

Business Insurance

Reporting Weekly on Corporate Risk, Employee Benefit and Managed Health Care News / \$4

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Gun maker sues for coverage in municipalities' lawsuits

BALTIMORE—Gun maker Beretta U.S.A. Corp. has sued two insurers, seeking coverage for suits brought against it by municipalities. The suit, filed in federal court in Maryland, seeks a declaratory judgment requiring the insurers, Federal Insurance Co. and Great Northern Insurance Co., to cover the \$150,000 already spent in defense costs, all future defense costs and indemnification for any future damage awards. The gun maker also seeks compensatory damages from the insurers. *See Updates on next page*



PHOTO: AP/WIDE WORLD

Rep. Bernard Sanders, I-Vt., was among the legislators discussing cash balance plans last week at a Senate hearing.

Cash balance move draws Congress' fire

By JERRY GEISEL

WASHINGTON—When International Business Machines Corp. announced this summer that it would convert its traditional pension plan to a cash balance plan, it was the biggest employer to join what has become a tidal wave of plan conversions. Now, IBM's action has become far more than just another big employer changing the design of its pension plan. That design change also ignited a massive revolt by thousands of IBM employees, who said the new cash balance plan would cut the benefits they had expected to receive by anywhere from 20% to 50%. IBM eventually responded to the protest by more than doubling the number of employees it will allow to remain in the old plan, reducing but by no means eliminating employee anger. *See IBM on page 43*

Taiwan quake cost may total billions

By CAROLYN ALDRED

TAIPEI, Taiwan—Insured property damage could be in the billions of dollars from the massive earthquake that struck Taiwan last week, killing thousands of people, international reinsurers estimate. Although the quake's epicenter was in a sparsely populated region some distance from the capital city of Taipei, disruptions to utilities in Taipei and other industrial centers also likely will mean large business interruption claims, particularly from the highly profitable semiconductor industry, according to loss adjusters. U.S. computer companies with operations and suppliers on the island last week were assessing their exposure to quake losses (see story, page 41). The earthquake and a subsequent wave of aftershocks have shut down Taiwan's financial markets and businesses and knocked out electrical power to much of the island. According to the U.S. Geological Survey, the first *See Taiwan on page 40*

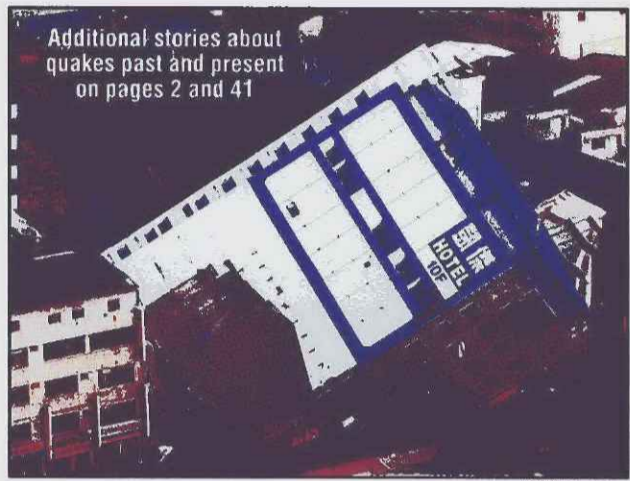


PHOTO: AFP
Last week's quake in Taiwan caused thousands of deaths and demolished buildings such as this hotel in Wufeng.

Flood of claims to come Farms, businesses devastated by Floyd's rains

By JOANNE WOJCIK KOCHANIEC

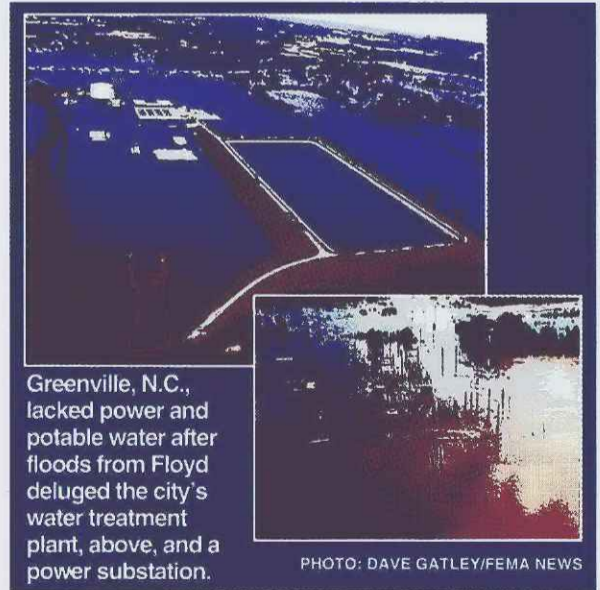


PHOTO: DAVE GATLEY/FEMA NEWS
Greenville, N.C., lacked power and potable water after floods from Floyd deluged the city's water treatment plant, above, and a power substation.

Many large commercial policyholders and agricultural operations in North Carolina are likely to be insured for damages caused by the severe flooding that followed Hurricane Floyd, industry sources say. Most mom-and-pop businesses and individual property owners, however, will likely be uninsured for those losses unless they have federal flood insurance, they say. Less clear is whether environmental damage resulting from the flood will be covered, they also say. Although insurance adjusters worked feverishly last week trying to assess the extent of damage when Floyd raked the Eastern Seaboard earlier this month, in many cases they could not access damaged properties because of standing flood water. Citing this difficulty and a concern that making incorrect estimates of such losses could harm their stock prices, few insurers would release projected damage figures. The Property Claim Services division of the Insurance Services Office Inc. last week estimated insured losses of \$1.3 billion from Hurricane Floyd. *See Flooding on page 42*

Overseas lawsuits a concern

No 'systemic failure' expected

By MARK A. HOFMANN

WASHINGTON—U.S. businesses might still be the target of Y2K-related litigation despite enactment earlier this year of a law granting them some relief from Y2K-related liability, according to a Senate report released last week. Much of the litigation that concerns the authors of "Investigating the Year 2000 Problem: The 100 Day



Report" won't be heard in U.S. courtrooms, though. "The committee remains concerned about the Y2K-related liability of U.S. corporations that operate internationally. The potential exists for certain countries to utilize their laws to unfairly recoup the costs of Y2K remediation by holding U.S. firms liable for Y2K-related disruptions," reads the report, issued by the Senate Special Committee on the Year 2000 Technology Problem last Wednesday to mark that only 100 days remained until the New Year. The international exposure "is obviously one we have very limited authority over," said the committee's vice chairman, Sen. Christopher Dodd, D-Conn., at a Capitol Hill hearing. *See Y2K on page 41*

Spotlight

Marine Market Report

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Updates

Gun maker sues for coverage

Continued from previous page

insurers, both units of Warren, N.J.-based Chubb Corp., by claiming they breached the insurance contracts by not providing defense costs to date.

The suit states that Beretta is a defendant in 13 suits brought by municipal governments to recover costs of treating gunshot victims. Numerous other gun makers besides Beretta have been named as defendants in those suits. The first such suit was filed last October by the city of New Orleans (*BI*, Nov. 9, 1998).

Beretta's attorney, Finley Harekham of Anderson Kill & Olick P.C. in New York, said the suit was brought after the insurers denied claims filed by Beretta. The insurers cited a products liability exclusion in the policies, Mr. Harekham said. But, he countered, the municipal suits are based on a theory of negligent marketing and distribution putting the suits outside the scope of the exclusion.

A Chubb spokeswoman said the company would have no comment.

HMO may appeal liability ruling

PHILADELPHIA—Aetna U.S. Healthcare is considering an appeal to the U.S. Supreme Court following a federal appellate court ruling that federal law does not exempt health maintenance organizations from medical malpractice claims.

In returning the case to state court, the 3rd U.S. Circuit Court of Appeals in Philadelphia concluded in its Sept. 16 decision that issues raised by the plaintiff regarding the quality of care provided by the health care plan are not automatically pre-empted by the Employee Retirement Income Security Act.

The case was brought against U.S. Healthcare Inc. by Steven and Michelle Bauman, whose newborn daughter, Michelina, died in 1995 from an untreated strep infection the day after she was discharged from the hospital. Among other charges, the Baumans said the HMO's 24-hour precertified discharge policy was a factor in the baby's death and that she "did not receive timely diagnosis and treatment of the deadly infection."

Two more moving to Bermuda

HAMILTON, Bermuda—Everest Reinsurance Co. and White Mountains Insurance Group Inc. are relocating their holding companies to Bermuda in what appears to be an emerging trend among U.S. property and casualty reinsurers.

In July, PXRE Corp. announced it was relocating its holding company to Bermuda from Edison, N.J. (*BI*, July 19).

Like PXRE, the two other companies will maintain their operating units in the United States and set up new operating companies in Bermuda.

The move will allow White Mountains to establish a presence in the Bermuda market and enjoy the tax advantages of operating in Bermuda, said Tom Kemp, president and chief executive officer at the Hanover, N.H.-based company.

"Bermuda is an attractive domicile, and to the extent that the company can move or develop business in Bermuda, it will not be subject to U.S. taxation," he said.

White Mountains was created out of Fund American Corp. in 1995. Its main operating unit is Folksamerica Reinsurance Co. in New York.

The move also will make it easier for the insurance group to buy other Bermuda insurers or reinsurers or, possibly, be acquired, Mr. Kemp said.

Everest also will seek to develop new business from Bermuda, said Janet Burak, senior vp and general counsel at the Liberty Corner, N.J.-based reinsurer.

"Bermuda has become an ideal platform for a global reinsurer," she said.

New health bill draws praise

WASHINGTON—Some business groups are welcoming a managed care reform bill that would not expand the liability of managed care plans and employers.

The Comprehensive Access and Responsibility in Health Care Act, introduced last week by Rep. John Boehner, R-Ohio, would guarantee managed care plan enrollees in plans governed by the Employee Retirement Income Security Act the right to have coverage disputes reviewed by independent physicians. The decision of the external review board would be binding upon the plan, and any plan that did not comply with the review panel's decision would be subject to fines of up to \$5,000 a day.

Among other things, the measure also would require all plans to offer direct access to obstetrician/gynecologists and improved access to emergency medical care; provide a point-of-service option giving patients the right to use a non-HMO doctor; and allow parents to choose a pediatrician as a child's primary care physician.

But the Boehner bill would not expose health plans or employers to new tort liability damages in coverage disputes. That stands in contrast to two bills already introduced in the House: one by Reps. Charlie Norwood, R-Ga., and John Dingell, D-Mich.; the other by Reps. Tom Coburn, R-Okl., and John Dingell, D-Mich. See *Updates on page 42*

Errors & omissions

• The Sept. 20 issue of *Business Insurance* listed an incorrect phone number for the Nov. 7-10 American Insurance Services Group's IN-STECH Conference in Orlando, Fla. For information and registration, the correct number is 800-856-7730.

• A Sept. 13 letter to the editor gave incorrect information about the author. Clint Kenner is vp-insurance company services at GAB Robins North America Inc. in Westchester, Ill.

• A Sept. 6 item about Gerling Global Reinsurance Group misspelled the name of Gerhard Niebuhr, a member of Gerling's management board who is responsible for the reinsurer's U.S. activities.

'89 quake's risks, lessons reviewed

By JUDY GREENWALD

SAN FRANCISCO—Another major earthquake in San Francisco could temporarily cripple the city's financial district because of the vulnerability of its steel-frame buildings to brittle fracture, quake experts warn.

Buildings damaged in a quake would have to be unoccupied while millions of dollars were spent to repair them, they say.

There is no question that a future earthquake will hit the San Francisco area.

"We'll have a large one in the

next 30 years, almost certainly," predicted Peter I. Yanev, president of Oakland, Calif.-based EQE International Inc., a risk management consulting firm that co-sponsored a media briefing last week to mark the 10th anniversary of the Oct. 17, 1989, Loma Prieta earthquake.

Other sponsors were the Radio-Television News Directors Assn. of Northern California and the Society of Professional Journalists.

The most important public buildings in San Francisco, in-

See *Quake on page 39*



PHOTO: H.G. WILSHIRE/U.S. GEOLOGICAL SURVEY
Masonry structures such as this one suffered some of the worst damage in the 1989 San Francisco quake.

Few business cases slated

By MARK A. HOFMANN

WASHINGTON—The U.S. Supreme Court will begin its 1999-2000 term next week with one of the lightest dockets of business-related cases in recent history.

In fact, of the 29 cases carried over from the last term, no more than eight—depending on how one defines business-related—could be considered of importance to business, Roy T. Englert Jr. told a preterm briefing at the U.S. Chamber of Commerce last week. In an unusual preterm move, the high court added a handful of business cases to its docket earlier this month.

Mr. Englert, a partner in the Washington office of Chicago law firm of Mayer, Brown & Platt, said he thinks the lack of cases of interest to employers is



simply a "blip," and he predicted that the number of business-related cases before the high court would increase.

Nevertheless, there are no high-profile cases before the high court of the significance of the landmark *Gore vs. BMW*, the 1996

case that held, for the first time, that a punitive damages award could be so disproportionate as to violate the Constitution. The justices have yet to decide to review any major cases dealing with the Employee Retirement Income Security Act, the Americans With Disabilities Act or Title VII of the Civil Rights Act. See *Docket on page 39*

Risk manager's duties changing

Future to bring new role

By GAVIN SOUTER

ST. JOHN'S, Newfoundland—Risk managers face huge changes in their jobs and the issues they must address, a risk manager says.

Changes in demographics, work environments, risk financing options and e-commerce all will lead to a revision of the traditional role of the risk manager, said David L. Mair, associate director for risk management at the United States Olympic Committee in Colorado Springs, Colo.

To adapt to those changes, risk managers must improve their

skills and knowledge, Mr. Mair said. That will involve broadening the scope of their expertise to ensure that they are well-versed in a wide range of financing and management issues, he said.

But despite the changes facing the profession, most risk managers today have the broad skills necessary to deal with the changing world, said Susan R. Meltzer, assistant vp-insurance and risk management at Sun Life Assurance Co. of Canada in Toronto, and president of the Risk & Insurance Management Society Inc. Risk managers need to be confi-

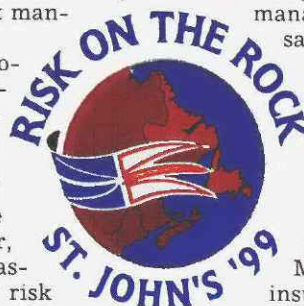
dent about those skills and, at the same time, be prepared to bring in outside expertise when they need assistance, she said.

Risk managers are facing a much broader range of risk financing options, two brokers agreed. And brokers are adapting and changing to help provide those options and advise the risk managers, they said.

They all spoke at sessions at the Canadian Risk & Insurance Management Society's annual conference, held Sept. 19-22 in St. John's.

Risk managers will face significant changes in the next century, Mr. Mair said.

Populations are changing, people change jobs more frequently, See *Changes on page 37*



Inside

• We report the issues discussed at the International Union of Marine Insurance and the Houston Marine Insurance Seminar. Conference coverage begins on **PAGE 3**

• Other employers should not be penalized for IBM's inept and unfair conversion from a traditional defined benefit pension plan to a cash balance plan, this week's editorial says. **PAGE 8**

• Australian insurers have joined household and business gas users in a class action lawsuit against Esso Australia Pty. Ltd. to recover claims stemming from last year's 10-day gas shutdown. **PAGE 33**

• The WISE electronic network has drawn executives from throughout the insurance industry to its board of directors. **PAGE 34**

• Editor Paul D. Winston thinks there's something funny about frivolous lawsuits, both state and federal, but finds it's no laughing matter. **PAGE 41**

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Business Insurance (ISSN 0007-6864) Vol. 33, No. 39, is published weekly by Crain Communications Inc., 740 N. Rush St., Chicago, Ill. 60611-2590. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to *Business Insurance*, Circulation Department, 965 E. Jefferson Ave., Detroit, Mich. 48207. \$4 a copy and \$89 a year in U.S.; \$108 in Canada and Mexico (includes GST). All other countries \$209 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 0293512, GST No. 136760444. Printed in U.S.A. Copyright 1999 by Crain Communications Inc.

Spotlight report

Marine insurers seeking rate stability

Overcapacity, low rates force review of business

By EDWIN UNSWORTH

Complaints about weak rates and overcapacity was stronger at this year's annual meeting of the International Union of Marine Insurance than in previous years.

The IUMI meeting in Berlin also was one, however, at which several underwriters indicated they are taking tentative action to offset poor market conditions.

The theme of this year's conference, in fact, was Marine Insurance—Reinventing Our Business.

Opening the conference, IUMI President Georg Mehl said the chosen theme was a call to



members to reflect on fundamental business basics. "Maybe we lost sight of our sound underwriting techniques. If this is the case, it is really high time to look at our own affairs in depth," he said.

According to Mr. Mehl, who also is speaker of the board of

Wustenrot & Wurttembergische

A.G., a financial and insurance services company in Stuttgart, Germany, marine insurance markets still are under enormous pressure from fierce competition and deteriorating re-

sults. He warned that there is unlikely to be any substantial increase in marine rates before mid-2000 and that given that some long-term contracts expire after that, "it will take some time to get off rock bottom."

One of the most innovative steps toward "reinvention" was reported by Norwegian marine insurers, which may opt to quote hull rates on a net basis.

Tom Midttun, senior vp-marine of Vesta Forsikring AS, of Bergen, Norway, told the conference that the principal reason behind quoting rates net of brokers' commissions is to make rates more transparent.

He said a decision whether to go this route is expected in about a month but that Vesta might begin using a net quoting policy even if other insurers in the Norwegian market decide against it.

Quoting insurance rates net also would be
See Market on page 12

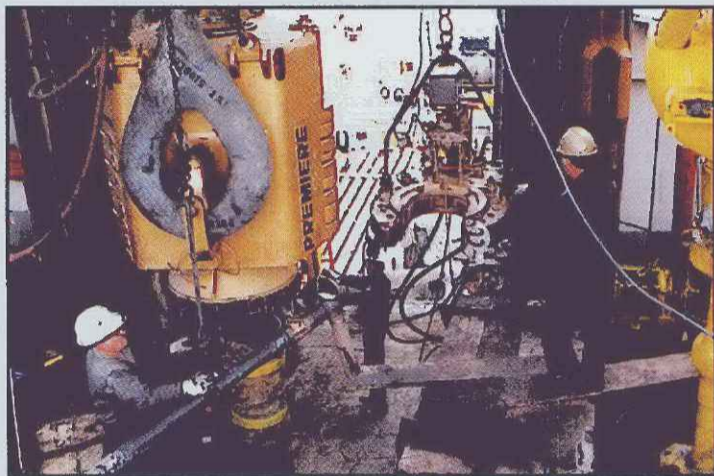


PHOTO: COURTESY OF PREMIERE INC.

These workers operating oil drilling equipment in the Gulf of Mexico are among those benefiting from Premiere's approach to safety.

Near-miss analysis directs safety plan

By MICHAEL BRADFORD

An oilfield services company with an award-winning safety program says close calls are the key to reducing employee injuries.

Premiere Inc. has established a program that hinges on the use of "near-miss analysis," which is based on the theory that every injury-causing accident is preceded by 300 near misses.

The program earned Premiere the National Ocean Industries Assn.'s 1999 Safety in

Seas Award, an annual recognition of safety efforts in offshore oil and gas development.

Premiere, which provides crews and equipment for offshore oil projects, has garnered more than plaudits for its safety program. The company's workers compensation costs are significantly lower than before the current program was put in place, and the number of workers injured each year has fallen sharply.

The near-miss concept is not a new one, but many companies have tried and abandoned it, according to Premiere's
See Premiere on page 6

Mississippi River project

Navigation tool aids flow of traffic

By LEE FLETCHER

A new marine navigation tool aims to make travel safer on the lower Mississippi River.

The Vessel Traffic Service system is being implemented gradually on commercial river vessels traveling the Mississippi from Baton Rouge, La., to the Gulf of Mexico. About 50 ships currently have the system equipment, according to Capt. Dan Farrell, project manager for

VTS at the U.S. Coast Guard.

The federal government is paying the total estimated \$12 million cost of testing the prototype system on the lower Mississippi. The U.S. Coast Guard is implementing the system, said Joseph Cocchiara, senior manager at the Port of New Orleans.

"The VTS is really not a new idea, but what is new are the technologies which are available now. They permit VTS to be implemented in, perhaps, a newly effective
See VTS on next page



PHOTO: U.S. ARMY CORPS OF ENGINEERS/ARTHUR BELALA

The Algiers Lock in New Orleans is one area of the Mississippi River where a new navigational system is being implemented to improve marine safety.

Program causing ebb in lost-time accidents

By MICHAEL BRADFORD

Tidewater Inc.'s renewed emphasis on safety has slashed the number of lost-time accidents at its operations worldwide.

The New Orleans-based energy company has reduced its lost-time accidents from 96 in fiscal year 1995 to just 10 in fiscal year 1999, which ended March 31. Since March 31, only two lost-time incidents have been recorded among Tidewater's 8,000 employees around the globe.

The turnaround began five years ago, when Tidewater Chairman William C. O'Malley joined the company. At that time, Mr.

O'Malley recalled during a speech last week at the Houston Marine Insurance Seminar, Tidewater had a safety department that primarily was engaged in "continual writing of a manual" and "presentations to customers of how well Tidewater was doing in safety." In reality, though, the company had "an unacceptable level of lost-time and recordable accidents," Mr. O'Malley remarked.

Setting about to rework the safety program, Mr. O'Malley first eliminated the barriers that exist-

ed between the operations and safety departments. Operations personnel, while they understood that the business was a hazardous one, operated independently of the safety department. There were "two hierarchies, each going their separate way," Mr. O'Malley pointed out.

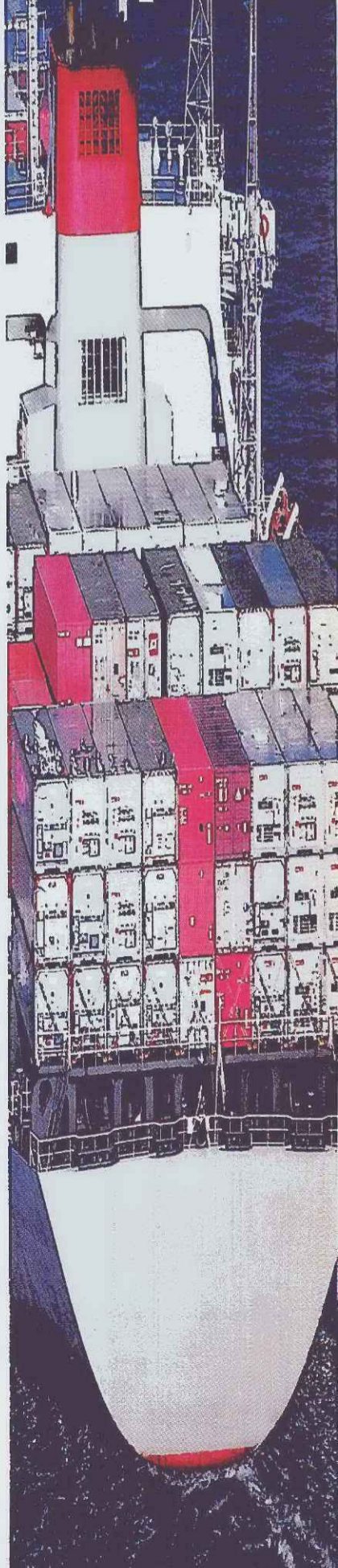
To combine the departments, Tidewater began recruiting operation personnel to work in safety groups at each shore-based location. For example, vessel captains with a reputation for operating safely are

called on to work in the groups for a period of time. Every six months, the operations personnel working with the safety department are rotated.

The company also began what Mr. O'Malley called "the keystone" of the Tidewater program: Whenever a project is begun, regardless of how many times similar projects have been done, a safety meeting is held. Whether it is laying or recovering anchors or some other operation, the meeting is held to make sure employees know things such as what equipment is being used, where they will be involved, how communications will be handled with the
See Tidewater on page 26



Marine Market Report



Fire, storm disrupt cruise

TAMPA, Fla.—A fire that broke out in the engine room of the cruise ship *Tropicale* last Sunday night forced the ship to return to port, according to cruise operator Carnival Cruise Lines.

The fire was extinguished quickly, but the ship was left without power, delaying its return to the Port of Tampa. The return was further delayed when the port closed because of Hurricane Harvey, which threatened three- to eight-foot storm surges in the area.

The storm turned south late Monday, sparing much of the area, and the port reopened

Tuesday morning.

All 1,096 of the passengers will receive refunds, as well as vouchers for free future cruises, said a spokeswoman for Miami-based Carnival.

She would not say whether Carnival was insured for the reimbursement costs or the damage to the ship. Damage to another Carnival cruise ship that caught fire in 1998, however, was covered by insurance, according to the company (*BI*, July 27, 1998).

