the Supreme Court ruled that it was inappropriate to award cost premiums in a personal injury case, the court would be less likely to think it was appropriate to award such premiums in a class action lawsuit because of the compensation mechanisms featured in the province's class action legislation, said Mark Gelowitz, a partner in the litigation department of Osler, Hoskin & Harcourt L.L.P. in Toronto. "Given what the Supreme Court said in *Walker*, it seems unlikely they would take a different view in the class action context," he said.

The Walker decision will affect cases that were in the court system before the contingency fee law was passed.

The first cost premium awarded in a class action lawsuit came in a securities case, *Kerr vs. Danier Leather* in May 2004, when the plaintiff lawyers were awarded $1 million Canadian ($888,889). The decision to award a cost premium in a class action lawsuit raised significant concerns for defense lawyers, their clients and their insurers.

"I don't think it was a concern that it would become automatic, but I think it was a concern that (cost premiums) could be available at all," said Gordon McKee, a partner in the litigation department at

See CANADA next page

SIGNIFICANT RULINGS

Two recent Canadian court rulings are expected to ease the burdensome legal environment for class action defendants:

WALKER VS. RITCHIE (Oct. 13), Supreme Court of Canada—The risk of nonpayment to a plaintiffs' lawyer is not a relevant factor in determining the legal cost award that should be paid by the losing party under Ontario's "loser pays" cost legal system.

BOUCHARD VS. AGROPUR COOPERATIVE (Oct. 18), Quebec Court of Appeal—A plaintiff seeking certification for a class action proceeding must have a cause of action against each named defendant.

Source: Court documents

Reliance wins court approval for scheme of arrangement

Most creditors endorse move by London unit

By STUART COLLINS

LONDON—Reliance National Insurance Co. (Europe) Ltd. has entered into a solvent scheme of arrangement, having recently received approval from the English High Court.

RNICE was the London-based European subsidiary of Philadelphia-based Reliance Insurance Co., which went into runoff in 2001 when the company was subject to a rehabilitation order by the Pennsylvania insurance commissioner. That move came nearly one year after Reliance Insurance lost its A rating and following various unsuccessful attempts to keep the insurer's operations going.

In spite of opposition from some policyholders, the majority of creditors of RNICE approved the proposed scheme of arrangement at a meeting in February. The Court approval went through unopposed, as several policyholders had either withdrawn their opposition or had since commutated their policies with RNICE.

With the final hurdle now overcome, the scheme became effective as of Oct. 20.

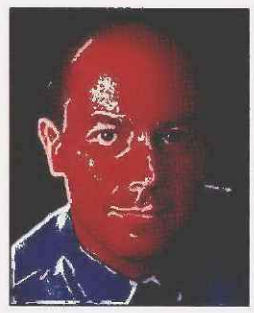
Under the scheme of arrangement, no more claims will be paid to policyholders until they have submitted the relevant forms and due process is completed, according to Richard Whatton, chairman of RNICE.

Policyholders have until May 21, 2007 to pursue unpaid claims and incurred-but-not-reported claims.

RNICE was acquired by Whittington Investments (Guernsey) Ltd., part of Singapore-based Whittington Group Pte. in October 2003.

Commentary

Stranger than fiction



DOUGLAS McLEOD

Senior Editor Douglas McLeod can be reached at: dmcleod@businessinsurance.com

NBC is getting a lot of press for an episode of its new comic book saga "Heroes," but it's probably not the kind of publicity the network likes.

"Heroes"—for anyone who's missed it—is about regular people who suddenly develop extraordinary powers, such as the ability to fly, read other people's thoughts or know when other countries are hiding weapons of mass destruction.

For the second week of October, "Heroes" was the seventh most popular show on broadcast TV among 18 to 49-year-olds, seen by 7.7 million viewers, according to Nielsen Media Research.

The episode in question was the show's pilot, in which a cheerleader character, who discovers she's indestructible, mangles her hand in a garbage disposal. (It's temporary; the hand regenerates itself.) A shot of the sink briefly shows the disposal's brand—InSinkErator—and hence the trouble.

It took all of two weeks for Emerson Electric Co., InSinkErator's maker, to sue NBC Universal Inc. for defamation for suggesting the appliance's design is dangerous. Emerson wants an order blocking reruns of the episode and forcing NBC to delete the InSinkErator trademark, along with unspecified damages.

It is interesting—and surely a coincidence—that the disposal in the scene is not one of those made by General Electric Co., NBC's parent.

Still, can Emerson be serious about suing over a two-second shot in a fictional TV series? Does Emerson want us to believe that you *can't* injure your hand by sticking it in a garbage disposal? Would anyone have even noticed that the disposal was an InSinkErator if Emerson hadn't made a point of it?

Unfortunately, Emerson appears to be serious.

There are certainly situations when companies are right to be serious about product disparagement or trademark dilution. Competitors spreading false rumors about your product deserve to be confronted. Manufacturers are justified in going after pirates selling cheap knockoffs of their goods.

Companies tread closer to a constitutional line protecting free expression when they sue publishers over product reviews. In a widely reported case in the 1990s, Suzuki Motor Corp. sued the publisher of Consumer Reports over safety tests that led to a negative review of Suzuki's Samurai sport utility vehicle. Years of legal wrangling ended in a settlement in which Consumer Reports paid nothing (except, presumably, big legal bills).

Once you move beyond the marginal disparagement cases, though, you get to the plain ridiculous ones. Like Emerson's. Not only is the glimpse of its brand in the NBC show fleeting and inconsequential to the plot, but—as others have pointed out—it's fiction.

