

# Business Insurance

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

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## New sponsor, same moderator in line for RISKWeb successor

BATON ROUGE, La.—The successor to RISKWeb, the popular but endangered electronic discussion forum for risk managers, could be operational by Wednesday with a new sponsor but under the eye of the original forum's longtime moderator.

Louisiana State University in Baton Rouge, La., is the potential new sponsor of RISKWeb's successor forum, according to sources.

James R. Garven, the educator who created the forum in 1993 and has moderated

*See Updates on next page*

## Limiting Y2K liability

Florida bill would protect businesses from Millennium Bug lawsuits

By MARK A. HOFMANN

TAMPA, Fla.—A Florida lawmaker is proposing comprehensive legislation aimed at limiting liability associated with the Year 2000 problem.

State Sen. John Grant, R-Tampa, unveiled a proposal named the Commerce Protection Act of 1999 last week. The bill, which will be taken up when the Legislature convenes next year, would offer legal protection to both businesses and governmental en-



tities that make good-faith efforts to be Y2K-compliant.

Although Y2K liability legislation has been introduced in other states, most bills focused their relief on protecting public entities.

Meanwhile, nearly all states have approved an endorsement that, if adopted, could minimize insurers' liability for the Year 2000 computer bug under existing coverage (see story, page 27).

The Florida proposal coincides with

plans by the Risk & Insurance Management Society Inc. "to take a more active role in promoting liability limitation legislation on both the federal and state levels," according to Anne Allen, director-state affairs for RIMS in New York.

"This is the type of initiative we need to get involved with. The scariest thing about Y2K from risk managers' perspective may not be systems failure or lack of coverage but lawsuits, third-party and otherwise. Where does a corporation's responsibility end?"

*See Y2K bill on page 27*

## HMO that fought Texas law battling to restore provision

By JOANNE WOJCIK

AUSTIN, Texas—Aetna U.S. Healthcare is trying to save part of the Texas managed care liability law it challenged in court.

When U.S. District Court Judge Vanessa Gilmore upheld the 1-year-old Texas statute permitting patients to sue health maintenance organizations for malpractice, she also struck down the part of the law creating an independent review process for treatment denials.

Ruling in *Aetna U.S. Healthcare vs.*

*the Texas Department of Insurance*, the judge said the state's external appeals program violates the federal Employee Retirement Income Security Act of 1974.

The statute called for the creation of an independent review organization. It is run by the state Insurance Department and reviews any case in which a person was denied coverage or has a complaint regarding the care.

Now Aetna—the HMO that brought the lawsuit challenging the state's groundbreaking right-to-sue law in the first place—apparently has

changed sides and is working with the Texas attorney general and insurance regulators to try to restore the independent review process.

"It is unfortunate that the IRO process wound up being coupled with health plan liability rather than as an alternative to it," David F. Simon, Aetna's chief legal officer, wrote in a letter last week to Texas Insurance Commissioner Elton Bomer and Attorney General Dan Morales.

"Because of our philosophical agreement on the salutary purposes

*See Texas on page 30*

## Accountability begets quality

Health plans that publicly report data outperform those that don't: NCQA

By ROSEANNE WHITE

WASHINGTON—Managed care plans that publicly and consistently report performance measurements are outperforming plans that don't, according to the National Committee for Quality Assurance.

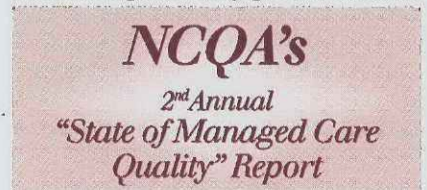
"Accountability really will drive toward better performance," said Margaret E. O'Kane, president of the Washington-based managed care watchdog group.

The NCQA last week released its second annual "State of Managed Care Quality" report, which assesses managed care plan quality by 10 clinical measures of care and by member satisfaction.

Among the report's key findings in

analyzing the 1997 and 1996 data, according to the NCQA, are:

- Health plans that submitted data for public release performed substantially better on clinical measures and attained significantly greater member



satisfaction than plans that submitted data on condition that they not be identified.

- Health plans that submitted data for two consecutive years, covering performance for 1996 and 1997, re-

ported higher scores and higher overall improvement on eight out of 10 performance measures than the industry as a whole.

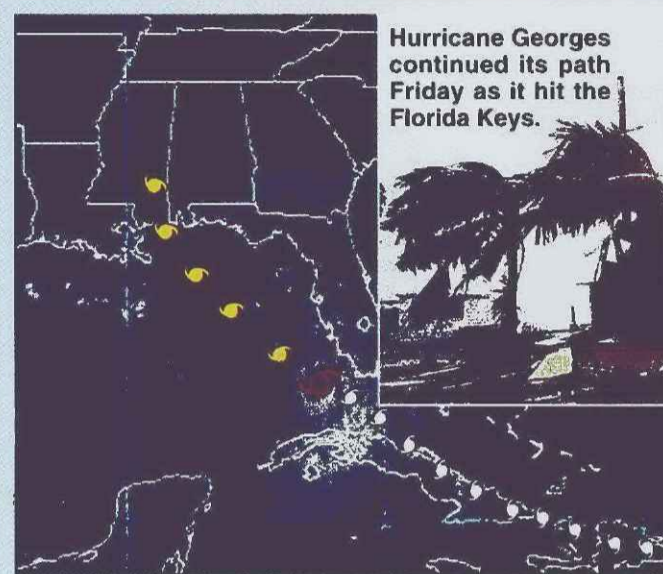
- NCQA-accredited plans outperformed non-accredited plans on all clinical and satisfaction measures.

"Our mission at the NCQA is to put this information out there to work with those in the marketplace that are selecting health plans—purchasers and consumers—and help them get the information they need to reward quality performers," Ms. O'Kane said.

All plans that publicly report data deserve recognition, she said.

The managed care industry saw gains of 1% or less between 1997 and 1996 in terms of most of the 10 clinical

*See NCQA on page 28*



Hurricane Georges continued its path Friday as it hit the Florida Keys.

PHOTO: AP WIDE WORLD/SATELLITE IMAGE:NOAA

## Georges' pre-Florida toll to top \$1 billion

By SALLY ROBERTS

Businesses throughout the Caribbean continue to pick up the pieces left shattered by Hurricane Georges, which ripped through the Leeward Islands last week on its way to Florida, sparing few in its wake.

By Friday morning, Hurricane Georges was lashing the Florida Keys with wind gusts of more than 100 mph and was expected to batter the state's Gulf coast later that day. Five million people in eight Florida counties were under hurricane warnings, and a million more living along 300 miles of coastline had been ordered out of the area.

Flooding, power outages and wind damage were expected throughout the Keys, but reports of damages were unavailable for this issue of *Business Insurance*.

On its way to the United States, Hurricane Georges killed more than 300 people in the Caribbean, pounding businesses and homes on the tiny islands of the eastern Caribbean with hurricane-force winds of more than 100 mph before pummeling the U.S. Virgin Islands, Puerto Rico, the Dominican Republic, Haiti and then Cuba on Thursday morning.

The Property Claims Services unit of the Insurance Services Office Inc. will not have an estimate of the total insured losses caused by Hurricane Georges until sometime this week.

However, Menlo Park, Calif.-based Risk Management

*See Georges on page 30*

NEWSPAPER

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Spotlight

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MARINE MARKET REPORT

## Updates

### RISKWeb may be uninterrupted

Continued from previous page

it since, said he plans to stay on as the new forum's moderator. Mr. Garven's participation is good news for risk managers, who have praised him as an even-handed and unobtrusive monitor of their online discussions. Risk managers were upset last month when Mr. Garven said he likely would not return as moderator.

Mr. Garven, who joined LSU's faculty earlier this year, and a spokesman for RISKWeb owner InsWeb Corp. both declined late last week to identify the potential new sponsor because negotiations with the entity had not been completed. But both said they expected the negotiations would be completed in time to bring the new forum online before InsWeb's planned shutdown of RISKWeb after Wednesday.

RISKWeb operates as both an Internet mailing list that distributes e-mail postings to subscribers as they are made and as a Web site where submissions are archived. Mr. Garven last week estimated there are about 3,400 RISKWeb subscribers worldwide.

InsWeb acquired RISKWeb from Mr. Garven in 1996, the year the company hired the former University of Texas professor as a vp of economic analysis and product researcher. Mr. Garven left InsWeb when he returned to teaching as a professor in LSU's finance department.

Without warning, San Mateo, Calif.-based InsWeb shut down RISKWeb last month. InsWeb explained that the service did not fit into the company's business plan. InsWeb provides online comparison shopping services for buyers of personal lines insurance.

But, after an outpouring of complaints from risk managers, InsWeb reactivated RISKWeb until Sept. 30 (BI, Aug. 24).

Neither Mr. Garven nor the InsWeb spokesman would discuss the nature of the negotiations with the potential new sponsor.

Unclear is whether the successor forum would have access to the RISKWeb discussions that Mr. Garven has archived for subscribers' use. The InsWeb spokesman last month said the company hoped to make the archives available to the forum's new sponsor, if some legal issues concerning privacy and copyrights could be resolved.

Mr. Garven and the InsWeb spokesman also would not discuss whether the new sponsor would have access to the RISKWeb subscription list. The InsWeb spokesman earlier said the company would not make that list available. Under that scenario, current RISKWeb subscribers would have to contact the new sponsor via e-mail and request a subscription to the new forum. If the new sponsor had the list, the sponsor could automatically subscribe RISKWeb users to the new forum.

Mr. Garven said he would post a message on RISKWeb early this week to explain developments.

### State loses EMLICO receivership

BOSTON—Effectively clearing the way for Electric Mutual Liability Insurance Co.'s continued liquidation in Bermuda, a Massachusetts Supreme Court judge has thrown out the state Insurance Division's petition to place EMLICO in receivership.

Supreme Judicial Court Justice John M. Greaney last week dismissed the Massachusetts receivership action, finding that EMLICO "is a lawful Bermuda corporation" and that "both the law and practicality weigh strongly against" allowing a U.S. receivership.

The ruling may signal the end of a marathon controversy that began when EMLICO, a longtime General Electric Co. liability insurer, redomesticated to Bermuda and declared itself insolvent, triggering charges from reinsurers that it had conspired with GE to take advantage of favorable Bermuda liquidation laws.

Massachusetts regulators thought they had worked out a deal last year to act as ancillary receiver to EMLICO's Bermuda liquidators. The Massachusetts high court threw out the deal, though, ruling that state law did not allow EMLICO to move to a foreign country and that—whatever its status in Bermuda—it remained a Massachusetts insurer. The Insurance Division then filed its receivership petition.

In his ruling last week, Justice Greaney found that "a corporation can have a lawful existence in two jurisdictions. EMLICO has lawful corporate presences in Bermuda and in Massachusetts even though its redomestication to Bermuda was invalid under Massachusetts law."

EMLICO's assets are also in the control of the Bermuda liquidators and "it follows in my mind that Bermuda has lawful jurisdiction over the liquidation," he wrote.

Justice Greaney cited other reasons for rejecting the petition, including that EMLICO and GE have settled with the reinsurers that challenged the redomestication and that a U.S. receivership would likely conflict with the Bermuda liquidation.

Referring to reinsurers' conspiracy charges against GE and EMLICO, Justice Greaney noted that "there is, to be sure, a seriously disputed question whether EMLICO and General Electric engaged in fraud or other wrongdoing."

"This question, if it is to be resolved at all, is to be answered in other proceedings in different fora," he wrote.

The Insurance Division has not decided whether to appeal to the full Supreme Judicial Court, a department spokesman said.

### Vesta's D&O insurer sues

BIRMINGHAM, Ala.—Vesta Insurance Group Inc.'s recent financial problems have prompted its directors and officers liability insurer to

See Updates on page 30

### Errors & omissions

• A Sept. 21 headline incorrectly summarized a court ruling in a coverage dispute between a miniblind manufacturer and its insurers. The court rejected the insurers' motion for summary judgment; it did not order them to defend the manufacturer, Jencraft Corp. The story correctly reported that, absent a settlement, the dispute must be resolved at trial. But the story does contain one small reference that inaccurately states the insurers are obliged to defend Jencraft.

# Medicare drug battle sparks two lawsuits

By JERRY GEISEL

BOSTON—The conflict between Massachusetts regulators and HMOs over prescription drug benefits for Medicare-eligible retirees now is in court.

The Massachusetts Division of Insurance last week sued Harvard Pilgrim Health Care, alleging that its proposal to cap prescription drug benefits next year at \$800 for members of its Medicare risk HMO violates state law and regu-

lations that require risk HMOs to offer either unlimited or no prescription drug benefits to members.

The suit, filed in state court for Suffolk County, seeks to compel Harvard Pilgrim and all other Medicare risk HMOs in the state to comply with the prescription drug mandate.

"We want to be very aggressive in securing drug benefits for our seniors and that HMOs are following state law," said a

spokeswoman for the Massachusetts Department of Consumer Affairs in Boston.

For its part, the Massachusetts Assn. of Health Maintenance Organizations, an industry trade group, filed suit in U.S. District Court in Boston asking the court to declare that a 1997 federal law pre-empts the Massachusetts prescription drug mandate.

"We hope the court will act quickly and resolve this issue," See Drugs on page 29

# IIE syndicate owner sued

Illinois insurance regulators file racketeering charges

By DOUGLAS McLEOD

CHICAGO—The management of a defunct Illinois Insurance Exchange syndicate looted the syndicate of millions of dollars in a series of fraudulent investment and reinsurance deals with affiliated companies, Illinois insurance regulators allege.

Illinois regulators liquidating Geneva Assurance Syndicate Inc. have filed a racketeering lawsuit charging that syndicate operator

Jeffery W. Beresford-Wood and several others plotted to strip valuable Geneva assets and replace them with worthless stock, money-losing real estate and other investments.

The transactions "gave the false and misleading appearance that Geneva's financial condition was satisfactory... and enabled Beresford-Wood and his co-conspirators to maintain control of Geneva and to operate it for their personal benefit," the complaint

charges.

A variety of allegedly bogus transactions cited in the complaint include deals in which Geneva took over Mr. Beresford-Wood's investment in three failing non-insurance businesses, racking up more than \$17 million in losses, and bought millions of dollars of worthless stock in companies owned by Mr. Beresford-Wood and his business associates.

The suit also charges that Mr. See Geneva on page 27

# Holocaust settlement collapses

By MEG FLETCHER

NEW YORK—State insurance regulators will continue developing the framework for resolving Holocaust-era claims, despite Italy's

**NAIC**

largest insurer nullifying a \$100 million lawsuit settlement.

The legal settlement involving Assicurazioni Generali S.p.A. of Italy failed because "the agreement over the harmonization of the claims process between the memorandum of understanding and the class-action lawsuit could not be reached," Generali Vice General Director

Guido Pastori said in a statement last week.

He said that such harmonization was agreed upon in a letter of intent regarding the settlement between Generali and lawyers representing Holocaust survivors in a New York lawsuit.

However, the National Assn. of Insurance Commissioners always has viewed the lawsuit as being unrelated to the "memorandum of understanding" underpinning establishment of an International Commission to resolve unpaid claims to Holocaust victims, NAIC President Glenn Pomeroy said last week. "The \$100 million reached in a separate agreement does not cap See NAIC on page 30

# High court to revisit old issues

By MARK A. HOFMANN

WASHINGTON—The U.S. Supreme Court will revisit some critical risk management and employee benefits issues during the session that begins next Monday.

This term, the legal territory before the court will include such issues as standards for expert testimony, the definition of what constitutes an acceptable class in class action suits; the extent of the McCarran-Ferguson Act's pre-emption of federal insurance actions; and the rules for amending certain types of pension plans.

Many of the business-related cases that the high court has already agreed to review fall into the category of what one attorney called "settler" cases.

Clifford Sloan, a partner in the Washington office of Wiley, Rein & Fielding, differentiated between "pioneer" cases—in which the justices review a question for the first time—and "settler" cases, where they review questions that have See Court on page 22



## Inside

• Those businesses that make good-faith efforts to become Year 2000-compliant deserve federal and state protection from liability for unforeseen third-party damages, one of this week's editorials says. **PAGE 8**

• Belgian floods have accelerated moves for mandatory natural disaster insurance. **PAGE 23**

• Unless Congress changes the payment structure, more companies will join Prudential and others in cutting Medicare risk HMO offerings, experts say. **PAGE 29**

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# California lawsuits deemed unfair

By ROBERTO CENICEROS

SACRAMENTO, Calif.—California businesses fear a provision in state law makes it easier for plaintiffs lawyers to file lawsuits that resemble class actions but do not require that a class actually exists.

Under California's Unfair Competition Act, a part of the state's Business and Professional Code, anyone can file a lawsuit in the public's interest as a "private attorney general," charging unfair or fraudulent business practices. The person suing does not need to represent an actual plaintiff who has purchased a product or had any business dealings with the defendant, according to the Assn. for California Tort Reform and plaintiffs attorneys.

The California Chamber of Commerce fears a jump in employment-related cases, and Unfair Competition Act claims recently have been added to Year 2000 compliance lawsuits filed against software manufacturers. This is particularly a concern because the number of lawsuits is on the rise in California, several companies said.

"We think it is one of the key issues for the next five years," according to Fred Main, senior vp and general counsel for the California Chamber of Commerce in

Sacramento.

Several California business leaders met in Sacramento last week to document what they say are the growing abuses of the act and to discuss how to reform the law, said Barbara M. Wheeler, legislative advocate for the ACTR.

Possible strategies include continuing to file amicus briefs in appellate cases and seeking legislative reform of the law.

The Unfair Competition Act is a good law in its intent to protect the public, Ms. Wheeler said. But she and other business representatives say its broad language makes it ripe for abuse.

"The courts have said in a couple of cases, 'We will determine what is inherently unfair,'" the Chamber's Mr. Main said. "It doesn't have to be the violation of a statute. Therefore, you can take your best shot at alleging anything is unfair, hoping that a reasonable person will judge it is not nice or fair."

He said he believes attorneys pursuing the cases are using the additional allegations to wrest settlements from defendants, rather than taking the cases to trial.

"The payout never occurs; you settle the case, and part of the settlement is attorneys fees," Mr. Main said.

Sixteen other states have roughly

See California on page 18

# Sinking claims dozens

LONDON—The Philippine inter-island passenger ferry "Princess of the Orient," which capsized and sank in a typhoon earlier this month, has hull coverage of about \$8 million from domestic insurers, though it was partially reinsured in international markets, including London.

A total of 359 people survived the disaster, but 40 are confirmed dead and 55 were listed as missing as of late last week.

The Philippine Maritime Industry Authority, or MARINA, has suspended passenger operations of the vessel's owners, Sulpicio Lines Inc., while an investigation is under way into the sinking of the 24-year-old vessel, which was en route to Cebu from Manila.

The government has convened a board of inquiry to investigate the sinking.

The latest disaster further dents the Philippines' record for maritime safety, and the order for the investigation came from the highest level, Philippines President Joseph Estrada.

Local reports quoted MARINA's chief investigator as saying the ferry was carrying heavy cargo that may have shifted during the typhoon.

With 30 vessels in its fleet, Sulpicio Lines is one of the Philippines' largest domestic shipping operators.

Sulpicio Lines also was the owner of the "Dona Paz," a vessel that collided with an

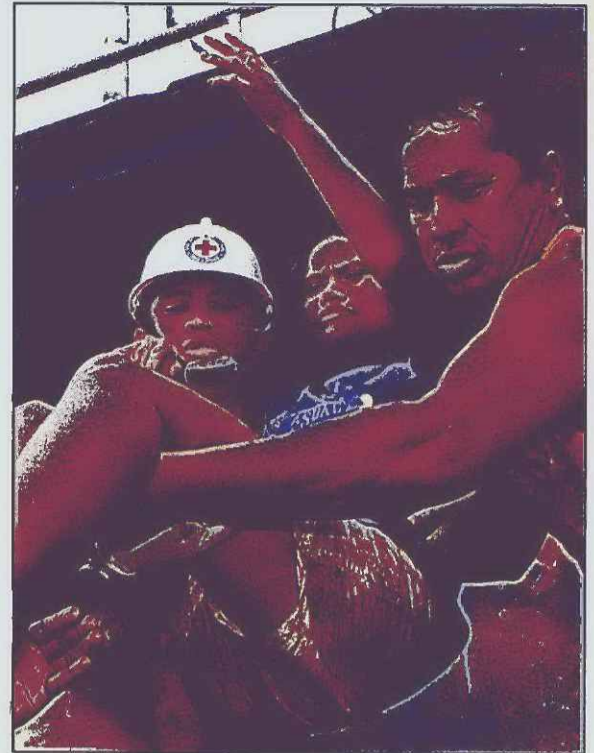


PHOTO: AP/WIDE WORLD

Rescuers help carry to safety a victim of a Philippine ferry sinking that claimed at least 40 lives.

oil tanker and sank in 1987. That accident caused the loss of more than 4,000 passengers and crew, making it the world's worst peacetime shipping disaster in terms of lives lost.

—By Edwin Unsworth

## Marine hull rates continuing to plunge Market softness has underwriters grumbling

By EDWIN UNSWORTH

The pleas at last year's annual gathering of the International Union of Marine Insurance for a return to responsible underwriting practices appear to have fallen on deaf ears.