Carnival is the largest cruise line in the world, based on passengers carried. It currently operates 14 vessels.

—Joanne Wojcik Kochaniec



PHOTO: AP/WIDE WORLD

Tug boats pull the damaged cruise ship *Tropicale* into Port Manatee near Tampa, Fla. Passengers were given refunds and cruise vouchers.

VTS

Continued from previous page
tive and, certainly, a cost-effective way," Mr. Cocchiara said.

Under the VTS navigation system, an individual vessel carries an Automatic Identification System device, which informs other AIS-equipped craft in the area of both the identity and location of the vessel. Additionally, the VTS system can determine a vessel's speed and direction.

Capt. Farrell said the system definitely will increase safety on U.S. waterways.

Mariners "will be able to see who is around them, and that will enhance collision avoidance. They won't be as likely to hit somebody if they know who they are and if they have contact with them," Capt. Farrell said.

Currently in downtown New Orleans, around Algiers Point, two traffic lights operated by Coast Guard personnel control traffic when the river reaches a certain level. In the future, "we'll be replacing the traffic-light operation with the VTS. But the extent (of the VTS project) is beyond that of a couple miles' area that's regulated—there's over a 270-mile stretch from the mouth of the river up to Baton Rouge," Capt. Farrell said.

Mariners "will be able to see who is around them, and that will enhance collision avoidance," says Capt. Dan Farrell of the U.S. Coast Guard.

The Coast Guard will likely continue to monitor traffic around Algiers Point, however, because it's such a dangerous curve, Capt. Farrell said.

Monty Ledet, chief of marine traffic management with the 8th district of the U.S. Coast Guard, emphasized that the main goal of the system is to provide the same information to each vessel on the lower Mississippi.

"With this equipment on board, it will work from vessel to vessel outside a VTS area. So, if two boats have this on board and they're transiting from New Orleans to Houston, they will be able to pick each other up," Mr. Ledet said.

Some accidents on the lower Mississippi over the past decade could have been prevented with the VTS system, he said.

"There are, however, some accidents that happen that are not VTS-preventable. In no way are we trying to sell this system as a fix-all for everything," Mr. Ledet said.

He said there eventually will be a local requirement for the lower Mississippi River making it necessary for commercial vessels of certain sizes to have VTS equipment.

"Very soon after the local requirement, there will be a national carriage requirement and following up with an international carriage requirement for rivers as well as seas," Mr. Ledet said.

Capt. Farrell said the equipment for the lower Mississippi project should be installed by the spring of 2000.

He also speculated that, sometime by 2002 or 2003, international vessels will be required to carry AIS devices compliant with the VTS system. **BI**

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Premiere

Continued from page 3
owner.

"It's a concept that's been around and, in most cases, given up on," said Lee Matherne Jr., owner and chief executive officer of New Iberia, La.-based Premiere. "It's been around for a long time."

Mr. Matherne couldn't say exactly where the near-miss idea originated or why it assumes 300 is the number of incidents that generally precede an accident. "It's based on some statistics we saw in the past," he said.

In fact, the 300 figure doesn't have a lot of meaning as long as near misses are monitored and lessons are learned from them, Mr. Matherne explained.

He said he first heard of near-

miss analysis in the 1970s during a discussion with a colleague who worked for an oil company. In the mid-1990s, he decided to roll out the concept as a way to lower injuries at Premiere.

Premiere employees work in jobs considered among the most dangerous in offshore work, including casing, caisson and drive pipe installations at offshore wells. Premiere employees also face the potential for injuries while transporting equipment and personnel to offshore locations.

Mr. Matherne said Premiere's near-miss program has worked because it is a little different from versions other companies have tried.

For one, the company requires its workforce of about 200 employees to record near misses at home as well as work, which helps workers avoid household acci-

dents and bolsters their safety attitude at work. "We define near misses as unsafe acts and conditions, or opportunities for people to get hurt," Mr. Matherne said.

When near misses are reported, corrective action is taken to eliminate worksite conditions that could cause accidents. Teams of employees review near misses at home and work sites during daily safety meetings.

John Walton, Premiere's president, chairs a weekly meeting of senior management to review near misses and then take action to change policies, practices or technology that could lead to accidents.

Companywide safety meetings held at least quarterly focus on general safety practices at home and correcting situations that could lead to injuries.

A version of Premiere's near-

miss program was implemented in 1994. Mr. Matherne found a couple of years later that it needed some fine-tuning: After two years of declines, injuries spiked in 1996.

Mr. Matherne said the program was revamped into its current form, in which near misses are more vigilantly monitored and discussed. The new emphasis on eliminating accidents brought the injury rate down sharply. Management re-emphasized to workers that blame would not be assigned when near misses were reported.

The number of injuries reported to the Occupational Safety and Health Administration fell 32% in 1997 to 1.58 injuries per 200,000 man hours from 2.33 per 200,000 man hours the year before.

This "OSHA recordable rate" was down to 0.59 injuries per 200,000 man hours by the end of 1998's third quarter. The industry

standard for oil and gas service firms at the end of that quarter was 9.28 injuries.

In an example of turning a negative into a positive, Mr. Matherne said he believes there is a wealth of information that can make the workplace safer when someone nearly gets hurt.

"What concerns us is when the near misses go down," he noted. That means employees aren't looking closely enough at circumstances that could lead to injuries and therefore need to be corrected.

As a result of its safety efforts, Premiere is reaping the benefit of lower workers comp insurance costs.

The cost per man hour for the coverage plunged to 28 cents as of the third quarter of 1998. That figure was \$1.18 per man hour in 1996.

Premiere's program is "very impressive," said Steve Clark, president of Montlake Casualty Co., the Seattle-based company that writes Premiere's workers comp coverage.

He said Mr. Matherne has "taken the lead in establishing safety initiatives for the company. He gets himself directly involved in the process."

Mr. Clark said the near-miss program is an example of the efforts by employers to "find ways to identify correct behaviors and reinforce them while finding unsafe practices and eliminating them." **BI**

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Opinions

Pension mandate a bad idea

IT ISN'T DIFFICULT to understand why long-term employees of International Business Machines Corp. revolted when the company announced it was converting its traditional defined benefit pension plan to a cash balance plan.

Those employees expected that, as soon as they completed 30 years of service, they could retire with a full, unreduced benefit, a feature IBM adopted in the early 1990s, when the then-overstaffed company wanted more employees to retire.

The company's new cash balance plan lacks such a generous benefit. Employees did the math and concluded that the new plan could result in a 20% to 50% reduction in the benefits they expected to receive from the old plan.

In dollars and cents, the losses in expected—though not yet earned—benefits for some individual employees amounted to several hundred thousand dollars, by some employees' calculations. IBM says some employee estimates of expected benefit losses are too high, but it does not dispute that the losses could be substantial.

Whenever a company converts to a cash balance plan from a final average pay plan, older, longer-service employees can lose. That is because, in an old-fashioned final average pay plan, the bulk of benefits are earned in an employee's last years of service, while in a cash balance plan, benefits accrue evenly throughout an employee's tenure with the company. For longer-service employees, the result of a cash balance conversion is that they will lose those last few years of coverage in the old plan—a time during which they would be earning most of their benefits—while they will not be in the new cash balance plan long enough to earn the same level of benefits.

That is a basic fact, and employers converting to cash balance plans are acutely aware of it. Because of that very real problem, many employers converting to cash balance plans give longer-service employees a choice of staying in the old plan or moving into the new plan.

This is where IBM took a wrong turn. It gave only those employees within five years of retirement the option to stay in the old plan. That decision, frankly, was stingy and baffling, given the company's financial strength and its history of generous benefits.

The move resulted in an employee revolt of unprecedented magnitude—to say nothing of a public relations nightmare. In response to the employee backlash, IBM more than doubled the number of employees who will be eligible to stay in the old plan by extending eligibility to those employees who are over the age of 40 and have at least 10 years of service. That provision puts IBM on a par with what many other companies have done when converting to cash balance plans.

IBM goofed, and it is paying the price for that, both in terms of strained employee relations and, perhaps, a tarnished public image.

Other employers, however, should not be penalized for one company's wrong move. Yet that is exactly what could happen if more federal regulators and lawmakers are swayed by a few demagogues in Congress who are trying to milk IBM's situation for all it is worth.



Cash balance plans are not, as some members of Congress argue, a pernicious employer plot to rob employees of benefits and fatten bottom lines.

If companies really wanted to cut their pension costs there are far simpler ways to do so, such as terminating their plans or freezing or reducing benefits.

Most employers adopting cash balance plans instead chose this model because they believed their old plans no longer worked for them or for their employees. Compared with traditional pensions, cash balance plans, with their even accrual of benefits, can offer greater benefits to a more-mobile workforce while, at the same time, rewarding long-term employees who do not retire early.

There are some rough spots in cash balance conversions, to be sure, that need to be smoothed out. We think IBM employees made a convincing case, for example, that employees need better, more easily understandable information to enable them to compare the old and new plans.

But one thing that is not needed—as some legislators are calling for—are new laws that would require employers converting to cash balance plans or other new plan designs to give all vested employees a choice of either plan.

The consequences of such a mandate would ultimately be devastating for employees, as it would stifle any effort by employers to innovate and improve upon existing benefit plans. What sane employer would dare to ever improve its pension plan, knowing that it could be locked into that design for decades?

The precedent such a pension choice mandate would set is awful to contemplate. What would come next? Perhaps legislators would require employers adopting new health care plans to give employees the choice of remaining in the old plan.

For the sake of maintaining a voluntary, employer-provided benefits system, we urge legislators not to go down this road. One company's wrong turn should not result in a blockade—or worse—for other employers heading in the right direction.

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ADVERTISING: Chicago: 312-649-5276

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COMMUNICATIONS: New York: 212-210-0132

SUBSCRIPTIONS: Detroit: 888-446-1422

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Letters

Direct reimbursement not a good system

To the editor: I was very dismayed and disgusted with your blatant promotion of "direct reimbursement" in your Sept. 13 Perspective article, "Consider Direct Approach To Dental Benefits." Ronald S. Moen is doing nothing than trying to get more business for orthodontists.

Direct reimbursement makes no sense since it contains no provisions for "necessary" dental work, no provision for reasonable and customary charges, and has little provision to verify that the work was even performed.

It is very understandable that dentists want plans that let them do whatever

they want, but why should an employer read your paper and get the distinct impression that these plans are a good way to provide dental benefits?

Hugh Hoffman
President
The Hoffman Co. Inc.
Gardena, Calif.

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Market

Continued from page 3

more in line with traditional shipbroking practices, where a vessel charterer is quoted a rate net of the shipbroker's commission, he said.

Were hull rates to be quoted net, shipowners who use brokers would know just what that intermediary is costing them. Mr. Midttun said that "at the end of the day the commission is always paid by the client" and should, therefore, be itemized separately.

Talking after his presentation at the conference, Mr. Midttun said that quoting net rates is not intended to bypass brokers, though Vesta always has done a modest proportion of its hull business direct with shipowners.

"Brokers are central to our business," he said.

Some marine underwriters, however, are concerned that global broker consolidation over the past few years is particularly restricting choice in the marine sector.

Such a sentiment was expressed by John Spicer, a Lloyd's of London cargo underwriter and chairman of the joint cargo committee of Lloyd's and the International Underwriting Assn. He complained that broker consolidation over the past few years has particularly affected the placing of London marine cargo business. Whereas once more than 25 brokers were doing this business, now "there basically is just one in London doing cargo, and I've got to get into bed with him or lose business," said Mr. Spicer.

The chairman of IUMI's cargo committee, James Zrebiec, also expressed concerns about the creation of the megabrokers.

They "seem to have greater ability

to impose 'take it or leave it' ultimatums on us," Mr. Zrebiec, who also is chairman of CGU International Marine Underwriters in New York, said during a speech at the

Megabrokers 'seem to have greater ability to impose "take it or leave it" ultimatums on us,' says James Zrebiec.

meeting.

Meanwhile, both hull and cargo underwriters said they detected signs that the market may be bottoming out, led by reinsurers demanding stiffer terms at renewals and investors becoming intolerant of accumulating underwriting loss-

es.

John Moloney, chief executive of the Lloyd's Underwriters' Assn., which represents marine underwriters at Lloyd's, said the LUA is beginning a project to examine the possibility of speeding up payment on straightforward claims and making the payment direct to the policyholder. He stressed that the reasoning behind such a major change in no way reflects a criticism of brokers, who, in fact, are backing it, as it would reduce their administrative burdens.

The change, which Mr. Moloney said he hoped could be in place by next year, would shorten the chain of payment, which he says is now too long, and give the London market a competitive advantage.

Mr. Moloney said it is possible that if direct payment works in the marine sector, it could be expanded to other lines of business at Lloyd's.

Loss prevention efforts also are being emphasized to reduce the rising incidence of cargo thefts.

For Mr. Zrebiec, one positive factor is that "more and more we see instances of federal and local law enforcement agencies working together with underwriters and industry to combat cargo theft; and increased security at airports against terrorism also serves to reduce cargo theft."

Dutch marine insurers this year set up a project called Mention Cargo Thefts, according to Alex Westerman, a member of the Dutch Assn. of Insurers who is responsible for liaising with the Dutch government on crime control.

He said the project, being undertaken in conjunction with Dutch harbor police and the National Criminal Intelligence Service, should lead to quicker tracking of stolen cargo and give insurers better insight by linking public and private information relating to thefts. The project works by having insurers and brokers promptly report details of cargo thefts worth at least \$12,500 so that efforts to track down the cargo can be started quickly and in a coordinated manner through the participating bodies.

Mr. Zrebiec said another positive sign is that world trade is on the increase, providing more business for cargo insurers.

Additionally, he said that some major markets, including the United States and Japan, reported 1998 cargo results that "were still quite positive."

Andreas Molck-Ude, head of the marine division of Munich Reinsurance Co., was soundly applauded when he said that the best contribution a reinsurer can make at this time to improving the health of the marine market is not to write the business.

He stressed, however, that real work to reverse the state of the hull market has to be done by direct underwriters. While price is part of the issue, direct underwriters also must develop the right products that bring them the business, he said.

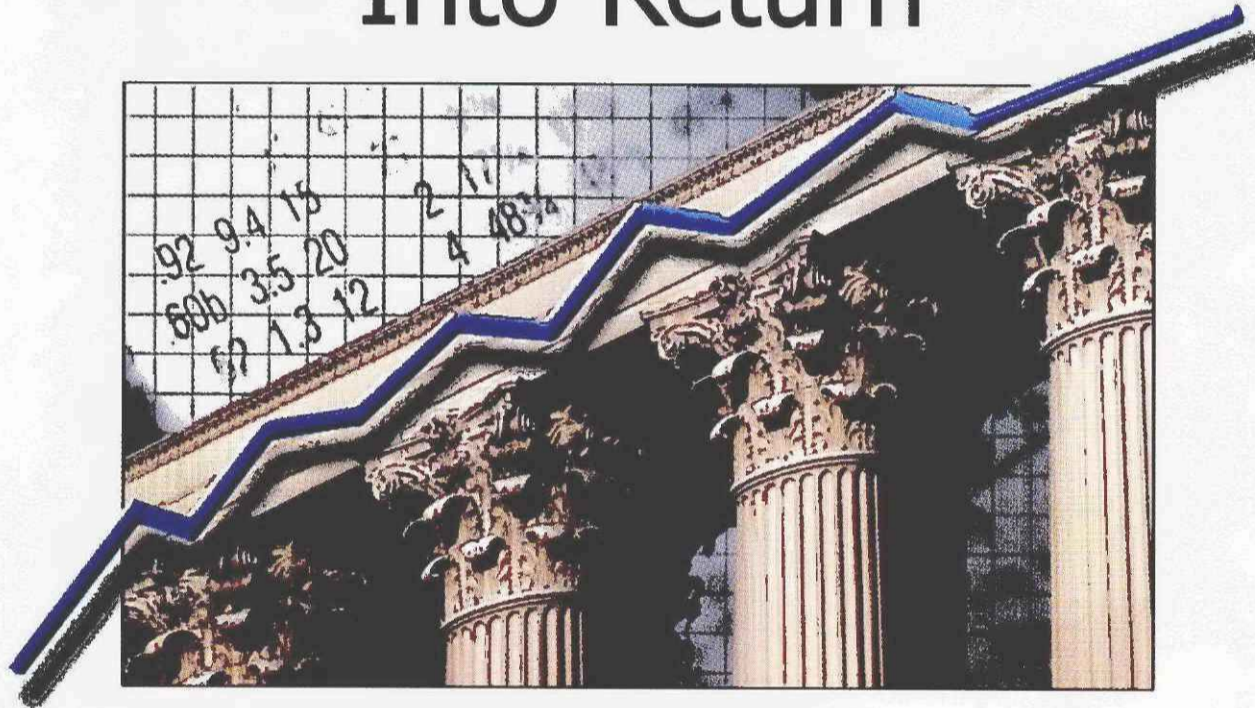
Mr. Molck-Ude also said the hull market of the future will be made up of fewer but bigger and highly professional underwriting units. One reason for this is that corporate investors at Lloyd's will be much less patient about underwriting losses than names have been to date, he said.

Despite some positive signs, the general atmosphere of this year's IUMI gathering was one of concern that the market is in its fifth year of weakening rates, continued high levels of competition, and falling earnings. Certainly, figures presented at the meeting made gloomy reading for underwriters and their shareholders.

The Central Union of Marine Underwriters, which each year presents at the conference figures on global marine insurance premiums compiled from IUMI member associations, reported that in 1997—the latest year for which full figures are available—total marine premiums fell 10% to \$13.1 billion from \$14.5 billion in 1996. Premiums fell in all four main classes of marine business: hull by 18% to \$3.6 billion, cargo by 5.6% to \$7.7 billion, liability by 13.3% to \$955 million, and offshore energy by 2.2% to \$792 million.

Peter Christmas, chairman of IUMI's ocean hull committee, said that in 1998, members were expected to have written \$2.9 billion of hull premiums, not only down on the 1997 figure, but only a little over half the 1994 total of \$5.6 billion. **BI**

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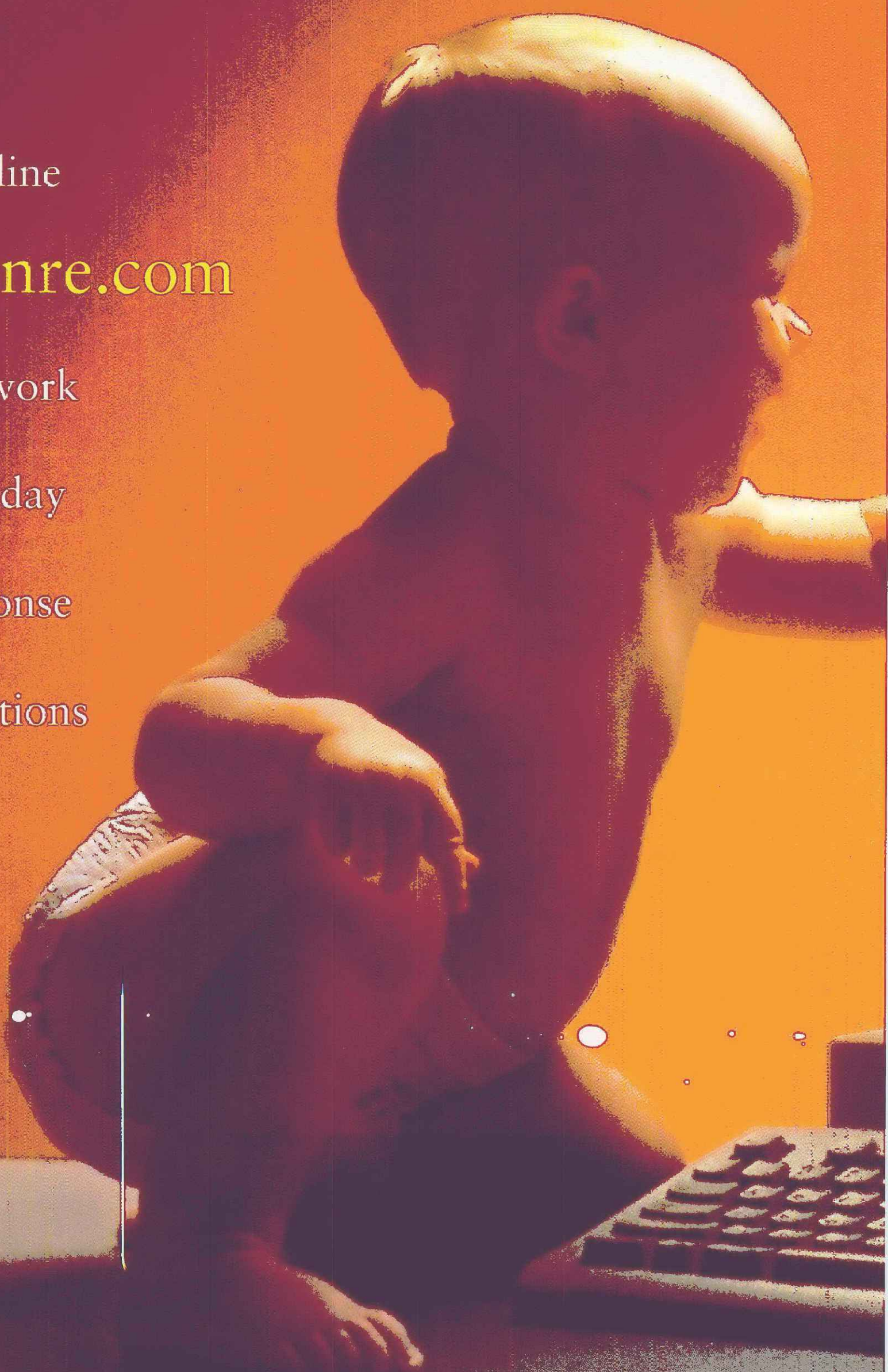
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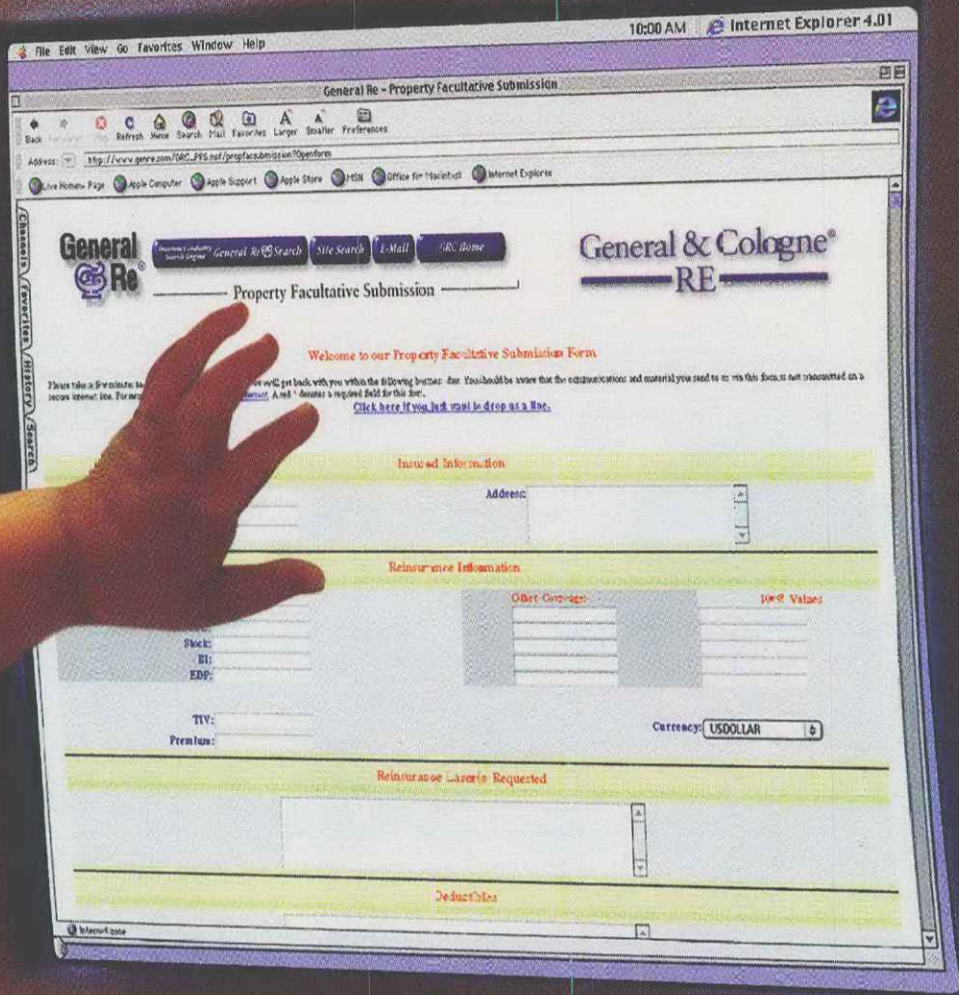
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Prospect of huge ships concerns insurers

By EDWIN UNSWORTH

Giant container ships capable of carrying more than twice as much cargo as the largest container vessels afloat today are a possibility causing considerable worry for marine insurers.