You can only imagine the cases that might have clogged the courts if everyone were as touchy about fiction as Emerson:

- *City of Atlanta vs. Metro-Goldwyn-Mayer Inc.*, a 1939 case in which Atlanta charges that the film "Gone With The Wind" depicts the city burned to the ground, damaging its reputation as a nice place to visit.
- *Ham Processors' Federation vs. Harper Lee*, a dispute over a passage in the author's book "To Kill a Mockingbird" in which the girl, Scout, is attacked by a vengeful madman while walking home from a school play still dressed as a ham shank. Plaintiffs charge the passage misrepresents ham as harmful to children. Ms. Lee counters that her longstanding friendship with author Truman Capote shows she is not unkindly disposed towards ham.
- *National Rifle Assn. vs. Walt Disney Productions*, a dispute over the animated movie "Bambi" in which the NRA claims that Disney maliciously casts hunters in negative light by showing them killing Bambi's mother. The suit does not seek monetary damages, but asks the court to order Disney to re-edit the film to make it clear that actual deer don't think like people, don't talk and don't make friends with baby rabbits.

While Emerson's lawyers are at it, they might want to take another look at the 1977 film "Rolling Thunder," in which a Vietnam veteran is attacked in his home by thugs who force his hand down a garbage disposal. It could have been an InSinkErator, and there might be some way around the statute of limitations.

Or, Emerson could just thank NBC for reminding people that they should only put food scraps in the disposal.

Canada: Quebec tightens class action rules

CONTINUED FROM PREVIOUS PAGE

Blake, Cassels and Graydon in Toronto.

The Ontario Court of Appeal overturned the *Danier Leather* decision due to the trial judge's incorrect analysis of the company's disclosure obligations (*BI*, Jan. 2). While not ruling on the decision to award a cost premium, the Court of Appeal said it doubted that a premium could be properly awarded in a class action proceeding because there are other mechanisms to deal with the risk of litigation.

Meanwhile, a Quebec Court of Appeal decision raised the threshold for certification of class actions.

In *Bouchard vs. Agropur Cooperative*, the court ruled that a plaintiff that wants to initiate a class action against several defendants must have a cause of action against each defendant. The ruling was the first time the province's Court of Appeal addressed the issue of whether a plaintiff could launch a class action against several companies in a given industry even though the claimant only did business with one of them.

"It's certainly great news for corporate defendants," said Yves Martineau, a partner in the litigation group of the Montreal office of Stikeman Elliott, who represented one of the defendants in the case. The plaintiffs have 60 days to seek permission to appeal the case to the Supreme Court.

Before the decision, Quebec's lower courts had been split on whether a plaintiff had to have legal standing to sue each individual defendant or if a claim could proceed simply on the basis that the plaintiff had a contractual relationship with at least one of the defendants and that they engaged in similar practices.

Under the Court of Appeal ruling, "you can't just hold an entire industry hostage," said Silvana Conte, a Montreal-based partner in Osler's litigation department and co-chair of its national class actions specialty group.

Quebec became a popular jurisdiction for plaintiffs' lawyers when the province amended its code of civil procedure in January 2003 to simplify the class action certification process. The amendments included the removal of the need for a class action plaintiff to file any evidence in support of certification and the elimination of an automatic right to cross-examine a plaintiff in advance of a certification hearing—instead, defendants had to ask a judge for permission to cross-examine a plaintiff and that was infrequently granted.

"It became a quasi-slam dunk for plaintiffs to get class actions certified in Quebec," said Robert Torralbo, a partner and the chair of the litigation group at Blake, Cassels and Graydon in Toronto.

In the *Bouchard* decision, the Court of Appeal reminded lower court judges that allowing a class action defendant to cross examine the plaintiff is important because it can help determine whether a claim is frivolous, whether the class has the legal standing to sue or whether the plaintiff adequately represents the class, Ms. Conte said. "It will be interesting to see what's going to happen from now on, but I think the court realized that the amendments needed to be reined in a little," she said.

The decision may level the playing field by broadening the line of defense for class action respondents, lawyers say. "Basically, I think our certification rules will be more fair to defendants if this message from the Court of Appeal is well-received," Mr. Martineau said.

The decision brings Quebec more in line with other provinces although it still has a relatively low certification threshold compared to other Canadian jurisdictions, lawyers say.

Walker vs. Ritchie (Supreme Court of Canada 45) (31001), Oct. 13
Bouchard vs. Agropur Cooperative et al. (Quebec Court of Appeal) 200-09-005067-050, Oct. 18

Zurich: Agreement resolves Ohio charges

CONTINUED FROM PAGE 3

ance markets violates state insurance laws enforced by the state insurance department, the regulators said.

"We are pleased that today's announced settlement with Ohio substantially resolves all investigations of Zurich covering allegations related to certain prior broker compensation and insurance placement practices," a Zurich spokesman said in an e-mailed statement. "We will continue to cooperate with all regulatory investigations."

Nearly 79,000 Ohio commercial and government policyholders will be eligible for restitution as part of Zurich's settlement with Ohio regulators, and under prior settlements and a pending class action lawsuit in U.S. District Court in New Jersey, the regulators said (see related story).

In March, Zurich entered into a $153 million, three-state pact to resolve similar allegations brought by officials in Connecticut, Illinois and New York. That same month, Zurich paid $171.7 million to settle similar charges with attorneys general from 10 states plus Florida's insurance commissioner (*BI*, April 3).