Not only did 1997 mark the third successive year that shipowners and shippers enjoyed falling insurance rates, but there also are no signs yet of the market veering from this course.

Richard DeSimone, chairman of the American Institute of Marine Underwriters, said the U.S. market "is the most competitive market we've ever seen." His remark could be applied equally to the global scene.

While insurers so far have been lucky in that there have been no major marine claims over the past year, they can't expect their luck to hold for any extended period, warned Mr. DeSimone.

Commenting on current prospects, Mr. DeSimone, who is also senior vp-marine with Atlantic Mutual Cos. of Madison, N.J., said he expects that in the first half of 1998 most underwriters have not had a good year and that there has been no im-

provement in the hull market.

Also commenting on the U.S. market, John Hickey, president of the New York-based American Hull Insurance Syndicate of New York, said that hull premiums are now 60% less than they were four years ago. "The prognosis is poor, and unless companies improve their rates dramatically, I doubt that you'll see much improvement in 1999," he said.

Others at this year's IUMI gathering in Lisbon, Portugal, were equally pessimistic about global prospects.

Hartmut Rehders, chairman of IUMI's Inland Hull Committee, complained that the current market is so bad that "nobody can earn money in this field."

Peter Christmas, chairman of IUMI's Ocean Hull Committee, said, "The international hull market is in the middle of its fourth year of serious reduction in the levels of premium; conditions remain soft with no signs of upturn."

Hull rates have never been lower, and in some cases they are as low as 25% of those obtained at the peak of the cycle in 1994, Mr. Christmas said. He added that the situation is exacerbated by huge and still-growing overcapacity, the reluctance of insurers to lose market share,

See Hull on next page

## Rewards proposed for better marine risks Shipowner suggests insurers offer incentives

By MICHAEL BRADFORD

Marine insurers that offer financial incentives and become familiar with their policyholders' operations will help lower claims, an executive with a marine transportation company says.

"So here's my challenge to marine insurers get to know your client," said A. "Gus" Elmer, president of SealRiver Maritime Inc., a Houston-based unit of Exxon Corp.

Mr. Elmer, speaking at the Houston Marine Insurance Seminar last week, challenged insurers to take a close and continuous interest in their marine clients' operations.

"I believe you should actively inspect the operational capabilities of the management and the crews of the vessels that you insure," he advised. "Spend some time to observe the crew at work on a vessel. This may be a short-term cost, but I believe that it will pay dividends in the long run."

And to encourage policyholders, underwriters should offer some financial rewards, Mr. Elmer said. "Be creative in developing individual incentives." For example, he suggested that in-

surers "develop one premium which rewards a lower frequency of small claims and another premium for catastrophic events."

Insurers also should make cash awards to policyholders that turn in "excellent claims experiences," he said.

"I know the marine industry is steeped in history and tradition," Mr. Elmer said. "But let's try and think outside the box."

Insurers that write onshore risks have a highly protected risk category, he pointed out. "Why not a similar category for marine? In other words, establish a lower premium for higher-quality operations who meet exceptional standards of certification."

One measure of exceptional standards could be the American Bureau of Shipping's Condition Assessment Program, Mr. Elmer said. The program provides a rigorous inspection of ships and is attentive to ship owners' and operators' commitment to maintenance, he explained.

Reports by the bureau spell out any deficiencies, and "you can address them directly," Mr. Elmer noted.

He said SealRiver is working with the ABS to begin reviewing its vessels. SealRiver owns ocean-going tankers, inland towboats, barges and

See Safety on page 17

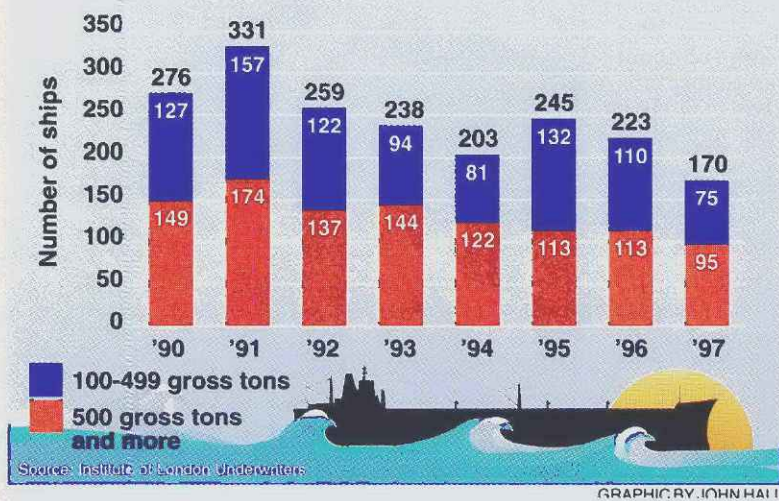


Spotlight

# MARINE MARKET REPORT

## Hull loss record improves

Total hull losses continue to decline in 1997



## Hull

Continued from previous page and the availability of cheap reinsurance.

The theme of this year's IUMI meeting was "adding value." IUMI President Georg Mehl, who is also chairman of Stuttgart, Germany-based Württembergische A.G. Versicherungs-Beteiligungsgesellschaft, said it is time that marine underwriters abstained from competing for market share at any cost and instead set a definite bottom line below which they would not go. Underwriters need to communicate better with customers and to do more to help them prevent losses, he said.

Mr. DeSimone also emphasized the importance of adding value. He said U.S. marine underwriters who

are weathering the current competitive phase of the underwriting cycle are those who keep their clients by "providing good claims service, loss control and an understanding of their business."

Underwriters are not overly optimistic about prospects for an upturn.

According to Mr. DeSimone, the upturn could come as management in some of the smaller, marginal markets decides to withdraw capacity. However, Mr. Hickey said he thinks it would take more, such as a dramatic downturn in the financial markets, most likely in bonds, which would cause investors to withdraw their money from the insurance sector.

One positive element for marine insurers is a reduction over the past few years in major maritime casualties.

The Institute of London Underwriters annually releases casualty figures at the IUMI gathering, and this year the figures show the number of merchant ships lost in 1997

**One positive element for marine insurers is a reduction over the past few years in major maritime casualties.**

fell to 170 from 223 in 1996. The 1997 total represented 0.22% of ships afloat, down from 0.27% in 1996 and the lowest proportion for more than 10 years.

The IUMI meeting began with the usual policy statement from the executive committee that in order for the IUMI to comply with U.S. laws, there would be no discussion of rates or conditions of insurance, though both topics were inescapably uppermost in everyone's thoughts.

In addition to comments from speaker after speaker about the dire state of the international marine market, with rates at a three-year low and showing no signs of improving, ample statistics were presented to demonstrate the competitive state of the market.

Norway's Central Union of Marine Underwriters presented its annual compilation of global marine premiums. It showed that in 1996, the latest year for which some IUMI member associations could provide figures, global marine premiums fell to \$15.1 billion from \$16.7 billion in 1995.

Within this total, premiums fell in all sectors of the marine market: hull premiums fell by 11% to \$4.5 billion, cargo premiums by 1.6% to \$8.7 billion, liability premiums by 29% to \$1.1 billion, and offshore energy premiums by 34% to \$810 million.

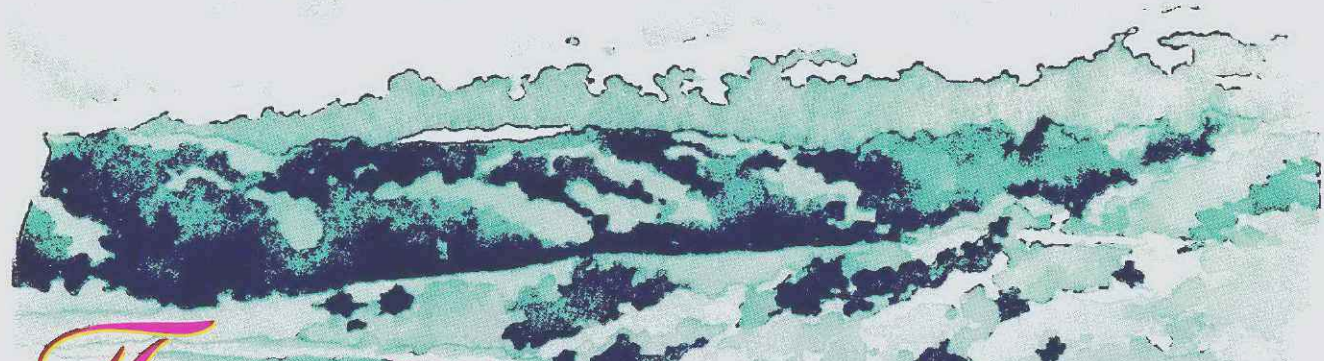
The figures also indicate that in 1996 Japan finally overtook London as the world's leading marine insurance market. That year, Japan produced marine premiums of almost \$2.7 billion, down from \$2.9 billion in 1995. However, in London, where Lloyd's of London then still was trying to push through its reorganization, marine premiums fell dramatically, to \$2.2 billion from \$3.4 billion.

According to figures from both the CUMU and the American Institute of Marine Underwriters, the third-largest marine market in 1996 was the United States.

However, AIMU figures for the U.S. market, which are more up to date than those of the CUMU, show that, after rising for a number of years, total marine premiums of U.S. insurers fell to \$1.51 billion in 1997 from \$1.60 billion in 1996. Hull premiums are 60% lower than they were four years ago, according to the AIMU.

Mr. DeSimone, the AIMU chairman, said this demonstrates "a dramatic deterioration" in results, making it "the most competitive market we've ever seen."

U.S. marine insurers' combined loss ratio deteriorated in 1997 to 98.24% from 91.59%, and in a number of classes exceeded 100%. These included cargo, where the ratio deteriorated to 100.45% from 91.32% on premiums that fell 4.3% to \$643.9 million; deep-sea hull, where it worsened to 130.35% from 85.93% on premiums that were down 9.5% to \$89.4 million; and other hull, which went to 120.04% from 98.64% on premiums that were 20.5% down to \$152.1 million. **BI**



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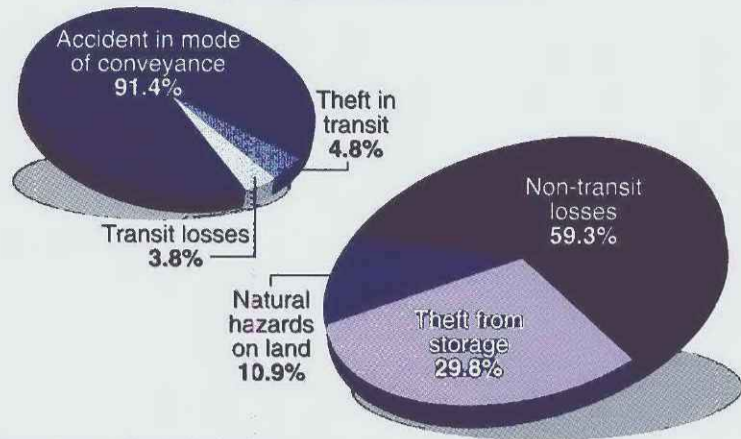
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## Cargo risks expanding

Cargo losses while in storage or port are of growing concern to insurers



Source: Institute of London Underwriters

GRAPHIC BY ADAM DOI

## Cargo rates continue to sink

Increasing number of underwriters reporting losses: Survey

By EDWIN UNSWORTH

Cargo insurance rates continue to decline and show little sign of firming in the near future.

Buyers also are seeing soft prices in the marine market for liability and energy insurance coverage.

Marine insurers bemoan the effects of rampant competition.

James Zrebiec, chairman of the International Union of Marine Insurance's Cargo Committee, said the situation for cargo underwriters has become "desperate."

"Something clearly has to give," said Mr. Zrebiec, who reported on the state of the cargo market during IUMI's annual convention in Lisbon, Portugal.

Marine cargo underwriters managed to post underwriting profits in 1997, but "the current year is another story," warned Mr. Zrebiec, who is also chairman of New York-based CGU International Marine Underwriters, a unit of London-based CGU P.L.C.

The IUMI Cargo Committee's annual survey of member associations found that an increasing number of underwriters are reporting underwriting losses in the

first six months of 1998, he said.

While 1997 was a break-even year for U.S. cargo underwriters, it was probably the most competitive sector of the marine insurance market after yacht business, said Mr. Zrebiec, who is also vice chairman of the American Institute of Marine Underwriters.

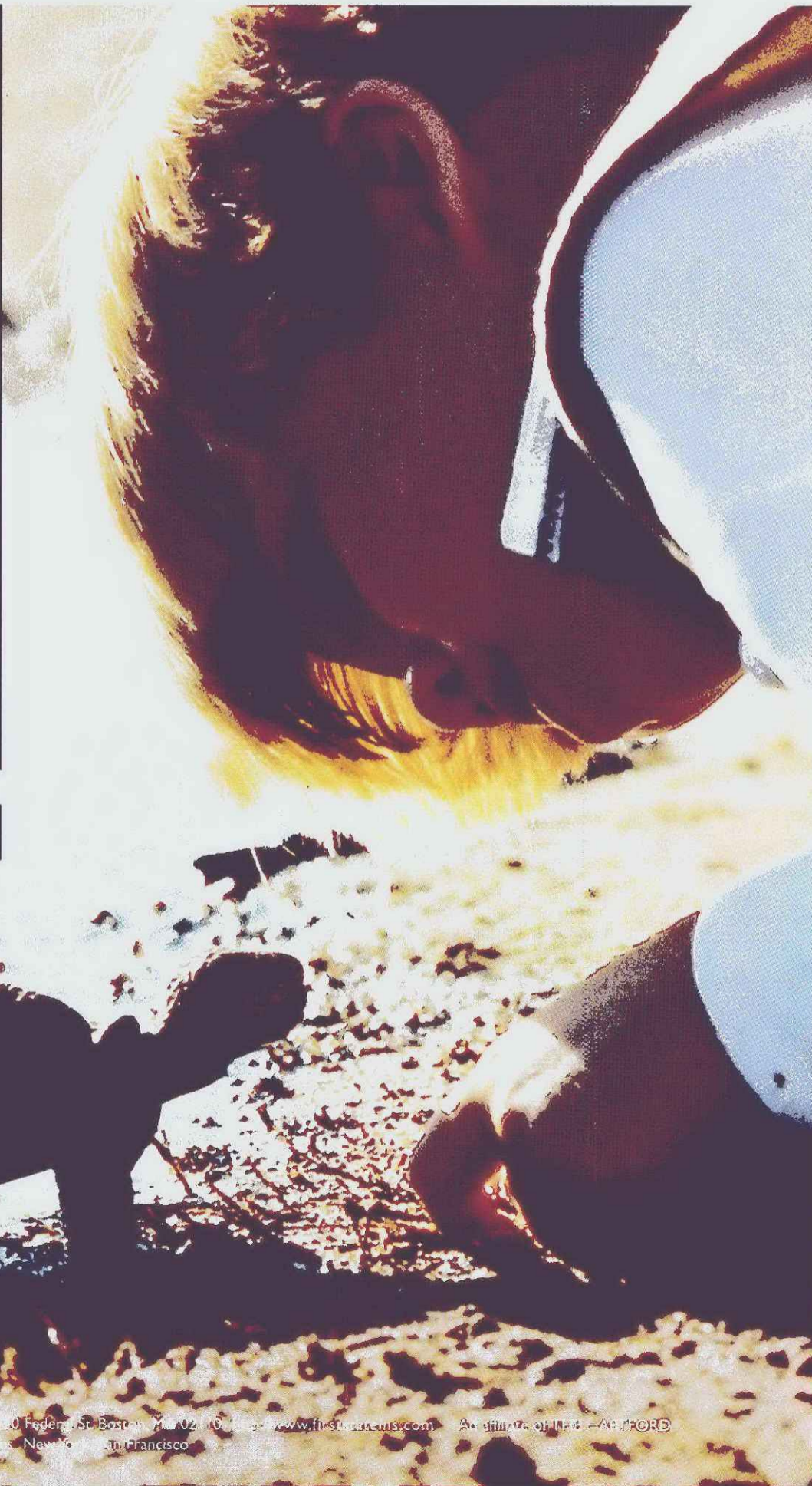
Which way the U.S. cargo account goes this year is important

**'Many underwriters feel that the present market conditions are the worst they have experienced,' says a survey response.**

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**NOTHING NEW?**



because a greater percentage of marine insurers in the United States underwrite cargo business than hull business, and cargo makes up the largest single element—45%—of the U.S. marine account, he said.

"Many underwriters feel that the present market conditions are the worst they have experienced. The continuing overcapacity for cargo business both within London and worldwide lead underwriters to wonder how this situation can be improved," London cargo underwriters stated in their response to the IUMI survey.

Michael Harding, a cargo underwriter for Eagle Star Reinsurance Co. Ltd. in London and chairman of the London marine market's Joint Cargo Committee, said the main concern of cargo underwriters, apart from falling rates, ought to be stopping an increase in losses of cargo not in transit.

While there appears to be a general reduction in losses from cargo in transit, there is a sharp escalation of claims relating to cargo while it is stored in ports or warehouses, awaiting transportation.

Mr. Harding said figures compiled by the Institute of London Underwriters show that in 1997 major insured losses to cargo damaged or stolen in transit totaled only \$14 million.

However, major insured non-transit cargo losses in 1997 resulting from warehouse incidents, such as fires or theft in storage, totaled \$343 million.

Mr. Harding said those figures show that cargo underwriters need to improve their information on non-transit risks, such as the adequacy of loss prevention measures in place at various ports and warehouse facilities.

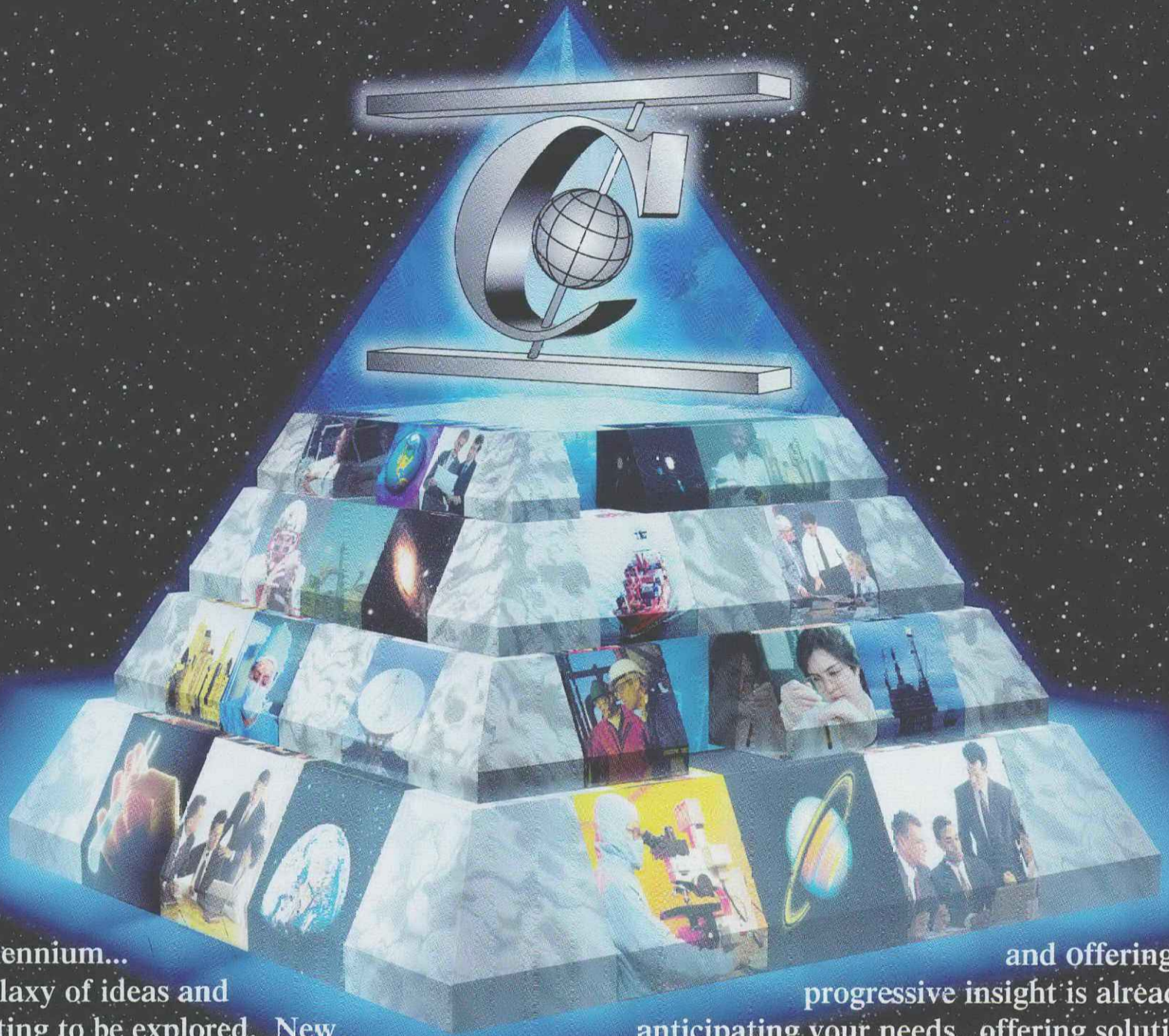
"In the present dark times for underwriters, only those who have the statistics can perform properly," said Hector Wauters, chairman of IUMI's Cargo Loss Prevention Committee and managing director of Nautica N.V. of Antwerp, Belgium.