One such underwriter is Deirdre Littlefield, senior vp-special lines for Swiss Reinsurance America Corp. in Armonk, N.Y.

Ms. Littlefield, who also is chairwoman of the cargo loss prevention committee of the International Union of Marine Insurance, said at IUMI's annual meeting in Berlin that she is concerned about proposals for container ships capable of carrying 15,000 or even 20,000 20-foot equiva-

lent units, or TEUs. The largest container ships today can carry about 7,000 TEUs.

The potential values at risk for insurers would be enormous. Ms. Littlefield said the cargo loss alone from a 7,000-TEU container ship could total more than \$1.5 billion.

Hans Payer, an executive board member with Germanischer Lloyd, the German ship classification society, also discussed the issue of a possible loss of a 7,000-TEU container ship. A ship of such a size might be worth around \$150 million, but its cargo could be worth far more, Mr. Payer said. He called this "a unique problem that has to be addressed... the \$2 billion nightmare."

Ms. Littlefield said marine insurers have been fortunate to have relatively

light claims from two container ships hit by bad weather in the last year. The MSC Carla was caught in a storm in the Atlantic in November 1997, and the APL China was hit by a typhoon in the Pacific in October 1998. Although the MSC Carla split in two, neither incident resulted in a total loss of vessel and cargo. Nevertheless, IUMI members paid \$76 million in cargo losses alone for the two incidents. The potential loss, had both vessels sunk and their cargoes been lost, would have reached \$3 billion, said Ms. Littlefield.

Concern about the high potential values carried in container ships was also expressed by James Zrebiec, chairman of IUMI's cargo committee.

Mr. Zrebiec said, "A recent eye-opening revelation has been that the

new generation of container ships can and does carry hundreds of millions of dollars of cargo at one time, a total loss to which would wipe out the cargo premium for most markets for years to come."

Richard DeSimone, senior vp-marine for the Atlantic Mutual Insurance Co. of Madison, N.J., warned that while there has not been a major loss yet, "the potential is there for a real big one, and it's just a question of time before we're going to have to pay for a big loss."

Providing a shipping company's perspective, Bernd Wrede, chairman of Hapag-Lloyd of Hamburg, Germany, said the size of container ships is bound to grow because of the savings larger ships can achieve. While the shipping cost per container on a

900 TEU ship is \$35,000, it falls to only \$12,000 for a 6,600 TEU vessel, he claimed.

Mr. Wrede added that, given of the competitive state of the marine insurance industry and his company's good safety record, he had no concerns about obtaining insurance cover for such ships at a competitive rate.

He told insurers at the conference, "We feel that your industry is a competitive as ours... and we are using that." He added that he thought it unlikely insurers would be able to push through any rate increases under current market conditions.

Two other potential risk areas were highlighted at the IUMI conference.

In the past two years, about \$50 million has been paid in combined hull and cargo claims due to fires on container ships caused by one type of cargo, calcium hypochlorite.

Calcium hypochlorite, a bleaching agent, is used primarily by the paper, textile and wood industries, as well as in water treatment systems for disinfection. The United States and Canada are among the top half-dozen producers of calcium hypochlorite.

It is listed in the International Maritime Dangerous Goods Code of the International Maritime Organization. IMDG shipping guidelines point out that calcium hypochlorite is sensitive to heat and generally should be stowed away from heat sources in excess of 131 degrees Fahrenheit. Most of the fires involving the compound occurred when this temperature guideline was breached.

James Darling, a member of IUMI's cargo loss prevention committee, said that another recent study by consulting chemists DH Burgoyne & Co. concluded that calcium hypochlorite becomes volatile at just 95 degrees.

For this reason, Mr. Darling, who also is senior vp and manager of marine at Chubb & Son Inc. of Warren, N.J., recommended that calcium hypochlorite be transported in insulated or refrigerated containers.

William O'Neil, the IMO's secretary-general, said that discussions on transporting calcium hypochlorite will now be moved up to take place during a two-week meeting of the IMO's technical committee, due to start Sept. 27. The discussions had been slated for next February.

Mr. Darling said when changes do take place, insurers must firmly support them "through policy warranties, punishing policyholders that fail to adhere to both the letter and spirit of the regulations."

Mr. O'Neil also highlighted his concerns about safety aboard passenger ships. He said there have been eight accidents since 1994 involving passenger vessels, and this should be worrying insurers.

He warned that efforts to limit passenger liability may be in jeopardy because the "limits laid down in some international treaties are so low that they are unrealistic and have not been accepted by many countries," and this will place added strain on insurers.

The IMO is currently considering amendments to the 1974 Athens Convention for passenger claims, said Mr. O'Neil. He said it is remarkable that passenger ships are not required to carry third-party liability coverage, and the IMO is considering one proposal to mandate insurance for passenger claims.

Mr. O'Neil said it is not surprising so few countries have ratified neither the Athens Convention or its 1990 Protocol, which limits compensation for death or injury on a passenger ship to \$255,000. Such limits represent only a fraction of the amount of compensation that would likely be awarded by the courts in most developed countries today, he pointed out.

Against such a background, insurers should take a more aggressive role in promoting safety and high environmental standards, he said. **BI**



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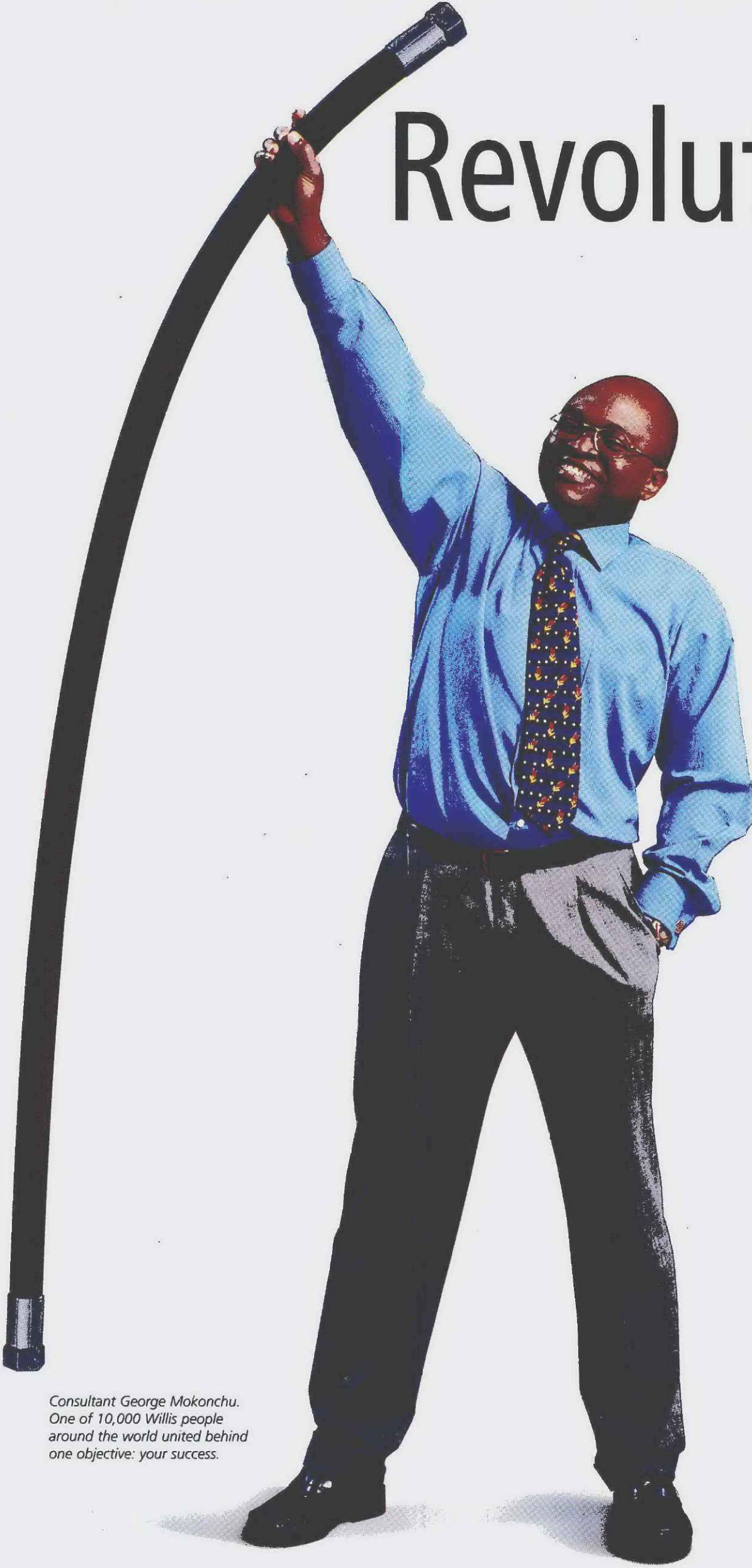
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IUMI celebrates 125th anniversary

The International Union of Marine Insurance celebrated its 125th anniversary with its annual conference in Berlin this year, making it the world's oldest international insurance organization.

Berlin was chosen for the Sept. 12-16 gathering because IUMI began there in 1874 largely as an association of German marine insurers. IUMI also celebrated its centennial in Berlin.

Despite the significance of the occasion, attendance this year was almost unchanged from 1998, with about 530 attendees. This year, however, 46 countries were represented, one more than the year before. Attendance in 1999, which fell almost 20% from two

years before, reflects the depressed state of the global marine market, which is experiencing its fifth consecutive year of falling rates and stiff competition.

Opening this year's conference, IUMI President Georg Mehl said there was no better time to look at the quality of marine insurance business than at IUMI's 125th anniversary meeting. The theme of the conference, "Marine Insurance-Reinventing Our Business," reflected the view that underwriters have lost sight of sound underwriting techniques and need to re-examine the fundamentals of their business.

Mr. Mehl, speaker of the board of Wustenrot & Wurttembergische A.G., a financial and insurance services company in Stuttgart,

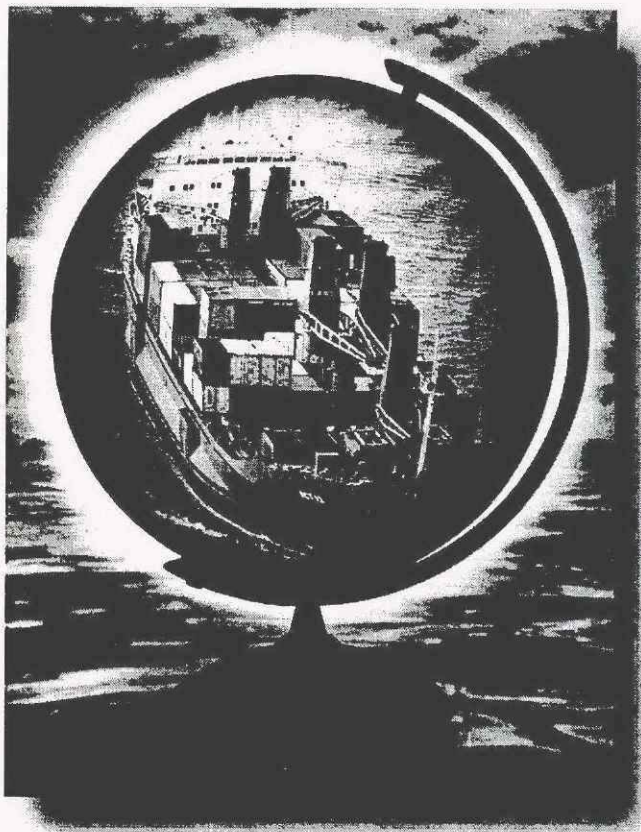
Germany, was re-elected president of IUMI for another year.

James Zrebiec, chairman of CGU International Marine Underwriters in New York, was elected to the IUMI executive board.

The 2000 IUMI conference will be held in London, Sept. 10-13. Provisional programs and registration forms will be distributed by national marine insurance associations next spring.

For information about the 2000 meeting, contact David Matcham or Rachel Turner at the International Underwriting Assn., London Underwriting Centre, 3 Minster Court, Mincing Lane, London EC3R 7DD, England; 44-207-617-4444.

—By Edwin Unsworth



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Insurers bemoan low cargo rates

By EDWIN UNSWORTH

Berlin.

Marine cargo underwriters are losing money as market conditions worsen, a market official says.

James Zrebiec, chairman of the Cargo Committee of the International Union of Marine Insurance, said that IUMI members' premiums for cargo insurance, which accounts for the largest percentage of overall marine insurance business, "have cut into the bedrock."

Mr. Zrebiec, who also is chairman of CGU International Marine Underwriters in New York, said he doubts that premiums are sufficient "to pay for attritional losses."

"Mergers continue to disrupt orderly conduct of business, and megabrokers seem to have greater ability to impose 'take it or leave it' ultimatums on us. Furthermore, regardless of restrictive endorsements, which underwriter isn't concerned about the possibility of Y2K surprises?" Mr. Zrebiec told delegates at the IUMI annual conference, held Sept. 12-16 in

Richard DeSimone, senior vp-marine for Atlantic Mutual Insurance Co. of Madison, N.J., said at a press briefing that cargo rates "are so low right now that you can no longer compete on prices alone."

As a result, cargo underwriters are looking for ways to add value with loss control and risk management services, he said.

John Spicer, a Lloyd's of London cargo underwriter and chairman of the Joint Cargo Committee of Lloyd's and the International Underwriting Assn., said cargo rates

now are lower than they were five or six years ago. The loss ratio for 1997 was 114% and for 1998 is already at 90%, so underwriters have to start increasing rates now or risk losses, he warned.

Mr. Spicer also complained that broker consolidation over the past few years has particularly affected the placing of London marine cargo business. While there once were more than 25 brokers placing cargo business, now there is only one leading broker passing him risks.

See Cargo on page 20



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Cargo

Continued from page 18

Mr. Spicer said, however, that the cargo market is showing signs that "common sense is beginning to prevail," particularly because reinsurers have begun to tighten their grip.

The head of IUMI's Cargo Loss Prevention Committee, Deirdre Littlefield, said she was concerned about the increasing incidence of cargo theft involving violence.

Ms. Littlefield, who is senior vp-special lines at Swiss Reinsurance America Corp. in Armonk, N.Y., said cargo theft "appears to be less of a victimless crime than it once was."

She also expressed concern about the rising cargo capacity of individual ships—and the commensurate increase in insured cargo values. She cited the growing use of container vessels that are capable of carrying

more than 7,000 20-foot cargo containers, as well as proposals for ships able to carry 15,000 or even 20,000 containers (see story, page 16).

Mr. Zrebiec said that despite the generally gloomy outlook for cargo insurers, a few positive signs are emerging.

First, international trade is increasing, he said. In addition, more local, federal and international efforts are being made to combat the rising incidence of cargo theft. And some major markets, notably the United States and Japan, achieved cargo results in 1998 that were "still quite positive."

Figures produced at the conference by the American Institute of Marine Underwriters show that last year U.S. cargo underwriters collected direct written premiums of \$666.8 million, up 3.4% from 1997. However, the combined ratio on cargo business worsened slightly to 101.75% from 101.13%. **BI**

Market may sink hull insurers

Overcapacity, low rates tantamount to flirting with disaster, some say

By EDWIN UNSWORTH

Hull insurers are facing "the lowest premium base ever, in relation to values insured," a market official claims.

The depressing news for marine insurers came from Peter Christmas, chairman of the International Union of Marine Insurance's Ocean Hull Committee, as he provided a state of the market report during the IUMI annual meeting in Berlin earlier this month.

Mr. Christmas said that worsening underwriting losses since 1997 in leading hull markets worldwide

reflect reduced rates, broader coverage and an increasing incidence of larger losses.

Most hull markets around the world are predicting a loss for 1998, and "we're getting to the situation where the total premium generated by the whole market wouldn't pay for one major catastrophe," said Mr. Christmas, a hull underwriter on Lloyd's syndicate 735, managed by Wren Syndicates Management Ltd.

Worse still for underwriters is that

broad rate increases will be delayed by multiyear policies, which have become more common in the soft market, he said.



The London marine market, whose members are the world's leading hull insurers, needs to do some work pretty quickly to assess where it is going, according to Trevor Hart, a hull underwriter on syndicate 62 at Lloyd's of London. The

London marine market is made up of Lloyd's and other companies writing marine insurance.

"There's no doubt there's far too much capacity out there," Mr. Hart said.

One measure the London market is considering is putting a clause in hull policies allowing underwriters to cancel coverage if the premium is not paid on time, he said. Mr. Hart said that, for any other type of insurance, the policy would become void if the premium was not paid and that it is nonsense for hull policies to be any different.

Mr. Hart, who also is chairman of the Joint Hull Committee of Lloyd's and the International Underwriting Assn., said the average delay in payments for hull policy premiums is 100 days.

'My feeling is that the asininity of this period will leave scars that are permanent,' says John Hickey.

He also noted a couple of factors that could help end the present buyers' market for marine insurance.

Corporate investors in Lloyd's syndicates "are starting to look at their figures" and at the return on their investments, and they could start withdrawing investment in unprofitable marine lines. Also, there are signs that reinsurers are raising rates this year, he noted.

French hull underwriters had a loss ratio of 120% for 1998 and are heading for 150% this year, according to Jean-Philippe Pages, a marine underwriter for Assurances Generales de France in Paris.

He stressed that the "fatalist approach" of the market must end. The only way out of the vicious cycle into which hull underwriters have descended is to admit three things: that there is chronic overcapacity in the market; that genuine risk analysis is vital, and underwriters must not blindly follow a rate quoted by a lead underwriter; and that complete disclosure of information about the risk must become a condition of underwriting.

In the United States, marine hull insurers collected premiums in 1998 of \$98.8 million, up from \$87.7 million in 1997. Their combined ratio improved slightly to 130.2% from 131.3%.

Commenting on the weak cargo insurance market, John Hickey, president and chief executive officer of American Hull Insurance Syndicate in New York, said at a press briefing, "My feeling is that the asininity of this period will leave scars that are permanent." **BI**

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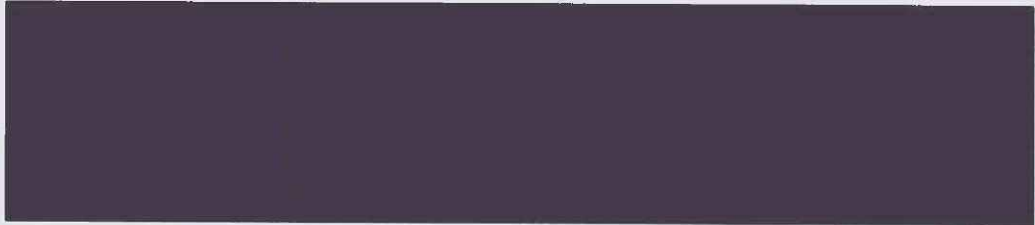
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Wm.H.McGee
Underwriting Managers

Policy disputes hinge on the language

By Kenneth S. Wollner

NOTWITHSTANDING ADVERTISING about being in "good hands" with a "good neighbor" for "all the commitments you make," the insurance relationship is created by contract and is governed by the law of contracts. For the most part, policy language controls the rights and responsibilities of both the insurance company and the policyholder.

There are plenty of books and other publications about what insurance policies are supposed to do. Courts, however, interpret policy language from a different perspective.

For a court, the meaning of contract language drafted by one party is determined by what a reasonably intelligent person placed in the other party's position would have understood the words to mean. Thus, courts construe a policy drafted by an insurance company from the point of view of the policyholder. They look at the words and phrases, syntax, consistency of the policy provisions and style of writing. In general, courts do not consider what insurance industry experts think an insurance policy provision means.

Insurance lore includes many theories about insurance policy interpretation, such as:

- **Theory:** The way to customize a policy is to "cut" out a provision from one policy and "paste" the provision on another policy.

- **Fact:** Cut and paste is a dangerous practice that often results in conflict between policy provisions. There are much safer ways to customize a policy.

- **Theory:** The place to find coverage exclusions is in the Exclusions section of a policy.

- **Fact:** Placing coverage limitations in the Insuring Agreements, Definitions, or Conditions sections provides the insurer with technical advantages in coverage litigation.

- **Theory:** A policyholder is better off with a supplementary coverage.

- **Fact:** Using sublimits is an effective way insurers circumscribe their exposure where courts hold that the main insuring agreement is ambiguous. Examples of this include medical payments, fire legal liability, pollution cleanup expense, appraisal and Y2K supplementary coverage.

- **Theory:** Courts construe policy language against the insurance company and consistent with the policyholder's reasonable expectations.

- **Fact:** There are many exceptions to these doctrines and ways to avoid application of the doctrines.

- **Theory:** Courts tend to discount grammatical and other minor errors in contract wording.

- **Fact:** Courts subject insurance policy language to vigorous ambiguity analysis. Grammar counts.

- **Theory:** Courts will uphold wording mandated or approved by an insurance commissioner.

- **Fact:** While the standards of interpretation sometimes differ, a court may refuse to enforce compulsory or approved policy terms.

- **Theory:** The absence of a restrictive provision broadens protection.

- **Fact:** Often a restrictive provision does nothing more than reiterate decisional or statutory authority. An example is a stipulation that a false statement in the application voids coverage.

- **Theory:** A change in terminology to a synonym is not meaningful.

- **Fact:** If a drafter does not say the same thing in the same way, courts infer that the drafter intended to change the meaning. In insurance contract interpretation, a rose may be a rose, but it is probably not also a red flower.

- **Theory:** Courts look only at the insurance policy and decide the case based on the text alone, rather than exploring other evidence of the parties' intent.

- **Fact:** While the text of an insurance policy usually controls interpretation, a court will consider evidence extrinsic to the policy text in many circumstances.

- **Theory:** Fraud, intentional act and other personal conduct exclusions are present because insuring the consequences of such conduct contravenes public policy.

- **Fact:** Often, a court's decision on whether the policyholder is entitled to indemnity turns on the wording of the personal conduct exclusion.

Coverage charts and checklists

Coverage charts and checklists, which compress large

quantities of information into a relatively small space, are increasingly used to compare policy forms offered by competing insurers. They help an analyst detect major coverage differences. One weakness of this approach is a tendency to oversimplify in order to fit the parameters of the coverage chart or checklist.

Coverage charts and checklists often ignore the language at the beginning of a set of exclusions. Consider the wording of a bodily injury liability exclusion found in a directors and officers liability insurance policy:

"The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the Insured Persons...for bodily injury..."

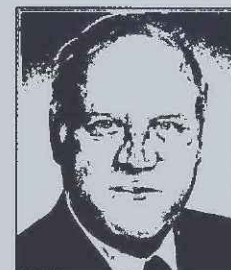
Courts have held that this provision does not eliminate coverage for actions by stockholders alleging mismanagement in the adoption or enforcement of corporate policies and procedures designed to manage risk. The claim by the stockholders is not for bodily injury, but rather for loss caused by mismanagement.

Another bodily injury liability exclusion reads this way:

"The Insurer shall not be liable to make any payment for Loss in connection with any Claim against the Insured Persons based upon, arising out of, relating to, in consequence of, or in any way involving...bodily injury..."

This second exclusion does not cover claims by stockholders for loss occasioned by bodily injury. This provision is not just an "other insurance" exclusion, as the exposure probably is not covered by hospital professional, umbrella or other liability insurance.

For insurance to function effectively, the insurance company and the policyholder must be able to depend on policy language to establish how insurance will respond to fortuitous events and circumstances. Do what courts do: Read the policy and do not rely on the lore about what insurance policies are supposed to do. **BI**



Kenneth J. Wollner is managing director of Globe Midwest Risk Management L.L.C., an independent risk management consulting firm in Southfield, Mich. This article is adapted from Mr. Wollner's forthcoming book, "How to Draft and Interpret Insurance Policies."

Off-duty shower not compensable for long-haul trucker

According to the Court of Appeals of Arkansas, showering is not inherently necessary for the performance of the job of a long-haul truck driver and, thus, a workers compensation claimant was not performing "employment services" when he took a shower at a truck stop while off duty.

Allan Kinnebrew is a long-haul truck driver employed by Little John's Trucks Inc. Mr. Kinnebrew was paid by the mile, plus an occasional per diem. In March 1996, he delivered cargo to a farm company in Texas at approximately 8 a.m. He then was advised by his dispatcher to proceed to a truck stop in San Antonio because they might have a load for him there the next day.

Upon arrival at the truck stop, Mr. Kinnebrew advised the dispatcher of his arrival. He then parked his truck and was off duty until he received further instructions the next day. At approximately 6:45 p.m., a shower became available for his use. When he entered the shower stall, he slipped and fell, hitting his neck against a ledge and injuring his left shoulder. He underwent discectomy surgery and treatment for left rotatory cuff tendinitis.