Mr. Petro and Ms. Womer Benjamin said that the state's investigation into improper broker compensation practices is "continuing," though they would not identify other targets.

Zurich has agreed to cooperate with the ongoing probe.

Agent group criticizes proposed settlement

ALEXANDRIA, Va.—The Independent Insurance Agents & Brokers of America Inc. has filed a reply brief refuting the opposition filed to its amicus brief concerning Zurich American Insurance Co.'s proposed class action settlement over its broker compensation practices.

The Alexandria, Va.-based IIABA filed an amicus brief in the U.S. District Court for the District of New Jersey last month opposing certain aspects of Zurich's multistate settlement reached in March. Specifically, the IIABA stated concerns about the mandatory disclosure statement contained in the settlement, which it says will inhibit communication with customers and increase customer confusion regarding incentive compensation. The IIABA said it believes that Zurich, not the agents and brokers, should have the responsibility for providing policyholders with any required compensation disclosure form.

Class plaintiffs and 10 attorneys general filed a brief opposing the IIABA's brief, stating that it was filed prematurely and should have been reserved for the final fairness hearings.

But the IIABA was not party to the settlement negotiations with Schaumburg, Ill.-based Zurich and therefore had no opportunity to raise concerns over the mandatory disclosure form contained in the multistate settlement, the association said in a statement announcing the brief's filing earlier this month.

The IIABA's amicus brief "provides the court with important information about the negative consequences consumers and insurance brokers and agents will experience if the court approves the portion of the proposed Zurich settlement requiring brokers and agents to provide their customers with Zurich's mandatory disclosure form," IIABA President Alex Soto said.

A similar brief was filed last month in opposition to the National Assn. of Professional Insurance Agents' similar amicus brief opposing certain aspects of the Zurich settlement (*BI*, Oct. 2).

The PIA on Oct. 6 filed a reply brief with the court again asking for it to delay preliminary approval of the class settlement until "flaws" in the mandatory disclosure statement are corrected.

The PIA also objects to the curtailing of certain contingent commission payments contained in Zurich's and other proposed settlements, which the association said would create "disparate impact on PIA members' livelihoods."

—By Sally Roberts

USI: Brokerage weighs option of returning to private ownership

CONTINUED FROM PAGE 1

broker of U.S. business with $504.3 million, according to *Business Insurance*'s annual rankings.

Formed in 1994 by well-known insurance brokerage executive Bernard H. Mizel, USI has employed an aggressive growth-by-acquisition strategy and went public in 2002.

Observers say USI is likely to strike a deal with a private equity firm as the brokerage continues to miss revenue and earnings expectations.

USI last week said it expects to report between $130.5 million and $131.5 million in total revenues for the third quarter of 2006, up modestly from the $127.3 million reported in the third quarter of 2005. Net income is estimated between $8 million and $9 million, USI said, compared with $9.8 million in the 2005 third quarter.

In a note last week about the potential buyout, David Lewis, an analyst with SunTrust Robinson Humphrey in Atlanta, gave a better than 70% chance that USI would be acquired at a minimum price of $17 to $19 per share.

"We believe (USI) could finalize its integration and margin expansion program quicker as a private company with cheap capital to continue pursuing strategic acquisition opportunities," Mr. Lewis wrote in the note. "USI has struggled to meet analysts' revenue and earnings forecasts over the past several quarters, causing the company to trade at a significant discount to its better respected peers."

"I think a buyout is highly likely," said another USI analyst, who asked not to be named. About 40% of USI's stock is held by so-called activists, that is, shareholders that use their equity stake as an opportunity to redefine and redirect the management of the corporation. "When you're on the cusp of missing expectations yet again and you want to keep your jobs, you'd probably start talking to someone to sell the brokerage," the analyst said. Otherwise if expectations are missed, shareholders are likely to want to sell to the highest bidder and management will change.

'Management could focus on the long-term issues in lieu of keeping the investment community happy.'

Timothy Cunningham, OPTIS Partners

"It's a good option for USI," said John Ward, chief executive officer of Cincinnati-based Cincinnatus Partners L.L.C., an insurance advisory firm. "I believe USI is a little bit on the small side to be a public company." Not only are there high compliance costs associated with public firms, but there also is the intense scrutiny of the public eye and the distraction that can cause in executing a business strategy. "One advantage of private equity is there's not the fishbowl effect and you're able to focus really on your strategy and building your franchise up," he said.

Timothy J. Cunningham, a principal with insurance advisory firm OPTIS Partners L.L.C. in Chicago, agrees that there are benefits for USI in becoming private.

In addition to reducing expenses, a buyout would mean that "management could focus on the long-term issues in lieu of keeping the investment community happy each fiscal quarter," he said.

Clients of USI may also benefit from a buyout as a private equity firm would focus on growing and building the brokerage in an effort to maximize returns and that would ultimately benefit USI customers, observers say.

"Private equity would enable a retail broker to focus more on building their business and delivering good service to their customers," Mr. Ward said.

Large companies with risk managers are "attracted to brokers that have a footprint that meets all of their needs," said John Wepler, president of Marsh Berry & Co. Inc. in Concord, Ohio. "If, for example, private equity funds a super-regional privately held agency and they buy a bunch of agencies across the country, infuse leadership and expand their geographic reach, there is a better likelihood of meeting the national needs of the commercial insured," he said.

Brokers attract 'massive influx of capital'

If USI Holdings Corp. ultimately decides to come under private equity ownership, it would be one of a string of recent deals involving private equity in the retail brokerage industry.