Cooperation among marine insurers to create a universal rating system of information on port and warehouse risks was called for by Harri Ek, head of the marine division of Industrial Insurance Co. Ltd. of Helsinki, Finland.

Mr. Ek, a member of IUMI's Cargo Loss Prevention Committee, said cargo underwriters do not know enough about the risks they insure, particularly the on-shore risks of cargo not in transit.

See Cargo on page 10

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**Q: IS IT BETTER TO EMPHASIZE SERVICE,  
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# More insurers supporting international safety code

By EDWIN UNSWORTH

**M**ore marine insurers are saying it is not in their interest to insure the hulls or the cargoes of merchant ships that do not comply with a new international safety code.

But, given the severely competitive state of the market, whether all insurers will support the International Safety Management Code remains to be seen. This became evident this month at the annual meeting of the International Union of Marine Insurance in Lisbon, Portugal.

The code went into effect July 1 for passenger ships, high-speed craft and oil and chemical tankers of more than 500 gross tons. Starting July 1, 2002, the code will be extended to apply to ships of less than 500 gross tons.

The code, devised by the International Maritime Organization, a London-based unit of the United Nations, applies a universal benchmark for marine safety management procedures (*BI*, Aug. 18, 1997). It requires shipowners and ship operators to have systems in place to prevent accidents and pollution.

IUMI President Georg Mehl reminded members at the start of the meeting that he had urged them in

a letter sent earlier this year to support the code. Comments at this year's annual meeting indicate that members do.

Richard DeSimone, chairman of the American Institute of Marine Underwriters, said the ISM Code is so vital for safety that he could not imagine why any underwriters would not support it.

However, Mr. DeSimone, who is also senior vp-marine of Atlantic Mutual Cos. of Madison, N.J., also acknowledged that nothing could be done to prevent underwriters from continuing to insure non-ISM-compliant ships or the cargoes on those ships.

London's cargo insurers, through the Joint Cargo Commit-

tee of the Institute of London Underwriters and Lloyd's of London, have issued an ISM endorsement stating that losses to cargoes carried by a non-ISM-compliant ship will not be covered unless the policyholder believes the vessel was compliant.

Michael Harding, chairman of the JCC and a cargo underwriter with Eagle Star Reinsurance Co. Ltd. in London, said cargo insurers have wholeheartedly welcomed the ISM Code, as it should help reduce cargo claims by making ships safer.

However, IUMI's Cargo Insurance Committee noted that while there was generally strong support among IUMI member associations

for the ISM Code, a number of these said their cargo market—either cargo insurers or policyholders—is unaware or not fully aware of the code's possible implications for cargo insurers. These markets include Austria, Cyprus, Germany, Greece, Pakistan, Poland, Russia and the United Arab Emirates.

Concerns were expressed about some unscrupulous shipowners who obtain their ISM certificates unlawfully. For example, there have been unsubstantiated reports of shipping companies buying their required ship-board safety manuals from someone else and simply changing the front cover. In addition, governments of countries where ships are registered or classification societies charged with carrying out inspections may not be thorough enough in ensuring a shipping company is ISM compliant.

Roberto Salvarani, head of the maritime safety unit at the European Commission's transport directorate in Brussels, Belgium, said he finds it difficult to believe that in the last-minute rush of shipowners to meet the July 1 deadline—which an unexpectedly high 87% of affected vessels met—some compliance documents weren't obtained underhandedly.

He warned that marine underwriters need to join ship safety inspectors and government bodies in ensuring that this problem is stamped out.

"Unless you take it on yourself, we will continue to see plenty of ISM compliance documents on non-compliant ships," Mr. Salvarani told underwriters. Underwriters, either by coordinated or individual action, should refuse to insure ships that are not ISM-compliant, he said.

A representative of shipowners, Chris Horrocks, general secretary of the London-based International Chamber of Shipping, acknowledged that such concerns are perfectly legitimate. He said there have already been a small number of cases in which the condition of a ship or the crew's lack of understanding indicated that ISM Code certificates had been issued "on rather flimsy evidence." But such practices should not be viewed as a significant development; the main point is that there will be a gradual but steady improvement in ship safety, Mr. Horrocks said.

Efthimios Mitropoulos, the IMO's director of maritime safety, emphasized the benefits to marine underwriters of the ISM Code. He cited figures from the Norwegian ship classification society, Det Norske Veritas, that show that the introduction of a safety management system, as required by the code, can cause personal injury payouts to ship crews to fall by up to 70%. DNV figures also show that savings on repair bills and on the number of days a ship is in dry dock for repairs can amount to 5% to 10% of total company costs. The bulk of these savings would most likely accrue to the marine underwriters who foot the repair bills.

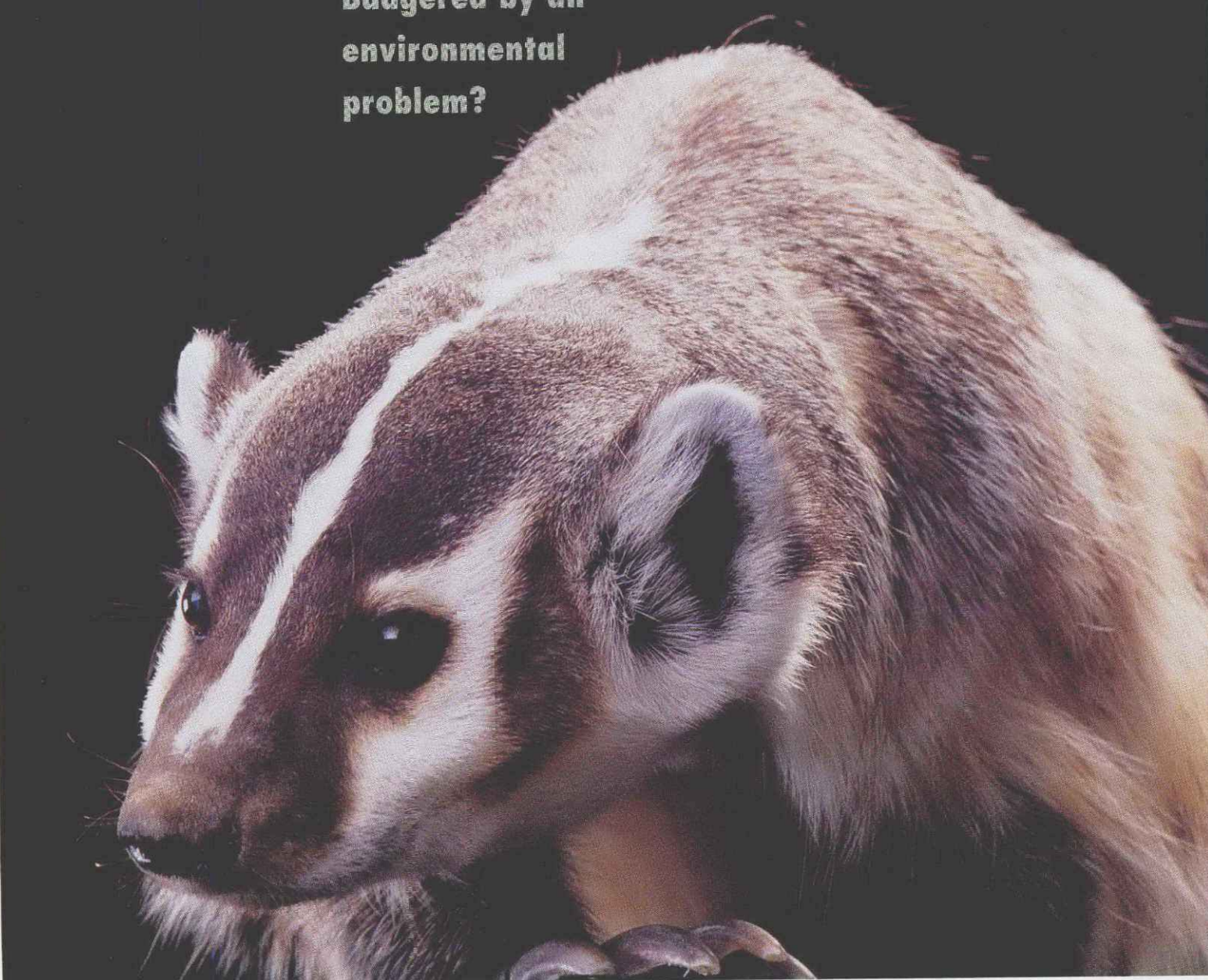
Nigel Carden, chairman of the ships' standards subcommittee of the International Group of P&I Clubs, the mutuals that provide shipowners liability insurance, said these clubs had decided at an early stage not to insure ships that were not ISM-compliant. Now P&I clubs belonging to the International Group are refusing to allow ships without ISM certificates to join. **BI**

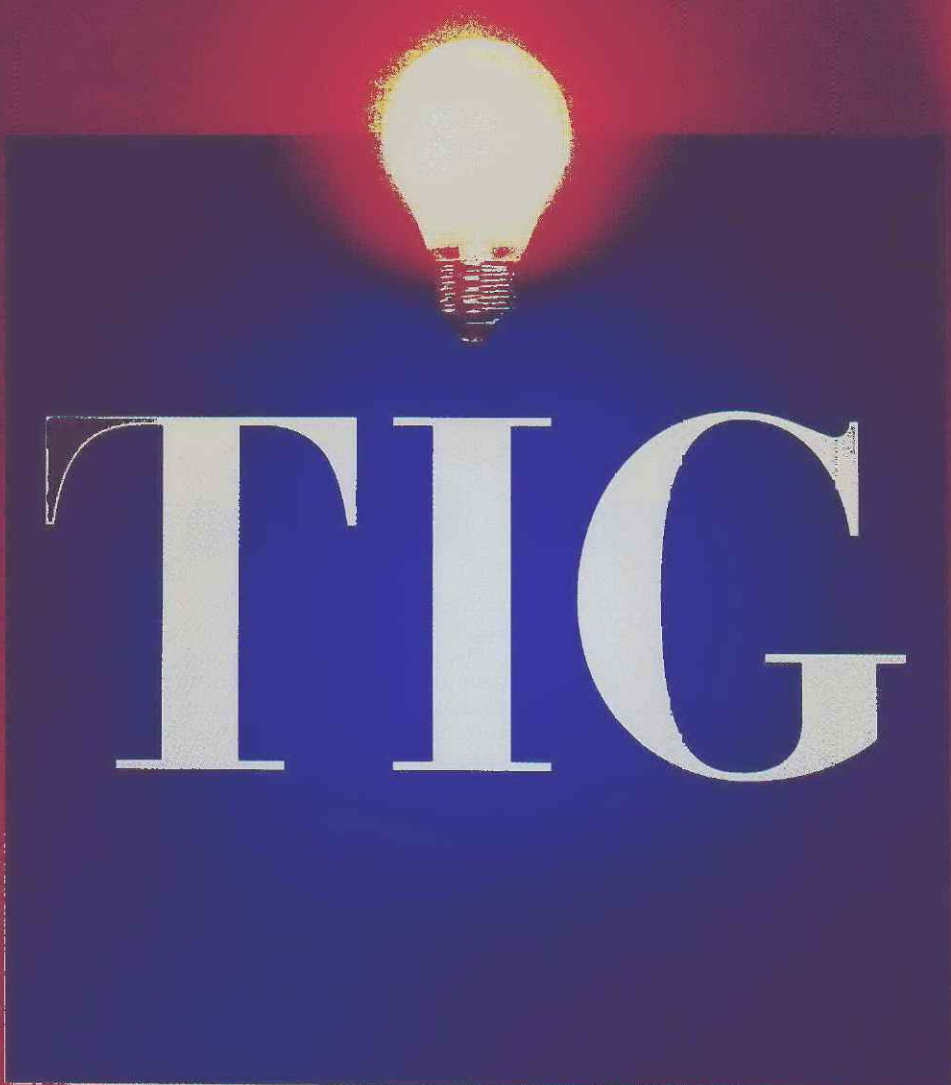
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# Insurers should clarify buyers' Y2K coverage: Broker

By EDWIN UNSWORTH

Commercial insurance buyers with marine exposures want their insurers to clearly state how—or if—they will cover risks related to the Year 2000 computer problem, a broker says.

"I haven't seen, at least in Germany, any clear statement from the insurance industry," said Ralf Geck, managing director-risk services at Aon Jauch & Huebener in Mulheim, Germany, during a forum on Year 2000 exposures at this year's International Union of Marine Insurers' conference in Lisbon, Portugal.

In a recent survey of its customers, Aon Jauch & Huebener found buyers are becoming increasingly anxious for insurers to clarify their coverage position because this year's renewals will produce policies and rates effective for the period which includes Jan. 1, 2000.

Mr. Geck accused the insurance industry of having "a tremendous communications problem with their customers" on this issue.

Instead of clear statements from insurers on coverage under existing policies, policyholders instead are receiving

brochures describing the range of problems that might emerge when computers that read only the last two digits of the year are thrown into confusion by the year 2000, Mr. Geck said.

Policyholders also complain that they are inundated with questionnaires from insurers asking how they are preparing for the Y2K problem, but rarely receive any feedback about how this information will be used by insurers.

What Aon Jauch & Huebener's survey also found is that policyholders believe governments should be more involved in solving Year 2000 prob-

lems. Among their suggestions was the creation of national databases on the Internet to share information on solutions, and the creation of catastrophic insurance pools to provide financial assistance in case Year 2000 losses reach disastrous proportions.

A rebuttal from the insurance industry was provided by a member of the audience who expressed frustration with getting his message across to insureds.

"We're not having problems with customers. We're having problems getting through the only two brokers on the planet. When are you guys going to get off our backs on this one and put some of the responsibility on the cus-

tomers?" Jerry Giroux, president of Eastern Marine Underwriters of Toronto, asked Mr. Geck. The comment received a hearty round of applause.

Providing the policyholder's view, Declan Connolly, managing director of DFDS Transport Ltd. of Harwich, England, said his company has taken the Year 2000 threat very seriously and expects all of its systems to be fully compliant by the end of October.

As a result, DFDS expects "where it has been clearly demonstrated that all reasonable efforts have been made to identify and resolve Year 2000 issues, that full insurance cover will be given for all loss or damages," he said. **BI**

# Y2K can mean more premiums: Attorney

By EDWIN UNSWORTH

Underwriters should view the Year 2000 problem as an opportunity to cover some of the risks the problem presents for additional premiums, an attorney says.

Underwriters should now be devising a plan for Year 2000 risks and "writing back" into their policies some of those risks, according to Michael Furman, a London-based partner in the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker.

"An army of plaintiffs' lawyers is now armed and ready" to do battle over Year 2000-related claims, Mr. Furman said during a forum on the Millennium Bug at the International Union of Marine Insurers' conference in Lisbon, Portugal.

Arguments by insurers over such issues as whether or not Year 2000 losses are fortuitous or whether or not computerized data is a tangible asset mean that coverage litigation over the matter could reach the magnitude of asbestos and pollution disputes, Mr. Furman warned.

Several marine insurance groups are already working on Year 2000-related policy wordings. In addition, some are offering to write back some coverage into policies after certain exclusions are included and the applicant has demonstrated that it is Year 2000 compliant.

London market energy insurers are soon likely to issue a combined model Year 2000 exclusion and write-back clause.

Len Messenger, chairman of both the London market's joint committee and IUMI's energy and offshore committee, said a dedicated working party has been considering the clause for some time. It would offer London underwriters a choice of an absolute exclusion; an exclusion of any computer system-related remedial or modification costs; or a write-back facility based on listed perils, such as fire, explosion or impact with another vessel.

Mr. Messenger, an energy underwriter with Zurich Reinsurance (London) Ltd., said it would be up to individual energy underwriters to decide which, if any, of the Year

2000 clauses they choose to use. However, he said, given that the date change is a certainty and not a fortuitous event, he doesn't believe any underwriter will insure direct losses from Year 2000 computer problems.

But French marine insurers issued a statement at the conference claiming their recently published Year 2000 clause would offer policyholders coverage against risks associated with the date change.

The Assn. Francaise des Societes d'Assurances Transports said the clause covers the consequences of fortuitous failure or malfunction of electronic systems, programs and embedded systems arising from an electronic change of date. It is incorporated under all risks in the "French Marine Hull Insurance Policy for all Vessels."

A client seeking to have the clause inserted in its coverage first will have to complete a questionnaire on the remedial measures it has taken to be Year 2000-compliant. Thereafter, if the client makes a claim, the onus would be on the insurer to

prove that the client did not take appropriate preventive measures.

Meanwhile, protection and indemnity clubs have no plans to introduce a Year 2000 exclusion, according to Nigel Carden, chairman of the ships' standards subcommittee of the International Group of P&I Clubs. But Mr. Carden said that P&I Clubs will expect their members to act as "prudent insureds" and to do all they can to be Year 2000-compliant. P&I clubs would reduce claims payments where they thought policyholders had not acted prudently to avoid losses, he said.

David Taylor, governmental affairs adviser to the Institute of London Underwriters, outlined Year 2000 practices being implemented by the London marine market. The Joint Hull Committee of the ILU and Lloyd's of London has proposed an exclusion to be used at underwriters' discretion providing coverage on a named-peril basis, though not for a complete computer system damaged by the Year 2000 problem. In August, the ILU/Lloyd's Joint Cargo Committee issued a cargo policy with a named-peril exclusion. **BI**



## IUMI draws 530 delegates

The setting may have been Lisbon, Portugal—also host of Expo 98, whose theme is the sea—but this year's International Union of Marine Insurance conference did not draw the same number of attendees as last year's event in Paris.

Some 530 delegates from 45 national member associations attended this year's event from Sept. 12-17, compared with 650 from 48 associations who were present in Paris.

Georg Mehl, chief executive of Wurttembergische A.G. Versicherungs-Beteiligungs-gesellschaft of Stuttgart, Germany, was re-elected IUMI chairman for another year. Richard DeSimone, senior vp-marine of Atlantic Mutual Cos. of Madison, N.J., and chairman of the American Institute of Marine Underwriters, was re-elected vice-chairman. Nigel Jenkins, managing director of London-based Maritime Insurance, also

was elected a vice chairman of IUMI.

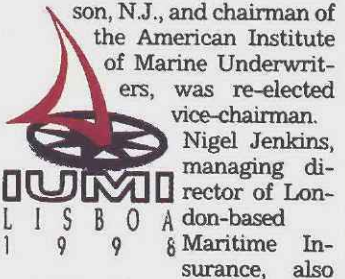
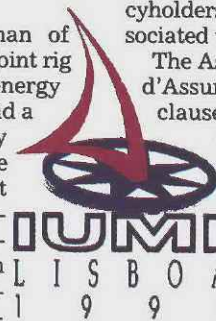
Deirdre Littlefield, senior vp and special lines director of New York-based Swiss Reinsurance America Corp., was elected chairman of the Cargo Loss Prevention Committee.

Next year's conference, which marks IUMI's 125th anniversary, will be held in Berlin, Germany, from Sept. 12-16, 1999. Berlin last hosted the annual event on IUMI's 100th anniversary in 1974.

Provisional programs and registration forms for the 1999 conference will be distributed by national marine insurance associations early next year.

For more information about next year's meeting, contact the German Insurance Assn.: Gesamtverband der Deutschen Versicherungswirtschaft e.V., Friedrichstrasse 191, D-10117 Berlin, Germany; 49-302-020-5365; fax: 49-302-020-6618; e-mail: iumi.1999berlin@ber.gdv.org.

—By Edwin Unsworth



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## Safety

Continued from page 3

harbor tugs that provide services to Exxon and other companies.

Mr. Elmer noted that the ABS inspections are carried out every three years.

"Trust me," he said, "they're not free." He added that insurers could help mitigate the high inspection costs by lowering premiums for policyholders that submit to the inspections.

There's a payoff for these kinds of efforts, Mr. Elmer told his audience. "Does risk management pay? You bet it does. And it pays for all parties involved."

Exxon has some experience with the costs related to maritime accidents. It formed SeaRiver as part of a 1993 reorganization as the successor to Exxon Shipping Co., the Exxon unit that owned the Valdez when it spilled 11 million gallons of crude oil off Alaska.

"The tragic and regrettable spill of 1989 was inconsistent" with an excellent safety record established by Exxon Shipping, Mr. Elmer remarked. "Nevertheless, the severity of the event was such that an intense self-examination was undertaken."

**'SeaRiver expects to, and does, incur costs in order to achieve best-of-industry safety performance,' says A. 'Gus' Elmer.**

The result of that effort has been a "companywide approach to risk management and safety which we believe has produced unequaled safety performance" by a U.S. company, Mr. Elmer stated.

He said the company's commitment to safety isn't cheap. "SeaRiver expects to, and does, incur costs in order to achieve best-of-industry safety performance."

But, Mr. Elmer added, "we also believe that there are offsetting cost benefits that accrue to us because of our safety record," which helps SeaRiver remain competitive in its market. "We believe safety is not a net cost but a competitive advantage. For SeaRiver, safety is the wellspring for all company performance."