Mr. Kinnebrew filed for and was awarded workers compensation benefits. However, the Compensation Commission reversed the award.

The appellate court said that even if Mr. Kinnebrew were acting within the course of his employment, the evidence still did not support a finding that he was performing "employment services" when he fell while taking a shower off duty. The court said that showering

Legal Briefs

was not inherently necessary for the performance of his job. The court affirmed the denial of benefits.

Kinnebrew vs. Little John's Trucks Inc., Court of Appeals of Arkansas, March 24, 1999 (BI/03/O.-\$10)

Policy termination upheld

The 5th U.S. Circuit Court of Appeals ruled that an insurer properly terminated a group health and accident insurance policy pursuant to a valid rider requiring the applicant to cancel his individual policy.

Reggie Nolan applied for and received a group policy of health and accident insurance from Golden Rule Insurance Co., with coverage commencing Oct. 1, 1994, at which time Mr. Nolan had an existing individual health and accident policy with First National Life Insurance Co.

Golden Rule's application asked Mr. Nolan whether its plan would replace any existing insurance. He answered that it would. So Golden Rule attached a rider to Mr. Nolan's policy providing that its policy would be void if other insurance coverage had not been terminated by Dec. 30, 1994.

In December 1994, after the Golden Rule policy became effective, Mr. Nolan injured his back. He feared that Golden Rule would deny coverage of his treatment for back pain because the injury arose from a pre-existing

condition. Therefore, Mr. Nolan did not cancel his First National policy. In 1997, Golden Rule canceled his policy after it discovered the continued existence of the First National policy. Mr. Nolan brought this suit seeking reinstatement of insurance coverage and payment of outstanding medical bills. The trial court ruled for Mr. Nolan after invalidating Golden Rule's rider.

The appellate court said the rider reflected Golden Rule's policy that its insured have only one source of insurance—Golden Rule—on the theory that a policyholder would be less likely to overutilize medical facilities if he or she had to pay his or her own deductibles. Furthermore, the court said that nothing in Louisiana's statutory coordination of benefits limitation prevented Golden Rule from limiting its liability, just as individuals may, by selecting "about with whom it contracts."

Thus, the court said Louisiana law did not invalidate Golden Rule's rider and Golden Rule properly terminated Mr. Nolan's policy pursuant to the rider. The court reversed the trial court's decision invalidating the rider.

Nolan vs. Golden Rule Insurance Co., 5th U.S. Circuit Court of Appeals, April 1, 1999 (BI/04/O.-\$10) **BI**

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

Large claims down in number but up in value: P&I club

By EDWIN UNSWORTH

Figures published this month by the U.K. Protection & Indemnity Club on large marine claims over the past 10 years reinforce fears expressed at this year's International Union of Marine Insurance conference that large claims, while falling in number, are growing in value.

The U.K. P&I Club says that while the number of major insurance claims, defined as those exceeding \$100,000 each, in the shipping industry is likely to continue falling, the value of such claims will continue to rise.

This is based on the Club's analysis of major claims it received over the 10 years to Jan. 1, 1997. Although the figures are based entirely on the Club's own claims experience, they can be considered representative of large merchant shipping claims in general because the U.K. P&I Club is the world's largest marine mutual.

Over the 10 years examined, the club received 3,719 large claims worth about \$1.77 billion. While these claims represented only 2% of the total number of claims received during the period, they represented 72% of the total value of claims.

The average value of major claims in 1987 was \$500,000, and it remained around that level until 1994, when they rose steeply, reaching about \$900,000 in 1996. By number, however, large claims decreased to just over 100 in 1996 from more than 300 in 1987.

The growth of large claims was one of the problems highlighted at this year's IUMI meeting by Peter Christmas, chairman of its Ocean Hull Committee. Speaking on the state of the hull insurance market, he told attendees that reasons for larger claims include:

- Competition is forcing hull insurers to give broader coverage, even for older vessels.
- More expensive on-board machinery claims.

• More large and more sophisticated vessels at sea. Not only do few technical repair facilities for these vessels exist, but salvage also is more difficult.

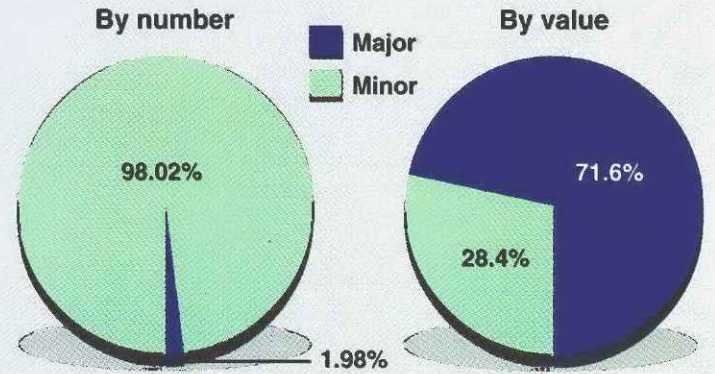
The Club's analysis breaks down claims into five principal areas. Cargo represented 40% of claims by number, and 27% by value; personal injury was 30% by number and 20% by value; property was 9% by number and 16% by value; collision was 8% by number and 11% by value; and pollution was 5% by number and 19% by value. Other claims represented 8% by number and 7% by value.

On a geographic basis, the United States dominated claims, both by number and by value as the country of incident. About 754 claims worth \$341 million originated in the United States. Japan, in second place, had 180 claims worth \$59 million.

Herry Lawford, the U.K. P&I Club's service director, said the U.S. figures were heavily influenced by personal injury claims. He

Rising tide for marine insurers

Major claims, or those exceeding \$100,000, are falling in number but growing in value.



Source: U.K. P&I Club Analysis of Major Claims 1987-1997

GRAPHIC BY JOHN HALL

said that if such claims are taken out, the U.S. experience is in line with that of other countries.

The report, *Analysis of Major*

Claims, is available for \$120 from Karl Lumbers, Thomas Miller P&I Ltd., International House, 26 Creechurch Lane, London EC3A 5BA, England; 44-207-204-2307.

Tidewater

Continued from page 3
 client and other matters.

"It's just a daily reminder to everybody that safe operations are important," Mr. O'Malley stressed. "It doesn't matter if it's the 39th time that you've done this, we insist on safety meetings."

Safety also is a high priority when Tidewater's board meets, Mr. O'Malley said. The board

meets eight to 10 times each year, and "the first item on the agenda is safety," according to Mr. O'Malley. He reports at the meetings on changes in and the results of Tidewater's safety program.

And quarterly, Mr. O'Malley chairs a conference-call meeting with safety and operations personnel at every Tidewater facility. "We go from area to area around the world. Each manager tells what incidents they have had since the last meeting." One purpose that those quarterly meetings

serve is instilling pride and peer pressure that can influence managers to be diligent about keeping workplaces safe, Mr. O'Malley said. Sharing of information is important, too, because it educates each location on ways to avoid accidents or close calls that have occurred at other sites, he said.

Another incentive to keep lost-time accidents down involves charges to facilities when incidents occur. For each lost-time accident, an operating area is

billed an insurance premium allocation of \$175,000, Mr. O'Malley explained. Each recordable injury that doesn't result in lost time costs the facility \$25,000.

On the positive side, a bonus plan also motivates operating units to keep down injuries.

Part of the bonus is based on whether the unit keeps lost-time accidents below a certain threshold. "We actually budget for an allowable number of lost-time accidents for each area," Mr. O'Malley said. "I know it sounds ridicu-

lous...but you have to have some reality to this." In addition, Mr. O'Malley uses discretion in determining whether to award bonuses. He said he will "size up lost-time accidents in terms of severity and cost." If he thinks there were accidents that were more the responsibility of a Tidewater client or some factor outside Tidewater's control, Mr. O'Malley said he "might be more generous." Or, he added, "if we have serious injuries or fatalities...I'll take that into account." **BI**

Lloyd's intends to remain major player in marine, energy

By MICHAEL BRADFORD

leaner Lloyd's of London will continue to be a leading provider of marine and energy insurance in a market that is slowly tightening, Lloyd's representatives contend.

A market turn, while perhaps not imminent, is beginning to look more likely, said one Lloyd's underwriter.

Some brokers and clients are "beginning to understand that while the party is not over, at least some of the members of the underwriting band are quietly putting their instruments away," said Barnabus Hurst-Bannister of the Janson Green syndicate at Lloyd's.

Speaking at the Houston Marine Insurance Seminar last week, Mr. Hurst-Bannister said there is "growing expectation" that the soft marine and energy market is firming.

"It surely is," he said, "but this turn will not be dramatic until the pain inflicted by underwriting losses" is significant enough to absorb some of insurers' capital.

Lloyd's Chairman Max Taylor told seminar attendees in a separate presentation that he believes Lloyd's expertise will keep it as "the first choice" in marine and energy lines. "We intend to ensure we retain our position as the world's leading underwriting market," he said.

Mr. Taylor said Lloyd's is adapting to a world that is seeing its customers becoming "increasingly global."

As policyholders spread their enterprises across the world, they are becoming more sophisticated, he

said. "I would say our customers know at least as much about the insurance industry as we do. As a consequence of that, the insurance industry has changed dramatically from being simply a receiver of the transfer of risk" into one that can advise the customer on where such transfers are needed, Mr. Taylor said.

"That's a major transformation for us," he said.

Mr. Hurst-Bannister said there are signs that indicate a new underwriting cycle is not far off.

Insurance, he said, is the "ultimate cyclical business. Whenever we make a profit, intruders appear, cutting prices until everyone makes a loss. Then the intruders retreat, bloodied but minus their capital." Such retreats are beginning in the current market, Mr. Hurst-Bannister said, affording stable underwriters and brokers more opportunities.

While the bottom has not been reached, marine coverage prices appear to be heading for it, he noted. Energy underwriters, while still offering low prices for large clients, are raising rates on some smaller accounts.

The year 2000 should see a return to "thinking underwriting," Mr. Hurst-Bannister said, as insurers find it increasingly difficult to cover up poor underwriting results with investment returns. And, he said, competition among reinsurers is cooling as those that made poor underwriting decisions are beginning to disappear.

"It will, however, take time for the effects of a tightening market to

manifest itself fully. A significant part of the market's business has been written on extended policy periods," he explained.

And "whole generations of brokers" accustomed to placing business in a soft market will need time to tighten their standards and develop the skills to serve their clients in "harsher times," Mr. Hurst-Bannister remarked.

In a separate presentation at the seminar, a Lloyd's broker pointed out that the market has become leaner, with fewer brokers for clients to choose from. That's both good and bad news for policyholders, who see fewer choices but more personalized service from smaller firms, according to broker Anthony B. Pickering, chairman of Agnew Higgins Pickering & Co. Ltd.

He estimated that in the early 1980s there were 17 independent energy retail brokers in the United States and 21 independent Lloyd's energy brokers; there now are eight in the United States and seven at Lloyd's, he said.

In years past, there was a "healthy cross-pollination and open competition between U.S.-based retailers and Lloyd's brokers," Mr. Pickering pointed out. "However, this has changed because, in many cases, Lloyd's brokers and retailers are now jointly owned."

Mr. Pickering pointed out that the largest brokers "undoubtedly employ some first-class people, but bigger does not always mean the best" when it comes to choosing a broker. Lloyd's brokers, he added, have the opportunity to grow in a marketplace that is dominated by megabrokers.

The two largest brokers, while they control most of the premiums,

can't handle all the world's business, Mr. Pickering said. "I believe there's room for others to excel, especially niche brokers, as evidenced by our own company, which has attracted over 150 clients in its first 18 months of existence as a natural resource broker."

Mr. Pickering and Mr. Hurst-Bannister said Lloyd's doesn't need the bad behavior of some of its brokers and underwriters.

"I'm sad to say, the behavior of some Lloyd's brokers today leaves a lot to be desired," Mr. Pickering said.

Too many brokers are engaging in "market blocking," he noted, which is the practice by some of those who lose accounts to attempt to get it back through bullying and threatening underwriters that take the business from a competing broker. "This is a very undesirable trend of the '90s, and I wish underwriters would report these activities," Mr. Pickering said.

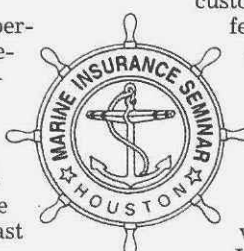
ing said. Mr. Hurst-Bannister acknowledged that dealings among Lloyd's underwriters and brokers, as well as those outside the marketplace, are not all cheery.

"The current jockeying for position between some underwriters and some brokers," Mr. Hurst-Bannister said, "is a symptom of the ill temper that appears whenever the market is at its worst."

He said that "it should not be demeaning for either to acknowledge the mutual dependence on the other."

"The insurance industry is, I'm afraid, awash in guilty parties on the matter. Underwriters are not underwriting or explaining the process to pay claims. Brokers are not broking, they are allocating lines."

Mr. Hurst-Bannister said that "all parties must raise their game" and commit to a "far higher degree of professionalism." **BI**



Attendance tops 900

The Houston Marine Insurance Seminar drew slightly more than 900 participants to its 34th annual meeting last week.

Held at the Westin Galleria Hotel, the event featured a lineup of speakers that included energy and marine insurers, brokers, attorneys and other experts. They discussed, among other topics, market conditions, changes in maritime laws and various coverages. Marine Insurance Seminars

Inc., the seminar's sponsor, uses proceeds from the meeting to fund scholarships and promote the study of maritime issues. In recent years, it has donated about \$100,000 each year to universities and other organizations.

The 2000 seminar will be Sept. 24-26 at the Westin Galleria.

Additional information is available from John S. Parsley, Aon Natural Resources Worldwide, 2000 Bering Drive, Suite 900, Houston, Texas 77057; 713-430-6000.



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Marine exec urges adherence to solid underwriting

By MICHAEL BRADFORD

Things are going to get worse before they get better for marine insurers, says an executive with one of those companies.

The marine insurance market has been "in the tank" for a long time, said Thomas J. Prendergast, president of The Center Marine Managers Inc. "And we've been there longer than the brief respite in the early and mid-'90s might have led us to believe. Remember the cycle? We loved to talk about it. But it's been virtually non-existent for the last 15 years," Mr. Prendergast said.

While some optimists say the bad times are behind marine insurers, Mr. Prendergast said, "There is little doubt that it will get worse." In a presentation at last week's Houston Marine Insurance Seminar, Mr. Prendergast called on marine insurers to "return to solid underwriting principles" as a way to improve their results, rather than waiting for a catastrophe to soak up the current abundance of capacity and drive up rates.

"Capacity is not the major culprit," Mr. Prendergast said. "Getting money in the door and throwing it in a seemingly inexhaustible stock market has become a critical measure of success. Couple this with extraordinarily low reinsurance costs, and you've got an invitation to both new and old players to jump in with both feet." He said a recent renewal illustrates how illogical pricing has become.



A sizable account, "although not a household name," was paying more than \$2 million for marine coverages three years ago, Mr. Prendergast said. "The account just renewed for \$850,000," he said, even though it incurred a total of \$1.75 million in losses in 1998 and 1999.

From any point of view, such practices are not good business, Mr. Prendergast noted. "But from the perspective of a good account," he said, "it must be galling to realize that there is virtually no distinction between winners and losers." While most companies with good safety records and low losses will "probably continue to do the right thing," he said, "it might occur to some of these most desirable insureds that there may be little value in spending time and money on training and maintenance to prevent losses when those with extraordinarily poor experience can obtain significantly more than 50% reductions."

Meanwhile, as brokers and insurers have gone out of business or disappeared through mergers and acquisitions, competition should have cooled and capacity should have shrunk, he suggested. "It doesn't seem to be happening that way. No sooner do companies fold than others rush in to take their place. Nature abhors a vacuum."

Mr. Prendergast predicted that "as long as there are ships and people working on ships," marine underwriters will continue to exist. "But clearly not all of us. It is a question of who will survive and who will fall by

the wayside, who will get the business, who will be the predator and who will be the prey." As long as marine insurers and brokers continue to do business the way they always have, the market will charge very little, he said.

The marine market, he said, appears to be "afraid of change," and even bad market conditions are less painful than taking on change. "Somehow, a recognizable pain is better than the alternative, simply because the alternative is unknown."

To help shore up the state of the market, he urged insurers to fight the temptation to cut rates in order to attract business. "Most important of all," he said, "we must remain steadfast to solid underwriting principles."

Mr. Prendergast said insurers can't "bury our heads in the sand and hope for a catastrophe or a downturn in the equities market to reduce capacity." Some insurers were eyeing Hurricane Floyd as a sponge that might soak up some capacity, he said.

Mr. Prendergast suggested that

policyholders want more than just low-priced coverage.

"We've got loss control experts, claims specialists and, of course, underwriters who honestly know their trade. When it comes right down to it, that's what our customers want. Our customers want a stable market of experienced professionals who will be around next year and the year after and will partner with them as they grow." Insurers' "best customers," he stressed, "want this even more than they want low pricing." **BI**

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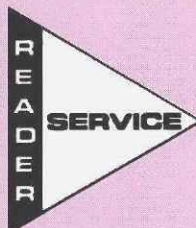
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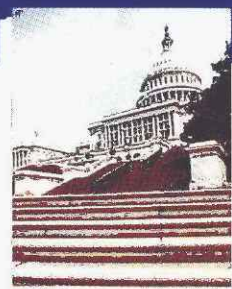
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WHO SHOULD ATTEND

Risk managers, loss prevention and safety managers, benefit managers, workers compensation and disability managers, along with representatives from state and local governments ... plus insurers, brokers, consultants, and representatives from HMOs and PPOs.

PRELIMINARY AGENDA

MONDAY, OCTOBER 18

**9:30 AM
 GOLF TOURNAMENT***

**10:30 AM
 TABLE-TOP EXHIBITS &
 REFRESHMENTS**
Hosted by: Wausau Insurance Cos.

**3:00 PM
 EARLY REGISTRATION**

**4:00 PM
 EMPLOYERS' PRIVATE
 ROUNDTABLE**

Moderator:
Kathryn J. McIntyre
*Vice President, Publisher and Editorial Director
 Business Insurance*

**5:30 PM
 PRE-CONFERENCE
 WELCOME RECEPTION***

**11:00 AM
 WORKERS COMP 2000:
 CHANGES ON THE HORIZON**

Jeffrey W. Pettegrew
*V.P. Ins. & Risk Management
 Westaff*

Edward Frackiewicz
*Director, Risk Management
 Del Monte Foods*

Larry L. Hansen
*National Practice Leader
 Wausau Insurance Companies*

Kenneth R. Ross
*Sr. VP, Product Development & Management
 Intracorp*

TUESDAY, OCTOBER 19

**7:45 AM
 REGISTRATION AND
 CONTINENTAL BREAKFAST**
Hosted by: Specialty Risk Services

**9:00 AM
 OPENING REMARKS**
Alexandra Scott
*President & CEO
 International Business Forum*

**9:05 AM
 KEYNOTE: How Disney Does It —
 "It's all about dealing with people"**
Stephen M. Wilder
*Vice President, Risk Management
 The Walt Disney Company*

**9:45
 INTEGRATED DISABILITY
 MANAGEMENT**

Robert Gelb
*Vice President, General Manager
 QTC Management Inc.*

**12:00 PM
 LUNCHEON***

**1:15 PM
 BUILDING A WINNING TEAM**

Barry E. Thompson
*National Practice Co-Leader
 WC Disability Management Services
 Deloitte & Touche LLP*

Dave Chetcuti
*Director of Workers Compensation
 Sysco Food Services*

Bernadette Melchionne
*Senior Corporate Insurance Administrator
 Mattel, Inc.*

Suzanne Guyan
*Director of International Workers Compensation
 Costco*

**2:30 PM
 COMBATING FRAUD**

Keith Neuman
*Deputy Commissioner
 California Department of Insurance*

John P. Massucco, Jr.
 Chief, Insurance Fraud Division
 San Diego County
 District Attorney's Office

Bill Strickland
 Special Investigation Unit Manager
 Liberty Mutual

3:30 PM
TABLE-TOP EXHIBITS & REFRESHMENTS
 Hosted by: Bayne Consulting Group, Ltd.

4:00 PM
CONCURRENT SESSION: A OR B

Session A:
NIOSH ADVICE ON EASING THE IMPACT OF JOB STRESS AND SHIFTWORK SCHEDULES

Dr. Steven L. Sauter
 Chief of Applied Psychology and Ergonomics
 National Institute for Occupational Safety and Health

Dr. Roger R. Rosa
 Research Psychologist
 National Institute for Occupational Safety and Health

Session B:
HOW TO MEASURE PERFORMANCE OF EMPLOYER PROGRAMS

Anshell Boggs
 Workers Compensation Manager
 Pep Boys

Jill A. Dulich
 Regional Director
 Marriott Claims Services

Peter Rousmaniere
 President
 Rousmaniere Designs

Maria Bayne
 President
 Bayne Consulting Group, Ltd.

5:00 PM
COCKTAIL RECEPTION
 Hosted by: GENEX Services Inc.

WEDNESDAY, OCTOBER 20

7:45 AM
CONTINENTAL BREAKFAST
 Hosted by: Intracorp

9:00 AM
CASE STUDY: TEXTRON AUTOMOTIVE COMPANY WORKERS COMP 'BOOT CAMP'
Douglas Hamrick
 Director of EH&S and Energy
 Textron Automotive Company

10:00 AM
ERGONOMICS: EFFECTIVE WORKPLACE PROGRAMS
 Winner of "The 1998 Outstanding Office Ergonomics Award"
 Presented by:
 The Center for Office Technology

Marynka S. Rojas
 Safety and Ergonomics Manager
 City of San Jose

11:00 AM
TABLE-TOP EXHIBITS & REFRESHMENTS*

11:30 AM
RETURNING INJURED WORKERS TO MEANINGFUL JOBS
Annette Sanchez
 Vice President of Business Development
 Specialty Risk Services, Inc.

Marshall Sherman
 Director, Risk Management
 Aramark Corp.

Philip B. Renaud, II
 Vice President of Insurance
 The Limited, Inc.

W. Tom Fogarty, M.D.
 Sr. VP, Chief Medical Officer
 Concentra Managed Care, Inc.

12:30 PM
LUNCHEON WORKSHOP
 Hosted by: HNC Insurance Solutions
 Alta Analytics

HIGH-TECH SOLUTIONS TO WORKERS COMPENSATION PROBLEMS

Paul Jester
 Vice President
 HNC Insurance Solutions

Dick Hughes
 Director
 Alta Analytics

Michael Gantt
 Sr. Vice President
 Claims and Benefits Solution Group
 Policy Management Systems

2:00
CONFERENCE ADJOURNS

COMMENTS FROM SOME OF LAST YEAR'S ATTENDEES:

"The conference helped us to look at new ways of managing workers compensation and gave us a network, heads up on industry trends."

Babs Troutman • Director, Risk Management • Trans World Airlines, Inc.

"The conference was excellent with very well organized exhibits and great networking opportunities."

Nancy Geedey, RN, CCM • Managed Care USA

"The conference had a well rounded program with diverse employers attendance."