"Within the past 24 months there has been a massive influx of capital into the insurance distribution system for a number of reasons," said John Wepler, president of Marsh Berry & Co. in Concord, Ohio.

Not only is there an "overwhelming perception" within the private equity industry that the insurance distribution system is more fragmented than other financial services sectors, but there also is a proven track record of brokerages that "have taken on capital, built up their operations and have gone public," he said.

In 1998, for example, Kohlberg Kravis Roberts & Co. acquired then-publicly traded Willis Group Holdings Ltd., took it private, built up the firm and raised $270 million in an initial public offering in 2001.

At the same time, private equity firms are attempting to time the insurance cycle by investing in an insurance brokerage today, Mr. Wepler said. With the belief that the soft market will last another five to seven years, if a private equity firm infuses capital today, it can then focus on building the brokerage over several years, float a small percentage of stock in the market via an IPO and then "time it so they can dribble out more stock and get full liquidity (for their shareholders) before the hard market ends," Mr. Wepler said.

Among the recent deals in the retail brokerage industry involving private equity:

- Former Hilb Rogal & Hobbs Co. President Robert Lockhart launched middle-market brokerage Kinloch Holdings Inc. with equity capital from Northhaven Management Inc. of New York and CCP Equity Partners of Hartford, Conn. (*BI*, Oct. 9).
- Kansas City, Mo.-based Lockton Cos. Inc. recently acquired a 51% stake in Alexander Forbes International Risk Services in a deal involving Trident III L.P., an investment fund managed by Greenwich, Conn.-based Stone Point Capital L.L.C., which owns the remaining shares (*BI*, Aug. 28).
- Bethesda, Md.-based American Capital Strategies Ltd. in May invested $35 million in New York brokers Tanenbaum-Harber Co. Inc. and Thesco Benefits L.L.C.
- And earlier this month, Marsh & McLennan Cos. Inc. rejected an acquisition offer from Willis, which involved financing by KKR (*BI*, Oct. 23).

—*By Sally Roberts*

News In Brief

CONTINUED FROM PAGE 1

shares valued at up to $175 million, according to a Securities and Exchange Commission filing. The Hamilton, Bermuda-based reinsurer, which said it will apply to list its common shares on the New York Stock Exchange, mainly writes property catastrophe reinsurance coverage to selected insurance companies and other reinsurers, primarily on an excess-of-loss basis.

Most workers unaware of employer flu plans

Fewer than one in five workers are aware of any plan in their workplace to respond to an influenza pandemic, according to a survey by the Harvard School of Public Health. In fact, 63% of the 1,101 full- and part-time workers surveyed by the Boston-based school between Sept. 28 and Oct. 5 said their workplace had no plan, while 19% said there was a plan. The remaining 18% did not know whether their workplace had a plan or not. Employees in workplaces with plans cited provisions such as encouraging sick employees to stay home, expanding options for working from home and general information about the flu.

PBGC base premium to rise in 2007

The premiums that employers with defined benefit plans pay the Pension Benefit Guaranty Corp. will increase slightly next year. The base premium—now $30 a year per plan participant—will increase to $31. That increase is the result of a provision in a 2005 federal law that not only raised—effective for the 2006 plan year—the base premium to $30 per participant from $19, but also mandated that premiums—starting in 2007—be adjusted to reflect changes in the national average weekly wage during the prior year.

MMC alters rules for its directors

Marsh & McLennan Cos. Inc. last week amended its guidelines for corporate governance among other things, requiring its directors to acquire a minimum of $100,000 in MMC stock within three years of joining the board. Senior executives also must now attain specified levels of MMC equity ownership over a five-year period, based upon their annual salary, MMC said. Directors will not be permitted to serve on more than four additional public company boards, and any director elected by the board must stand for re-election at the subsequent annual shareholder meeting.

Ill. Court overturns carpal tunnel ruling

Illinois' Supreme Court has overturned the rulings of two lower courts and the Illinois Workers' Compensation Commission, which had all found that a carpal tunnel injury claim was "time barred" because the plaintiff first experienced pain several years before filing a workers comp claim. In the case of *Deana Durand vs. The Industrial Commission*, the court ruled that the plaintiff couldn't have immediately known she suffered from a work-related injury and said it declined to penalize an employee who continued to work despite pain.

Lloyd's Chief Ward says trading floor to stay

Lloyd's of London Chief Executive Richard Ward has committed to maintaining a trading floor at the 300-year-old insurance market, although he called for technological and business process reform to support face-to-face transactions. Mr. Ward joined Lloyd's in April, having transformed the London-based International Petroleum Exchange (IPE), which was re-branded ICE Futures, into an electronic trading platform. In an address to the Insurance Institute of London at the Lloyd's building at One Lime St., Mr. Ward said that it was clear that Lloyd's "fundamental strength" lies in its "human capital."

Tredegar phasing out DB pension plan

Plastic films manufacturer Tredegar Corp. is phasing out its defined benefit pension plan for salaried employees and enhancing its 401(k) plan. Richmond, Va.-based Tredegar said its pension plan will be closed to employees hired on or after Jan. 1, 2007. Additionally, the pay used to compute pension benefits for active employees will be frozen as of Dec. 31, 2007. However, participants will continue to earn benefit credits for each year of service after 2007. Tredegar will sweeten its 401(k) plan to fully match employees' salary deferrals.

Cash balance: IBM ruling swaying other decisions

CONTINUED FROM PAGE 1

involved a suit filed by four former employees of World Color Press Inc., which offered a cash balance plan. World Color Press later merged with another printing company to become Quebecor World Inc., which is based in Montreal.