Mr. Elmer pointed to several ways that SeaRiver's attention to safety and maintenance has paid off for the company. They include:

- No spills this year. "We have not spilled one ounce of cargo" in 1998, Mr. Elmer said.
- Equipment is in its best-ever operating condition.
- Morale is high among personnel. Mr. Elmer said the company enjoys excellent relations with union and non-union seafarers.
- Overhead costs are down 33% over the past five years.
- The number of accidents and claims handled by the medical and law departments at SeaRiver has dropped dramatically.
- The number of satisfied customers who provide SeaRiver with repeat business has risen.

Mr. Elmer noted that SeaRiver's clients are not charged to finance SeaRiver's safety effort. "The fact of the matter is that you have to accept the industry market rate for hire to get the business. Yes, some key customers will and do evaluate the bids for their busi-

ness considering not only the rate you might offer but also your quality as a transportation company.

"But in most cases, what gets you the business the second and subsequent times around is your performance the first time you were the successful bidder. If you delivered on time, had no contamination, your equipment performed well, your crews looked and acted professional and your charter hire was competitive," the likelihood of repeat business is increased, he said. **BI**

## 'Time is getting short' for Y2K fixes

Number of embedded chips on ships adds to risk, speaker says

By MICHAEL BRADFORD

**M**arine companies starting late in exterminating the Millennium Bug better have contingency plans to deal with problems likely to occur.

Ships are particularly vulnerable because of the number of embedded chips that control so many functions, said Mark Holford, a director at Thomas Miller Risk Management (UK) London Ltd.

"One thing is certain: Nobody

will get it all right," he said of the attempt to find Year 2000 computer glitches. "It's impossible to find all Y2K problems. Indeed, some of them are impossible to get at."

Speaking at the Houston Marine Insurance Seminar last  
See Y2K risk on next page



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#### WHO SHOULD ATTEND

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

#### PROGRAM AGENDA

##### MONDAY, OCTOBER 26

**9:30 AM**  
**GOLF TOURNAMENT**  
Hosted by: Deloitte & Touche LLP and SAC<sup>3</sup>

**3:00 PM**  
**EARLY REGISTRATION**

**4:00 PM**  
**EMPLOYER'S PRIVATE ROUNDTABLE**  
Moderator:  
**Kathryn J. McIntyre**  
Vice President, Publisher and Editorial Director  
Business Insurance

**5:30 PM**  
**WELCOME RECEPTION**  
Hosted by: Integra Group

##### TUESDAY, OCTOBER 27

**7:45 AM**  
**REGISTRATION AND CONTINENTAL BREAKFAST**  
Hosted by: Bayne Consulting Group, Ltd.

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

**9:05 AM**  
**KEYNOTE**  
**Bruce G. Sundquist**  
Vice President  
American Re-Insurance Company

**CHALLENGING TRADITIONAL WORKERS COMPENSATION PARADIGMS**

**9:45 AM**  
**THE NEW WORLD OF WORKERS COMPENSATION**

Moderator:  
**Maddy E. Bowling**  
Independent Consultant

**William Granahan**  
Senior Consultant  
Milliman & Robertson Inc.

**Barry E. Thompson**  
National Practice Co-Leader  
Workers Compensation and  
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President  
Missouri AFL-CIO

**Greg Owen**  
Manager, Claims Administration  
Risk Management  
Harrah's Entertainment Inc.

**Scott Lund**  
Vice President, Marketing  
SAC<sup>3</sup>

**10:30 AM**  
**TABLE-TOP EXHIBITS REFRESHMENTS**  
Hosted by: Paradigm Health Corporation

**11:00 AM**  
**THE DECISION WHETHER TO IMPLEMENT AN INTEGRATED DISABILITY MANAGEMENT PROGRAM**

Moderator:  
**Terry R. Bolz**  
Vice President, Casualty Managed Care  
Wausau Insurance Companies

**Tom Parry**  
President  
Integrated Benefits Institute

**Victor Paganucci**  
Director, Integrated Disability Systems  
Champion International Corp.

**Joanne L. Pomerleau, B.S., RN**  
Workers Compensation Coordinator  
Maine Employee Health and Benefits

**Arthur Wilcox**  
Director, Public Employee Division  
New York State AFL-CIO

**12:00 PM**  
**MEETING THE CHALLENGES CREATED BY THE AMERICANS WITH DISABILITIES ACT AND FAMILY MEDICAL LEAVE ACT**

Moderator:  
**Betsy Robinson**  
Vice President  
Product Development and Management  
GENEX Services Inc.

**Robert B. Steggert**  
Vice President, Casualty Claims  
Marriott Corporation

**Ken Mitchell**  
Vice President, Return-to-Work Programs  
Provident Insurance Company

**Marylou Kinlen**  
Manager of Disability Plans  
Norwest Bank Corp.

**Sharon Kaleta**  
Director of Risk and Benefits  
Paragon Steak House Restaurants Inc.

**12:45 PM**  
**LUNCHEON**  
Hosted by: Intracorp

**1:45 PM**  
**LUNCHEON SPEAKER**  
**Susan K. Moreland**  
Director of Risk Management  
San Francisco Newspaper Agency

**A CASE STUDY ON REDUCING WORKERS COMPENSATION LIABILITIES**

**2:15 PM**  
**BREAK**

**2:30 PM  
CONCURRENT SESSIONS: A OR B**

**Session A:  
ALTERNATIVE DISPUTE  
RESOLUTION**

**Moderator:**  
**Duncan Ballantyne**  
Senior Analyst  
Workers Compensation Research Institute

**Ed Zutler**  
Vice President, Integrated Benefits  
AIG

**Pat McGinn**  
Senior Business Representative  
Regional Council of Carpenters

**Mike Massey**  
Assistant Executive Director  
Piping Industry Progress and  
Education Trust Fund

**Session B:  
ARE YOU USING THE RIGHT  
REPORT CARD?**

**Moderator:**  
**Peter F. Rousmaniere**  
President  
Rousmaniere Designs

**Nicholas J. Lannutti**  
Senior Vice President, Corporate Actuary  
National Council on Compensation  
Insurance Inc.

**Alex Swedlow**  
Research Consultant  
California Workers Compensation Institute

**Eloise Lincicum**  
International Workers Compensation/  
Employers' Liability Manager  
Apple Computer Inc.

**Fred Scardelletta**  
Vice President, Information Management Services  
Intracorp

**3:30 PM  
TABLE-TOP EXHIBITS  
REFRESHMENTS**  
Hosted by: Wausau Insurance Companies

**4:00 PM  
CONCURRENT SESSIONS: C OR D**

**Session C:  
FUNDING MECHANISMS**

**Moderator:**  
**Jeffrey W. Pettegrew**  
Vice President  
Insurance and Risk Management  
Western Staff Services

**Robert B. Hill**  
President  
Professional Underwriters

**Darin R. Haines**  
Manager, COSE Workers Compensation Program  
Greater Cleveland Growth Association

**John R. Keenan**  
Chief Executive Officer  
Keenan & Associates

**Session D:  
EVALUATING ERGONOMICS  
PROGRAMS**

**Moderator:**  
**Alexandra R. Charish**  
President  
Charish Ergonomics Inc.

**Soha Sadek, Ph.D.**  
Ergonomist Consultant  
Applied Risk Management Inc.

**Sam Fulginiti**  
Risk Manager  
Godiva Chocolatier

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

**WEDNESDAY, OCTOBER 28**

**7:45 AM  
CONTINENTAL BREAKFAST**  
Hosted by: TravelersPropertyCasualty/  
Constitution State Services

**9:00 AM  
KEYS TO RESPONSIVE  
RETURN-TO-WORK PROGRAMS**

**Moderator:**  
**Dr. Thorv Hesselund**  
Director of Vocational Programs  
Paradigm Health Corporation

**Jean M. Long, RN, COHN, CCM**  
Manager, Loss Control  
Fireman's Fund Insurance Company

**Clifton Matsuno**  
Administrator for Rehabilitation Services  
Protect Physical Therapy

**Marshall Sherman**  
Director, Risk Management  
Aramark Corporation

**Soraya M. Wright**  
Corporate Risk Manager  
The Clorox Company

**John J. Larkin Jr., M.D.**  
Vice President, Clinical Affairs  
Integra Group

**10:00 AM  
TABLE-TOP EXHIBITS  
REFRESHMENTS**  
Hosted by:  
Specialty Risk Services/The Hartford

**10:30 AM  
DOING WHAT'S BEST FOR THE  
WORKER: CAUGHT BETWEEN THE  
EMPLOYER, THE TPA, INSURANCE  
COMPANY AND THE OCCUPATIONAL  
HEALTH PROVIDER**

**Moderator:**  
**Stephen M. Holcomb**  
Senior Vice President  
Specialty Risk Services/The Hartford

**Panelists:**  
**Leo Costantino**  
Workers Compensation Manager  
UCLA

**Jerry L. Thomas**  
Managing Director, Workers Compensation  
American Airlines/AMR Corp.

**Maria Bayne**  
President  
Bayne Consulting Group Ltd.

**11:30 AM  
WORKERS COMPENSATION  
INSURANCE FRAUD: SPECIFIC  
STEPS AND SOLUTIONS TO  
COMBATING FRAUD**

**Moderator:**  
**Dominic Dugo**  
San Diego County District Attorney

**William Kizorek**  
President  
InPhoto Surveillance

**Jeff Nale, Esq.**  
Bello, Tade & Nale

**Kevin Saucier, R.S.A., REA**  
Director of Environmental, Health and Safety  
Guess? Inc.

**12:30 PM  
LUNCHEON**  
Hosted by: AIG American Home Assurance/  
Specialty Workers Compensation

**1:30 PM  
LUNCHEON SPEAKER**  
**Jerry L. Thomas**  
Managing Director, Workers Compensation  
American Airlines/AMR Corp.

**THE AMERICAN AIRLINES  
SUCCESS STORY; BEST PRACTICES  
AND LESSONS LEARNED**

**2:00 PM  
BREAK**

**2:15 PM  
LOW BACK TREATMENT GUIDELINES**

**Moderator:**  
**Edward C. Woodward**  
President  
California Workers Compensation Institute

**Nancy Geedey, RNC, CCM**  
Director, Case Management  
Managed Care USA Services

**Michael D. Roback, M.D.**  
Diplomate, American Board of  
Orthopaedic Surgery  
Industrial Medical Council of California

**3:15 PM  
CONFERENCE ADJOURNS**

**COMMENTS FROM SOME OF LAST YEAR'S ATTENDEES:**

*"The whole conference was a great opportunity to listen to very good presentations."*  
Al J. Rhodes • President • SIGMA

*"Well worth the investment. I came away from the forum with ideas I was able to implement and it allowed me to hear the experiences of others. Great networking."*  
Leo Costantino • Workers Compensation Manager • UCLA

*"Everything you included on the agenda was interesting and informative."*  
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# Court

Continued from page 2

Mr. Sloan spoke during a Supreme Court preview at the National Chamber Litigation Center last week. The NCLC handles litigation for the U.S. Chamber of Commerce.

In addition to the approximately 20 business-related cases it has agreed to review, the high court also will no doubt agree to review additional cases that deal with critical risk management and benefits issues later in the term. One of the most important cases of the past term, for example—*Beth Ann Faragher vs. the City of Boca Raton, Fla.*—wasn't accepted by the high court until last November (BI Nov. 24, 1997). Justices later used that case to spell out the liability of employers for the sexually harassing actions of supervisors (BI, June 29).

One of the most closely watched cases now before the court—*Kuhmo Tires vs. Carmichael*—takes

up a question tackled by the high court in its 1993 decision in *Daubert vs. Merrell Dow Pharmaceuticals*.

*Daubert* set standards for the admission of expert scientific testimony, and basically directed district court judges to act as "gatekeepers" who would determine whether testimony met the standards.

The question presented by the *Kuhmo* case is whether those standards also should apply to testimony that is non-scientific but technical. The 11th U.S. Circuit Court of Appeals held that the *Daubert* standards did not apply to a mechanical engineering expert's testimony in a product liability case brought against a tire maker because the testimony was technical rather than scientific.

Two insurer trade groups filed a brief supporting the use of *Daubert* standards to technical issues with the high court in late August (BI, Sept. 14). Insurers hold that making broader application of those standards would

have implications for liability associated with Year 2000 computer litigation cases as well as product liability cases.

A legal expert speaking at a Supreme Court preview sponsored by the Washington Legal Foundation earlier this month hinted that the court might grant the insurers their wish. The high

Rule 23 of the Federal Rules of Civil Procedure did not allow the certification of a class for purposes of a global settlement of asbestos-related claims (BI, June 30, 1997). But the 5th U.S. Circuit Court of Appeals held in *Ortiz* that a federal court could certify a somewhat similar asbestos-related class action despite an absence

to regulate the business of insurance. In *Humana Inc. vs. Forsyth*, the 9th U.S. Circuit Court of Appeals Racketeer Influenced and Corrupt Organizations Act in a Nevada dispute over managed care copayments did not interfere with the state's ability to regulate insurance. A U.S. district court judge had earlier ruled that McCarran-Ferguson trumped RICO in the case.

Mr. Sloan said that the Supreme Court's decision in *Humana* could have a "very major impact on the insurance industry" because it could affect how the McCarran-Ferguson Act would apply to other federal statutes.

The employee benefits-related case before the high court that stirs the most interest among employers involves how surplus assets in a contributory defined benefit pension plan are treated when an employer converts the plan into a non-contributory plan. In *Hughes Aircraft Co. vs. Stanley I. Jacobson et al.*, a group of Hughes retirees claimed that by amending the contributory plan, Hughes actually terminated it. The 9th U.S. Circuit Court of Appeals said that the retirees could pursue a suit under the Employee Retirement Income Security Act to lay claim to at least some of the plan's surplus, which would be their right in a plan termination (BI, May 4).

In *Wright vs. Universal Maritime Services Corp. et al.*, which the court agreed to review, the justices have a chance to determine whether employers can be required to go through binding arbitration of statutory discrimination claims—in this case, a claim that was made under the Americans with Disabilities Act—under a collective bargaining agreement.

The NCLC has also asked the justices to review *Duffield vs. Robertson Stephens & Co.* to determine whether employers can force employees to waive their rights for a judicial hearing for claims brought under Title VII of the Civil Rights Act by requiring agreements to arbitrate as a condition of employment. The high court has not yet decided whether to hear that case.

In addition, the justices will review a case of interest to the aviation industry in *El Al Israel Airlines vs. Tseng*. The case involves whether a passenger may sue an airline under a domestic law for an alleged injury that is within the scope of the Warsaw Convention—which governs the liability of international carriers—but for which the convention does not allow recovery. BI

## The high court 'will probably be reluctant' to draw distinctions about the standards governing different types of expert testimony, says David G. Leitch.

court "will probably be reluctant" to draw distinctions about the standards governing different types of expert testimony, said David G. Leitch, a partner in the law firm Hogan & Hartson L.L.P. in Washington.

The Washington Legal Foundation—a pro-free market non-profit legal and policy center—filed its own brief in the case, also urging the justices to apply the *Daubert* standards broadly. "An unchecked expert can be a dangerous roadblock to the jury's search for the truth," said the WLF in its brief.

Another issue of considerable interest to employers—mass torts—will be dealt with by the high court as it reviews *Ortiz vs. Fibreboard Corp.* That case revolves around determining who can belong to a class for purposes of settling a mass tort. The court ruled last year in *Amchem Products et al. vs. Windsor et al.* that

of what would typically constitute commonality.

Mr. Leitch said that if the high court reverses the 5th Circuit's decision in *Ortiz*, the decision would "obviously be a kind of impediment to global settlements" and could lead to legislation to deal with the issue.

"Whatever the court decides in this case, it probably won't be the last word," said Mark Levy, a partner in the Washington law firm Howrey & Simon who also spoke at the NCLC preview.

The justices could also weigh in on the different aspect of class actions if they agree to review *State Farm Mutual Automobile Insurance Co. vs. the Honorable John Speroni, Tammy Snider and Michael Avery*. This Illinois case revolves around a provision in most State Farm auto insurance policies that the insurer can require the use of so-called "non-OEM parts"—or parts not made by the car's original manufacturer—when adjusting claims for damage to insured vehicles. Two Illinois citizens sued in state court, alleging the provision violates state anti-fraud law, and sought to maintain the suit as a class action on behalf of 5 million State Farm policyholders who had received non-OEM parts, even though the majority of those policyholders aren't covered by Illinois law.

An Illinois state judge, however, agreed to apply the state law to the entire class. The WLF has filed an amicus brief with the Supreme Court asking it to review the case that, among others, the ground that courts should never certify a class so large that notice could not be provided to all members.

The last property/casualty related case concerns the scope of the McCarran-Ferguson Act, which grants states rather than the federal government the right

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## Directory deadlines near

Deadlines are approaching for two features in *Business Insurance*.

The Oct. 26 issue will contain an Information Resource section on workers compensation.

This section lists current educational and informational materials available free to readers.

In the Nov. 9 issue, *Business Insurance* will publish its annual Directory of Reinsurance Intermediaries. This issue also will contain a Spotlight report on reinsurance market trends.

The directory and the Information Resource section are published as an editorial service, and there is no charge to be included in either.

To be included in the Directory of Reinsurance Intermediaries, a company must generate at least \$500,000 in revenues from reinsurance brokerage.

If you would like to be listed in the directory or wish to submit materials for the Information Resource section, please call Assistant Directory Editor Matt Scroggins at 312-649-5483 and request the appropriate questionnaire.

Completed questionnaires must be submitted by the extended deadline of Oct. 2.

# INTERNATIONAL

## Global Briefs

Following an extensive review of operations arising from its planned management buyout, **Zurich Re (London) Ltd.** will cease underwriting aviation business beginning Oct. 1. Zurich Re is in talks to transfer all current aviation business to the British Aviation Insurance Co. Ltd., a company managed by **British Aviation Insurance Group Ltd.** of London. Runoff contracts for the years up to and including 1995 will continue to be handled by Zurich Re (London). All subsequent years will be handled by BAIG. Zurich Re (London) says the management buyout of all non-aviation-related business from Swiss parent Zurich Group is "imminent." The management buyout is being led by Dennis Purkiss, Zurich Re (London) chief executive officer, and backed by venture capital group Candover Investments (BI, Aug. 10). . . Sydney, Australia-based **HIH Winterthur International Holdings Ltd.** has issued a takeover bid for fellow Sydney-based general insurer **FAI Insurances Ltd.** HIH, whose main operating subsidiaries are HIH Casualty & General Insurance Ltd. and CIC Insurance Ltd., yesterday announced it had acquired a 14.3% stake in FAI and plans to make a takeover offer for the remaining shares. Formal takeover documents have not yet been distributed. The move follows AMP Ltd.'s bid last month for GIO Australia Holdings Ltd., which GIO's board rejected (BI, Aug. 31). Either takeover, if successful, would create Australia's largest general insurance group. . . **The Institute of London Underwriters** is to levy its members to resolve outstanding property liabilities that have delayed its merger with the London International Insurance & Reinsurance Market Assn. The merger was delayed in June so the ILU could clear up lease payments surrounding its building in London's Leadenhall Street (BI, June 29). The ILU says the levy will secure the financial future of the ILU building and recommends the two associations reconvene their meetings to vote on the merger, which is still expected to be completed by Jan. 1. . . Germany's **Munich Re Group**, the world's largest reinsurer, has for the first time revealed its valuation, or "hidden," reserves. Valuation reserves, the amount by which the market value exceeds the book value of a company's investments, are a key indicator of financial strength. The reinsurer's board last week announced that, as of June 30, the company's investments, with a book value of 200 billion deutsche marks (\$119.16 billion), had valuation reserves of 82 billion deutsche marks (\$48.86 billion). By mid-September, due to international stock market turbulence, the valuation reserves had fallen to 74 billion deutsche marks (\$44.09 billion). Munich Re claims it will "derive significant competitive advantage from this outstanding financial strength" as primary insurers are placing increasing importance on reinsurers' security. . . French reinsurer **SCOR S.A.** of Paris has announced plans to buy back 5% of its equity base from shareholders within the next six months. SCOR received shareholder approval in May to purchase up to 10% of the publicly held company's shares. SCOR says the repurchased shares either will be canceled to increase earnings per share for all shareholders or invested in a stock option plan. Depending on market conditions and investment opportunities, SCOR may buy back more shares in the future. . . Standard & Poor's Corp. has upgraded the insurer financial strength rating of German reinsurer **Gothaer Ruckversicherung A.G.** of Cologne to BBB+ from BBB-. S&P says the improved rating follows Cologne Reinsurance Co.'s 85 million deutsche mark (\$50.64 million) purchase of a 27% stake in Gothaer Re in July. S&P expects Gothaer Re's stronger capital base and access to Cologne Re's technical expertise will allow the company to write larger and more complex risks.

# Floods bring reform moves

## Belgian government proposes mandatory natural disaster coverage

By **MATTHEW MacDERMOTT**

BRUSSELS, Belgium—Extensive flooding in Belgium this month, which left significant uninsured personal and business losses, has accelerated moves for a compulsory natural disaster insurance system.