K. Workers Compensation Claims Manager • Catholic Healthcare West

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Global Briefs

Italian bank **Sanpaolo IMI** last week refused to be rushed into action by Assicurazioni Generali S.p.A.'s counterbid for life insurer Istituto Nazionale delle Assicurazioni S.p.A. INA's board has stated its preferred option is to join forces with the Turin, Italy-based banking group, and the two organizations are considering various options to thwart Generali's hostile bid, made earlier this month. . . **SVB Holdings P.L.C.** and **CLM Insurance Fund P.L.C.** have confirmed plans to merge and form one of the largest corporate vehicles within Lloyd's of London. Rupert Villers, SVB chief executive, said when making the announcement that more acquisitions or mergers could be in store. At the same time, SVB unveiled a first-half 1999 pretax profit of £1.14 billion (\$1.86 billion), up from £817 million (\$1.33 billion at a current exchange rate) for the comparable 1998 period. . . **The Hub Group Ltd.**, a Toronto-based consolidator of independent insurance brokerages, has acquired Parsons Brown & Co. Ltd. of Vancouver, British Columbia. Parsons Brown has annual commission revenues of \$3.8 million Canadian (\$2.6 million). . . Atlanta-based Crawford & Co., an international provider of risk and claims management services, has bought Certiser, Peru's third-largest marine cargo loss prevention and adjusting service company, from Ransa Commercial S.A. Crawford said the acquisition complements its existing property and casualty services and further expands its ability to provide services worldwide. . . **Wellington Underwriting Ltd.** is pushing for rate increases in all lines of business, according to Managing Director Julian Avery. He made the statement as Wellington unveiled a dip in operating profits on its Lloyd's business for the first half of 1999 to £5.6 million (\$9.1 million) from £6.0 million (\$9.8 million at a current exchange rate) in the same period in 1998. . . Moody's Investors Service Inc. has assigned a Prime-1 short-term insurance financial strength rating to **Mitsui Marine & Fire Insurance Co.** of Tokyo. It said the rating is based on Mitsui Marine's "strong competitive position in Japan. . . and the high quality and liquidity of its assets in relation to the business it writes and supports." . . **Brockbank Insurance Services Inc.**, a subsidiary of XL Capital Ltd. of Hamilton, Bermuda, has reached a long-term producer's agreement with underwriting management company W. Brown & Associates. The agreement, which allows WBA to place its general aviation business with Santa Barbara, Calif.-based BIS, is effective Jan. 1, 2000. WBA underwrites general aviation business throughout the United States from offices in Newport Beach, Calif., and Memphis, Tenn. . . AIG Europe (U.K.) Ltd. has appointed **David Palmer** crisis management corporate manager for the United Kingdom and Ireland. Mr. Palmer, who joined the company in April, previously was sales development executive-commercial lines for Allianz Cornhill International in London. . . As part of the reorganization of its U.K. operations, French insurer **Groupama-GAN** has moved certain underwriting operations of GAN Insurance and Lombard General Insurance Co. to the London Underwriting Centre from Tonbridge, England. The operations are headed by Geoff Clark, who has been appointed contingency special risks manager. . . Kiln P.L.C. has appointed **Edward Creasy** managing director of its underwriting agency, R.J. Kiln & Co. Ltd., effective Jan. 3, 2000. Mr. Creasy, who is currently managing director of Lloyd's underwriter Cassidy Davis Syndicate Management Ltd., will take over from **Jeff Kilpatrick**, who will remain finance director until his retirement next June. Meanwhile, Cassidy Davis has announced the appointment of **Neil Deshpande** to succeed Mr. Creasy as managing director. Mr. Deshpande joined Cassidy Davis in 1985; since 1998, he has been chief operating officer.

Equitas claims successes

Directors stress importance of early settlements, commutations

By SARAH GODDARD

LONDON—Equitas Ltd. has made significant progress in settling claims in the three years since it was launched, according to its claims director, Scott Moser.

Mr. Moser explained that Equitas has paid more than £7 billion (\$11.43 billion when converted at a current exchange rate) in claims, though £14 billion (\$22.86 billion) in undiscounted future claims still wait to be settled, according to Equitas estimates. Mr. Moser was speaking at a meeting of former and current Lloyd's of London names who have reinsured their pre-1993 Lloyd's liabilities into the

runoff reinsurer.

Among the high-profile policyholders that have settled their claims are General Electric Co., Amoco Corp., Chevron Corp., Dow Chemical Co. and Martin Marietta Inc. Others close to settling include Sun Oil Co., with one claim type outstanding; Minnesota Mining & Manufacturing Co., with one lineslip policy to be settled; and Phillips Petroleum Co., with one claim remaining.

Although Lloyd's names have been reinsured individually into Equitas, with each name's Equitas premium calculated on the spread of syndicates that name participated on, Equitas treats its re-

serves as a pool, explained Equitas Chairman Hugh Stevenson. That means no name will receive a return premium until the last claim is paid, even if the individual's reinsured portfolio has been settled.

Under these circumstances, several of the estimated 250 reinsured names attending the meeting requested that the Equitas board provide more information on its progress in settling claims.

Mr. Stevenson said the board has a "dilemma" with issuing this information. "We want to be as transparent as possible," he said. "However, we are engaged in many negotiations with people who

See Equitas on page 36

Amlin to sell Whittington Group

By SARAH GODDARD

LONDON—While mergers and acquisitions continue apace in London, Lloyd's insurance group Amlin P.L.C. is, at least partly, bucking the trend by selling off its insurance services subsidiary.

Amlin said last week it would sell its Whittington Group Ltd. subsidiary to Dutch-owned insurance services

Philipps said the sale of Whittington will allow Amlin to concentrate on its core business of underwriting London market and U.K. insurance, as well as e-commerce.

"The overall strategy is very clear: to build a serious, focused, integrated insurance company," said Mr. Philipps. Amlin would have needed to devote a significant amount of management time to develop Whittington, he said. Instead, it is looking at expanding its more traditional businesses by acquiring underwriting teams and individuals.

At the same time, Mr. Philipps said that he hoped Amlin would continue to have "a good relationship with Whittington" and said he thought the Whittington business was "better placed in private hands."

In fact, after the transfer the company will partly revert in ownership to one of its original founders, Tony Hobrow. Mr. Hobrow left Amlin at the beginning of this year to become acting chief executive officer of the Lloyd's Market Assn. Since Mr. Hobrow's departure, three other main board directors have left as well, though

See Sale on next page

Whittington GROUP LIMITED

company Omni Finance & Insurance Services Ltd. In its interim accounts, issued in mid-September, Amlin states it will receive £3 million (\$4.9 million) for Whittington.

That deal came just days after Amlin announced that management of Lloyd's first captive syndicate had moved from Whittington to PXRE Managing Agency Ltd., following a defection of most of the captive management team to PXRE earlier this year.

Amlin Chief Executive Charles

Change in South African VAT

New tax for Lloyd's

By SARAH GODDARD

LONDON—Lloyd's of London executives have welcomed moves by the South Africa Revenue Service to put

LLOYD'S

the tax treatment of Lloyd's South African underwriting on an equal footing with the local insurance industry.

The South African Parliament's finance committee earlier this month heard representations from Lloyd's and the SARS about the Revenue Laws Amendment Bill, which proposes that Lloyd's pay value added tax on premiums for some South African risks.

Lloyd's last year wrote about £92.5 million (\$153.3 million) in premiums for South African-domiciled business, with direct insurance business accounting for about £75 million

(£124.3 million) of the total. About £33 million (\$54.7 million) of the insurance business was written in the open market, with the balance written through about 80 South African coverholders, mainly through binding authorities.

VAT was initially introduced in South Africa in 1991, but the Value-Added Tax Act contained special provisions relating to Lloyd's that exempted it from paying VAT on its South African business. Instead, the 14% VAT payments were the responsibility of policyholders.

At the beginning of this year, the South African government introduced a new Short-Term Insurance Act, which changed Lloyd's funding requirements so that it now reserves on an outstanding liability basis rather than as a percentage of premium income. But the act failed to mention Lloyd's VAT treatment within the legislation.

The Revenue Laws Amendment Bill changes the situation. From the

See Tax on page 36

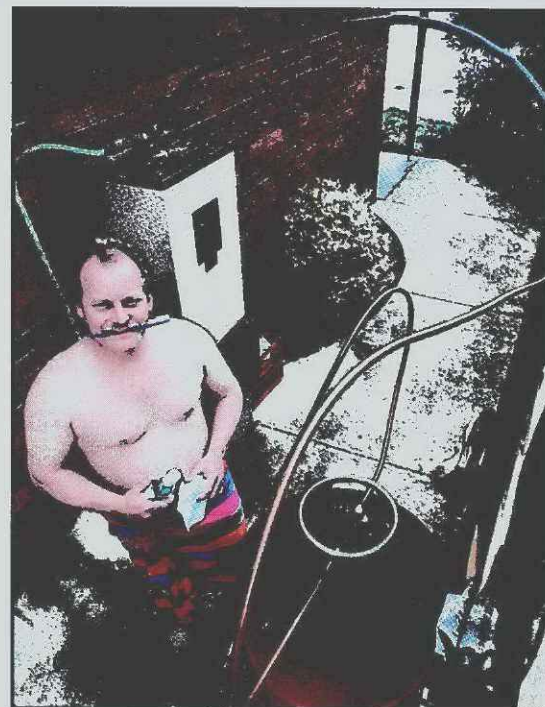


PHOTO: AFP

Insurers have joined a class action by 1.2 million users of Esso gas who, like this Melbourne resident standing by a jury-rigged hot water heater, were inconvenienced by a 10-day gas plant shutdown.

Insurers enter class action against Esso

By MATTHEW MacDERMOTT

MELBOURNE, Australia—Australian insurers have joined the \$1 billion Australian (\$656.8 million) class action against Esso Australia Pty. Ltd. to recover claims stemming from last year's gas shutdown at Esso's Longford, Victoria, natural gas plant.

The fire at the Longford plant, which pumps natural gas from wells in Bass Strait, between the Australian states of Victoria and Tasmania, killed two Esso workers, injured eight others, and caused a 10-day gas shutdown (BI, Oct. 5, 1998).

The Melbourne-based law firms of Slater & Gordon and Maurice Blackburn Cashman last year filed a class-action suit against Esso on behalf of 1.2 million household and business gas users in Victoria that suffered a total of \$1 billion Australian in financial losses due to the disruption in the gas supply (BI, June 7, 1999).

Australian insurers, which paid an estimated \$350 million Australian (\$229.9 million) in claims for business interruption and lost profits due to the shutdown, had been investigating options for their own combined or individual legal actions against Esso to recover their claim costs.

Ultimately, the 22 insurers decided to join the

See Esso on page 36

Sale

Continued from previous page

Mr. Philipps said Amlin is now on the brink of augmenting its executive board.

Mr. Hobrow will become a director of Omni's Dutch owner, The Hague-based Omni Finance & Investment Group BV, and will become chief executive of the Whittington Group once the deal is completed. Although terms have been agreed between Omni and Amlin, the deal still needs Lloyd's approval.

The sale includes:

- Omni Whittington Ltd., a joint venture between Whittington Group Ltd. and Omni specializing in political risk debt recovery ser-

vices:

- Whittington Insurance Services Ltd., an insurance services company providing runoff management, claims handling, cash recovery and administration services;

- Whittington Syndicate Services Ltd., providing runoff services to Equitas Ltd., the reinsurer of Lloyd's pre-1993 liabilities; and

- Amlin Capital Management Ltd., a Lloyd's managing agency looking after third-party syndicates.

Whittington's projected revenues for 1999 are £17 million (\$27.7 million), the bulk of which comes from its Equitas-related business. The group employs a staff of about 250.

"Our business will revolve around claims and debt," explained Mr. Hobrow. Buying Whittington allows Omni, a political risk debt recovery specialist, to extend its operations, while Omni's list of European clients could give Whittington opportunities to increase its list of managed syndicates, he said.

With signs that the insurance cycle is close to turning, Mr. Hobrow said the "timing is right if the logical happens." By providing the range of services it does, Whittington will be able to benefit both from runoff management—though this is more likely to be portfolio runoff rather than insurance company runoff—and the provision of services to new entrants to the market. **BI**

WISe network taps execs for board

By CAROLYN ALDRED

LONDON—In an unprecedented move, leading insurance, reinsurance and broker executives from rival companies around the world are working together as members of the executive board of one electronic network to drive forward the use of e-commerce in their industry.

WISe, which stands for "worldwide insurance e-commerce," was formed this summer by the merger of three industry networks: the London Insurance Market Network, or LIMNET; the Brussels, Belgium-based Reinsurance & Insurance Network, or RINET; and the World Insurance Network, or WIN, which was set up by the world's leading brokers, with of-

boards to ensure that WISe's development is in the interest of the industry as a whole. Mr. Ashby expects to invite industry associations such as the Reinsurance Assn. of America and the Brokers & Reinsurance Markets Assn. onto the advisory board, as well as buyer groups such as the Risk & Insurance Management Society Inc. and the U.K.'s Assn. of Insurance & Risk Managers.

In an effort to kick-start electronic commerce, the new board has said that all members of WISe should be conducting electronically most of their administrative transactions, including premium accounting and claims settlement, by the year 2002. To help achieve this end, a business center was opened this month that

'The insurance industry is a complex web of relationships. We couldn't allow it to be dictated by any particular sector,' says Kevin Ashby of WISe.

ices in London and New York.

Involvement of the entire industry in the project will produce the most cost-effective and efficient solution to e-commerce trading, according to WISe Chief Executive Officer Kevin Ashby, formerly the chief executive officer of LIMNET.

"The insurance industry is a complex web of relationships. We couldn't allow it to be dictated to by any particular sector, and the last thing we want is different systems for everyone to have to deal with," Mr. Ashby told *Business Insurance*.

As a result, in addition to its executive board, WISe also has formed an operations board made up of information technology and other executives from several member companies. It also plans to set up an advisory board, which will sit above both the other

translates information sent in various formats into recipients' preferred formats.

A legally secure framework also has been set up to enable member companies to conduct business electronically, including underwriting.

The main features of WISe Trusted Trading include an interchange agreement, a legal agreement that members must sign, with signing meaning the member recognizes that documents processed electronically are legally binding; an audit trail, which registers the time and content of all e-mail messages and attachments; and digital certificates, which ensure that documents can be read only by their intended recipients, who then can authenticate senders.

WISe—which has offices in Chicago, London and Brussels, Belgium—has compiled a business directory that provides information on member companies and their trading interests and explains how to communicate with users electronically.

The recently appointed board of WISe is made up of: Ken Pinkston, chairman and chief executive officer of Willis Corroon Corp.; Joe Prochaska, chief financial officer of Aon Group Inc.; Brandon A. Sweitzer, president and CEO of Marsh & McLennan Cos. Inc.'s Guy Carpenter & Co. Inc. unit; Max Taylor, chairman of Lloyd's of London; Alfred Gossner, a member of the board of Allianz A.G.; Brian Duperreault, chairman, president and CEO of ACE Ltd.; Clem Booth, deputy chairman of Munich Reinsurance Co.; Jean-Marie Nessi, president of AXA Re; David Calhoun, chairman of ERC Frankona Ltd.; Ken Carter, CEO of Jardine Lloyd Thompson Group P.L.C.; Ron Forrest, chairman of Aon Risk Services; Dieter Losse, deputy chairman of Benfield Group P.L.C.; George Nixon, a director of Willis Corroon Group Ltd.; Richard J. Quagliaroli, president of commercial lines at The Hartford; Robert A. Scott, group CEO of CGU P.L.C.; and Rob White-Cooper, chairman and CEO of Marsh International Ltd.

Other major companies, such as SCOR S.A., Swiss Reinsurance Co., General Re Corp., Assicurazioni Generali S.p.A. and the Zurich Financial Services Group, also are supporting WISe. **BI**

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Equitas

Continued from page 33

have claims against Equitas," and it would not be in the interest of reinsured names to weaken the Equitas negotiators' hand by providing too much information about Equitas, Mr. Stevenson said.

Mr. Moser explained that the proportion of so-called APH claims—long-tail liability claims relating to asbestos, pollution and health hazard losses—in the Equitas portfolio is increasing as short-tail claims are resolved. But "non-APH claims still are quite substantial," he said.

Outlining the Equitas claims philosophy, Mr. Moser explained that it is "fair but firm." He said: "We aim to pay covered claims promptly, both to fulfill policy obligations and to reduce unnecessary costs. We resist invalid claims by all proper means at our disposal."

But APH claims are not clear-cut in terms of either coverage or cost, he said. As a result, Mr. Moser said, "our strategy here is to resolve these claims at the earliest appropriate moment...the earliest time at which we can achieve the right terms at the right price."

Because of the conservative nature of its business, and because it

has no inward cashflow from new business, Equitas cannot hold the same sort of investment portfolio as would a regular insurer or reinsurer. Consequently, it doesn't see the returns of up to 20% on investments that are enjoyed by conventional insurers, said Mr. Moser.

"These (re)insurance and reinsur-

'In virtually all major claims matters, (Equitas) demands, at a minimum, a release from all of the claimant's known and unknown pollution exposures,' says Scott Moser.

ance) companies will accept less money from us up front in order to make the settlement funds work for them immediately at their higher rates of return, and thus, by settling early, we can shave a few percentage points off our payment," Mr. Moser explained.

Early settlement also allows Equitas to minimize its expenses, he said.

"In addition, we seek the broadest possible release from our claimant," he said. That means the claimant might guarantee not to claim against the syndicates again,

"and in virtually all major claims matters, we demand, at a minimum, a release from all of the claimant's known and unknown pollution exposures."

During the 12 months ending March 31, 1999, Equitas closed 134 of its 650 ongoing pollution claims, said Mr. Moser, and in to-

(\$890,000 when converted at a current exchange rate) to be paid to Equitas directors next year. Highest paid under the plan is Chief Executive Officer Michael Crall, who is set to receive £147,674 (\$241,107) in addition to his £320,000 (\$522,464) salary to the end of March 1999 and a £150,000 (\$244,905) bonus for the same period.

Last year, Mr. Moser earned £380,000 (\$629,850), plus £128,874 (\$213,608) under the Equitas long-term incentive plan.

Commutations are also bearing fruit for Equitas, according to Commutations Director Paul Jardine. Describing commutations as "an agreement to extinguish, once and for all, all liabilities under contracts of reinsurance between Equitas and a counterparty," Mr. Jardine said the runoff reinsurer is beginning to see positive results from its commutations strategy.

To illustrate, he said that more than £100 million (\$163.3 million) of Equitas' £5 billion (\$8.16 billion) of reinsurance assets is taken up in reinsurance processing and collection. What's more, the individual syndicate reinsurance programs Equitas inherited at its inception were designed to protect individual syndicate portfolios, not Equitas' aggregate portfolio, he explained.

If Equitas were able to turn its reinsurance assets into cash, the cost of managing those assets would be about £5 million (\$8.16 million), plus it would be earning

an investment income. "Against this background, our strategy has to be to commute as much of the reinsurance asset as possible and to turn it into cash as quickly as we can," he said.

Pursuing a commutations strategy also helps secure payments from "less-than-secure" reinsurers, as well as resolving some of the 1,200 individual coverage disputes Equitas inherited, said Mr. Jardine.

Most of the commutations completed so far have been concluded on a "global basis," allowing Equitas to finalize both inward and outward reinsurance business for the syndicates.

For the last financial year, commutations produced £439 million (\$707.6 million) of reinsurance proceeds after bad debt, and removed £414 million (\$667.3 million) of inward liabilities, explained Mr. Jardine. "During the period, commutations were effected with over 100 companies, many of whom were insolvent," he said. These include a settlement with insolvent London market reinsurer Charter Reinsurance Co. Ltd. involving £260 million (\$419.1 million) in ceded claims and £220 million (\$354.6 million) in inward liabilities. This will have a major impact on the London market excess-of-loss spiral, said Mr. Jardine.

Equitas expects to see a similar level of commutations activity for the fiscal year to end March 31, 2000, said Mr. Jardine. **BI**

Esso

Continued from page 33

gas users' class action. The insurers' lawyers, the Melbourne law firm of Lander & Rogers and the national law firm of Phillips Fox, will work in conjunction with the other plaintiffs' firms in the action.

Michael Proud, a partner with Phillips Fox who is representing the insurance industry's interests in the case, said it was unique for Australian insurers' law firms to work together with plaintiffs' law firms.

He said that the combined action will strengthen the ability to "put forward the best possible case against Esso." Joining the

class action, rather than bringing individual suits at different times, will bring a quicker and better outcome for all parties involved, Mr. Proud explained.

Michael Landvogt, an insurance litigation partner at Lander & Rogers, said that the collective action is the best way to "maximize the prospects of recovery" from Esso.

The class action is scheduled to be heard next year in Australia's federal court by Justice Ron Merkel. A Victorian government inquiry into the Longford fire, released in June, concluded that Esso's failure to train and equip its workers to deal with emergencies was the principal reason for the fire and gas shutdown (BI, July 5). **BI**

tal, gross claims payments reached £2.25 billion (\$3.63 billion).

During that time, Equitas also reduced the number of claims adjusting contractors to 14, and these contractors operate at a cost of £4 million (\$6.4 million). This compares with 57 contractors costing £12 million (\$19.3 million) working for Equitas when it was launched in September 1996.

At the same time, Equitas has resolved to reduce its costs by 15% each year, explained Mr. Stevenson, and the payments from the long-term incentive plan to Equitas executives depend on their success at meeting this target. Based on results for the year ending March 31, 1998, the LTIP has made provisions of £545,106

Tax

Continued from page 33

beginning of 2001, Lloyd's will be responsible for paying any VAT accruing on net revenues from business introduced by Lloyd's coverholders. Business introduced to Lloyd's in London through its 38 local correspondents, however, will not be affected by the changes, according to Maureen McLeod, manager of international taxation at Lloyd's.

"This clarifies the issue and levels the playing field," said Michael Lewis, company secretary and compliance officer of Lloyd's underwriting agency R.J. Kiln & Co. Ltd. Kiln opened a new Johannesburg-based service company at the beginning of this month. Kiln South Africa (Pty.) Ltd. has been set up to write multiline business for South African businesses and has a "very, very modest" target of 5 million rand

(\$823,500) in premium volume for its first year.

"We are expecting to see business which wouldn't otherwise be seen (by Kiln) in London," said Mr. Lewis.

The new tax treatment will put Lloyd's on an equal footing with

The tax change 'clarifies the issue and levels the playing field,' says Michael Lewis of Lloyd's agency Kiln & Co. Ltd.

local business, which Mr. Lewis sees as "a positive move." This means that operations such as Kiln's can differentiate themselves in terms of service, he added.

Lloyd's tax department is evaluating the various options for col-

lecting the tax. Originally, the South African government requested that the new procedure begin in April of next year, but Lloyd's successfully requested that the inception date be deferred until January 2001, as the vast majority of its systems-related resources currently are dedicated to Y2K compliance work.

Keith Stern, regional manager for Australasia, Africa and the Middle East in Lloyd's international department, said he did not think the changes will make any significant difference to Lloyd's competitive position.

"The tax is on the net underwriting account," offsetting claims against premiums, he explained, so this could reduce the amount paid substantially, particularly since South Africa, like many other markets, is experiencing soft premium rates at the moment. "A 10% underwriting return probably is fairly optimistic" at the moment, he said. **BI**

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Changes

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more employees work from home, the economy is becoming more information-based, service providers and retailers are broadening their businesses, and the risk financing tools available to risk managers are growing in diversity and sophistication, he said.

To adjust to all these changes, risk managers need to develop some new skills, he said.

Risk managers will have to have a broader awareness of all kinds of risk financing issues to keep pace with changing liability issues, he said.

For example, although the USOC has never had to deal with a sexual harassment claim, Mr. Mair, as a risk manager, has to be aware of the potential for such a problem and his options for dealing with it, he said.

Risk managers need to learn the language of finance, Mr. Mair said. For example, risk managers should be conversant in terms used for currency risks, credit risks, investment risks and alternative risk financing, he said.

Similarly, risk managers should be attuned to the concerns of their senior management, Mr. Mair said.

"If you are trying to manage adversity and the board is trying to maximize opportunity, then

you are going to be at loggerheads," he said.

Risk managers also have to be willing to innovate and change, Mr. Mair said.

"Don't get locked in to doing things the same way as you do them today if tomorrow things are going to be different," he said.

For example, with the increase in telecommuting, risk managers need to broaden their view of workers compensation issues to include an employee's home as a worksite, Mr. Mair said.

And to cope with all the changes, risk managers should become more familiar with all of the operations of their companies through "management by walking around" and include in their formal continuing education topics that may not be pertinent to their current jobs, he said.

For example, Mr. Mair, who works for a non-profit organization, said he is studying tax regulations in case his own circumstances change or tax laws change, he said.

Despite all the changes affecting risk financing, risk managers still will play a vital role, Ms. Meltzer said.

"There are a lot of risk managers in North America that are scared of this changing world and don't believe that they have the educational background," she said at another CRIMS session.

But the practice of risk management already is a major skill, and by knowing how to access other expertise, risk managers can continue to flourish in the new environment, Ms. Meltzer said.

"I don't know how to install a sprinkler system or exercise a hedge, but I know when I need them. . . . We pull people together and look at the risks and look at the options," she said.

The role of the risk manager is not to be an expert in all possible areas of safety and finance, but to promote the balance of risk, Ms. Meltzer said.

Risk managers also need to develop productive relationships with service providers, such as brokers, she said.

Some risk managers say they don't need a broker, Ms. Meltzer said. "It's the new sort of macho pose."

But brokers the size of Marsh Inc. and Aon Group Inc. have purchasing power and established relationships that no risk manager has on his or her own, she said.

Risk managers should manage the relationship between their brokers and their companies and encourage the brokers' senior management to contact their executives, Ms. Meltzer said.

And to get the best out of brokers, risk managers need to pay them adequately, Ms. Meltzer said. In the current soft market, a risk manager

may be able to reduce a brokers fee by, say \$50,000. That savings is hardly noticed by a company, but "it lessens the interest of the broker in bringing solutions to the table," she said.

Risk managers also need to nurture their relationships with the property/casualty insurance market, as those insurers will likely remain the primary resource for risk financing, she said.

Capital markets insurance products will likely fade away once they have to respond to a large catastrophe, as banks are not used to paying those types of losses, Ms. Meltzer said. "I don't believe in the long-term validity of the capital markets" catastrophe insurance products, she said.