In dismissing the age discrimination charge filed against Quebecor, Senior U.S. District Court Judge Karl Forester, of the Eastern District of Kentucky in Lexington, also quoted from the IBM decision that "all terms of IBM's plan are neutral. Each covered employee receives the same 5% pay credit and the same interest credit per annum."

While plaintiffs argued that the same benefit provided to younger employees as to older employees is more valuable to younger employees because their benefit would earn interest over more years, Judge Forester, again directly quoting from the IBM decision, wrote that analysis "treats the time value of money as age discrimination. Yet the statute does not require that equation.

"Interest is not treated as age discrimination for a defined contribution plan and the fact that these subsections are so close in both function and expression implies that it should not be treated as discriminatory for a defined benefit plan either," Judge Forester concluded.

Pension attorneys and others are not surprised that the 7th Circuit Court of Appeals ruling already is swaying judges with cash balance age discrimination cases before them.

"This is a highly regarded court with a very persuasive opinion. There was no question in my mind that it would have significant impact" in other cases, said Jeffrey Huvelle, a partner with Covington & Burling L.L.P. in Washington, who argued IBM's appeal before the appeals court.

"The clarity and focus of the decision certainly will influence other courts," said Russ Hall, a principal with Towers Perrin in Valhalla, N.Y.

Still, attorneys point out the legal climate for cash balance plans is far from settled and perhaps won't be until other appeals courts rule on the age discrimination issue.

"We don't have closure yet," said Nancy Ross, a partner with McDermott, Will & Emery L.L.P. in Chicago, who successfully defended Equitable Life Assurance Society—now known as AXA Equitable Life Insurance Co.—against cash balance plan age discrimination charges.

Indeed, in mid-December, the 3rd U.S. Circuit of Appeals will hear oral arguments in a cash balance plan age discrimination suit filed against PNC Financial Services Group Inc., a Pittsburgh-based bank. Last year, a district court dismissed the age discrimination charges and plaintiffs then appealed the ruling.

Additionally, the 9th U.S. Circuit Court of Appeals is reviewing—but has not yet set a date for oral arguments—a lower court ruling dismissing age discrimination charges against Southern California Gas Co., the nation's largest natural gas distribution utility and a subsidiary of San Diego-based Sempra Energy.

The decisions reached by those appeals courts, observers say, will be critical in whether the age discrimination issue is put to rest.

"We won't have certainty until the other appeals courts rule. We need to ride the wave longer to have greater comfort," said McDermott, Will & Emery's Ms. Ross.

"The 3rd and 9th Circuits are the wild cards," said Christopher Rillo, a principal with Groom Law Group in Washington.

If the two other appeals courts join the 7th Circuit, additional age discrimination suits likely will dry up and pending suits in courts covered by those circuits will be dismissed, attorneys note.

"The controversy then would pretty much come to an end," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Arlington, Va.

While the last battle in the cash balance age discrimination conflict is not over, the impact of IBM's victory cannot be overstated, experts say.

Had the 7th Circuit ruled against IBM, a slew of employers would have rushed to phase out their cash balance plans. "That was the critical result of the 7th Circuit decision. It saved a lot of retirement benefits provided through cash balance plans," Ms. Ross said.

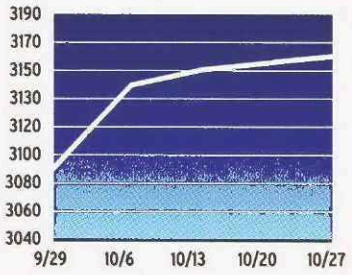
Congress, as part of a pension funding reform bill passed this summer, shielded cash balance plans from age discrimination suits. But that protection applies only to new plans, leaving it up to the courts to resolve the issue for existing plans.

Stock Index

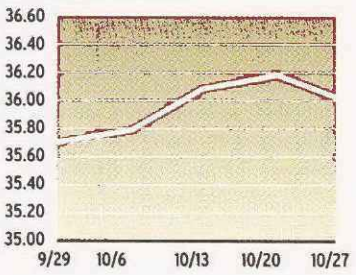
[10/23 - 10/27]

Up-to-the-minute data for all 85 companies that comprise the BI Stock Index can be found at www.BusinessInsurance.com.

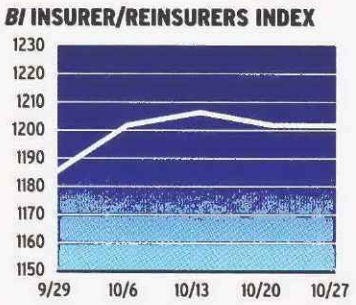
BI STOCK INDEX



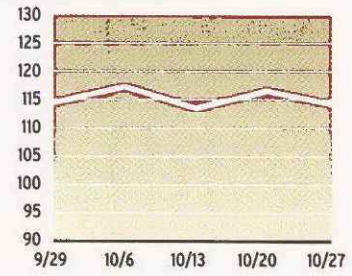
BI BROKERS INDEX



BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



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

BI STOCK INDEX	▲	
3156.11		0.08
DOW JONES	▲	
12090.26		0.73
S&P 500	▲	
1377.34		0.64

LARGEST GAINS

United Fire & Casualty	7.69%
USI Holdings Corp.	6.98%
Zenith National	5.15%
Clark Inc.	4.77%
Arthur J. Gallagher & Co.	4.52%

LARGEST LOSSES

Sierra Health Services	-8.10%
Hilb Rogal & Hobbs	-7.68%
PMA Capital Corp.	-7.03%
Cincinnati Financial Corp.	-5.54%
Health Net Inc.	-5.19%

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

Business Insurance END PAGE

Block of ice gives couple the blues

Slip-and-fall accidents on ice-crusted walkways are common risks that can be mitigated. But blocks of so-called blue ice falling out of nowhere are tough to dodge, especially if one is screaming toward your house.