The Belgian government is proposing a system that would require, at a 10% additional premium, flood and earthquake coverage in all underlying commercial property and homeowners policies.

Insurance for flood damage is not widely offered or purchased in Belgium. The few Belgian insurers that do provide flood coverage offer it separately from standard property policies. Therefore, flood insurance typically is considered only by those most at risk, and premiums and deductibles are very high.

"It has been impossible for insurers to offer (flood insurance) on any

great scale, as the premium is unbearable," explained Francois de Clippele, a spokesman for Belgium's Centre d'Information de l'Assurance, the country's insurer trade association based in Brussels.

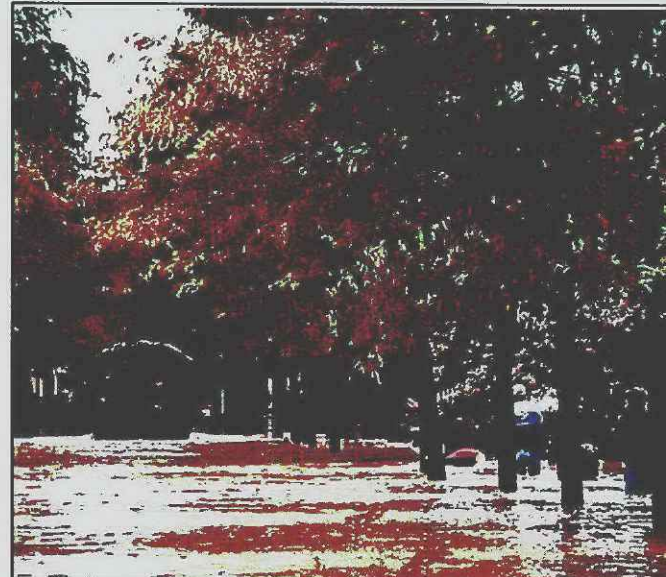
Mr. de Clippele said the new system has the strong backing of the Belgian insurance industry and insurance buyers, who think the mandate will bring more competition to the flood insurance market and give them more choices.

"It will be a very complete coverage and will improve service to policyholders," he said.

The Belgian government has announced it will propose the system to Parliament in the coming weeks. Mr. de Clippele said the proposal must then be debated by Parliament and translated into law, but he is confident a new system will take effect no later than June 1999.

Belgium's personal and small to

See Belgium on next page



Officers of Belgian special police units help to evacuate residents after heavy rains caused severe flooding.

# New Malta laws may draw captives

By **SARAH GODDARD**

VALLETTA, Malta—Legislation to take effect beginning next month may make Malta a serious competitor as a captive domicile.

At the same time, the Mediterranean island has resumed its application to become a member of the European Union. Full membership would give it cross-border insurance trading capabilities with other E.U. countries.

Malta's Parliament this summer approved two bills, the Insurance Business Act 1998 and the Insurance Brokers and Other Intermediaries Act 1998. They will become law Oct. 1, replacing the Insurance Business Act 1981.

The insurance-related acts are the final pieces of financial services legislation designed to increase Malta's attraction as an offshore financial service center. Like the other finance-related acts enacted in 1994 and 1995, the two latest pieces of legislation aim to bring Malta's legislative environ-

ment in line with other European countries.

The Insurance Business Act 1998 "upgrades insurance legislation to international standards based on E.U. directives," explained John Bonett, director of insurance at the Malta Financial Services Centre, a government agency supervising financial services in Malta.

Previous legislation had discriminated between onshore and offshore insurance business as far as regulation was concerned, he commented, and the new act will bring all regulation under the same umbrella.

In particular, the new act allows the registration of "affiliated insurance companies," such as captives. Such companies must have minimum capitalizations of 100,000 Maltese liras (\$264,900) and must maintain solvency margins at levels required by E.U. directives. Currently, this equates to 18% of annual premiums or 26% of average claims over the previous

See Malta on page 25

# 'Co-insureds' not seen at risk of subrogation

By **KATE TILLEY**

PERTH, Australia—Entities named as additional insureds on Australian policies face little risk of successful subrogation by insurers after a loss, Australian legal experts say.

Australian courts generally have rejected insurers' attempts to recover from additional named insureds that may have contributed to a loss, according to speakers at the Australian Insurance Law Assn.'s annual conference in Perth, Western Australia, Sept. 2-4.

In a session on insurers'

rights to recover on behalf of policyholders, Perth barrister Geoffrey Hancy said Australian courts tend to prevent insurers from exercising subrogation rights against "co-insureds" because subrogation actions increase litigation and because insurers, by accepting premiums, assume the risk of loss.

Mr. Hancy said he discourages insurers from subrogation actions against co-insureds because failure is "almost guaranteed." While the courts' reasons for rejecting such subrogation actions vary and there is therefore

See Recover on next page



# Stolen art likely self-insured

By **MATTHEW MacDERMOTT**

NICE, France—A spate of fine art losses in Europe is continuing this year with the recent armed robbery of two Impressionist paintings in the south of France.

As with earlier European art thefts this year, the latest stolen pieces are not believed to be insured in the commercial insurance market, according to James Emson, managing director of the London-based Art Loss Register.

The ALR is an international database of stolen artworks backed by Aon Corp. and several fine arts underwriters and auction houses.

Mr. Emson said the ALR has entered the two stolen paint-

ings—Claude Monet's "Cliffs at Dieppe" and Alfred Sisley's "Poplars Lane"—into its database but has not been notified of any insurance arrangements covering the works.

He said he believes commercial insurance coverage is unlikely as the paintings were owned and displayed in government-run museums. Most government museums in Europe self-insure their art collections rather than purchase commercial insurance.

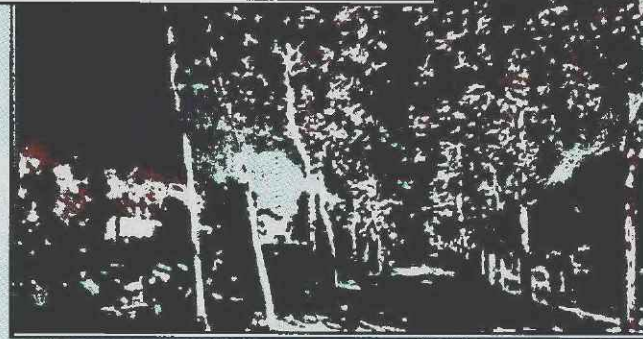
The Monet and Sisley paintings may have been on loan from the

See Art on page 25



Monet's "Cliffs at Dieppe" (left) and Sisley's "Poplars Lane" (below) were stolen from the Musee des Beaux Arts in Nice, France, last Monday.

PHOTOS: AFP



# Belgium

*Continued from previous page*  
 midsize business insurance buyers are expected to be most affected by the change. However, the less expensive for large Belgian commercial businesses to arrange flood coverage, according to Christine Hariga, insurance manager for Belgian national supermarket chain Delhaize "Le Lion" Group, based in Brussels.  
 Ms. Hariga said many large Belgian corporate buyers, with multiple and complicate portfolios, have been able to negotiate flood extensions into their multiline policies. "Le Lion" Group has negotiated

## The areas hit worst were the Belgian provinces of Eastern Flanders, Antwerp, Limburg and Liege.

flood extensions, mainly due to its dedicated risk management and prevention programs for flood risks, according to Ms. Hariga. She would not, however, disclose the supermarket chain's insurer or the policy details.  
 Ms. Hariga expects the compulsory inclusion of flood insurance in property policies to make such coverage more accessible to Belgium businesses. She said the subsequent competition among insurers also should reduce prices and give risk managers more options.

Mr. de Clippele described the new system as a "solidarity" approach to flood coverage, where all policyholders pay the extra premium to spread the cost of flood insurance.  
 Under the new system, there will be no compulsion to buy fire insurance, but homeowners and companies that do will receive flood and earthquake coverage automatically at the 10% extra premium cost.

Mr. de Clippele said the new system was first proposed by the Belgian insurance industry in 1990 but has been repeatedly stalled by government concerns over the unpopularity of increasing insurance premiums.  
 This month's flooding, however—Belgium's worst in 50 years—height-

ened public support for the proposal and hastened the government into action, he said.

Weeks of continuous rain in Belgium culminated in widespread flooding, starting Sept. 13 and lasting four days.

The areas hit worst were the provinces of Eastern Flanders, Antwerp, Limburg and Liege. More than 500 buildings, including homes, schools, factories, shops, banks and restaurants, were evacuated. Several flooded towns suffered power and telephone service outages. One death was reported after a motorist skidded into a flooded ditch.

As very few of the affected buildings had coverage for flood damage, major insured losses are not expected.

The Belgian government has released the country's national catastrophe relief fund of 1.2 billion Belgian francs (\$34.6 million), but total financial losses resulting from the floods are expected to exceed that. There is currently no estimate of total losses.

Mr. de Clippele said that the catastrophe relief fund, paid for by Belgian taxpayers, has no permanent administration; the compensation process, he said, is slow and complicated. Money from the fund is available only to owners of private homes and does not cover losses experienced by businesses.

Belgium's new, private-sector insurance solution to natural disasters is based on the French CatNat disaster insurance model established in 1982.

As with the French model, the Belgian system will be backed by a state-owned central reinsurance fund.

The reinsurance fund is expected to have limits of 3 billion Belgian francs (\$86.5 million) for flood and 10 billion Belgian francs (\$288.2 million) for earthquake.

Mr. de Clippele is confident the new system will be a success, but he said a catastrophe occurring early in the life of the new system could hamper the buildup of premium reserves. "We (insurers) need a few years to build up reserves to make the system strong," he said.

Risk is not known as a high-risk earthquake zone, but there is regular seismic activity. Belgium's most recent earthquake, in Liege in 1983, caused "considerable" damage. Mr. de Clippele said. **BI**

# Recover

*Continued from previous page*  
 "no simple solution," it is rare for an insurer to win a case.

The subrogation problem generally arises in construction all-risk policies, which frequently include many insureds, Mr. Hancy said. Construction all-risk policies are common in Australia for large infrastructure projects.

An example is a case involving Offshore Petroleum Pty. Ltd., which is under appeal in the Western Australian Supreme Court, Mr. Hancy noted. The trial judge found that an oil platform's insurers could not take action against the platform designers because the policy wording meant the designers also were insured under the policy (BI, March 13, 1995).

The Australian courts have yet to implement a simple rule, as U.S. courts have done, Mr. Hancy said. In the United States, an insurer that pays a loss to one insured under the policy cannot recover from an additional insured on the same policy that was at fault for the loss, unless there was intent or fraud on the co-insured's part, he noted.

But Mr. Hancy said decisions in Australia "point in the same direction." Insurers have no rights to recover from additional insureds under a joint policy in which the interests of all insured parties are the same, he said. A right to subrogation against co-insureds does exist, however, in composite policies, where the interest of "the guilty co-insured in the insured property, or liability, is different from the interests of other insureds," he said.

In a construction all-risks policy, for example, the builder and subcontractors' interests differ from those of the project owner. The owner has property interests in the building, while the builder and subcontractors may have property interests in material on site but not yet used in construction. The builder has a possessory title to the building; subcontractors have no property interest in the building or construction work but have an economic interest in it.

Martin Davies, an insurance law professor at the University of Melbourne, said insurers' failure to distinguish between the doctrines

of subrogation and contribution—the right, taken by the insurer in its own name, to recover a share of the loss—can "derail recovery litigation comprehensively. Contribution action is generally taken against another insurer that may also indemnify the same loss, but it can be against another party that, perhaps under a contract, has an obligation to indemnify for a loss. Subrogation is taken in the in-

## Policyholders need to make insurers aware of any contracts that allocate risks, or the insurer may be able to act as though no policy contract existed, says Chris Chapman.

suree's name after the insurer has indemnified the insured; it can recover only for the insured's losses.

He told the conference that a case in Scotland last year, *Elf Enterprise (Caledonia) Ltd. vs. London Bridge Engineering Ltd.*, one of seven test cases arising from the 1988 Piper Alpha oil rig explosion, illustrates the problem. After 381 trial days, defense counsel for the rig contractors raised, for the first time, the issue of whether subrogation was the correct action.

The insurers' case, taken on behalf of the rig's owners under subrogation rights, was dismissed.

The defense argued successfully that there was no right to subrogation action, which sought full recompense, because the owners had been indemnified in full for their loss and there was therefore no loss that the insurers could pursue on their behalf. Instead, the insurers should have taken action in their own name, seeking a contribution from the contractors.

Mr. Davies said a similar argument would succeed in the Australian courts. The trap insurers fell into with *Elf* was to assume that contribution applied only in cases where multiple insurers share the risk on a pro rata basis, he said.

Australian insurers have made the same "fatal mistake," with the same result, he said. Mr. Davies warned that subrogation will seldom result in complete recovery for the insurer. "If an insurer enforces its contractual right to use the insured's name to pursue an indemnity from a third party, that third party can proceed directly back against the insurer for a ratable contribution to the same loss."

Chris Chapman, a partner in the firm of Buddle Findlay, agreed that insurers' long-standing belief that the subrogation right includes a right of full recovery from any party that might be considered to have indemnified the insured is "not soundly based." He told the conference that where there are doubts about subrogation rights, an insurer could contemporane-

ously issue a claim for contribution. He said defendants in subrogation or contribution claims will look carefully at risk allocation agreements with the insured. Hold-harmless agreements may prevent insurers from taking any action, Mr. Chapman said.

Policyholders need to make insurers aware of any contracts that allocate risks, he noted, or the insurer may be able to "avoid" a policy, or to act as though no policy contract existed, on the basis of material non-disclosure.

*Elf Enterprise (Caledonia) Ltd. vs. London Bridge Engineering Ltd., unreported, Court of Session (Outer House), Sept. 2, 1997.*

## AILA meeting draws 200

PERTH, Australia—The 1998 Australian Insurance Law Assn. annual conference, held Sept. 2-4 at the Sheraton Hotel in Perth, Western Australia, attracted more than 200 attendees.

The 1999 conference will take place Aug. 4-6 at the Wrest Point Hotel in Hobart, Tasmania.

For more information, contact the AILA Tasmania Secretariat, Sandy Kemp, GPO Box 745, Hobart, Tasmania, Australia, 7001; fax: 61-3-6224-3441, e-mail: sandra@eisa.net.au.



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## Malta

*Continued from page 23*  
three years. In addition, captives will be required to set up and maintain adequate reserves.

Malta's new government, elected Sept. 5, already has reapplied to become an E.U. member. Malta originally applied for membership in 1990, but the application was suspended after the Maltese Labor government took power in October 1996.

The Nationalists' re-entry as the ruling party has reignited the application process, and Guido de Marco, deputy prime minister and minister of foreign affairs, formally applied to reactivate the process just five days after the government was voted in.

Gaining full E.U. status also will help Malta's ambition to become a major insurance center, as it will be able to benefit from the Third Life and Non-Life Insurance Directives, allowing insurance business to be freely transacted across E.U. member country borders.

Companies setting up captives will benefit in several other ways by domiciling in Malta, Mr. Bonett said. The island has double-taxation treaties with 26 countries and "various fiscal benefits," he said, making it an "attractive, tax-efficient jurisdiction."

In addition, the new legislation allows captives to offset reserves and provisions against taxable income and contains a provision to the Companies Act 1995 that will allow the entry of protected cell companies. The

Insurance Business Act 1998 also provides for redomiciliation into and out of Malta.

Several companies in the past have been interested in creating captives in Malta but were awaiting the new legislation, Mr. Bonett said. In the meantime, two captive managers, International Insurance Management Services Ltd. and Willis Corroon Management-Malta, already are operating on the island.

Malta has low costs, good communication infrastructure, and well-educated insurance and accounting personnel, said Mr. Bonett. "In addition, it offers tax planning opportunities and is a particularly pleasant place to visit," he added, though the MFSC has not set a timetable or target number for captives. **BI**

## Art

*Continued from page 23*

French government to the Musee des Beaux Arts, a municipal government museum in the Riviera capital of Nice. However, no spokespeople for the Musee des Beaux Arts or the French government were available for comment.

At 7 a.m. on Sunday, Sept. 20, two masked gunmen broke into the house of Jean Fortis, director of the Musee des Beaux Arts. The gunmen forced Mr. Fortis to drive them to the museum, where they overpowered two staff members preparing to open the museum for the day.

Mr. Emson said the two paintings are invaluable and it will be impos-

sible for the thieves to sell them in the open art market. He said such thefts often end in a ransom demand.

The Nice theft, plus the two earlier art thefts, should highlight museum security issues in Europe, according to Mr. Emson.

However, he noted that violent art theft will always be difficult to prevent.

In May, three Impressionist paintings—two by Vincent Van Gogh and one by Paul Cezanne—were stolen by armed thieves from Rome's National Gallery of Modern Art but were later recovered (*BI*, June 1; July 13).

This followed the non-armed theft of a painting by French artist Camille Corot from the Louvre in Paris (*BI*, May 11). **BI**

# Risk retentions rising despite soft rates: Survey

By EDWIN UNSWORTH

Despite the current buyer's market for commercial property/casualty insurance, more U.K. organizations are maintaining or even increasing their risk retentions, according to a recent survey.

The Assn. of Insurance & Risk Managers and the Reigate, England, office of consulting firm Watson Wyatt Worldwide conducted the survey, "Optimizing Risk Retention," of 300 AIRMIC members earlier this year. The survey is intended to provide risk managers with an overview of the approach taken by others in the profession to determine amounts of

risk to be retained.

Although companies are turning to insurance where it suits them, survey responses suggest there is little respect among buyers for a "fickle" insurance market, Watson Wyatt said.

AIRMIC said a common theme in the survey responses was that risk managers are maintaining or increasing their retention of risks, even though they recognize that insurance currently can be bought relatively cheaply. AIRMIC said the rationale given for this decision is to maintain the focus of the organization and its employees on reducing risk.

Nevertheless, risk managers said

the three most common factors they take into account when making risk retention decisions are: the trade-off between risk and reward, the price of insurance and the ability to negotiate premium discounts.

Almost 40% of the 84 AIRMIC members that responded, ranging from manufacturing companies to financial services to retailers and government organizations, said they dedicated capital to retaining risk.

David Gamble, AIRMIC executive director, said the findings confirm the increasing importance of the risk management role in the United Kingdom.

"Growing confidence in more in-

novative risk management techniques and principles is reflected in the increased level of risk retention within organizations, supported by a broader senior management outlook to the control of risk," he added.

Almost 50% of the survey's respondents said they expect to use computer-based risk modeling techniques over the next two years to help design insurance programs.

Asked to indicate who has main responsibility for risk retention, 55% of respondents said the risk manager, while finance directors had that responsibility in 26% of cases.

Tim Windibank, risk management partner with Watson Wyatt in

Reigate, England, said: "These results suggest continued development in the role and confidence of risk managers but may hide the fact that the impact of the risk financing strategy is ultimately the responsibility of the board."

The survey found that risk managers acknowledge that their operating environment is changing and that this may bring new and broader sources of risk.

Copies of the survey, "Optimizing Risk Retention," are available from AIRMIC, 6 Lloyd's Ave., London EC3N 3AX, England; 44-171-480-7610; fax: 44-171-702-3752.