One new trend in risk financing that is not going to go away is enterprise risk management, said John Johnstone, executive vp at Marsh Canada Ltd. in Toronto, a unit of Marsh Inc.

"The book on enterprise risk is still being written, and nobody is an expert on it yet. . . . But I've been a broker for 30 years, and I've not seen anything that creates such a buzz at the CEO level as enterprise risk management," he said.

The sessions were moderated by Richard W. Whitehouse, director-risk management and insurance division at the Alberta Treasury in Edmonton, and Marlene Jones-MacKenzie, manager-risk and insurance at Bell Canada in Toronto. **B1**

Having no disaster plan inspired quick action

By GAVIN SOUTER

ST. JOHN'S, Newfoundland—A pencil stub and the back of a cigarette packet were more useful than a detailed emergency response plan as government workers dealt with the aftermath of the Swissair crash last September, managers from the Nova Scotia transportation and public works department say.

The onerous process for leafing through a detailed government manual would have stymied efforts to complete their main task, which was to quickly convert a military aircraft hangar into a morgue, they said.

Instead, the government department improvised, quickly sketched out a plan and relied on the good will and camaraderie of all the people involved to get the job done quickly, managers said.

When the Swissair MD-11 went down in the Atlantic off Peggy's Cove, Nova Scotia, killing 229 people, "the world was watching," and the

provincial government had no emergency plan to turn to help them deal with the situation, said Bruce G. Langille, risk manager for the Government of Nova Scotia in the department of transportation and public works.

Canadian, U.S. and other international television networks descended on Peggy's Cove shortly after the crash, and Nova Scotia officials largely had to improvise their response to the crash, Mr. Langille said.

He was speaking at a plenary session of the Canadian Risk & Insurance Management Society conference, held in St. John's, Newfoundland, Sept. 19-22.

One of the main tasks given to the department of transportation and public works was the construction of a morgue with autopsy facilities at a hangar at the Shearwater air force base near Peggy's Cove.

Among other things, the builders and engineers needed to provide running water, lighting and autopsy tables for the medical team, which had to examine the human remains found around the crash site.

The tragic circumstances of the disaster inspired the teams of people to work together quickly and effectively to build the morgue, said Christopher Moir, an environmental engineer at the transportation and public works department.

"All the supervisors called their respective shops and told their workers what was required and everything started happening. . . . There were no trade lines. Electricians were grabbing hammers and doctors were grabbing plywood," he said.

As a result, the teams built two functioning autopsy rooms by 4:30 p.m. the day after the crash, Mr. Moir

said.

One of the supervisors who helped build the morgue was Ron Jeppesen, supervisor-building services. "Up until the early hours of Sept. 3, I was blissfully unaware that we were mandated to respond to disasters," he said.

Within a few hours of the crash, however, Mr. Jeppesen was designing a morgue on the back of a cigarette pack.

At the end of the project, the teams had built eight autopsy rooms with DNA sampling and fingerprint sampling areas as well as several other facilities, such as drying machines for the large amount of paper currency the aircraft had been carrying, he said. Also, the department assisted in setting up command centers for other people involved in reacting to the disaster, built facilities for grieving family members of the victims and supplied a fleet of vehicles with drivers to assist the response teams.

The whole project worked in part

because there had not been a plan, Mr. Jeppesen said.

When highly regulated organizations like government departments have written plans for anything, they are normally detailed and require rigorous compliance, he said.

Given the unique nature of the project, the team of builders and engineers had to work quickly with what they had available; the work would have been considerably slowed if they had to continually consult a generic disaster plan, Mr. Jeppesen said.

Nevertheless, Nova Scotia will likely draw up a broad-based plan to respond to disasters, said Mr. Moir.

But the plan should empower the managers involved to act quickly and decisively, he said. And it should contain practical information, such as phone numbers of key personnel, details on how to contact suppliers and information on how to quickly bring in stress counselors for the workers involved, Mr. Moir said. **B1**

Seek clarity, breadth in interruption cover: Speakers

By GAVIN SOUTER

ST. JOHN'S, Newfoundland—The evaluation of business interruption coverage seldom is a clear-cut process, two consultants say.

Disagreements over who and what is covered and how much should be paid serve to cloud the picture. But by crafting extensive coverage provisions and broadly worded policies, policyholders can bolster their chances of making successful claims and winning coverage disputes with insurers, they say.

The process of evaluating business interruption claims is about 20% black and white and 80% gray, said Carey Mamer, senior manager in the business insurance consulting practice of Deloitte & Touche L.L.P. in Calgary, Alberta.

Standard policies can give rise to coverage disputes because of the numerous variables involved in many business interruption claims, he said in a presentation at the Canadian Risk & Insurance Management Society annual conference, held Sept. 19-22 in St. John's, Newfoundland.

One of the most likely areas of dispute is contingent business interruption, said Gregory I. Pollard, a partner in the business insurance consulting practice of Deloitte & Touche.

Usually, business interruption policies cover shutdowns resulting from

insured damage to a policyholder's property, Mr. Pollard said.

But as the use of "just-in-time" inventory management increases, companies are more reliant on third-party suppliers and customers, he said.

"If something happens to those parties, then you can be affected, but that is not covered by normal policy wordings," he said.

All sorts of scenarios can create contingent problems, Mr. Pollard said: A supplier could suffer a shutdown and stop delivering crucial parts; a customer could be hit by a flood, stop production and cancel orders; or a hotel near a theme park could experience a dramatic loss of business if the theme park burned down.

Such scenarios can be covered under specially worded business interruption policies, Mr. Pollard said. Before such wordings can be drawn up, though, policyholders need to determine what their contingent exposures are, he said.

For example, a policyholder in Alberta might not see the need for earthquake coverage. However, because business interruption policies cover only losses stemming from insured property damage, it would be worthwhile detailing earthquake coverage in the business interruption policy if that policyholder has a crucial supplier in California, Mr. Pollard said.

Also, a policyholder should consider all the links in a business chain and either name all the suppliers and customers in the policy or request as broad a category of covered sites as possible, he said.

Policies also should include "extra-expense" coverage to pay for any costs incurred in obtaining alternative supplies, Mr. Pollard said. And the limits should be high enough to cover an extended period.

"This is one of the most underinsured exposures that we see," he said.

Another contentious issue in business interruption claims is depreciation, Mr. Pollard said.

"Two accountants looking at the same information will come up with completely different ideas. It ends up being a negotiating point," he said.

For example, insurers might argue that there is less wear and tear at a plant because it experienced a shutdown.

Consequently, insurers might contend, parts will not need to be replaced as quickly and those savings should be deducted from insurance payments. Or they might argue that some expenses are reduced when a plant is closed and that those expenses should also be deducted from insurance payments, Mr. Pollard said.

On the other hand, policyholders might argue that parts wear out over time and not just through use and that

a "saved expenses" deduction should not override the principle of indemnity for a loss, he said.

To avoid such disputes when a claim occurs, policies should state that reduced depreciation will not be deemed savings for the employer and, hence, deducted from a claim, Mr. Pollard said.

Another complex area in business interruption claims is overlapping losses and coverages, said Mr. Mamer.

For example, a policyholder may suffer two unrelated losses within a month of each other, with one loss covered under a boiler and machinery policy, and the other covered by a

property policy.

Disputes could arise over which insurer should cover any overlapping lost production period, when time deductibles should kick in for the losses, and whether the insurer for the second incident should cover any of the period affected by the first loss, he said.

"It's a complex area, so it is best to have one lead underwriter if possible, and, if they are different, have a strong joint-loss agreement and let them fight it out," Mr. Mamer said.

The session was moderated by Bren Paul, president of Steers Insurance Ltd. in St. John's. **B1**

436 attend Canadian RIMS

ST. JOHN'S, Newfoundland—The Canadian Risk & Insurance Management Society's conference drew 436 attendees to North America's most easterly city.

The conference, held Sept. 19-22 in St. John's, had a wide range of plenary and optional sessions and attracted risk managers, insurers and brokers from all over Canada, as well as the United States, Barbados, the United Kingdom and other countries.

During the conference, Wayne

Hickey, risk manager for the City of St. John's and chairman of the conference, was awarded the Donald M. Stuart award for outstanding contributions to risk management in Canada.

Next year's CRIMS conference will be held in Edmonton, Alberta, Oct. 15-18.

For more information on the meeting, contact Rich Whitehouse, Government of Alberta, at 780-427-4134, ext. 328; e-mail: whiteri@treas.gov.ab.ca



USI gets capital boost from investors

SAN FRANCISCO—Recent equity investments and a new credit facility will enable USI Holdings Corp. to strengthen its balance sheet and pursue strategic goals such as acquisitions, the brokerage announced last week.



New York-based Capital Z Financial Services Fund II L.P. has become USI's largest shareholder, with a \$90.5 million equity investment in convertible preferred stock, the brokerage said. The investment gives Capital Z a 25% stake in USI.

In a separate transaction but with the same terms, some existing USI shareholders invested an additional \$34.5 million in the broker. USI's plans for the investments include strengthening its capital base, funding acquisitions and paying off old loans, a USI spokesman said.

He declined to name the shareholders but confirmed they are part of the original consortium that invested in USI last year (BI, July 27, 1998). That group comprised seven insurers and a bank: CNA Financial Corp., Chubb Corp., the Equitable Cos., Orion Capital Corp., Provident Cos. Inc., Travelers Insurance Cos., Zurich Centre Investments and Chase Manhattan Corp.

USI also closed a \$200 million new credit facility with Credit Lyonnais Americas consisting of a \$125 million term loan and a \$75 million revolving credit facility. The new facility will be used to refinance debt and fund strategic initiatives, USI said.

Majority of big insurers Y2K-ready: NAIC

KANSAS CITY, Mo.—The vast majority of "nationally significant" insurance companies are Year 2000-compliant, according to the National Assn. of Insurance Commissioners' Y2K Industry Preparedness Task Force.

While there is still work to do, task force members "believe the insurance industry will not experience any serious problems when the year 2000 begins," said Glenn Pomeroy, task force chair and North Dakota Insurance Commissioner.

An insurer is considered nationally significant if, during the past three years, its annual gross premiums totaled more than \$30 million for a property/casualty company or \$50 million for a life/health company. The company also must be licensed or write

business in at least 17 states. Such companies wrote about 86% of the total premium for the life/health and property/casualty segments in 1998.

The task force also recently expanded its scope to include the largest managed care organizations and Blue Cross & Blue Shield programs.

OSHA asbestos citations upheld

HOUSTON—An administrative law judge has upheld citations and a penalty of more than \$1.1 million issued by the Occupational Health and Safety Administration for unsafe asbestos removal practices.

Eric K. Ho and his businesses, Ho Ho Ho Express Inc. and Houston Fruitland Inc., were cited for 28 alleged willful violations of construction requirements, 12 alleged serious violations and one alleged other-than-serious violation, according to OSHA.



OSHA charged that Mr. Ho employed nine non-English speaking Mexican immigrants who were untrained in asbestos removal to remove the carcinogenic fibers from property he owned. The workers were doing the work at night behind a locked, fenced area because Mr. Ho failed to obtain proper local permits for asbestos removal, OSHA said.

Mr. Ho has a limited time to appeal. The abuses were investigated and cited after a March 1998 fire at the facility.

Florida comp physician directory

LONGWOOD, Fla.—Some Florida employers have a faster way of finding the closest contracted health care provider to treat injured workers.

Humana Workers' Compensation Services, based in Longwood, Fla., last week introduced a digital version of its Florida Medical Provider Directory. The directory, available on diskettes and CD-ROM, replaces a lengthy printed version.

Florida employers are required to direct employees who are hurt at work to a contracted network of medical providers. The Humana WCS directory lists more than 1,200 primary care physicians, 319 urgent care centers and 148 hospitals.

Comings & Goings: Industry

Howard W. Albert has been named executive vp and chief underwriting officer of New York-based Capital Reinsurance Co., a subsidiary of Capital Re Corp. Mr. Albert comes to Capital Re from Rothschild Inc., where he was senior vp in the Debt Capital Markets Group. . . . Schaumburg, Ill.-based Zurich U.S. has named Robert Shine senior vp-excess casualty at Zurich U.S. Specialties. He previously was territorial executive for the Northeast region of the excess casualty group. Also at Zurich U.S., Norman W. Wilson has been appointed vp-strategic planning for Zurich U.S. Services. He previously was vp-strategic planning/research for Zurich Commercial.

Information in brief

Group life and disability insurer Jefferson-Pilot Corp. of Greensboro, N.C., signed a definitive agreement last week to acquire The Guarantee Life Cos. Inc., an Omaha-based life insurer, in a cash-and-stock deal valued at \$411 million. Pending shareholder and regulatory approval, the deal is expected to close in mid-December. . . . The Paragon Risk Management subsidiary of Dallas-based E.W. Blanch Holdings Inc. has acquired JDWarren Inc., a technology-based services company based in Pittsburgh specializing in identifying and recovering third-party deductibles for the insurance industry. Terms were not disclosed. . . . New York-based American International Group Inc. has established a 24-hour hot line for many of its underground storage tank liability policyholders. The hot line, operated by Austin, Texas-based Tankology-NDE International Inc., aims to reduce policyholders' risk of incurring fines and regulatory violations by not responding properly to an incident. For information, call 800-348-4314. . . . Frontier Insurance Group Inc. has announced an agreement to purchase ManagedComp Inc., a managed workers comp service company based in Waltham, Mass. Terms have not been disclosed. The deal would enlarge Frontier's presence in the workers comp field and give ManagedComp a strong underwriting presence, said James Walter, chief executive officer of ManagedComp. No change in management is expected, he added. Also at Frontier, the company will provide commercial property/casualty coverage nationwide as part of a strategic alliance with Union, N.J.-based Metro Insurance Services.

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REQUEST FOR PROPOSALS

METROPOLITAN TRANSPORTATION AUTHORITY (MTA)
NOTICE is hereby given that the Authority requests proposals from qualified firms to provide the services indicated below. Copies of RFP may be secured from Ms. Jean Maounis, Procurement Services, MTA, 345 Madison Avenue, New York, NY 10017-3739 or by calling (212) 878-7209. Each document will cost a non-refundable fee of \$50 (Company checks drawn on an U.S. Depository or Money Order). There will be a \$25.00 fee for each returned item. You may pick up the documents between 9:30 a.m. and 4:30 p.m., Monday-Friday (except holidays) or have them mailed to you. Viewing of the documents is available during the same hours. This document will be available on or about September 20, 1999.

RFP# DUE DATE TIME
2-01-99197 October 8, 1999 4:00PM
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NEXT ISSUE: OCTOBER 4, CLOSING SEPTEMBER 28

Quake

Continued from page 2

cluding City Hall and the Opera House, have been retrofitted and are in great shape, Mr. Yanev said, noting "the public sector has done quite a bit" to prepare for a future quake.

But problems remain within the private sector.

The 1994 Northridge earthquake taught us that modern steel-frame buildings, which include the San Francisco financial district's skyscrapers, are subject to brittle fracture, said Ronald Hamburger, manager of EQE's structural department.

While there is believed to be no major risk to lives if this occurs, "There is however, a very severe financial issue. It can cost millions of dollars to inspect and repair a single large high-rise building after an earthquake," Mr. Hamburger said.

"While that work is occurring, the buildings will not be occupied. You run a very severe risk of not being able to occupy much of the financial district of San Francisco and other large cities" in the event of a major earthquake, he added.

Mr. Yanev said "the worst-possible problem" is concrete buildings. These include the high-rise apartment houses of the Russian Hill area of San Francisco. Those were built from the 1920s to the 1950s and "absolutely do not meet the current requirements of the building code," he said.

Those types of buildings are in danger of collapsing, particularly if the quake lasts 30 to 40 seconds, the duration of last week's quake in Taiwan, according to Mr. Yanev.

He showed a slide of a sanatorium that collapsed in the 1971 San Fer-

nando quake just three months after its construction. He said that the building's first floor was largely windows, so "where you need the most strength, you have the least of it."

But it was properly rebuilt, and, in the 1994 Northridge quake, "it effectively had no significant damage," even though that quake was stronger at the site than the 1971 tremor was. "So we've learned how to do it right," Mr. Yanev said.

Another problematic construction is "tilt-up" buildings. Tilt-up is the cheapest type of building and is wide-

ly used in the South Bay for commercial buildings. They are called tilt-ups because the perimeter walls are constructed laying flat against the floor slab and then tilted up into position around the building.

That continues to be a major threat, I think, to businesses in the South Bay," said Mr. Yanev. "Many have been fixed; many have not."

But a building does not necessarily have to collapse to cause very serious business interruption claims. There can be significant internal damage, he said, noting that some equipment can take six months to a year to replace.

Retrofitting, though, can help minimize the damage. For instance, St. Louis-based Anheuser-Busch Cos. Inc. launched a \$10 million project to retrofit its \$1.3 billion brewery in San

Yanev. Furthermore, it recouped its investment through lower insurance costs in less than five years, he said.

Mr. Hamburger focused further on the benefits of retrofitting. Adapting a phrase from the anti-gun control lobby, Mr. Hamburger said: "Earthquakes really don't kill people. What kills people are buildings, buildings that are incapable of surviving an earthquake and which collapse and endanger lives" and also have the potential to create tremendous economic damage.

Comparing the situation in 1989 to today, Mr. Hamburger said, "The news is not at all completely bad."

Almost all Bay Area cities have addressed the major hazards in their public buildings, said Mr. Hamburger. This includes the major cities of

San Francisco, Oakland and San Jose, as well as smaller communities.

Some municipalities, such as Hayward, Calif., have built new structures that are expected to not only remain standing but also to stay operable even after a major quake. "That's very good news," he said.

For instance, when Oakland's City Hall was damaged in 1994, preventing access to the city's building department, that kept the city from dealing with the issue of its damaged buildings. That problem will not recur in the next quake, Mr. Hamburger said.

Major institutions have done a lot to prepare for a quake as well, said Mr. Hamburger. Stanford University in Palo Alto, Calif., for instance, has undergone a major seismic retrofitting program on its more than 1,000 buildings. And the University of California at Berkeley is starting a similar program on the hundreds of its buildings.

Progress also has been made in masonry buildings. During the Loma Prieta earthquake, the most concentrated and severe damage to structures occurred in unreinforced masonry bearing-wall buildings, which were commonly constructed throughout California until the 1930s.

A great deal has been accomplished in developing the available technologies to both design new structures and upgrade old ones based on the knowledge gained in earlier quakes, said Mr. Hamburger.

"We really are getting to a point where structural engineers in California are able to design buildings that are earthquake-resistant," not only to avoid collapses and avoid killing people but also to control damage, he said.

Today, some developers and corporations are retaining design firms, asking them to design buildings that

protect their business continuity, said Mr. Hamburger. "That is an important consideration," he said.

But that is not to say there is no risk in the San Francisco Bay Area, said Mr. Hamburger. We now know, for instance, that ground motion during a quake can be stronger than buildings designed as recently as a year ago can withstand, he said.

That does not mean every building designed more than a year ago will collapse during an earthquake, but it does mean they are likely to sustain far more damage than was ever anticipated when the building codes they adhered to were developed.

"By and large, our business community is not prepared," said Mr. Hamburger. Many businesses have "elected to take a gamble" in betting a major earthquake will not happen in their lifetime. "It's a gamble we, as a society, cannot afford to take" he said.

Other speakers included Paul Thenhaus, an Evergreen, Colo.-based EQE senior consultant and associate. He discussed earthquake probabilities. Mr. Thenhaus said the current thinking is, the longer the period since a fault has had a major eruption, the more likely the possibility of a new one occurring.

"We're 10 years closer to another earthquake" simply because of the time that has elapsed since the last one, he said.

For instance, the northern coast segment of the San Andreas fault has a "very, very low probability" of rupturing in a large quake because it did so in 1906, relatively recently in geologic terms, while other faults in the area have a higher probability of erupting. Meanwhile, experts at the seminar also warned that not all the faults in the area have necessarily been identified. **BI**

'Earthquakes really don't kill people. What kills people are buildings, buildings that are incapable of surviving an earthquake,' says Ronald Hamburger of EQE International Inc.

ly used in the South Bay for commercial buildings. They are called tilt-ups because the perimeter walls are constructed laying flat against the floor slab and then tilted up into position around the building.

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Utility ready for next quake

SAN FRANCISCO—The Pacific Gas & Electric Co. has gained major advances in its quake-readiness since the 1989 Loma Prieta earthquake, says the official in charge of the job for the San Francisco-based utility.

"We've really accomplished all of the no-brainers," said Lloyd S. Cluff, manager of PG&E's geosciences department. He spoke at a media briefing last week marking the 10th anniversary of the Loma Prieta earthquake.

The session was sponsored by Oakland, Calif.-based EQE International Inc., a risk management consulting firm, as well as the Radio-Television News Directors Assn. of Northern California and the Society of Professional Journalists.

Mr. Cluff noted he had been chairman of a state earthquake safety commission whose report was completed shortly before the Oct. 17, 1989, Loma Prieta quake.

The report's 72 proposed initiatives helped prepare the California Legislature to react to the quake. With the recommendations as a road map before it, within one week of the quake, the Legislature introduced 464 bills proposals to improve seismic safety. Of those, 134 ultimately were signed into law, said Mr. Cluff.

"This was more legislative activity to support seismic safety improvements

than all of the combined legislative activity in the world," he said.

Mr. Cluff said PG&E had held its first emergency exercise, a daylong mock drill, in June 1989, a few months before the quake. At that time, he said, PG&E's chairman had instructed his managers not to wait from headquarters for orders if a quake occurred. He said, "You know what to do; do it," reported Mr. Cluff.

PG&E, whose earthquake plan is updated annually, regularly evaluates facilities, including corporate headquarters, service centers, hydroelectric facilities, dams, power plants, underground gas and electric facilities, transmission and substation facilities, and offices and support facilities.

Mr. Cluff said, in one case, PG&E discovered a major gas transmission system crossed the San Andreas fault multiple times. It has since been moved.

Among the other ways PG&E manages its earthquake risk is to store critical parts at strategic locations throughout the Bay Area; that is done on the assumption the Bay bridges will not be usable, Mr. Cluff said.

In addition, PG&E employees know "where they're supposed to go, and what they need to do" if a quake occurs, Mr. Cluff said.

—By Judy Greenwald

Will claim capital be there?

SAN FRANCISCO—The bigger the earthquake, the less assurance there is that the insurance industry has adequate capital to pay its claims, an insurer official says.

"Is there enough money to go around?" asked Kenneth E. Devlin, senior vp-operations manager at FM Global who is based in Woodland Hills, Calif. "Certainly, for a moderate event, there's no question about it," said Mr. Devlin, who noted he would include the 1994 Northridge quake in this category.

For a significant event, the answer is, "Yes, I'm pretty sure there is" adequate capital, said Mr. Devlin.

But for a "maximum credible event," which would include a quake of more than magnitude 7.0 along the Hayward, Calif., fault, "We're going to have to wait and see," he said during a media briefing marking the 10th anniversary of the Oct. 17, 1989, Loma Prieta earthquake last week. The session was sponsored by Oakland, Calif.-based EQE International Inc., a risk management consulting

firm, the Radio-Television News Directors Assn. of Northern California, and the Society of Professional Journalists.

There have been "tremendous advances made" in software modeling techniques that estimate insurers' potential catastrophe losses, said Mr. Devlin. "But despite that fact, there's no way you can guarantee with absolute certainty that there will be enough money to go around," he said.

Despite all the industry's capital, only about \$60 billion of that is property/casualty surplus available to North American companies that write quake insurance, said Mr. Devlin. Perhaps another \$30 billion to \$40 billion in offshore capital can be added to that, he said.

Furthermore, he said, industry knowledge of what is likely to be the worst-case scenario still is far from complete. "We can't predict when it's going to happen or how large it's going to be," he said.

Also, earthquake science is a "work in progress," and new discoveries continue to be

made, he said. For instance, it was learned in Turkey's Aug. 17 quake that temblors can jump from one fault to another.

And factors such as the time of day can make a tremendous difference. Pointing to the damaged Northridge Mall following that area's 1994 quake, Mr. Devlin said 1,000 people easily could have lost their lives if it had erupted on a busy weekend day instead of during the early morning hours.

Mr. Devlin said that, just before the 1989 Loma Prieta earthquake, his company had launched a five-year project, costing almost \$10 million, to find out if it could achieve risk reduction through risk-engineered mitigation and if that could be accomplished economically.

The study, conducted with EQE, concluded that 85% of the losses for property at risk of ground-shaking could be reduced or eliminated at a "very reasonable cost," said Mr. Devlin, who added that there will always be a large chunk of risk that cannot be eliminated.

—By Judy Greenwald

Docket

Continued from page 2 during the upcoming term.

One case of interest to employers was accepted by the justices less than a month ago. *Alexis Geier vs. American Honda Motor Co.* involves federal pre-emption of state tort laws, or, in this case, the tort laws of the District of Columbia.