That is what reportedly happened to a Chino, Calif., couple recently. A huge chunk of ice, possibly from a passing aircraft, crashed through their roof and destroyed a bed.

Blue ice forms when disinfectant and human waste leak from commercial aircraft bathroom waste tanks and freeze at high altitude. As a plane descends, the ice can break off and plunge to earth.

Blue ice has also been blamed on other property destruction and one victim sought the responsible airline by tracking flight schedules. Santa Cruz, Calif. resident Raymond A. Erickson in 2003 won a small claims court judgment against American Airlines by following that strategy after a piece of blue ice crashed through his boat's skylight.

But on appeal, a state court overturned the small claims court, Mr. Erickson said.

The Chino couple, meanwhile, said they are taking their case to their insurer.

Bad monkey! No banana for you

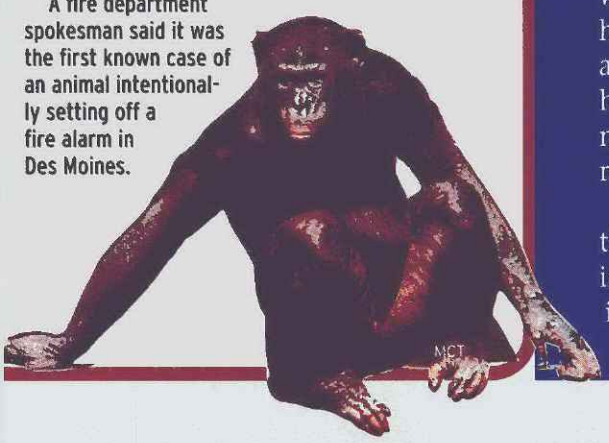
Having apparently demonstrated her desire to get involved in the Great Ape Trust of Iowa's safety program, one of the organization's residents may want to tryout for a role promoting CareerBuilder.com, the online job search firm whose TV ads show how some workers tend to monkey around.

Panbanisha, a female bonobo chimpanzee, apparently, got with the program a little too enthusiastically one day earlier this month and pulled a fire alarm. However, there wasn't even a hint of smoke when firefighters responded. Instead, they discovered the guilty-looking, smiling chimp. Panbanisha's handler at the Des Moines scientific research facility said she may have intentionally pulled the alarm one day after seeing a worker do the same.

Since it was a false alarm, scientists studying the behavior and intelligence of bonobos, which are considered the most humanlike of the primate community, scolded the twentysomething female that can understand words and symbols.

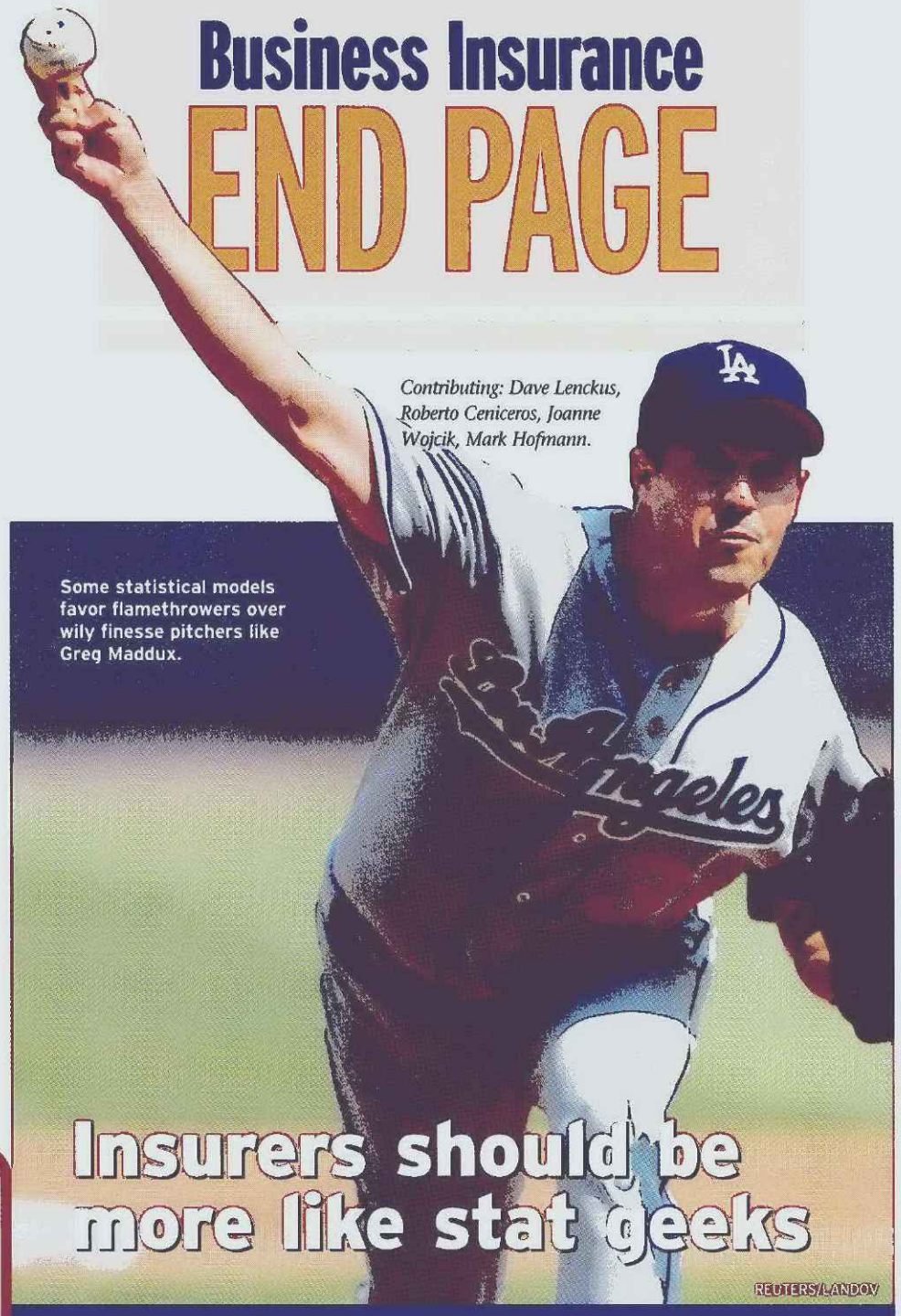
"It's my understanding that she's been told not to do it again," said a trust spokesman.