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### LEGAL NOTICE

### LEGAL NOTICE

### LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
IN RE PETITION OF DAN YORAM SCHWARZMANN AND  
COLIN GRAHAM BIRD, AS JOINT PROVISIONAL LIQUIDATORS OF  
BLACK SEA AND BALTIC GENERAL INSURANCE COMPANY LIMITED,  
CASE NO. 98-B-46759 (CB)

NOTICE IS HEREBY GIVEN THAT, PURSUANT TO AN ORDER (THE "ORDER") OF THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "BANKRUPTCY COURT"), IN CONNECTION WITH THE PETITION FILED PURSUANT TO SECTION 304 OF THE BANKRUPTCY CODE WITH RESPECT TO BLACK SEA AND BALTIC GENERAL INSURANCE COMPANY LIMITED (THE "COMPANY"), A HEARING WILL BE HELD IN THE BANKRUPTCY COURT ON OCTOBER 1, 1998 AT 2:00 O'CLOCK P.M., BEFORE THE HONORABLE CORNELIUS CORNELIUS IN HIS COURTROOM AT THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK (THE "HEARING"), TO CONSIDER THE PETITIONERS' REQUEST FOR A PRELIMINARY INJUNCTION ON THE TERMS SET FORTH BELOW, AND PENDING THAT HEARING A TEMPORARY RESTRAINING ORDER IS IN EFFECT:

(1) ENJOINING AND RESTRAINING ALL PERSONS AND ENTITIES FROM: (A) TRANSFERRING, RELINQUISHING OR DISPOSING OF ANY PROPERTY OF THE COMPANY IN THE UNITED STATES, OR THE PROCEEDS OF SUCH PROPERTY, TO THIRD PARTIES; (B) COMMENCING OR CONTINUING ANY ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER) AGAINST THE COMPANY, OR ANY PROPERTY IN THE UNITED STATES INVOLVED IN THE FOREIGN, QUASI-JUDICIAL, OR ANY PROCEEDS THEREOF, AND SEEKING DISCOVERY OF ANY NATURE AGAINST THE COMPANY; (C) ENFORCING ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY JUDGMENT, ASSESSMENT OR ORDER OR ARBITRATION AWARD AGAINST THE COMPANY, AND COMMENCING OR CONTINUING ANY ACT OR ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER), TO CREATE, PERFECT OR ENFORCE ANY LIEN, SETOFF OR OTHER CLAIM AGAINST THE COMPANY, OR ANY OF ITS PROPERTY IN THE UNITED STATES, OR ANY PROCEEDS THEREOF, INCLUDING, WITHOUT LIMITATION, RIGHTS UNDER REINSURANCE OR RETROCESSION CONTRACTS; AND (D) DRAWING DOWN ANY LETTER OF CREDIT ESTABLISHED BY, ON BEHALF OR AT THE REQUEST OF, THE COMPANY, OR WITHDRAWING FROM, SETTING OFF AGAINST, OR OTHERWISE APPLYING PROPERTY THAT IS THE SUBJECT OF ANY TRUST OR ESCROW AGREEMENT OR SIMILAR ARRANGEMENT IN EXCESS OF AMOUNTS EXPRESSLY AUTHORIZED BY THE TERMS OF THE CONTRACT AND ANY RELATED TRUST OR OTHER AGREEMENT PURSUANT TO WHICH SUCH LETTER OF CREDIT, TRUST, ESCROW, OR SIMILAR ARRANGEMENT HAS BEEN ESTABLISHED; EXCEPT, HOWEVER, NO DRAWING AGAINST ANY LETTER OF CREDIT SHALL BE MADE IN CONNECTION WITH ANY COMMUTATION UNLESS THE AMOUNT HAS BEEN AGREED IN WRITING WITH THE PETITIONERS OR PERMITTED BY FURTHER ORDER OF THE COURT;

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(5) PROVIDING, WITH RESPECT TO ANY CLAIM, ACTION, ARBITRATION OR OTHER PROCEEDING WHICH MAY BE COMMENCED OR BECOME KNOWN TO PETITIONERS IN THE FUTURE, OR THE ENTITLEMENT OR ALLEGED ENTITLEMENT OF ANY BENEFICIARY OF ANY LETTER OF CREDIT ESTABLISHED BY, ON BEHALF OR AT THE REQUEST OF, THE COMPANY, OR A PARTY TO ANY TRUST OR ESCROW AGREEMENT OR SIMILAR ARRANGEMENT IN WHICH THE COMPANY HAS AN INTEREST THAT IS IDENTIFIED BY THE PETITIONERS IN THE FUTURE (EACH A "SUBSEQUENT CLAIM"), THAT:

(A) WHEN INFORMED OF A SUBSEQUENT CLAIM, COUNSEL FOR PETITIONERS SHALL SERVE UPON THE HOLDER OF SUCH CLAIM A COPY OF THE SUMMONS, PETITION, AND OTHER DOCUMENTS SUPPORTING THE APPLICATION FOR INJUNCTIVE RELIEF, AND THE MOST RECENT INJUNCTION ORDER ENTERED BY THE COURT;

(B) THE HOLDER OF A SUBSEQUENT CLAIM WILL HAVE TWENTY (20) DAYS FROM SERVICE OF THE SUMMONS IN WHICH TO FILE AN ANSWER OR MOTION WITH RESPECT TO THE PETITION; AND

(C) ON NOT LESS THAN TWO (2) DAYS TO COUNSEL FOR THE PETITIONERS, THE HOLDER OF A SUBSEQUENT CLAIM MAY FILE A MOTION SEEKING AN ORDER OF THE COURT VACATING OR MODIFYING THE INJUNCTION ENTERED IN THIS PROCEEDING WITH RESPECT TO SUCH SUBSEQUENT CLAIM. SUCH REQUEST SHALL BE THE SUBJECT MATTER OF A HEARING AS SCHEDULED BY THE COURT. OTHERWISE, THE HOLDER OF A SUBSEQUENT CLAIM MAY FILE OBJECTIONS AND BE HEARD BY THE COURT IN ACCORDANCE WITH THE TERMS OF ANY ORDER OF THE COURT PROVIDING FOR A HEARING IN THE FUTURE ON THE RELIEF SOUGHT BY PETITIONERS IN THIS PROCEEDING.

ALL PARTIES-IN-INTEREST OPPOSED TO THE PETITIONERS' REQUEST FOR A PRELIMINARY INJUNCTION MUST APPEAR AT THE HEARING AT THE TIME AND PLACE SET FORTH HEREIN. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING THE PETITIONERS' REQUEST FOR A PRELIMINARY INJUNCTION SHALL BE FILED WITH THE COURT WITH A COPY TO THE CHAMBERS OF THE HONORABLE CORNELIUS CORNELIUS, AND SERVED ON CHADBOURNE & PARKE LLP SO AS TO BE RECEIVED ON OR BEFORE SEPTEMBER 29, 1998 AT 5:00 P.M. NEW YORK TIME. THE ORDERS AND SUPPORTING DOCUMENTS WILL BE MADE AVAILABLE UPON REQUEST AT THE OFFICES OF THE PETITIONERS' UNITED STATES COUNSEL AT THE ADDRESS BELOW.

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Associations ..... 259  
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# Y2K bill

Continued from page 1

What is the chain of liability for such problems? Who will interpret the rules?" asked Ms. Allen.

Under Sen. Grant's proposal, Y2K class-action suits could not be brought against Florida businesses on or after Jan. 1, 2000, unless each member of the class had suffered at least \$50,000 in damage.

That limit on class actions would not apply, however, to suits brought against "a manufacturer or vendor of information technology products for damages resulting from the failure of those products to be Year 2000-compliant," according to the bill.

Punitive damages in Y2K suits would be limited to three times compensatory damages under the Grant bill. State agencies would be responsible only for compensatory damages.

Under the bill, the winning party in suits would be entitled to re-

cover "reasonable attorneys fees" and other court costs from the losing party.

However, companies that informed customers by Sept. 1, 1999, that they would not be not be Y2K-compliant despite their good-faith efforts would be exempt from having to bear the plaintiff's legal costs.

The measure would also: provide some immunity for directors and officers for good-faith compliance efforts; require "solution providers" to "maintain liability insurance in an amount that is not less than its annual gross income to cover claims against it by its customers and third parties"; provide antitrust immunity to companies and government agencies that exchange information to solve the problem; and encourage the use of alternative dispute resolution to settle Y2K-related disputes.

"No silver bullet exists, and we are clearly running out of time," Sen. Grant said in a statement accompanying his proposal. **BI**

# Geneva

Continued from page 2

Beresford-Wood treated Geneva as a "personal bank," using it, for example, to pay \$85,000 in bonuses to an architect and builder working on his California beach house.

A lawyer representing Mr. Beresford-Wood and several other defendants dismissed the allegations as "totally unfounded and not accurate at all."

"All of those things were done with the full knowledge, understanding and approval of the (insurance) commissioner and the IIE," said John F. Horvath of the firm of Horvath & Lieber in Chicago. "Everything done by Geneva and the defendants was above-board."

Mr. Beresford-Wood and two of his California-based companies named as defendants—Concord General Corp. and JBW & Co. Inc.—have filed a motion to dismiss the complaint. They charge, among other things, that the lawsuit fails to meet requirements for claims under the federal Racketeer Influenced and Corrupt Organizations law.

The Illinois Insurance Department lawsuit is the latest blow to Mr. Beresford-Wood, whose insurance empire has steadily fallen apart over the past three years.

Through Concord, Calif.-based Concord General and JBW, Mr. Beresford-Wood controlled Indiana-domiciled Classic Fire & Marine Insurance Co. and its subsidiaries United Southern Assurance Co. of Florida and Classic Syndicate Inc. of the Chicago-based IIE.

In 1990, through a newly formed unit of JBW, he acquired Geneva and an affiliate, Geneva Underwriting Syndicate Inc., from financially troubled London United Investments P.L.C.

By 1994, Classic Syndicate and Geneva Assurance were the two biggest underwriters on the IIE, based on \$64 million and \$55.5 million, respectively, in gross premium volume.

Things started to unravel the next year, though, when Geneva Assurance—which already had absorbed affiliate Geneva Underwriting—voluntarily closed its doors. Under an agreement with regulators, Classic Syndicate later that year reinsured all of Geneva's liabilities, withdrew from the Illinois exchange and merged with its parent, Classic Fire (*BI*, Jan. 8, 1996). Geneva was ordered liquidated in July 1996 (*BI*, July 15, 1996).

Last December, Classic Fire itself was ordered into rehabilitation by Indiana regulators, two months after the insurer's United Southern unit agreed to be liquidated by the Florida Insurance Department (*BI*, Dec. 22, 1997).

The Indiana Insurance Department is close to completing an analysis of Classic Fire's operations and soon will advise a state judge whether Classic Fire also should be liquidated, said Richard T. Freije Jr., a lawyer with Baker & Daniels in Indianapolis who represents the department.

Two years after Geneva entered liquidation, Illinois regulators have filed their racketeering complaint in U.S. District Court in Chicago. Defendants in addition to Mr. Beresford-Wood, Concord General and JBW include:

- Julie Ann Garrison, Concord General's former general counsel and a former Geneva officer and director.

- Howard L. Turpin III, formerly a Geneva director and an officer or director of other Beresford-Wood companies.

- James H. Ryan, former Concord General chief financial officer and president of Classic Fire.

- Richard E. Foss, former president of Geneva and vp of JBW. Mr. Foss previously underwrote for the two Geneva syndicates when they still

were owned by London United.

- Brian D. Bethke, former president of Concord and general counsel for Classic Fire.

- Thirteen other former directors and officers of Geneva. They are Bob Roy, Gwen F. Kindelin, Barbara K. Marrs, Haydon S. Leedy, Francis P. McGovern, Roland G. Roth, Thomas M. Thie, Bruce A. Ricci, Charles Podczewinski, Peter O. Norton, James R. Lambert, Dennis J. Bieda and Janis Florio.

Mr. Horvath of Horvath & Lieber also represents Ms. Garrison, Messrs. Turpin, Ryan and Foss, and several of the Geneva directors and officers.

Mr. Bethke, who said he has not yet hired a lawyer, denied the charge of looting Geneva but declined to comment further. Mr. McGovern also declined to comment.

The other defendants or their lawyers could not be reached.

The Illinois Department's complaint charges that Mr. Beresford-Wood, Ms. Garrison and Messrs. Ryan, Bethke, Thie and Foss plotted to drain Geneva's assets virtually from the time they gained control of

## Geneva's assets were pirated in a series of convoluted intercompany stock and reinsurance deals, regulators charge.

the syndicate through JBW subsidiary Geneva Insurance Management Inc. in 1990.

GIMI bought Geneva and affiliate Geneva Underwriting from London United for about \$31 million, using loans from Concord General and a Concord affiliate. Immediately after the sale, GIMI repaid \$18 million to Concord using funds taken from the two syndicates "despite Beresford-Wood's express representation to the IIE that no assets of the (syndicates) would be used in this way," the suit charges.

Concord also immediately sold substandard California real estate to the syndicates for \$23.9 million. By the end of 1991, the syndicates had recorded \$3.9 million in losses from the declining value of the properties, the suit says.

Soon after acquiring the syndicates, Mr. Beresford-Wood started using them to bail Concord General and one of its subsidiaries out of bad investments in three non-insurance businesses, the complaint charges.

In one case, a Concord unit had taken control of Continental Publishing Services, a company whose only business was publishing a travel guide for Hertz Corp. By 1990, Mr. Beresford-Wood and other defendants saw that CPS would continue to operate at a loss and arranged for the two Geneva syndicates to lend the publisher \$6.8 million. CPS used \$3.5 million of the money to repay previous loans from other Concord affiliates but failed to repay most of what it owed the syndicates, ultimately leaving them with \$7.5 million in losses, the suit says.

In another case, Concord sold its stake in a money-losing company called Payfax Inc. to Geneva for \$2.5 million. By the end of 1993, Geneva had written off a total of \$4 million it invested in Payfax, the suit says.

The two syndicates also paid Concord \$2.1 million in 1990 to acquire Concord's stake in Homestar International Inc., a start-up toy manufacturer. Geneva went on to invest \$3 million more in the company, but by the end of 1990, Homestar had shut down, and Geneva spent another \$1.3 million to wind up its operations, the suit says.

Over the next several years, Mr. Beresford-Wood and other defen-

dants continued to pirate Geneva's assets in a series of convoluted and allegedly fraudulent intercompany stock and reinsurance transactions, regulators charge.

One series of transactions, for example, grew out of a 1991 deal in which Concord General and TCO Holdings Inc., a unit of Solvang, Calif.-based Exstar Financial Corp., each bought \$15 million of the other's preferred stock.

Exstar, headed by Peter J. O'Shaughnessy, also is the parent of Illinois-domiciled Alpine Insurance Co., which Mr. O'Shaughnessy said recently stopped writing new business and went into runoff. Mr. O'Shaughnessy is not named as a defendant in the Illinois Department's complaint.

Both preferred-stock issues were "essentially worthless" and were intended only to allow each company to report a cash infusion on its balance sheet, the complaint alleges, charging that neither Mr. Beresford-Wood nor Mr. O'Shaughnessy ever intended to pay any dividends or redeem the stock for its full value.

Concord and TCO both redeemed \$4.3 million of their preferred stock within about a year of the deal. In 1994, the remaining \$10.7 million of Mr. Beresford-Wood's TCO preferred holding was split among Concord, JBW, Classic Fire and Classic Syndicate. Mr. Beresford-Wood was getting ready to launch an effort—ultimately unsuccessful—to take Concord General public as the parent of Classic Fire, though, and wanted to rid the companies of substandard assets such as the TCO stock, the suit charges.

Toward that end, he and other defendants presided over a tangle of intercompany deals that resulted in all of the \$10.7 million in TCO stock being dumped into Geneva in exchange for valuable Geneva assets, the complaint alleges.

Geneva's Illinois liquidators last year reached a restructuring agreement with Mr. O'Shaughnessy under which they exchanged Geneva's \$10.7 million in TCO preferred stock for a \$2.5 million promissory note from TCO payable over several years and guaranteed by Mr. O'Shaughnessy, court records show.

In an interview, Mr. O'Shaughnessy denied any intention not to pay dividends and denied that the TCO stock was worthless.

In another 1995 transaction, Geneva agreed to provide property and casualty excess reinsurance to Classic Syndicate in exchange for a \$10 million deposit premium, the suit says. The deal provided for a sliding scale commission payable to Classic, though, under which Classic would ultimately recoup 90% of the premium either as losses or commissions.

Because the deal also called for Classic to "receive payment for its 90% minimum return," Geneva turned over title to a Carmel, Calif., estate appraised at \$9.2 million and used as a residence by Mr. Beresford-Wood, regulators allege.

Thus, Geneva was stripped of a valuable property in exchange for "questionable" reinsurance business, the suit charges.

In addition, shortly after receiving the \$10 million deposit premium, Geneva wired \$4 million to JBW as a "management fee" and paid Concord General \$7 million for allegedly worthless Concord preferred stock, the lawsuit charges.

Overall, Mr. Beresford-Wood and other defendants "at no time had any intention of operating or managing Geneva in a reasonable or proper manner conducive to its continued existence," the suit alleges. "These defendants intended simply to loot Geneva of its assets while using it as a repository for the substandard assets or worthless stock of, or owned by, other corporations in the JBW empire." **BI**

# Y2K exclusions less criticized

Wordings largely clarifications: Kelly

By MARK A. HOFMANN

HARTFORD, Conn.—Risk manager opposition to policy wording that restricts coverage of Year 2000 losses has become more muted over the past nine months.

Connecticut recently became the 49th jurisdiction to approve the exclusions and endorsements introduced by the Insurance Services Office Inc.

Only Maine and Massachusetts have yet to approve the use of at least some of the ISO provisions, which were unveiled in late 1997. The ISO endorsements apply to commercial general liability, commercial property and business interruption coverages (*BI*, Dec. 15, 1997).

Risk manager reaction to the endorsements was initially negative, as it was seen at the time as an attempt by the industry to exclude valid risks from coverage. However, buyers now say that they do not understand the policy wording to take away coverage of consequential risks presumed to be covered.

"Every time one of these issues comes up, suddenly it's not covered under your CGL policy, and our fear was it could turn into another absolute pollution exclusion," said Anne Allen, director-state affairs for the Risk & Insurance Management Society Inc. in New York. Buyers have extensively challenged the broad application of the pollution exclusion.

The concern among risk managers is that "anytime there's any problem with anything electronic, suddenly it's excluded out of hand as a Year 2000 problem. Of course, you won't be able to tell until the claims start coming in and see how these are applied, but that's our worry," Ms. Allen explained.

"I think the endorsements are to a great extent more clarifications than withdrawals," said William J. Kelly, senior vp

at J.P. Morgan & Co. Inc. in New York.

"I don't think the insurance community is saying if a building burns down, and it burns down because a warning system failed because of a Y2K problem," that the consequential loss won't be covered, Mr. Kelly said. "I don't think they're taking away basic physical damage insurance."

Scott K. Lange, director of risk management for Microsoft Corp. in Redmond, Wash., was among those who initially criticized the endorsements.

Now, however, he concedes that insurance companies would be "remiss to their shareholders if they were to leave the door wide open" for all sorts of Y2K-related claims.

Mr. Lange added that the risk has become better understood since last December, as have organizations' responsibilities for dealing with it.

"We have all had to divert attention and resources to fixing a problem that emanates from technology decisions made years ago when modern-day dependence on computers could not have been foreseen. This risk can no longer be described as fortuitous or random in who it will effect," he said.

While Mr. Lange said that the insurance industry should not have to cover losses directly created by the Year 2000 problem, certain consequential losses should be covered.

"I think there will be some consequential damages that will result from a failure no one could foresee. I don't think the insurance industry should abandon its clients under those circumstances. The trillion-dollar question is how do you differentiate between foreseeable and unforeseeable in those circumstances?"

"An insurance company that is trying to please its clients is going to try to come up with wording that will protect its clients against unforeseeable things," Mr. Lange said.

# NCQA

Continued from page 1  
performance measures.

One performance measure that showed a higher level of improvement, however, was the percentage of smokers or recent quitters age 18 and older who received advice to quit from a health plan professional. The NCQA noted that smoking is the leading preventable cause of death in the United States.

The national average for adult plan participants receiving this advice was 64%, compared with 61% last year.

Among plans reporting two consecutive years, the average in 1997 was 66.3%, up 4.5% from 1996.

There aren't many other interventions that have such a significant effect on reducing people's risk of dying within the next decade, said Dr. Jeffrey Harris, director of the division of prevention research and

analytic methods for the U.S. Centers for Disease Control and Prevention in Atlanta.

Although the improvement among repeat participants may appear modest, it translates into 1,521 lives saved, Dr. Harris said. If average performing plans reached the level of the highest performing plans on this measure, the impact would be quite dramatic, he said.

The national averages for other clinical measures were: breast cancer screening, 71.3%; Cesarean sections, 20.7%; childhood immunizations, 65.4%; diabetic retinal exam, 39.0%; follow-up after hospitalization from mental illness, 67.3%; prenatal care in the first trimester, 83.1%. Those numbers reflect the percentage of the pertinent health plan population that have received the particular screening, immunization or treatment from their health plans.

The report was based on NCQA's Quality Compass 1998 database,

which includes 1997 Health Plan Employer Data and Information Set submissions and accreditation information from 292 managed care plans and identifies them by name.

**'We're seeing behavior changes on the part of providers' because the data is out there, says Bruce Bradley.**

Another 155 plans submitted data for NCQA to use in calculating national averages, but they would not allow their identity to be publicly released. The total of 447 plans contributing data represent 65 million enrollees, or about 80% of the 80 million Americans enrolled in HMOs. Member satisfaction information was publicly reported by

240 plans.

"In many cases, the difference between plans that disclose their performance and plans that don't is dramatic," the report states.

For example, the percentage of children who received appropriate immunizations before age 2 was 69.3% on average among publicly reporting plans, and 57.7% for those not publicly reporting the data.

An average of 76.5% of patients in publicly reporting health plans received treatment with Beta blockers after an acute heart attack, while 65.4% of patients in non-publicly reporting plans received such treatment. "Beta blockers are a remarkably effective, low cost drug that have been shown to significantly reduce morbidity and mortality associated with heart disease, as well as reduce the chance of a second heart attack," according to the NCQA.

Among publicly reporting plans, an average of 73.2% of women between ages 52 and 69 received at least one mammogram within the last two years, while 67.7% of women in that age range in non-publicly reporting plans received mammograms.

The 252 plans that submitted performance data for two consecutive years outperformed national averages on every measure of clinical quality.

For example, the percentage of members receiving Beta blocker treatment after a heart attack was 78.3% for plans reporting for two consecutive years, compared with a national average of 73.8% for plans overall.

In addition, the percentage of women who received at least one Pap test for cervical cancer screening in the past three years was 73.7% for plans reporting for two consecutive years, while the overall national average for cervical screening rates was 71.3%.

Plans reporting for two years also showed greater year-to-year improvement than plans overall. For example, adolescent immunization rates averaged 57.8% for repeat participants, an increase of 4.2% over the previous year. The national average for plans overall was 52.2%, up 0.7% from last year, ac-

ording to the report.