Ms. Geier claimed that the lack of an air bag in her 1987 Honda Accord caused her to be injured in a car accident. She sued Honda,

claiming that air bags should have been installed, even though they were not required by law in 1987. The U.S. Court of Appeals for the District of Columbia Circuit held that the National Traffic and Motor Vehicles Safety Act pre-empts claims based on the failure to install air bags when they were available but not legally required. Ms. Geier argues that the act does not pre-empt state tort statutes and that her case should proceed.

Another, narrower pre-emption case before the court involves the right of states to set their own reg-

ulations for oil tankers. In a case consolidating *United States vs. Locke and International Assn. of Independent Tanker Owners vs. Locke*, the U.S. government and a trade group argue that federal law and international agreements preempt the state of Washington's more-stringent oil tanker regulations, which were adopted in the wake of the Exxon Valdez oil spill.

Arguments in both cases are expected before the end of the year.

On Oct. 12, the justices will hear arguments in a case involving the right of private parties to seek civ-

il penalties against a corporation under the Clean Water Act.

In *Friends of the Earth vs. Laidlaw Environmental Services*, the 4th U.S. Circuit Court of Appeals held that an environmentalist group's suit seeking penalties against the operator of a hazardous-waste incinerator was moot because the operator had come into substantial compliance with the law while the case was pending. The appeals court also denied the plaintiff attorneys fees.

Another case of potential interest to employers involves arbitration.

The question in *Cortez Byrd Chips Inc. vs. Bill Harbert Construction Co.* is a technical one: Can a suit to vacate an arbitration award be brought in the district in which the underlying dispute occurred, or must it be brought in the district in which the arbitration occurred? Cliff M. Sloan, a partner in the Washington law firm of Wiley, Rein & Fielding, told the Chamber of Commerce gathering that the case, which involves a construction contract dispute, has significance because of the growing popularity of alternative dispute resolution. **BI**

Taiwan

Continued from page 1

earthquake had a preliminary magnitude of 7.6. Its epicenter was in the Taichung and Nantou counties, about 100 miles southwest of the capital of Taipei.

The quake was followed by thousands of aftershocks, four of which were about magnitude 6.0. Most of the earthquake's victims were in the two counties, and most of the damage was to residential buildings and roads.

In Taipei, the earthquake destroyed the 12-story, 78-room Sunshang Hotel. The hotel's lower stories collapsed, and the remainder of the building toppled to one side. A 12-story apartment building in the Taipei suburb of Hsin Chuang also collapsed.

Swiss Reinsurance Co. estimates total insured losses from the quake will reach about 3 billion Swiss francs (\$1.95 billion), an amount similar to the toll from the earthquake in Turkey last month that killed more than 15,000, a spokesman said.

The Zurich-based reinsurer estimates its own exposure to be about 2% of the total loss, or about 60 million Swiss francs (\$39 million).

A spokesman for German reinsurer Munich Reinsurance Co. said last week it was still too early to quantify the loss across the island. In 1998,

Munich Re wrote 1.7 billion deutsche marks (\$907.8 million) of reinsurance premiums in Asia and the Pacific, of which 15% came from the Taiwan market.

"Our representatives in Taipei tell us that only a few buildings in the city show outward signs of the earthquake," the Munich Re spokesman said the day after the earthquake hit.

However, telecommunications and the power supply have been disrupted, so business interruption losses, particularly in Taiwan's extensive semiconductor industry, are likely, said the spokesman in Munich.

Among Taiwan's large industrial corporations—including energy, metal and steel production facilities—almost 100% have earthquake coverage, and 50% of these corporations also hold business interruption coverage, said Herbert Haag, president and CEO of Partner Reinsurance Co. Ltd. of Bermuda. He noted, however, that the general deductible for business interruption is five to seven days.

By contrast, among small to mid-sized industrial facilities, Mr. Haag said only about 20% had an earthquake endorsement included on a fire policy, despite such coverage being less expensive in Taiwan than in some other Asian countries. A majority also do not have business interruption coverage, he added.

Property catastrophe reinsurers in Bermuda will see some claims from the quake, but do not expect to bear

the brunt (see related story).

The London reinsurance market's exposure to the earthquake also likely will be minimal, says Lloyd's of London underwriter Piers Lloyder.

Not much treaty reinsurance for companies in Taiwan is written in the London market, and many London-based excess-of-loss reinsurers have pulled out of Taiwan or introduced lower earthquake limits for the area following several large losses suffered by semiconductor companies in recent years.

Those losses include large fire losses to two semiconductor plants, said Mr. Vacher, who is property reinsurance underwriter for syndicate 2020, managed by Wellington Underwriting Agencies Ltd.

More recently, a July power outage in Hsin Chu Science Park, the center of Taiwan's electronics industry, caused insured losses of more than \$5 billion Taiwanese (\$158 million), according to some estimates.

Loss adjuster McLarens Toplis has set up a temporary office in the science park to assess the damage to semiconductor plants. There, damage from the quake "is reported to be serious and business interruption losses are expected to be large," according to a Sept. 21 bulletin by Peter Newall, Hong Kong-based regional operations director for McLarens Toplis.

In a Sept. 22 bulletin, Mr. Newall also said there had been "numerous reports of machinery internally having been disrupted and damaged" at semiconductor plants in Hsin Chu, and repairs could take some time. There is also the need to restore or maintain clean-room conditions, so business interruption exposures likely will be large, he noted.

McLarens Toplis is supplementing its local Taipei-based staff of 11 with employees from Asia and Europe.

"Our initial assessment is that the damage and losses are serious in Taichung, Hsin Chu and in Taipei, and that the impact on the global insurance and reinsurance community will be severe," wrote Mr. Newall in the initial bulletin, and he confirmed

"widespread damage" in Taichung, the nearest industrial city to the epicenter, in his Sept. 22 bulletin.

"We expect that virtually all businesses in Taichung will have suffered some damage and that, in many instances, this will be serious, if not massive," wrote Mr. Newall.

Reports of the toppling and distortion of industrial process equipment are also coming in from the port city of Kaohsiung, Mr. Newall reported.

Taiwan Power Corp. last week introduced power rationing on the island, though some remote areas in the center remained without power, and no power for industrial usage was expected until Sept. 27 at the earliest, Mr. Newall reported.

International loss adjusting firm Crawford & Co., based in Atlanta, last week activated its Asia-Pacific catastrophe team to deal with claims arising from the earthquake, said Richard Solomon, Crawford's senior vp and regional managing director for Asia-Pacific.

"A lot of damage has been sustained through (the Nantou) region of Taiwan, which includes a concentration of major industrial and technology producing plants. Many buildings have collapsed, the power supply grid has failed, and there are burst pipes everywhere," according to a bulletin released by the London unit Crawford-THG Ltd. last week.

"We expect significant damage to the industrial complexes in Taiwan, if only from power outage and burst pipes alone. This is particularly relevant to the semiconductor industry," according to the Crawford statement.

Although standard domestic and commercial insurance policies in Taiwan do not cover earthquake claims, most industrial facilities have industrial special risks—or industrial all-risks—policies, which include earthquake coverage, said Mr. Solomon.

"There have been several industrial plants which have sustained obvious structural damage, but we need to get the engineers in" to better assess the level of damage, he said.

A report issued by international broker Willis Corroon predicts that Taiwan's high-tech sector will experience large losses.

"It has been reported that the price of computer components could rise worldwide, and lost production in this sector could cost \$350 million," according to the Willis report.

Taiwan is the world's fourth-largest supplier of microchips and the world's third-largest manufacturer of personal computer equipment, with sales of about \$40 billion expected this year, according to Willis.

Taiwan authorities have initially estimated that the event has caused \$100 billion Taiwanese (\$3.15 billion) in damage, Willis reported.

Most of the affected industrial zones are reported to be in central Taiwan, and it is also reported that there has been more than \$150 million Taiwanese (\$4.7 million) of damage to five factories in the Wuku industrial zone in northern Taiwan, according to Willis.

According to Willis, the worst-hit districts are Nantou and Taichung in central Taiwan, where at least 840 buildings have collapsed. It has been reported that in Puli, close to the epicenter, 98% of buildings have structural damage.

The Taiwan area suffers large-scale earthquake activity every 20 to 30 years, said McLarens' Mr. Newall. A major earthquake in 1964 killed 110 people, he said.

In January, Taiwan's Seismological Center issued a warning to authorities and residents in southern Taiwan that the area was "about to re-enter a period of a large-scale earthquake activity, and the possibility of a large-scale earthquake disaster is very high," according to Mr. Newall's bulletin.

Building rules and regulations in Taiwan include stringent anti-quake measures, but rules are effective only if they are followed, said Crawford's Mr. Solomon.

David Petley, a senior lecturer in engineering geology at the University of Portsmouth, England, has been working with a team of scientists since 1991 on the design and construction of buildings, including hotels, in Taroko National Park, the mountainous area hit hard by the earthquake. His team also is involved in the re-engineering of the Central Cross-Island Highway, the main route across Taiwan.

Early reports suggested that the construction work that had been completed stood up well in the earthquake, said Mr. Petley, who is leaving for Taiwan as soon as possible.

Matthew MacDermott and Amanda Milligan contributed to this report.

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Reinsurers eye quake risk

HAMILTON, Bermuda—Several of Bermuda's property catastrophe reinsurers expect their exposure to Taiwan quake losses won't be severe.

Herbert Haag, president and chief executive officer for Bermuda-based Partner Reinsurance Co. Ltd., last week said the reinsurer had not had any claims from last week's earthquake in Taiwan, though it reinsures a lot of business in the country.

"Most of the local Taiwanese insurance companies have reinsurance contracts with us," said Mr. Haag, noting that almost all of the reinsurance written for the country is pro-rata treaty reinsurance.

The Taiwanese insurers have very low retentions, said Mr. Haag, who added that most of Partner Re's treaties are surplus share treaties.

Some facultative reinsurance contracts are written on large individual Taiwanese risks in the international market, Mr. Haag said. "They can pose the biggest problem for a reinsurer, because if one of those risks is damaged, it can be a very large loss."

Insurance coverage for Taiwanese semiconductor manufacturers, for example, would carry facultative reinsurance, Mr. Haag said. As of Thursday, he had not heard of any significant structural damage to semiconductor manufacturers be-

yond property loss or production interruptions.

Despite tremendous devastation to the landscape and massive loss of life, Mr. Haag said actual insured losses from the quake may not be as significant as some might fear.

George Rivaz, chief operating officer for Tempest Reinsurance Ltd., a division of ACE Ltd., said the Bermuda-based reinsurer doesn't expect a significant loss from the earthquake.

"We don't directly reinsure the Taiwanese companies," said Mr. Rivaz. "Our only potential exposure in the region would be from multinational insurers," he said.

Early projections indicate that losses from the Taiwan earthquake are likely to be similar to those from the earthquake earlier this month in Turkey, said Jim Bryce, senior vp and chief underwriting officer for IPCRe Ltd. in Bermuda.

When coupled with record typhoons, numerous hurricanes, several intense earthquakes and an April hailstorm in Sydney, Australia, the Taiwan earthquake is "one more straw on the camel's back for 1999," Mr. Bryce said. "You start adding them up, and the aggregate total is becoming very significant for the industry."

—By Amanda Milligan

Ridiculous lawsuits not always so funny

Every four minutes in this country, a frivolous lawsuit is filed. OK, I made that up, but it seems to me that the number of silly, outrageous and groundless suits being filed is accelerating. Every day I can find a handful of new ones to share with colleagues and cite to joke about the idiotic excesses of our legal system, as well as the greed of your average litigant and plaintiff's attorney. Last week I found a bumper crop.

Take the case of the lawsuit filed against SeaWorld in Orlando, Fla. The parents of a man who, in July, was found nude and dead after apparently entering the tank to cavort with a five and one-half-ton killer whale are seeking several million dollars from the theme park. They are alleging negligence and misrepresentation by the park for luring their son to his demise by portraying the whale as cute, huggable and human-loving.

I, too, think killer whales are kind of cute. That doesn't mean, however, that I'm going to break into a private theme park in the middle of the night, evade security, scale barriers and jump into a chilly pool to play Marco Polo with Tillikum the Killer Whale.

Even if I did, I would expect, post mortem, that my parents would be so ashamed to have raised such a dolt that they would not draw attention to that fact—or seek to profit from it—with a lawsuit.

The Tillikum tort was by no means the only bizarre lawsuit to come to my attention last week.

Michigan Gov. John Engler declared the week of Sept. 19-25 as "Lawsuit Abuse Awareness Week." In an effort to focus attention on this issue, a group called Michigan Lawsuit Abuse Watch issued its list of the "looniest lawsuits of 1999."



Paul D. Winston

Award winners included:

- Two Alpena, Mich., arsonists who sued their insurer for bad faith after it denied coverage for losses from a fire they intentionally set.
- A woman who sued a police officer for failing to put her in protective custody because she was intoxicated.
- An inmate who sued the state, charging that prison food was giving him flatulence

problems.

- A woman who bumped into a 12-year-old girl during a crowded open session at a public ice skating rink, slipped and hurt her knee, and sued the girl for recklessness.
- A cleaning lady who sued clients for failure to warn after she was injured by lighting a firecracker she took from their home, thinking it was a candle.

More information on these and other loony lawsuits can be found at www.mlaw.org/loony1999.htm.

Michigan, though, is far from alone. Several other states, including California and Texas, also have organizations trying to draw attention to excesses in our legal system.

One organization, the Citizens Against Lawsuit Abuse, offers a deck of playing cards; each card gives the details of an absurd lawsuit (www.cala.org/media.html).

But frivolous lawsuits are not solely the bane of the state courts.

Evidence of lawsuit abuse also was seen in the federal courts last week when the U.S. government filed a suit against the tobacco industry, claiming it had engaged in a 45-year "intentional, coordinated campaign of fraud and deceit." This suit seeks billions of dollars for the government's cost of treating smoking-related illnesses.

If this product was as harmful and manufacturers were so deceitful as the government's suit contends, I'm skeptical that it was unaware of that until now.

And, if this industry and its products are as evil and harmful as alleged, why is the government only bringing a civil suit against these companies, rather than taking more-decisive action to regulate or ban their products?

The answer is that the government has had as much a hand in perpetrating the alleged tort as the man who entered the park and was killed by Tillikum.

The government has chosen, rightly or wrongly, to allow tobacco products to be sold, in spite of knowing for at least 35 years of the potential health risks. It decided not to infringe on the public's right to consume products that may be harmful to one's health. Furthermore, for years it encouraged smoking in the armed services by supplying troops with cigarettes.

Why should it now deserve to be awarded billions of dollars because it has changed its mind about tobacco?

To date, most courts have rejected smokers' claims of being unaware of the long-term risks of smoking. So why should the government expect to succeed?

Like the other frivolous suits, this case will clog the courts, cost taxpayers millions of dollars, distract the legal system from more-sensible work and, ultimately, will likely fail. And that's no joke.

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

U.S. firms assess impact

Many buildings in Taiwan's 'Silicon Valley' built to high standards

By RODD ZOLKOS

As rescue efforts continued in Taiwan after the devastating earthquake that struck early last week, U.S. companies with operations and suppliers on the island were focusing on the well-being of employees there while assessing any business impact.

"We have about 300 employees in Taiwan, plus we do have relationships with a number of companies there that supply systems or components to us," said a spokesman for Houston-based Compaq Computer Corp.

None of Compaq's Taiwan employees were killed by the quake, and any injuries were relatively minor, the spokesman said. The company is focusing on aiding the local relief effort right now.

In Taiwan, Compaq employees are involved in such efforts as clothing and blood drives. And in the United States, the company is making a corporate donation to the relief effort and is matching employee donations.

As for the impact on the company's business, the spokesman said, "It's important to understand that the situation in Taiwan is unsettled at this point."

"There was minimal damage to most of the Compaq facilities in Taiwan," the spokesman said. Compaq has five offices in Taiwan, he said, adding that one small office with 12 or 13 employees located in a building that is not owned by the company might have sustained more serious damage.

"We're still working with business partners in Taiwan to assess any potential disruptions in supply of systems or components," the Compaq spokesman said.

But he said the company is anticipating no major disruption of supply. "Most facilities of the business partners we have there were located well away from the epicenter of the quake," he said.

A spokesman for Santa Clara, Calif.-based Intel Corp. also said his

company is still sorting out the earthquake's impact on its business, but based on a preliminary assessment of property damage to its suppliers, it doesn't expect the impact to be significant.

"We don't have any direct manufacturing operation in Taiwan," the spokesman said. "We have a sales and supplier management team." That operation employs up to 100 people in a single facility in Taipei.

"That building was not structurally damaged, and none of our employees was injured," he said.

"We know so far that none of our suppliers had any major damage," the Intel spokesman said. "But operations for many of them are being affected by the ongoing power outages."

"Once they get the infrastructure stabilized, we should be in pretty good shape," he said. "We don't see any long-term problems because we don't see any major structural problems."

But, he said, "With respect to suppliers, as they get the power grid up and running, we'll have a better idea of any impact. We have no idea of the business impact at this time, but we expect it to be minor."

It will probably be "a few weeks" before Intel has a definite assessment of the earthquake's impact on its business, the spokesman said.

Peter I. Yanev, president of Oakland, Calif.-based EQE International Inc., a risk management consulting firm, noted that Taichung, Taiwan's "Silicon Valley" is located near the quake's epicenter.

But many buildings in the area have been constructed according to California's latest building code standards, he said, and he doesn't expect they have sustained serious damage from the quake.

Businesspeople in Taiwan tend to be conservative and "have the money to do it right," said Mr. Yanev, who spoke early last week at a seminar marking the 10th anniversary of California's Loma Prieta earthquake.

Even if the buildings incurred little

damage, another concern, he said, is potential damage to the machinery inside the buildings, some of which could take as long as six months to a year to replace.

Jerry L. Davies, assistant treasurer at Tektronix Inc. in Wilsonville, Ore., said, "We do have a sales facility there, and I know that none of our employees were injured by the earthquake itself."

The Taiwan sales facility employs about 40 workers, Mr. Davies said, and is located in leased space. He said he was unsure whether Tektronix relies on any sole-source suppliers based in Taiwan.

A spokesperson for Dallas Semiconductor Corp. in Dallas said the company has a small, four-person sales office in Taipei that didn't suffer any damage. He didn't yet know the quake's impact on any of the company's customers there, or its possible effect on sales.

Tony Rodolakis, vp-risk management at Phoenix-based Starwood Lodging Corp., said: "We've got two properties there. Neither one of them are in our insurance program."

Both properties in Taiwan are owned by third parties and managed by Starwood, Mr. Rodolakis said, adding, "Neither of them sustained much damage."

"It's been an active period with all the hurricanes and everything," the Starwood risk manager said. "It's been an interesting time for hotel companies."

A spokesman for Pittsburgh-based PPG Industries Inc. said his company has several facilities in Taiwan but experienced no property damage or injuries to employees.

"A couple of (PPG's facilities) had some power interruptions, that's it," the spokesman said. "He didn't know whether power had been restored to the operations that experienced outages, he said."

Judy Greenwald contributed to this report.

Y2K

Continued from page 1
press conference accompanying the release of the report.

The report notes, however, that the outlook for litigation falling under Congress' Y2K Act also remains hazy. The report states that 74 Y2K-related suits had been filed by June 30, according to a survey conducted by PricewaterhouseCoopers. The majority—65%—involved non-compliance, 13% were class-action shareholder suits, 9% involved remediation efforts, 7% were filed against entities that allegedly did not adequately disclose their Y2K status, 4% were insurance claims, and 2% were contract disputes.

Looking ahead, the report predicted a shift in the composition of claims: "It is too soon to tell whether the Y2K Act will reduce the number of cases expected to be filed in the next few years. However, as PricewaterhouseCoopers concludes in its report, should the wave of litigation arrive, three industries appear to be prime targets of Y2K suits: software companies, remediators and insurance companies. Indeed, a review of the cases filed recently shows a trend toward large corporations filing lawsuits against their insurers to cover the costs of Y2K remediation."

Despite the uncertainty over litigation, the general tone of the report is upbeat.

"We are in better condition than we had any reason to hope for" only a

year earlier, the special committee's chairman, Sen. Robert Bennett, R-Utah, said at the report's release.

"There will not be a horizontal systemic failure," he said, adding that he believes most problems probably will be solved relatively quickly.

In a reference to concerns that some people will hoard supplies of food, water and other essentials out of fear that computer problems will cause widespread dislocations, Sen. Bennett advised, "If you stockpile anything for Y2K, stockpile information." He echoed a concern he'd voiced earlier in the month during a speech at the National Press Club that some people could panic unnecessarily (BI, Sept. 13). Panic by individuals without access to reliable information about the nature of Y2K could cause problems worse than those caused by computer malfunctions, he said.

Sen. Dodd said the committee still has several areas of concern about Y2K preparedness.

The first is the health care industry. The industry as a whole received two stars out of a possible five for the "overall quality" of its risk exposure. In contrast, the financial services industry received the highest possible assessment of five stars. Physicians' offices, rural and inner-city hospitals, and nursing homes all received low ratings for progress and data quality regarding Y2K preparedness.

A related area of concern is state governments, particularly with regard to the administration of federal health benefit programs such as Medicaid, said Sen. Dodd.

Another area of concern is small business. A survey conducted by the National Federation of Independent Business and Wells Fargo Bank this spring found that 28% of the small business respondents planned to take no action regarding Y2K. Sen. Dodd noted.

The final concern cited by Sen. Dodd is the international area. Sen. Dodd repeated what he and Sen. Bennett had said during their Press Club address: that China, Russia and Italy were among the countries that appear to be lagging the farthest behind in preparedness. He added a few minutes later that Japan, once feared to be among the worst laggards, now appears to be in "much better" shape than had been thought only a few weeks ago.

Sen. Dodd cautioned, though, that some countries claiming to be prepared may not be as far along as they say.

"In some countries, where we have good reports, we don't have independent assessments," he said.

Sen. Bennett also noted that the first report of a computer glitch stemming from the 9/9/99 problem—some old computer programs read four nines as a signal to stop, and there was some concern that many computers could malfunction accordingly on Sept. 9—came from a Chinese factory.

Copies of "Investigating the Year 2000 Problem: The 100 Day Report" are available at www.senate.gov/y2k.

Flooding

Continued from page 1

Industry catastrophe modeler EQE International Inc. of San Francisco estimates insured losses from Floyd will fall somewhere between \$1.5 billion and \$2.5 billion.

Commercial policyholders in the Fortune 1000 are more likely to have coverage of flood losses than mom-and-pop businesses and homeowners, said Scott Ellwanger, manager of claims at FM Global in Park Ridge, Ill.

"The more sophisticated risk managers usually somehow work flood into their coverage," he said.

For example, most large commercial policyholders usually use flood insurance from the Federal Emergency Management Agency's National Flood Insurance Program as a primary layer, and they purchase excess coverage from commercial property insurers such as FM Global, Mr. Ellwanger explained.

Many commercial policyholders also may have coverage for business interruption losses caused by utility interruptions, such as the loss of telephone service that occurred when a Bell Atlantic Corp. switching station shut down during the hurricane, he said.

Some Bell Atlantic customers are suing the company over the outage. Bell Atlantic did not return phone calls.

So far FM Global has received between 300 and 350 reports of losses from its commercial policyholders. However, Mr. Ellwanger could not estimate the value of those claims because "in a lot of places the water hasn't receded yet," making it difficult to determine the extent of damage.

Dennis O'Shay, assistant vp at Hartford Steam Boiler



PHOTO: AFP

Businesses in Bound Brook, N.J., were left in ruins as a result of flooding caused by Hurricane Floyd.

Inspection & Insurance Co., said the insurer's equipment breakdown policies will pay the costs of drying out covered electrical equipment.

While he did not yet have an estimate of HSB's losses from Hurricane Floyd, he said "no doubt we will have some significant losses."

"To make it really personal," he said, "I had to drive down to Upper Montclair, N.J., last Friday to retrieve my mom from a condominium complex" whose flooded basement shut down elevators and other essential equipment. "This was an HSB insured," he added.

To assist its policyholders and others with flood recovery efforts, HSB has posted on its Internet site an article titled, "The Risk Does Not Recede with the Water."

The site, www.hsb.com/hsbsever.htm, warns business owners not to start up boilers, electrical equipment and systems or machinery that have been exposed to floodwaters.

"Your equipment could be damaged or destroyed if you attempt to start or test it without adequate cleaning and preparation for operation," the Web site warns, adding in capital letters: "DO NOT ATTEMPT TO OPERATE OR TEST YOUR EQUIPMENT WITHOUT PROPERLY RESTORING IT."

Equipment floater policies will help pay losses suffered by agricultural operations in North Carolina, according to Bill Pollard, executive vp and general manager of the North Carolina Farm Bureau Insurance Co. in Raleigh.