The Des Moines facility said it planned to secure the alarm to prevent future monkey business.



A fire department spokesman said it was the first known case of an animal intentionally setting off a fire alarm in Des Moines.

MCT



Some statistical models favor flamethrowers over wily finesse pitchers like Greg Maddux.

REUTERS/LANDOV

Insurers should be more like stat geeks

Contributing: Dave Lenckus, Roberto Ceniceros, Joanne Wojcik, Mark Hofmann.

If insurance company executives have any thoughts about changing careers, many would have trouble moving into the front offices of Major League Baseball teams, suggests a baseball statistician.

That's because, unlike a growing number of baseball executives, insurance company management does not invest in or support the use of predictive modeling, says John Dewan, an actuary and the owner of Baseball Info Solutions in Bethlehem, Pa.

As a result, insurer executives run an increased risk of allowing a sneaky curveball to buckle their knees in a clutch situation, Mr. Dewan suggested during a seminar on predictive modeling for members of the Arlington, Va.-based Casualty Actuarial Society. CAS members attended the seminar in Boston last week.

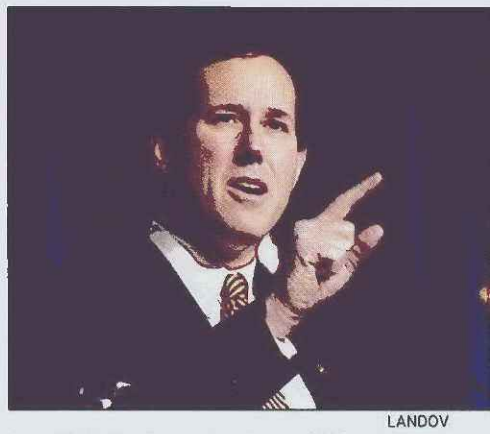
"There are more things you can do with data than you imagine," Mr. Dewan said. "Our job is to find the nuggets of data that are interesting and relevant and that reveal tendencies."

However, he said, "management in insurance doesn't always want to use the data or spend the money to collect the data. That's the challenge."

That mindset is changing in Major League Baseball, however, and executives in the sport are reaping benefits as a result, Mr. Dewan said.

Many Major League teams now use a corps of statisticians as well as scouts to, for example, evaluate which prospects will likely help them most, he noted. With no apologies to finesse pitcher and likely future Hall-of-Famer Greg Maddux, Mr. Dewan noted how his firm's model has demonstrated that pitchers with the most giddy-up on their fastballs tend to have the stingiest earned-run averages.

Mr. Dewan urged actuaries to search out the unexpected and the new when collecting data for insurers. "The data has to be interesting to get the attention of management you are trying to impress or win over to your side."



LANDOV

Sen. Rick Santorum leads candidates in contributions from the insurance industry.

Industry puts its money on the GOP

The insurance industry has a reputation of attracting a rather conservative lot, so perhaps it should be no surprise that insurance companies and associations are contributing far more heavily to Republican House and Senate candidates than they are to Democrats.

According to the Center for Responsive Politics, a Washington-based nonpartisan, nonprofit research organization, insurance interests had donated $22.8 million to federal campaigns as of Sept. 11. Sixty-six percent of that went to Republican candidates, and 33% to Democrats. The remaining 1% isn't credited to anyone.

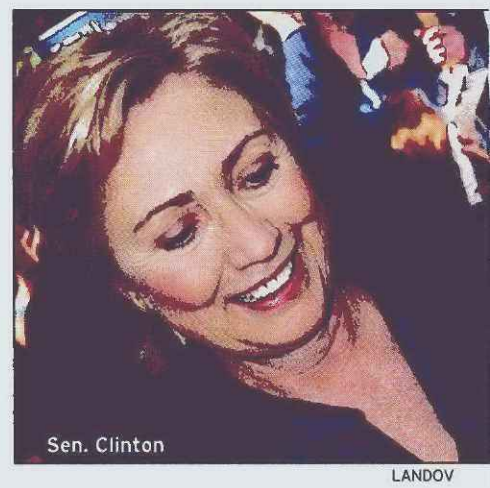
The insurance industry, however, ranks only eighth among industries in total contributions. In the "surprise, surprise" category, lawyers and law firms ranked first, with a pattern of contributions that's almost a mirror image of the insurance industry. Of the more than $89 million disbursed by the legal industry, 69% went to Democrats and 30% to Republicans, with 1% unaccounted for.