Also, the increase in cervical cancer screening rates was 2.2% for repeat participants, compared with an increase of 0.7% for all plans.

Wide variations among regions were found, with New England health plans having the highest average on 10 out of 11 clinical performance and service measures. For example, the Beta blocker treatment rate among New England plans was 90.1%, compared with 73.2% in the Mountain region and 60.3% for the South Central region.

Wide variations also can exist within plans in a region, noted Dr. Cary Sennett, NCQA executive vp, at last week's news conference. Looking at three plans in the Mid Atlantic region, breast cancer screening rates ranged from 60% to 80%. If the plan with the lowest rate attained the 80% rate, based on the expected number of breast cancer cases for the plan size, an additional 20 cases of breast cancer could be detected each year, he said.

The NCQA data is valuable to employer purchasers, employees and providers, said Bruce Bradley, managed care director for General Motors Corp. in Detroit. The automaker provides its salaried employees and retired salaried employees financial incentives in terms of lower out-of-pocket costs to join plans that are high performers on quality measures such as HEDIS and satisfaction surveys. "We've seen massive migration from poor performing plans to good performing plans," he said.

GM also uses the data in its discussions with health plans about quality.

"We're seeing behavior changes on the part of providers" because the data is out there, Mr. Bradley said. When health plans see that the purchaser cares about quality, they're more willing to participate with the employer in ensuring that it is delivered, he said.

A spokesman for the American Assn. of Health Plans in Washington said the report clearly shows that the "act of measuring and reporting spurs improvement."

However, she said that the decrease in the number of plans that would provide the NCQA data for public reporting is a concern. "I think that what that tells us is that a lot needs to be changed in the environment," she said.

She attributed the reluctance of some HMOs to publicly report to the lack of data about the fee-for-service sector of the industry and concerns about irresponsible use of data, despite NCQA's efforts to promote responsible use of the information. Both those factors can prevent the data from being seen in its proper context, she said.

There is a tendency to overemphasize "looking at the measures as a moment in time and underemphasize the role it plays in improvement over time," she said.

The regional variation in plan performance is an issue that relates to the entire health care system, not just managed care, she said. "Managed care organizations are trying to address this very directly," she said, adding that performance measures are a key part of solving the problem.

The "State of Managed Care Quality" is available on the NCQA's web site, <http://www.ncqa.org>. The Quality Compass 1998 CD-ROM costs \$2,500. The electronic data files—two of which contain plan-specific data; two of which contain summary statistics—cost between \$2,500 and \$5,000. Both the CD-ROM and the electronic data files are available through NCQA's Publications Center at 800-839-6487.

## Employers not using reports

Most employers don't consider reports on HMO quality when choosing employee health plans, a new study shows.

The study by The Commonwealth Fund also found that only 1% of employers provide data on health plan quality to their employees.

"As major buyers, employers have a great deal of influence in the health care marketplace and are in a position to demand higher standards of plans," observed Karen Davis, president of the Commonwealth Fund. The Commonwealth Fund is a New York-based private foundation supporting independent research of health care and social policy.

"Unfortunately, they don't seem to be taking full advantage

of their bargaining power when it comes to health care," Ms. Davis said.

Accreditation by the National Committee for Quality Assurance and reports from the Health Plan Employer Data and Information Set may be playing a growing role in employers' health plan purchasing decisions as more employers become familiar with the measures, the study suggested.

The percentage of employers familiar with NCQA accreditation has increased to 35% in 1997 from 29% in 1996, the study found.

Still, only 11% of employers that offer HMOs to their employees said the NCQA's accreditation quality measurements—

the leading standards by which HMO quality is ascertained—were important to them in deciding which health plans to offer.

An even smaller proportion—5%—said HEDIS performance measures were important in selecting plans.

The study, "When Employers Choose Health Plans: Do NCQA Accreditation and HEDIS Data Count?" was based on 1997 and 1996 surveys by KPMG Peat Marwick L.L.P. of 2,653 companies with 200 or more employees.

Free copies of the study are available by calling 202-606-3840 or by visiting The Commonwealth Fund's World Wide Web site at [www.cmf.org](http://www.cmf.org).

—By Joanne Wojcik

# Carvill

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## Commentary

# Answering lay queries an all-consuming task

There's an old saying that a journalist is a jack of all trades and the master of none. That's true even for a journalist who has spent a career covering one subject, as I was reminded in the last week. In various social settings, I was asked insurance-related questions by people who don't work in insurance, and I had no practical answers. This was a bit embarrassing as the subject of insurance didn't just come up. It was raised because my position as publisher and editorial director of *Business Insurance* was known.

Here are the problems that were posed to me:

Why would an insurer non-renew homeowners coverage on a Nantucket cottage after 20 years of collecting premiums and paying no claims, leaving the broker to put the coverage into the Massachusetts Property Insurance Underwriting Assn.?

How can an American, living abroad most of the year managing a small charity she founded, buy health insurance in the United States? The father of the altruistic woman is very concerned, not about paying for treatment for minor ailments or injuries but about the prospect of his daughter becoming seriously ill without insurance. The father tells me he has talked to insurers and agents, and no one seems interested in helping.

Why are employers buying health insurance programs that require so much pre-authorization but are not forcing the

health insurers to promptly answer doctors' telephone calls concerning proposed care? The questioner is an orthopedic surgeon, who also complained that when on call at his hospital he has to patch up the uninsured. He is concerned not only that he is not paid for his services but also that he is as at risk for malpractice while giving uncompensated care. Is that fair?

Personal lines insurance is not my area of expertise, but I gave the cottage owner my best shot at an answer. I started to explain that insurers are analyzing their ac-

cumulations of values, especially in hurricane-exposed areas. I talked about insurers reducing their exposures to limit their losses under larger retentions and to make their programs more attractive to reinsurers. The more I tried to explain it, the more skeptical he looked, concluding, "Sounds like a racket to me."

I had to admit that non-renewing a 20-year customer did not sound like the best approach to re-underwriting, and I suggested that he write the chief executive officer of the insurance company. Curious, I contacted my personal broker, who referred me to an agent on Nantucket. He says property insurance capacity is loosening up a bit, though insurers of high-value homes on Nantucket are requiring a 1% to 2% windstorm deductible. On a \$1 million home, that's \$10,000 to \$20,000.

I also remembered that the Insurance Information Institute sponsors a toll-free hot line to answer consumer questions about insurance (800-942-4242). I'm sorry to report, though, that the hot line can't handle health insurance questions anymore, because the Health Insurance Assn. of America pulled out of the project. So much for finding a quick answer to the second question regarding health insurance for a person doing good deeds abroad. So, to help a concerned father, I've put out some calls for contacts whom I think may be able to help.

The third question, though more up my alley than the first two, also was somewhat difficult for me to answer. I suggested that employers will pressure their health plans to respond more quickly to doctors, or will reduce pre-authorization requirements in their plans, only if they are convinced that health plan costs will go down, not up. On the issue of the uninsured and malpractice exposure, I could only sympathize.

It occurs to me that if I find it difficult to answer these questions based on my experience, the insurance industry has a lot of work to do to improve public access to insurance information. How these issues are resolved for these people and those in similar situations also will influence public perception of insurance and, in the long run, public policy toward insurers on everything from non-renewal regulations to the Patients' Bill of Rights legislation under consideration in Congress.

But these are the observations of a jack of all trades. And knowing I am master of none of this, I've entered the III hot line number into my electronic organizer for future reference—and I vow not to wear my *Business Insurance* windbreaker while off duty.

*Publisher and Editorial Director Kathryn J. McIntyre and Editor Paul D. Winston publish columns on alternate weeks.*



Kathryn J. McIntyre

# Drugs

*Continued from page 2*

said Robert Hughes, president of the Boston-based MAHMO.

The dueling lawsuits are the latest developments in the controversy that began last month when several HMOs, including Harvard Pilgrim, said they intend to cut back previously unlimited prescription drug benefits to keep the cost of coverage for retirees affordable.

Brookline, Mass.-based Harvard Pilgrim, which says it has "consistently acted with the best interests of its members in mind," now offers a risk HMO plan with an unlimited prescription drug benefit, with retirees paying a \$71 monthly premium. It also offers a zero-premium plan with no drug benefit.

Next year, Harvard Pilgrim in-

tends to offer, in most parts of the state, a zero-premium plan with an \$800 annual limit on prescription drugs. That change, Harvard Pilgrim says, will save money for many members.

The Insurance Division, which launched an investigation of Harvard Pilgrim after learning of its planned prescription drug benefit change, said the cutback violated state laws and regulations mandating that risk HMOs offer either unlimited or no prescription drug benefits for retirees eligible for Medicare.

A 1997 federal law, known as the Balanced Budget Act, opened up the traditional Medicare program to more private competition for members. MAHMO argues that the federal law pre-empts state laws and rules, like the one in Massachusetts, that dictate the kind of benefits Medicare risk HMOs and other so-called Medi-

care + Choice plans can offer.

The federal law and its enabling regulation "call for broader enrollee choice and also explicitly retain for the federal government the exclusive right to determine what benefits must be offered or included in a Medicare + Choice plan," MAHMO said in a statement.

While the legal skirmishing directly affects only Medicare risk HMOs operating in Massachusetts and their roughly 200,000 enrollees, the outcome of the controversy could have national implications (*BI*, Sept. 21).

If Massachusetts regulators are successful in enforcing the state's prescription drug benefit mandate, that could be a signal to other states to mandate benefits—at substantially higher cost—for HMOs and other health care plans that cover retired workers opting out of Medicare and into their own plans. **BI**

# Pullouts in risk HMOs seen

## Low payment and growth rates threaten program stability

By JERRY GEISEL

ROSELAND, N.J.—Another major Medicare risk HMO is withdrawing from certain markets, and additional withdrawals by more health care plans are expected soon.

Prudential HealthCare SeniorCare—The Prudential Insurance Co. of America's Medicare risk HMO product—will exit California; Maryland; New Jersey; New York; Baker County, Fla.; parts of St. John's County, Fla.; and the Washington, D.C., area. The affected plans have nearly 25,000 members. The withdrawal will be effective Jan. 1, 1999.

Prudential, though, will continue to offer Medicare risk HMOs in other parts of Florida as well remaining in Houston, San Antonio and Cleveland. Those Medicare risk HMOs have about 100,000 members.

Several factors are behind the pullout, including small penetration in markets dominated by other Medicare risk HMOs, little likelihood of gaining additional market share, and low payment rates from the federal government, a Prudential spokesman said. The importance of these factors varies by market, the spokesman added.

Prudential's termination of several of its Medicare risk HMOs comes in the wake of other health care plans closing their risk HMOs. Earlier this month, Aetna U.S. HealthCare said it is shutting down Medicare risk HMOs in six states and parts of three others. Other insurers shutting down risk HMOs in certain markets include Humana Inc., Foundation Health Systems Inc. and PacifiCare Health Systems Inc.

The closure of these Medicare risk HMOs affects only a small percentage of the nearly 6 million retirees now enrolled in Medicare risk HMOs nationwide.

But health care experts say more announcements of Medicare risk HMOs withdrawing are imminent. United HealthCare Corp. last month said it will curtail its presence in the Medicare risk HMO market, though it has yet to release details.

The wave of pullouts is expected to continue unless Congress re-

vamps its methodology for increasing the rates it pays HMOs that take over from Medicare the responsibility of providing coverage to retirees, HMO experts say.

"There are pullouts all around the country. It is clear that Congress will have to revisit the issue" if retirees are to have choices, said Susan Foote, coordinator of the Fairness in Medicare Coalition, which represents HMOs, hospitals and hospital associations in areas with low HCFA payment rates to Medicare risk HMOs.

Legislation passed by Congress in 1997 was intended to overhaul the much-criticized Medicare risk HMO rate structure.

Prior to those reforms, Medicare risk HMOs in areas of the country that traditionally had the highest

of an increase to offer a competitive benefit package to Medicare beneficiaries, said Ms. Foote, who also is president of Durenberger/Foote, a Washington-based health policy consulting firm.

Unless Congress changes the payment methodology, "you will have a two-tiered system in which there will be risk HMOs in high-payment states and none elsewhere," she added.

To ensure that does not happen, the American Assn. of Health Plans, a Washington-based managed care trade group, called on Congress and regulators to make "midcourse corrections" to ensure that Medicare Risk HMOs and other so-called Medicare + Choice plans can remain viable alternatives to the traditional Medicare program for retirees.

"The payment (to Medicare + Choice) needs to be adequate to ensure long-term stability," said AAHP President and Chief Executive Officer Karen Ignagni.

In fact, even before the most recent announcements of withdrawals from the Medicare risk HMO market, enrollment growth has been slipping. Last year, enrollment in Medicare risk HMOs was growing at a rate of about 100,000 per month. Most recently, the monthly growth rate has slipped to about 65,000.

Employers have a major stake in ensuring that Medicare risk HMOs remain in the market and are attractive to retirees.

That is because many risk HMOs offer far more generous benefits than the traditional Medicare program. That makes it attractive for retirees to opt out of the traditional Medicare program and enroll in risk HMOs.

When that happens, there is much less need for employers to offer retirees benefit plans designed to supplement the traditional Medicare program.

In fact, some employers have found it much less expensive to pay whatever premium a Medicare risk HMO charges than offer a retiree health care plan.

But if Medicare risk HMOs withdraw from more areas of the country, employers will lose a cost-saving health care market for their retirees to obtain coverage. **BI**

**Unless the payment method changes, 'you'll have a two-tiered system, with risk HMOs in high-payment states and none elsewhere,' says Susan Foote of Durenberger/Foote.**

Medicare costs also got the highest payments from the federal government, while HMOs operating in areas that had been the most successful in holding down costs got the lowest payments.

That, in turn, means HMOs in high-payment areas could provide a rich array of benefits, charge no premiums to beneficiaries and still profit, while HMOs in low-payment areas couldn't even afford to enter the market.

The 1997 legislation—known as the Balanced Budget Act—was intended to address these inequities, by boosting rates in extremely low-payment areas, such as rural areas, by about 50%, while rates in areas of the country where costs were somewhat lower than the national average also would increase more than they otherwise would. Rates in high-payment areas would increase, though much less compared to the former system.

But due to certain budget neutrality provisions in the legislation, the net effect—except for HMOs in very low-payment areas—has been to limit rate increases to about 2%.

In very low payment areas, the rates still are too low to attract HMOs, while HMOs in lower-payment areas are not getting enough

# Georges

Continued from page 1

Solutions Inc. last week projected that insured losses from the hurricane would likely exceed \$1 billion from Puerto Rico, the U.S.V.I., the Leeward Islands, and the Dominican Republic. As of Friday, it could not yet estimate damage in the Florida Keys.

Brokers that have seen the damage in Puerto Rico say Hurricane Georges was much more destructive than Hurricane Hugo, which devastated the U.S.V.I. and the northeastern portion of Puerto Rico in September 1989, causing \$1.2 billion in insured damages to those areas.

Hugo headed north from the Caribbean to produce an additional \$3 billion in insured losses to North and South Carolina, making it the second-most costly hurricane on record, behind Hurricane Andrew, which caused about \$18 billion in insured losses in August 1992.

"Right now, it's too early to tell insured damages," said Juan Antonio Garcia, Puerto Rico's commissioner of insurance in Santurce. The insurance industry paid \$685 million in insurance losses in Puerto Rico for Hurricane Hugo, and "Hugo just touched us. This hurricane was stronger and it crossed diagonally over the island," Mr. Garcia said. "We estimate damages will be much more. My best guesstimate is about \$1 billion."

"The hurricane has been devastating," said Jose Carrion III, senior vp-client services for broker Aon Barros

& Carrion Inc. in San Juan. Damages "are much more than Hurricane Hugo."

As of last Friday, the broker had received five claims from its major clients. A fast-food client filed a \$1 million claim; a hotel client filed a \$4 million claim; and a race track client is asking for "several million," Mr. Carrion said.

He noted that most of the damage to its manufacturing clients is structural, while most of the damage to its professional service clients stems from business interruption.

Much of Puerto Rico has been without electricity and water since last Monday, Mr. Carrion said. As a result, "contingent business interruption losses will be substantial."

"We'll probably be cleaning up from this for a year," said Patrice Gonya, state officer for Nationwide Mutual Insurance Co.'s Puerto Rico operation, noting that the storm savagely seized the island for almost 24 hours. "It was a forever kind of storm. . . . This is the worst one I've ever seen."

Ms. Gonya said Mayaguez, a town on the western coast, sustained more water damage than the capital city.

At 10 a.m. Friday morning, about 80 claims had been filed in Puerto Rico, mostly due to wind damage. Because approximately 95% of the island still is without power, she guessed the number of claims is likely to rise to about 10,000.

Bernhard Schroeder, national property claims consulting leader for J&H Marsh & McLennan in Parsip-

pany, N.J., is beginning to assess insurance claims from clients in the affected areas.

"Claims are starting to come in pretty strong now," he said. "We have around 60 to 80 clients in Puerto Rico that have identified some form of loss or damage." He said there are some manufacturing clients in the area whose roofs are gone and are completely exposed.

The broker also has a couple of clients in the Dominican Republic that have identified significant damage as well.

"I'm aware of one client's home office that is either severely damaged or condemned," Mr. Schroeder said.

Several utility clients in the Dominican Republic and Puerto Rico also have significant damage, he added.

While Mr. Schroeder said clients still were assessing damages last week, he has seen claims filed from Puerto Rico anywhere from \$2 million to \$20 million each. Total insured losses from its Dominican Republic clients could range between \$20 million and \$30 million, he estimates.

"As far as from our clients' physical and business interruption standpoint, it appears pretty significant," he said.

"This loss makes Hurricane Hugo look pale, and I saw the effects of Hugo and thought that was bad," Mr. Schroeder added.

Jack McCutchen, managing executive of Sedgwick of Florida Inc. in Fort Lauderdale, said damage to Sedgwick's three clients in Puerto Rico

See **Georges** on next page

# Texas

Continued from page 1

served by external review, I hope we can work together to help craft a revised external review mechanism which would likely pass ERISA muster," he said.

"One possibility may be non-binding external review; experience has shown that advisory external review accomplishes the same objective as binding review because, among other things, a health plan not following a reasonable advisory opinion runs significant risks in the court of public opinion as well as the usual civil venues," Mr. Simon wrote.

But before any solution worked out by the parties can be implemented, "it would have to be formalized with a motion before the court," explained Texas Assistant Attorney General David Mattax. He said he was preparing such a motion late last week.

Until Judge Gilmore rules on Mr. Mattax's motion, however, the Insurance Department will continue processing review requests using its existing format, Mr. Mattax said. The ruling did not order the dismantling of the review board.

Since the IRO process began last November, 253 cases have been reviewed. Of those, 224 reviews have been completed, with 114 rulings in favor of the HMO and 110 in favor of the patient.

"The independent review process is really an interim step before you go

to court," pointed out Lisa McGiffert, a senior policy analyst with Consumers Union in Austin, Texas. "It's a very important process to help people who are denied care."

The managed care industry had been anxiously awaiting Judge Gilmore's ruling because Texas was the first state to allow patients to sue their health plans for damages under state law if they are hurt as a result of treatment denials or delays. A similar law removing HMOs' immunity from malpractice lawsuits recently was enacted in Missouri.

In the Texas decision, Judge Gilmore said: "A suit brought under the Act may challenge the quality of benefits actually received." However, the law doesn't permit damages for denial of benefits or the mishandling of a claim.

"So if a plan denies benefits, that's a benefit decision pre-empted under ERISA. But if it authorizes care and the care is less than adequate quality, that's a malpractice issue," interpreted Stephanie Kanwit, a partner specializing in ERISA law at the Groom Law Group in Washington.

"It also may end up impacting what happens in Congress," observed Ms. Kanwit, referring to federal legislation now being considered.

Henry Saveth, an attorney with benefit consultant William M. Mercer Inc. in Washington, predicts that because the decision validates the prevailing public view that HMOs have a "Get out of jail free card. . . . This will come up in more states."

Consumer and doctors' groups, especially the American Medical Assn.,

have pushed for federal right-to-sue legislation as part of HMO reform legislation.

Ms. Kanwit also pointed out that any law—whether federal or state—that permits malpractice suits against managed care organizations "indirectly makes employers liable," because whenever there's a huge jury verdict against an HMO or insurer "the employers will be picking up the tab in terms of higher premiums."

Texas Insurance Commissioner Bomer said he was disappointed with Judge Gilmore's ruling, adding that he believes it will deny Texans' "access to the independent review process, which has been working very well."

Geoff Wurzel, executive director of the Texas Assn. of Health Plans, the state's HMO trade group, said the industry has supported the review process in the past.

"It was not our understanding, and I don't believe it was Aetna's plan, to get the (independent review) process thrown out," Mr. Wurzel said.

However, consumer advocate Jamie Court, director of Consumers for Quality Care in Santa Monica, Calif., praised Judge Gilmore's decision.

"The ruling is a tremendous victory for patients who deserve to be able to take HMOs to state court and receive damages," he said.

*Aetna U.S. Healthcare vs. Texas Department of Insurance, U.S. District Court, Southern District of Texas, Houston Division, No. H-97-2072, Sept. 18.*

from several Jewish groups as well as Sen. Alfonse D'Amato, R-N.Y.