"It's an inland marine-type policy that pays for equipment in a flood, and livestock can also be covered, but they must be scheduled," he explained.

However, few farmers are likely to have coverage for damage to structures unless they purchased flood insurance from FEMA, he said.

Most farmers in North Carolina also will have some type of federal crop insurance, according to Tom Rudisill, assistant general manager. But the level of that coverage varies widely.

For example, virtually every farmer has catastrophic coverage, which pays up to 35% of losses. And more than half of the farmers of "cash crops"—tobacco, peanut and cotton—will have coverage for anywhere from 50% and 85% of the crops' value, he estimated.

Crop insurance is written by private insurers and regulated and reinsured by the federal government, Mr. Pol-

lard explained.

So far the North Carolina Farm Bureau has received 22,000 property damage claims, which includes livestock, and 27,000 automobile claims. No dollar figures were available as of late last week.

More than 110,000 hogs and 1 million chickens and other poultry were killed in the flooding caused when Hurricane Floyd dumped rain on North Carolina, overflowing rivers and bursting dams.

Livestock losses are estimated at \$2.5 million as of last week, while crop losses were projected at \$355.9 million. Damage to farm structures was put at \$178.7 million by the North Carolina Department of Agriculture in Raleigh.

While many large businesses are likely to have insurance to cover their losses from Hurricane Floyd, few small business owners or homeowners will, according to a spokesman for ISO in New York.

"The standard business owners policy would not cover business interruption because of flood," he said. "However, some business owners may buy flood coverage from FEMA."

According to FEMA, however, few did.

Only about 25% to 50% of home and business owners in flood-prone areas typically buy flood insurance, according to JoAnn Howard, the top official at the National Flood Insurance Program. Such policies cost, on average, \$340 a year for \$120,000 of coverage. The maximum policy limits for homes is \$250,000, with \$100,000 limits on personal belongings, and \$500,000 limits for small businesses. Small businesses can get another \$500,000 in contents coverage, she said.

Policyholders who purchased the NFIP's Increased Cost of Compliance endorsement, available for an additional premium since June 1, 1997, will have additional coverage to pay for enhanced building codes in their area to mitigate future flood damage.

In response to Hurricane Floyd, the Flood Insurance Administration has opened a Flood Response Office in Wilmington, N.C., and a Claims Coordinating Office in Raleigh, N.C. These offices are primarily for insurance companies, agents, and adjusters. Flood insurance policyholders are being advised to contact the insurance company or agency that sold them their policy to file a claim.

So far the agency has received approximately 15,000 to 20,000 flood claims from 11 states totaling between \$300 million and \$350 million.

That estimate, which is subject to change as losses surface, tops the \$270 million the program paid after extensive flooding in 1993 in the Midwest, officials reported.

About the only other place personal lines policyholders are likely to find flood coverage is for their automobiles, according to a spokesman for State Farm Mutual Insurance Co. in Bloomington, Ill.

Comprehensive coverage endorsements to the standard auto policy will pay for flood damage to cars, he said.

State Farm so far has received 11,000 auto claims valued at about \$28 million, the spokesman said. The insurer's homeowners claims, which exclude flood losses, are expected to top \$136 million.

It is unknown at this point whether the environmental damage left by the storm will be insured.

"That's an interesting question," observed Laura Foggan, an attorney at Wiley, Rein & Fielding in Washington who represents the Insurance Environmental Litigation Assn.

Decaying animal carcasses and flooded septic systems have contaminated wells and water supplies in many rural areas, North Carolina health officials report.

An Occidental Chemical plant near Wilmington spilled more than a million gallons of waste water that might have contained chromium, the federal Environmental Protection Agency reported last week, and mercury may have spilled from a nearby containment pond. Water is also flowing freely through junkyards, warehouses of farm pesticides and underground storage tanks.

"If a tank floats, you know it's leaking" because "that means the piping attached to it broke loose," said Mark Buffkin, senior vp for the Southern Region at Tanknology-NDE International Inc., an environmental consulting firm based in Austin, Texas.

Meanwhile, in New Jersey, state and federal environmental officials are warning residents not to touch containers in or near the Raritan River. So far more than 1,000 buckets, barrels and other containers of potentially hazardous materials have been swept away by the floodwaters of Hurricane Floyd and are turning up on the shore as floodwaters recede.

Environmental officials say they plan to examine many of the more than 300 known contaminated sites in New Jersey for any leaks caused by the storm. Owners also are being asked to assess damage at sites officials are unable to access.

The heavily flooded sections of Somerset County along the Raritan were of particular concern, officials said.

For example, 75 acres of a former American Cyanamid plant in Bridgewater, one of 114 New Jersey locations on the federal Superfund list of dangerously contaminated sites, remained underwater last week. The site is home to 27 lagoons holding toxic wastes including arsenic, zinc and lead left over from 75 years of manufacturing at the site. **BI**

Updates

New health bill draws praise

Continued from page 2

R-Okla., and John Shadegg, R-Ariz. In fact, the Boehner bill also would place limits on non-economic damages and punitive damages awarded in medical malpractice cases.

M. Anthony Burns, chairman of the Washington-based Business Roundtable's Health and Retirement task force, told Rep. Boehner in a letter that, "we greatly appreciate your commitment to passing health care reform legislation that will not punish employers who voluntarily offer health care benefits by subjecting them to new categories of legal liability."

House Speaker J. Dennis Hastert, R-Ill., has promised votes on all three managed care reform bills early next month (BI, Sept. 20).

House OKs class-action bill

WASHINGTON—The fate of a bill that would place new requirements on interstate class-action lawsuits remains murky after the House approved the measure by a narrow vote.

The Interstate Class Action Jurisdiction Act would permit both defendants and plaintiffs in interstate class-action lawsuits to remove the cases from state to federal courts under certain circumstances (BI, May 24). Proponents of the business-backed measure claim the change is necessary to prevent so-called forum shopping, in which class-action suits involving plaintiffs in multiple states are filed in the state court considered most friendly to plaintiffs. Opponents claim the measure infringes on the right of citizens to seek redress.

The House's 222-to-207 approval of the bill brought a swift response from the Clinton administration, which repeated its threat to veto the bill. The Senate has not taken up the measure.

Hurricane Gert brushes Bermuda

HAMILTON, Bermuda—Bermuda was spared the brunt of Hurricane Gert's force, as the windstorm's edge only skirted the southeast part of the island early last week.

Gert caused mostly beach erosion and negligible property damage to homes on Bermuda's south shore, according to a spokeswoman for the government's Emergency Management Office.

The insurer with the largest number of claims was BF&M General Insurance Co. Ltd., which reported 17 property and three small craft marine claims. The value of the claims was put at \$530,000 by Glen P. Gibbons, vp-customer relations.

The Kitson Group, a managing general agent for New Hampshire Insurance Co., a unit of American International Group Inc. based in Puerto Rico, reported five minor claims from Gert totaling \$150,000.

"Most of the loss is beach erosion," said Scott Kitson, executive vp for the MGA.

More federal lawsuits feared

WASHINGTON—Business groups fear that the federal government's suit against tobacco companies to recover health care costs associated with smoking could be only the first in a series of suits against unpopular industries.

The government last week sued 11 defendants in the tobacco case, including all major U.S. cigarette makers. The suit holds that the defendants are liable for hundreds of billions of dollars the federal government has spent on smoking-related health care costs. Among other things, the government charges that the tobacco companies violated the Racketeer Influenced and Corrupt Organizations Act by conspiring since the 1950s to conceal information about the hazards of smoking.

The government is not, however, seeking the treble damages allowed under RICO.

The government also is basing its suit on the Medical Care Recovery Act and the Medicare Secondary Payer Act.

"There's never been anything like this before. RICO has been used against racketeers and the like—it hasn't been used against people who make legal products," said Victor Schwartz, general counsel of the American Tort Reform Assn.

"I think if the government is successful in any of these claims, other industries are directly threatened," particularly if those industries happen to be perceived as unpopular by a particular administration at a particular time, he said. Future targets could include the makers of lead paint, guns, alcoholic beverages and even automobiles, he said.

"We're (opposing this suit) on behalf of all industries that may fall out of political favor," said Lawrence Fineran, assistant vp of the National Assn. of Manufacturers in Washington. He stressed that the NAM was not opposing the suit on behalf of the tobacco industry or tobacco company members of NAM.

Briefly noted

The House Judiciary Committee has approved a **product liability reform bill** that sets an 18-year statute of repose after delivery to the original purchaser for durable workplace goods. The lawsuit limits set by the Workplace Job Growth and Competitiveness Act, which was sponsored by Rep. Steve Chabot, R-Ohio, would not apply in cases where an injured party was not eligible to receive workers compensation. . . . Holocaust-era insurers, including Assicurazioni Generali S.p.A. of Italy and AXA Group of France, are expected to begin making offers this week to resolve the **first batch of claims** presented through the International Commission on Holocaust Era Insurance Claims, which met in London last week. There will, however, be a short delay in initiating the full claims process, including opening a London office for claims handling, according to statement by New York Insurance Superintendent Neil Levin, a commission member. . . . A Florida state appeals court last week **vacated its Sept. 3 ruling** that damages in the so-called Engle smoking case must be heard on a case-by-case basis (BI, Sept. 13). That leaves open the possibility of a single large award in the class-action suit.

IBM

Continued from page 1

The IBM debacle could trigger congressional intervention. Bombarded with stories from long-service IBM employees complaining of massive cuts in expected benefits and what they say was an inability to get straightforward information from the company, legislators say they are preparing to intervene and rewrite the rules for cash balance conversions.

"Through sleight of hand, companies are cutting benefits to increase profits," Rep. Maurice Hinchey, D-N.Y., said at a Senate Health, Education, Labor and Pensions Committee hearing last week on cash balance plans. "This is moving Congress to action," he added.

"You fired the shot that has been heard around the country," said Sen. Tom Harkin, D-Iowa. "We have to get something done before we get out of here this fall. We need a good joint effort," Sen. Harkin said.

"We are not letting up at all on this," added Sen. Paul Wellstone, D-Minn.

At a minimum, legislators said last week, they will push to change pension law so that companies changing pension plan design must disclose more information, allowing workers to readily see how the two plans stack up to each other.

The problem of disclosure must be "resolved once and for all," said Committee Chairman James Jeffords, R-Vt.

Some legislators also want to ban the practice of "wear-away," which can result in situations where employees moving from a traditional plan to a cash balance plan later leave company without earning any new benefits under the cash balance plan.

"It is unfair that employees could go for years without earning (additional) benefits," said Sen. Jeff Bingaman, D-N.M.

And some legislators want to go even further and mandate that employers give all employees a choice between plans when converting to cash balance or other pension plans that would result in reductions of future expected benefits.

"Every employee should be given a choice in which to enroll in," said Rep. Bernard Sanders, I-Vt.

The reverberations from IBM's plan conversion go beyond specific legislative responses, benefit experts say.

Indeed, with the attention of so many legislators riveted on cash balance plans, the controversy could defuse congressional interest in broad pension reform legislation. There had been bipartisan support for such reforms, which were intended to boost the appeal and

ease of offering both defined benefit and defined contribution plans.

"We had a lot of bipartisan support for expanding the pension system. That has been pretty much forgotten. We are losing the political cohesion for pension reform," said Kyle Brown, an attorney with Watson Wyatt Worldwide's Research and Information Center in Bethesda, Md.

And Congress is not the only arena where cash balance plan conversions are coming under new scrutiny.

The Internal Revenue Service, which no longer is permitting district offices to automatically approve cash balance plan conversions, is reviewing the plans to see whether they violate age discrimination laws; and the Equal Employment Opportunity Commission is conducting its own review. Announcements of both reviews came in the wake of congressional pressure that developed after IBM an-

'With the elimination of their ability to revise benefit formulas, many employers will be prompted to terminate their (defined benefit) plans,' says Robert Chambers.

nounced its cash balance plan conversion.

It isn't known what action, if any, Congress or the regulatory agencies will take. But the black eye that cash balance plan conversions have received—judging by the statements made by some legislators—is obvious.

For example, Sen. Harkin, who says he isn't opposed to cash balance plans, nonetheless last week labeled conversions like IBM's as "coming out of the hides of employees. It is not fair and we ought to make it illegal."

Of the proposals being bandied about in Congress, the one most feared by employers would mandate that companies give employees the option in cash balance plan conversions—or any other design change that reduces future benefit accruals—to either remain in the old plan or move to the new plan.

Faced with the prospect of being locked into a benefit design for what could be decades, many companies would terminate their pension plans, some observers say.

"This is a commitment that prudent businesspeople, unable to predict the financial future, simply cannot make," said Robert Chambers, a partner with the Philadelphia law firm of Montgomery, McCracken, Walker & Rhoads.

"With the elimination of their ability to re-

verse benefit formulas, many employers will be prompted to terminate their plans and leave the defined benefit plan system altogether," said Mr. Chambers, who testified before the Senate panel on behalf of the Assn. of Private Pension & Welfare Plans.

If choice is mandated, "You'll see a lot more companies get out of their defined benefit plans," concurred Michael Johnston, a consultant with Hewitt Associates L.L.C. in Lincolnshire, Ill.

"There isn't enough money around" to give everyone choice, said J. Thomas Bouchard, senior vp-human resources with IBM in Armonk, N.Y.

Others disagree with those assessments. Karen Friedman, special projects director at the Pension Rights Center, a pension advocacy group in Washington, says companies wouldn't terminate their defined benefit plans because of the stiff 50% excise tax currently imposed on reversions after a termination.

The controversy over cash balance plans is a dramatic change after years in which several hundred employers implemented the plans with no visible employee dissent.

Indeed, employers say the driving factor behind their cash balance plan conversions was the need to respond to a changing workforce. Many said their old-style final average pay plans no longer appealed to a growing percentage of the workforce that will not stay long enough to earn a decent benefit from such plans.

By adopting cash balance plans, in which benefits accrue steadily throughout an employee's career, companies provide shorter-service employees with richer benefits than those employees would get in traditional plans. This is an attraction for what some benefit experts say has become a more mobile workforce.

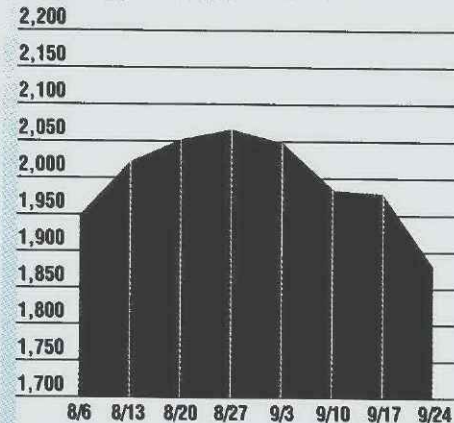
Cash balance plans, which have a 401(k) account-like feature in which accrued benefits are expressed as a lump sum, also have made benefits more visible and increased employee appreciation for the plans, employers have said.

But longer-service IBM employees offered a different perspective on cash balance plans. Janet Krueger, a 23-year IBM employee in Rochester, Minn. who recently quit, said she was stunned when she was told that her opening account balance amounted to only a little more than a year of salary.

"What IBM has done was not fair and equitable," she said.

"IBM management has broken the trust of employees. It will take a long time to get it back," said Bill Syverson, a 19-year IBM employee in Essex Junction, Vt.

BI Insurance Index



Base=100 on Dec. 29, 1978
Source: Nordby International Inc. (nordby.com) Boulder, Colo.

PCS catastrophe options

As of Sept. 24	Call spread bid/ask	Call spread bid/ask	
National Annual 1999		California Annual 1999	
40/60	15.0/19.5	60/80	0.2/—
60/80	10.0/—	80/100	0.1/0.5
80/100	2.0/—	100/150	0.2/1.0
150C	0.5/2.0	Western Annual 1999	
200/250	—	80/100	—/1.9
Southeastern September 1999		National Annual 2000	
40/60	0.1/0.8	100/150	6.7/—
60/80	0.1/0.6	150C	5.0/—
Eastern September 1999		190/195	0.3/0.5
60/80	0.1/0.1	200/250	3.0/—
80/100	0.1/0.5		

Total volume: 0 Total open interest: 10,305
For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.
Source: Chicago Board of Trade

British Issues

Companies	Price pence	P/E	Div. pence	Yield %	52-week high-low
Legal & Gen	180	23.9	3.6	1.9	237-142
Royal & Sun	476	16.6	23.0	4.8	633-452
Brokers					
Lmbrt Fenchurch	82	8.0	4.2	5.2	94-58
JLT	267	12.4	12.0	4.4	286-166

Note: Prices are Sept. 24 closings; other numbers from Sept. 23.
Source: CNET Investor (investor.cnet.com) Boulder, Colo.

BI Industry Stock Report SEPT. 20, 1999, THROUGH SEPT. 24, 1999

BROKERS	Price	Weekly % change	Year to date % change	Year to date		Price	Weekly % change	Year to date % change	Year to date		Price	Weekly % change	Year to date % change	Year to date	
				High	Low				High	Low				High	Low
Aon Corp.	NYS	30.13	-7.84	-19.40	46.69	30.13	4569	EMC Insurance Group Inc.	NDO	10.75	2.99	-15.69	13.38	9.00	198
Accel Bardas Holdings	NDO	18.00	3.97	6.59	21.00	8.25	98	ESG Re Limited	NDO	9.00	0.00	-54.57	22.25	8.63	767
E.W. Blanch Holdings Inc.	NYS	65.69	-4.89	40.70	71.75	36.13	297	Enhance Financial Services	NYS	17.88	-3.05	-40.91	33.13	17.31	257
Gallagher Arthur J. & Co.	NYS	52.75	-1.52	20.57	56.50	34.88	163	Everest Reinsurance	NYS	23.56	-12.53	-35.78	38.94	23.25	1696
Hilo, Rogaf & Hamilton	NYS	23.81	-3.30	27.85	24.88	15.56	30	Fremont General Corp.	NYS	8.75	-4.11	-63.73	25.69	8.50	2487
Kaye Group Inc.	NDO	8.06	0.00	11.21	9.25	5.00	4	Frontier Insurance Group	NYS	9.19	-19.23	-26.50	18.75	9.19	847
Marsh & McLennan	NYS	65.19	-10.93	10.25	81.50	43.38	5127	Gainco Inc.	NYS	6.38	-6.42	0.99	7.50	3.94	157
Brown & Brown	NYS	33.69	-1.28	-3.58	39.44	29.31	37	Harleysville Group	NDO	16.88	-1.46	-33.82	26.13	16.88	63
BROKERS AVERAGE			-3.65	17.83				HSB Group Inc.	NYS	35.50	-2.07	-11.66	43.50	34.75	514
INSURERS/REINSURERS								HCC Insurance Holdings	NYS	16.56	-2.57	-2.21	25.13	13.88	565
ACE Ltd.	NYS	18.06	-8.54	-44.74	35.81	18.06	3772	ING Groep N.V.	NYS	52.75	-2.43	-13.52	70.00	36.06	291
Accel International Corp.	NDO	1.25	21.21	-58.33	3.38	0.75	12	IPC Holdings Ltd.	NDO	19.38	-11.17	-14.84	27.00	17.38	125
Acceptance Insurance Cos.	NYS	12.75	0.00	-35.65	21.13	11.75	102	Janford Financial Services	NYS	43.38	-9.99	-22.28	66.44	37.63	3533
AEGON N.V.	NYS	83.25	-2.77	-31.73	130.13	69.63	638	LaSalle Re Holdings Ltd.	NYS	14.00	-3.45	-32.12	27.94	11.63	77
Aetna Life & Casualty	NYS	70.00	-8.12	-12.29	99.88	62.69	3831	Lincoln National	NYS	39.44	-12.36	-4.83	57.50	33.50	4624
AFLAC Inc.	NYS	42.25	-4.79	-3.98	56.75	25.50	3165	MAIC Holdings Inc.	NYS	26.38	4.46	-17.58	33.13	24.63	84
Allmerica Financial Corp.	NYS	50.88	-6.76	-10.15	64.81	38.38	562	Market Corp.	NYS	183.25	5.32	1.66	193.00	132.00	73
Allstate Corp.	NYS	28.13	-20.21	-26.95	48.38	28.13	25047	MBA Insurance Group	NYS	49.13	-1.63	-25.92	71.88	46.06	1669
AMBAC Indemnity Corp.	NYS	48.81	-2.38	-18.56	62.38	40.88	741	Meadowbrook Insur. Group	NYS	12.00	-6.80	-26.44	25.00	10.56	25
American Financial Group	NYS	26.89	-5.32	-35.20	43.88	26.69	602	MMI Cos. Inc.	NYS	12.00	-9.86	-28.09	19.06	12.00	78
American General	NYS	65.38	-2.97	-16.45	81.38	52.38	3234	Mutual Risk Mgmt. L'ld.	NYS	18.94	-26.99	-50.08	43.25	18.94	4964
American Heritage Life Ins.	NYS	31.56	0.20	31.17	32.00	18.88	931	Navigators Group	NDO	13.38	-6.14	-12.30	16.38	13.25	9
American Intl Group	NYS	88.88	-5.64	14.09	107.19	51.88	10571	NYMagiic Inc.	NYS	13.56	0.93	-35.03	26.63	12.00	4
American Safety Insurance	NYS	7.31	-3.31	-23.03	10.38	6.63	18	Ohio Casualty Corp.	NDO	16.31	-7.45	-20.67	21.69	15.13	2446
Argonaut Group	NDO	25.69	-0.24	7.03	28.38	21.25	40	Old Republic Int'l	NYS	14.69	-8.56	-31.49	24.00	14.69	1237
AXA-UAP Group	NYS	60.56	1.36	-15.37	80.25	38.25	170	Orion Capital Corp	NYS	46.63	-3.12	18.98	48.50	27.56	2277
Baldwin & Lyons Inc.	NDO	20.94	-2.33	-10.43	26.00	18.50	16	Partner Re Ltd.	NYS	34.56	-1.25	-23.51	46.50	33.63	272
Berkley W.R. Corp.	NDO	22.56	-0.55	-33.15	36.50	22.25	520	Penn-America Group Inc.	NYS	9.00	-4.64	-2.70	11.44	8.13	25
Berkshire Hathaway Inc.	NYS	59700.00	-3.55	-12.59	81100.00	57700.00	1	PMA Capital Corporation	NDO	20.00	0.83	2.24	21.13	16.63	95
Capital RE Corporation	NYS	10.75	-7.03	-45.05	30.38	10.75	179	Philadelphia Cons. Holding	NDO	15.00	-0.83	-29.41	25.50	10.81	789
Capital Transamerica Corp.	NAS	13.88	-3.48	-21.55	20.25	12.50	25	PXRE Corp.	NYS	15.44	-6.44	-38.86	26.81	13.94	41
Centris Group Inc.	NYS	11.50	15.72	22.67	14.06	7.50	539	Reliance Group Holdings	NYS	3.94	-8.70	-69.57	16.13	3.94	1390
Chartwell Re	NYS	15.50	-1.59	-33.33	29.63	13.25	69	ReliaStar Financial Corp.	NYS	36.63	-14.95	-18.16	49.81	29.00	3579
Chubb Corp.	NYS	52.00	-8.97	-19.92	76.38	52.00	3079	RenaissanceRe Holdings Ltd.	NYS	35.06	-2.09	-2.94	45.38	30.00	141
CIGNA Corp.	NYS	90.13	0.70	15.92	98.63	62.00	3737	Risk Capital Holdings	NDO	13.75	0.00	-34.91	24.13	12.00	31
Cincinnati Financial Corp.	NYS	37.94	-1.62	6.30	42.50	30.50	1442	RLI Corp.	NYS	32.88	-1.68	-1.50	39.56	27.88	61
Citigroup	NYS	43.75	0.14	29.79	51.75	19.00	49469	St. Paul Companies	NYS	28.88	-11.15	-17.50	37.50	28.38	3622
CNA Financial Corp.	NYS	34.81	-2.45	-11.45	45.31	33.00	584	SCOR	NYS	47.88	-2.42	-26.35	68.50	45.88	13
CNA Surety	NYS	12.50	-1.48	-16.32	16.00	10.19	33	SAFECO Corp.	NDO	30.13	-11.56	-29.12	46.75	30.13	4277
								SCPIE Holdings Inc.	NYS	30.25	-2.02	0.82	33.00	23.69	NA

Top advancing issues: Accel International Corp., Centris Group Inc., Market Corp. Leading decliners: Mutual Risk Mgmt. Ltd., Allstate Corp., Frontier Insurance Group. Most active issue: Citigroup. The BI Index fell 5.0%; the Dow Jones 30 Industrials decreased 4.9%; the S&P 500 was down 4.3%, and the NYSE Composite decreased 3.8%. Average P/E: Brokers, 16.9; Insurers/reinsurers, 16.9; HMOs, 18.0.
Source: CNET Investor (investor.cnet.com) Boulder, CO

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