While both groups ranked among the most partisan in their giving, neither stood at the top.

The oil and gas industry was the most likely to back GOP candidates, with 83% of its money going to Republicans. Public sector unions were the most likely to give to Democrats, with 84% of their largesse going to Democratic candidates.

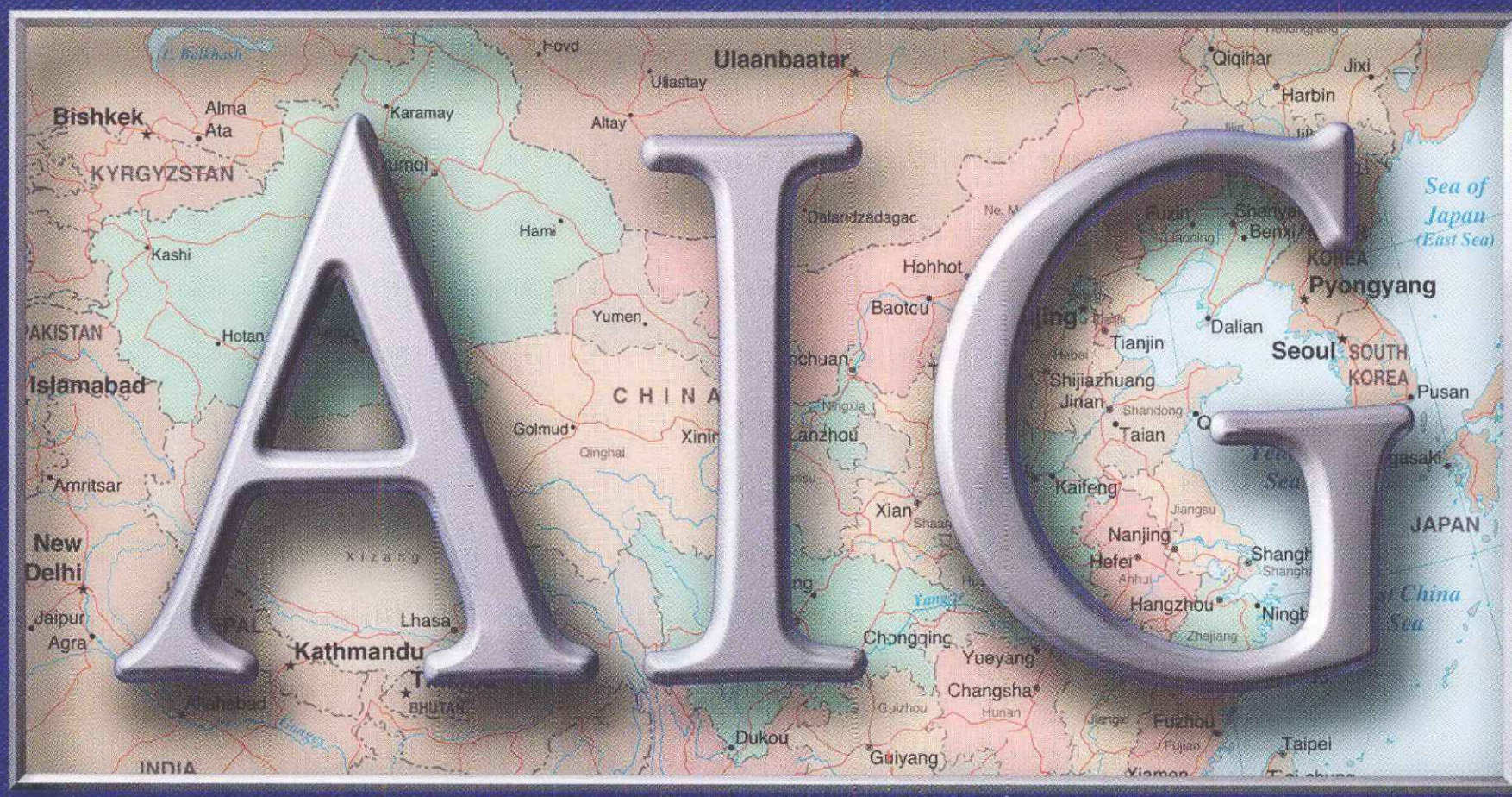
Yet the insurance industry and the legal profession were both very generous toward one candidate. Sen. Hilary Rodham Clinton, D-N.Y., was the No. 1 recipient of law-related contributions.

But in what might be a bit of a surprise, Sen. Clinton was the No. 2 recipient of insurance-related contributions, trailing Sen. Rick Santorum, but edging out former Safeco CEO Mike McGavick, the Republican Senate candidate in Washington, who had to settle for third.



Sen. Clinton

LANDOV



SOURCING PRODUCTS IN CHINA? UNINSURED SUPPLIERS CAN COST YOU MILLIONS.

U.S. companies import billions of dollars in goods from China. Because many Chinese manufacturers don't carry product liability insurance, with these goods can come additional risk to you and your customers. Protect your company by insisting that your Chinese suppliers carry product liability insurance from the AIG companies. A pioneer in the Chinese market with an extensive local presence, the AIG companies have all the experience, knowledge and financial strength it takes to secure the future of your company and reduce both the risks and costs of doing business in China.

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