State insurance regulators plan to move forward in helping to establish the commission, in which Generali pledges to fully participate, Mr. Pastori said. However, the insurer emphasizes it is motivated only by a moral commitment. Generali says it doesn't have legal responsibility because of widespread communist expropriations of its operations in Central and Eastern Europe after World War II.

Currently, six insurers have agreed

to sign the memorandum, which was developed by the NAIC and Sen. D'Amato (BI, Aug. 31).

By signing the memorandum, the European companies agree to: cooperate fully with the commission to resolve expeditiously all unpaid claims; provide full access to regulators and representatives of potential claimants to all their relevant records, books, files and archives; contribute to the establishment of a humanitarian fund; and pay for the investigation and audits by the commission. **BI**

## Updates

### Vesta's D&O insurer sues

Continued from page 2

file a lawsuit last week seeking to rescind coverage.

Fairfield, Ohio-based Cincinnati Insurance Co. filed the lawsuit in the U.S. District Court in Birmingham, Ala., where Vesta is based.

Vesta executives said in a statement that the lawsuit, which names all of the individuals covered by the D&O policy as parties, apparently is based on the theory that Vesta's recent restatement of financial information made its earlier application for coverage "inaccurate." Vesta contends, however, that the lawsuit is "completely without merit" and intends to "vigorously contest" what it calls Cincinnati Insurance's "improper actions."

A spokesman for Cincinnati Insurance Co. confirmed the lawsuit is based on Vesta's restatement of its financial results. Cincinnati also insured bonds issued by Vesta and is seeking to rescind coverage for those as well.

Vesta financial problems first came to light in June, when "accounting irregularities" were discovered during an investigation by the Alabama Insurance Department. Subsequently, the company reported that the irregularities could have a sizable impact on prior financial statements, including lowering earnings statements an aggregate of \$72.4 million over the past five years (BI, Aug. 24; July 6).

Vesta is a holding company for several property/casualty insurance and reinsurance units.

### Kemper, Gulf in joint venture

LONG GROVE, Ill.—The Kemper Insurance Cos. have entered into a joint venture with Gulf Insurance Group under which a newly formed Kemper underwriting management company will underwrite and administer specialty program business formerly underwritten by Gulf Underwriters Insurance Co.

Through the arrangement, Gulf, part of the Travelers Group, will provide a market for business written through the new underwriting management company. "Some of it will be written on Gulf paper, and some of it will be written on Kemper paper, so (Gulf) will continue to be quite involved in the business," a Kemper spokesman said.

As part of the venture, Kemper also will create a new holding company, along with admitted and non-admitted insurance companies. Vickie F. Kartchner, who was president of Gulf Underwriters, was named president of the new Scottsdale, Ariz.-based Kemper holding company and will be nominated for election as a senior vp of Kemper Insurance Cos. All current employees of Gulf Underwriters have been offered positions with the new Kemper unit.

### RightCHOICE, state reach deal

ST. LOUIS—A final settlement agreement was announced last week among Missouri officials, Blue Cross & Blue Shield of Missouri and the Blues' for-profit publicly traded subsidiary, RightCHOICE Managed Care Inc., in a dispute over RightCHOICE's creation and operation.

The conceptual framework for the agreement, which still must receive court and shareholder approval, was announced in April (BI, April 27). BC/BS of Missouri in 1994 moved all of its managed care operations into newly formed RightCHOICE and then took the company public with an offering of 20% of its stock. State officials argued the new for-profit network owed hundreds of millions of dollars as a public benefit obligation.

Under the settlement agreement, Blue Cross & Blue Shield of Missouri would reorganize and be merged with RightCHOICE Managed Care. A charitable health care foundation would become the owner of 80% of the new RightCHOICE's stock, now owned by BC/BS of Missouri. The foundation would liquidate most of its shares over a period of no longer than five years. The remaining 20% of the new RightCHOICE stock would continue to be owned by RightCHOICE's public shareholders.

The Missouri Department of Insurance and the state attorney general participated in the agreement.

John O'Rourke, chairman, president and chief executive officer of RightCHOICE and president and CEO of BC/BS of Missouri, said at a news conference last week that the agreement, which if approved will resolve all outstanding litigation and regulatory issues with the state, is a "critical milestone" in RightCHOICE's progress toward building its core business and strengthening its leadership position.

### Briefly noted

**Maurice R. Greenberg** has been named 1998 Insurance Leader of the Year by The College of Insurance in New York. A benefit dinner is scheduled for Jan. 28 in New York to honor Mr. Greenberg, chairman of American International Group Inc. . . . **Henry R. Roberts**, former chairman, president and chief executive officer of Connecticut General Corp., died last week at age 82. Mr. Roberts led the life insurer through a period of rapid growth during a career lasting more than three decades. Connecticut General merged with Insurance Co. of North America to form CIGNA Corp. in 1982. . . . **Seibels Bruce Group Inc.** has named Tom Savage acting president and chief executive officer. He will replace John Weitzel, who is resigning from the Columbia, S.C.-based insurer, the company said in a release. . . . Citicorp and Travelers Group Inc. said the two companies' **merger to form Citigroup Inc.** is expected to be completed Oct. 8, after gaining approval last week from the Federal Reserve Board. . . . **Jerry Choate**, 60, chairman and chief executive officer of Northbrook, Ill.-based Allstate Corp., will retire at the end of the year. Edward Liddy, 52, the company's president and chief operating officer, will replace Mr. Choate, who became Allstate's CEO in 1994 and its chairman in 1995. . . . California Gov. Pete Wilson has signed S.B. 1965, a bill that will permit employers to settle **retroactive vocational rehabilitation claims** (BI, Sept. 14). . . . The Ohio Insurance Department has approved the merger of **Nationwide Mutual Insurance Co.** with **Allied Mutual Insurance Co.** of Des Moines, Iowa. The Ohio regulatory approval was the last Nationwide needed to complete its acquisition of Allied.

# NAIC

Continued from page 2

the liabilities of Generali to the International Commission," he said.

State insurance regulators discussed Generali's position that the \$100 million be "a ceiling," rather than "a floor," at closed sessions during its fall national meeting earlier this month. The meeting also included a mini-celebration of the NAIC's involvement, with praise coming

# Georges

Continued from previous page  
Rico was not extensive.

"Our biggest concern from a physical standpoint is not as bad as from a business interruption standpoint," added Joe Latona, senior vp-risk control at Sedgwick of Florida Inc.

Dominican Republic President Leonel Fernandez gave a televised address to the nation last week, noting that more than half of the power grid in the country was destroyed at a cost of \$111 million, according to press accounts. He also said that 70% of the country's bridges were damaged or destroyed and that 90% of the country's banana and other crops were flattened.

Reports from Haiti, Cuba, Antigua and Guadeloupe say that the islands sustained severe flood damage and thousands of homes were damaged.

The small islands of St. Kitts and Nevis in the Caribbean sustained an estimated \$445 million in damages, according to press accounts. It has been reported that 85% of the homes on both islands were hit, as well as local hospitals, police stations and schools. The local airport terminal and control tower are severely damaged.

The U.S. Virgin Islands also sustained severe damage to homes, hotels, shops, piers and boats, according to press accounts.

The hotel industry was one of the hardest hit by the hurricane. Structural damage due to the high winds from the storm has closed several hotels in the Caribbean, while others

were spared and are open for business. In Puerto Rico, several hotels sustained no structural damage but are closed until electricity is restored to the island.

According to Utell International, a hotel marketing and reservations company in Omaha, Neb., Club Antigua on the tiny Caribbean island of Antigua is closed until Nov. 20 for cleanup and repair to its restaurant. Hawksbill Beach Resort, also in Antigua, is closed for about two months for repairs.

Two hotels on the tiny island of St. Martin—Maho Beach Hotel & Casino and Great Bay Beach Hotel—were closed last week for cleanup.

Ten hotels in Puerto Rico for which Utell books reservations are closed until electricity is restored, according to the company.

Westin Hotel Co.'s two hotels in the U.S.V.I., Westin Resorts St. John and Westin Carambola Beach Resort in St. Croix, sustained "minor structural" damage, according to a hotel spokeswoman. The Westin Carambola was expected to be up and running early this week, and the Westin St. John by Oct. 7.

A Westin hotel in Puerto Rico, Westin Rio Mar, also sustained water and wind damage due to the hurricane, but "nothing major," she said. The hotel is expected to reopen in 10 to 14 days. The spokeswoman had no information regarding damage and business interruption estimates.

Best Western International also had no damage estimates as of late last week. However, a spokeswoman said its Best Western Mayaguez Resort & Casino in Puerto Rico "suffered quite a bit of damage" and was tak-

en off the hotel's reservation system until Oct. 4. She said there is water and roof damage to the structure and that it is without electricity.

Best Western Carib Beach Resort in St. Thomas, U.S.V.I., suffered minor damage to the roof of the building, water damage to several rooms and damage to the pool deck, the spokeswoman said. It is expected to be back in full operation by Oct. 15, she said.

While total insured estimates from Hurricane Georges are not available yet, it is no doubt the most powerful and destructive hurricane of the season.

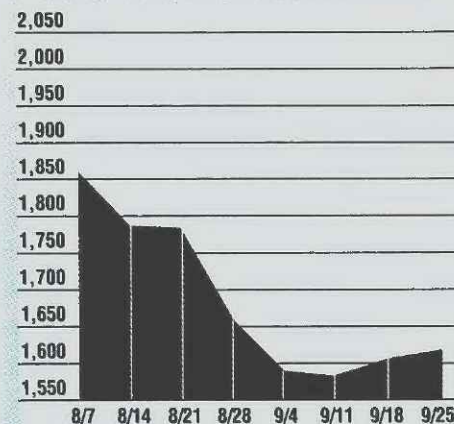
Property damage from last month's Hurricane Bonnie totaled about \$360 million in three Southeastern states, a majority coming from North Carolina, according to PCS. Hurricane Earl, which hit Florida's Panhandle, Georgia and South Carolina late last month, cost the insurance industry less than \$50 million, according to the Insurance Information Institute (BI, Sept. 7).

As Hurricane Georges battered down on Florida last Friday, it was too early to assess if total damages would be enough to affect pricing in the soft property insurance market.

"We're certainly not professionals at rate-making," said Jack McCutchen, managing executive of Sedgwick of Florida Inc. in Fort Lauderdale. "Obviously, any natural disaster causes insurers to re-evaluate their positions. We can only hope that the storm turns north out of the Atlantic and does not cause us to address that situation. We just don't know at this point."

Amanda Milligan contributed to this report.

## BI Insurance Index



Base=100 on Dec. 29, 1978  
Source: Nordby International Inc. (nordby.com) Boulder, Colo.

## PCS catastrophe options

As of Sept. 25	Call spread	Price bid/ask	Call spread	Price bid/ask
<b>National Annual 1998</b>				
60/80	8.0		40/60	9.2
150C	1.0		60/80	4.0
			100/120	2.0/6.5
			150C	6.0
<b>National December 1998</b>				
10/20	0.6			
20/10	0.5			
<b>Southeastern September 1999</b>				
40/60	4.3			
<b>Eastern September 1999</b>				
40/60	4.5			
			<b>Western Annual 1999</b>	
			40/60	1.4
			80/100	1.0/2.0
			<b>Midwest June 1999</b>	
			10/20	0.8/2.0

Total volume: 0 Total open interest: 19,608

For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.

Source: Chicago Board of Trade

# Georges prompts little market activity

Hurricane Georges caught the attention of markets for catastrophe insurance-linked securities and derivatives late last week, but that extra interest translated into little additional market activity.

At such forums as the Chicago Board of Trade, CATEX and the Bermuda Commodities Exchange, the hurricane's threat failed to generate stepped-up trading in risk-swapping vehicles.

"The level of inquiry at Bermuda and CATEX has stepped up a little bit," said Robert W. Montgomery, managing director at Sedgwick Lane Financial L.L.C. in Chicago. "There's been no more trades, but there's been more interest. At the Board of Trade, we've seen the same sort of thing."

"We've seen a little bit of interest but not a real big amount of interest yet," echoed Carlton Prouty, an independent broker who trades catastrophe options at the Chicago Board of Trade. "I think it might be a case of waiting to see just what kind of damage comes down through Florida."

Mr. Montgomery said the slow trading in derivatives probably was due to economic forces in the insurance market. "I think because the industry is just sort of rolling in money these days, the pricing pressure that's taking place in the market is being reflected here," he said. "There just isn't the imperative for them to be looking at these alternative risk financing mechanisms when they don't feel any peril."

On the catastrophe bond front, Georges also might have caught the attention of holders of bonds issued earlier this year to back an East Coast windstorm reinsurance contract for United Services Automobile Assn.

The reinsurance contract written by Residential Reinsurance Ltd., the Cayman Islands-domiciled special-purpose reinsurer that issued the bonds, triggers in the event USAA sustains \$1 billion in losses from a hurricane that is Category 3 or greater.

As Hurricane Georges passed over Key West Friday, forecasters predicted it could become a Category 3 storm as it made its way en route to a predicted landfall on the Florida Panhandle.

—By Rodd Zolkos

## British Issues

Companies	Price pence	P/E	Div. pence	Yield %	52-week high-low
Gdn Royal Exch	252	4.1	13.4	5.1	495-228
Legal & Gen	685	19.9	13.3	2.4	796-400
Royal & Sun	515	13.5	23.6	4.4	825-437
<b>Brokers</b>					
Lmbt Fenchurch	100	8.0	5.7	6.9	138-100
Lloyd Thmpson	197	11.6	10.5	6.9	213-151
Sedgwick Grp	210	—	7.0	3.3	220-119
Willis Corroon	201	23.3	6.9	4.2	210-116

Note: Prices are Sept. 25 closings; other numbers from Sept. 24.

Source: Nordby International Inc. (nordby.com) Boulder, Colo.

# BI Industry Stock Report SEPT. 21, 1998, THROUGH SEPT. 25, 1998

BROKERS		Price	Weekly % change	Year to date % change	52-week		Price	Weekly % change	Year to date % change	52-week		Price	Weekly % change	Year to date % change	52-week								
					High	Low				High	Low				High	Low							
Aon Corp.	NYS	66.94	-1.56	14.18	75.56	50.00	1035	GNA Surety	NYS	14.56	1.75	-5.67	16.75	12.56	51	Reliastar Financial Corp.	NYS	40.50	-2.26	-1.67	52.44	37	1384
E.W. Blanch Holdings Inc.	NYS	37.56	1.69	9.07	38.75	29.38	128	EMC Insurance Group Inc.	NDQ	12.00	-3.76	-9.43	15.88	11.75	165	RenaissanceRe Holdings Ltd.	NYS	43.88	-0.28	-0.57	50.75	38	125
Gallagher Arthur J. & Co.	NYS	42.13	4.66	22.32	46.56	33.56	170	ESG Re Limited	NDQ	14.63	0.86	-37.77	28.88	14.00	298	Risk Capital Holdings	NDQ	23.50	-1.57	5.62	25.50	19	37
Hilb, Rogal & Hamilton	NYS	18.63	1.71	-3.56	19.63	15.38	31	Enhance Financial Services	NYS	31.38	1.62	5.46	37.56	24.56	391	RLI Corp.	NYS	39.06	4.17	-1.98	45.63	31	51
Kaye Group Inc.	NDQ	6.63	3.92	0.00	9.00	6.13	23	Everest Reinsurance	NYS	37.69	-2.27	-8.64	45.25	33.00	388	St. Paul Companies	NYS	34.94	6.27	-14.85	47.19	28	2000
Marsh & McLennan	NYS	52.88	2.30	6.37	64.31	44.00	2494	Executive Risk Inc.	NYS	43.25	5.17	-38.05	75.75	35.50	376	SCOR	NYS	59.00	3.17	23.56	72.75	40	12
Poe & Brown	NYS	37.00	0.00	24.37	42.50	26.00	19	IPC Holdings Ltd.	NYS	62.13	-2.64	-1.97	83.25	61.56	694	SAFECO Corp.	NDQ	41.63	-3.48	-14.62	56.00	38	2809
Sedgwick Group PLC	NYS	17.75	1.07	44.16	17.75	9.94	24	EXEL Ltd.	NYS	48.31	10.74	-11.76	62.13	37.75	541	SCPIE Holdings Inc.	NYS	31.13	-0.99	7.56	38.38	26	NA
Willis Corroon Corp.	NYS	16.69	-0.37	35.53	16.88	10.06	29	Fremont General Corp.	NYS	13.13	-2.33	-42.62	35.69	12.19	1192	Seibels Bruce Group	NDQ	4.38	-2.78	-41.67	8.75	4	246
BROKERS AVERAGE			1.87	17.28				Frontier Insurance Group	NYS	13.13	-2.33	-42.62	35.69	12.19	1192	Selective Ins. Group	NDQ	19.25	0.82	-28.70	29.25	17	44
								Gainco Inc.	NYS	7.13	-5.00	-16.18	10.19	5.75	129	Terra Nova Insurance Co. Ltd.	NYS	26.38	-1.86	0.48	35.00	23	48
								General RE Corp.	NYS	207.00	2.54	-2.36	275.00	191.00	2013	TIG Holdings	NYS	14.38	6.48	-56.89	36.56	12	2148
								Gryphon Holdings	NDQ	14.00	0.90	-16.42	19.38	11.38	13	Tokio Marine & Fire	NDQ	44.50	1.14	-22.94	61.88	39	300
								Harleysville Group	NDQ	22.69	2.54	-5.47	28.50	19.25	132	Torchmark Corp.	NYS	37.06	-1.33	-12.15	49.81	35	1121
								Hartford Steam Boiler	NYS	42.56	-3.27	15.69	59.56	33.25	358	Transatlantic Holdings	NYS	83.13	-0.89	16.26	94.50	67	44
								HCC Insurance Holdings	NYS	19.94	-1.24	-6.18	29.38	15.63	291	Travelers Property Casualty	NYS	31.38	2.66	-28.69	46.06	29	1029
								ING Groep N.V.	NYS	49.75	-7.87	17.58	76.75	38.88	1618	Travelers Corp.	NYS	40.25	0.16	-25.29	73.50	37	13
								IPC Holdings Ltd.	NDQ	24.63	-2.96	-23.50	33.25	21.19	111	Trenwick Group Inc.	NDQ	28.00	-16.10	-25.58	41.75	27	300
								IPC Holdings Ltd.	NYS	49.75	-2.69	6.35	60.00	39.25	1709	Unico American Corp.	NDQ	11.63	5.68	-5.10	18.13	8	88
								LaSalle Re Holdings Ltd.	NYS	27.13	0.93	-23.32	42.94	26.50	57	United Fire & Casualty	NDQ	37.38	5.28	-15.54	47.00	32	13
								Life Re Corp.	NYS	91.75	0.00	40.75	92.94	49.88	247	Unlitrn	NDQ	66.63	5.75	3.09	74.13	55	619
								Lincoln National	NYS	89.19	-3.58	14.16	98.88	64.63	1670	UNUM Corp.	NYS	51.00	5.29	-6.21	59.63	43	1429
								MAIC Holdings Inc.	NYS	26.38	-2.76	-1.53	30.38	23.94	41	Vesta Insurance Co.	NYS	8.38	11.67	-85.89	64.75	6	886
								Market Corp.	NYS	152.56	0.37	-2.28	187.00	138.00	8	Zenith National Ins.	NYS	26.25	1.20	1.94	30.50	23	56
								MBA Insurance Group	NYS	56.94	-2.67	-14.78	80.94	47.19	1274	INSURERS/REINSURERS AVERAGE			0.07	-6.05			
								Meadowbrook Insur. Group	NYS	24.75	1.02	-5.04	35.00	22.69	25	HEALTH MAINTENANCE ORGANIZATIONS							
								MMI Cos. Inc.	NYS	17.69	-0.70	-29.60	27.06	15.25	125	Foundation Health Systems Inc.	NYS	10.63	-2.86	-52.25	33.50	9	3221
								Mutual Risk Mgmt. Ltd.	NYS	34.13	-4.71	13.99	39.94	24.75	462	Humana Inc.	NYS	18.00	4.73	-13.25	32.13	12	25
								NAC Re Corp.	NYS	49.94	2.30	2.30	55.88	43.50	99	Oxford Health Plans	NDQ	11.00	11.39	-29.32	79.00	5	23471
								Navigator Group	NDQ	16.00	-1.54	-14.81	22.50	16.00	27	Pacificare Health Sys.	NDQ	74.25	3.13	47.76	88.88	46	212
								Nobel Insurance Ltd.	NDQ	0.69	-15.38	-94.76	1.00	0.40	60	Safeguard Health Enter.	NDQ	5.06	15.71	-62.50	14.88	3	23
								NYMagic Inc.	NYS	26.19	4.75	-4.99	34.25	21.75	9	Sierra Health Services	NYS	19.56	-0.32	-12.73	27.75	15	203
								Ohio Casualty Corp.	NDQ	39.00	-1.73	-12.61	51.75	36.63	1068	United Healthcare Corp.	NYS	37.63	-8.79	-24.28	73.94	29	56
								Old Republic Int'l	NYS	23.13	1.93	-6.72	32.25	21.88	1058	Wellpoint Health Networks	NYS	57.63	5.73	36.39	75.00	38	1636