Hopes for tort reform high in new Congress / 3

PBGC to take over plan for United pilots / 3

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January 3, 2005

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Tsunami deaths exceed 100,000, but few claims are expected

Nations grieve after deadly wave

By MICHAEL BRADFORD

A deadly tsunami late last month claimed more than 100,000 lives in several Asian and African countries and left a swath of destruction estimated in the billions of dollars, much of it uninsured.

The economic losses, though, pale in relation to the human toll taken by the earthquake-spawned wave that roared ashore Dec. 26 in Indonesia, Thailand, Sri Lanka, India, Malaysia and other countries. Sources say the final tally could make it one of the deadliest-ever catastrophes.

When the waters receded, shorelines in many parts of the affected areas were tangled piles of destroyed buildings, automobiles and debris. The powerful waves, triggered by an earthquake of 9.0 magnitude in the Indian Ocean about 100 miles west of Sumatra, raced to the coastlines and pounded unsuspecting residents and tourists.

Many deaths might have been averted had a warning system been in place to alert residents. Such a system exists for countries along the Pacif-

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PHOTO: CPL. BELINDA MEPHAM/AFP/GETTY

Flooding from the killer tsunami covered Banda Aceh, the capital city of Indonesia's Aceh province, located on the northwest coast of the island of Sumatra.

Foreign drugs pose health risks, HHS report says

By RUPAL PAREKH

WASHINGTON—A long-awaited federal report has reignited the debate on prescription drug reimportation, contending that drugs from abroad now pose significant health risks, while a safer U.S. government-regulated importation program would be costly and offer consumers minimal savings.

In March 2004, U.S. Department of Health and Human Services Secretary Tommy G. Thompson appointed a 13-member task force to explore issues related to the importation of prescription drugs from other countries and subsequently determine whether or not drugs could be imported safely.

The legislation directed the task force to complete its study by December 2004.

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Settlement won't end industry probe: Spitzer

By DOUGLAS McLEOD

NEW YORK—New York Attorney General Eliot Spitzer will pursue new cases in his insurance industry investigation in early 2005 but is also hoping to report "positive news" about a "resolution" of issues raised so far in the broker compensation inquiry, spokesmen for Mr. Spitzer said.

The spokesmen would not provide specific details on either the possible new lines of inquiry or on a potential resolution in the compensation probe. Market observers, though, have speculated in recent weeks that Mr. Spitzer may be nearing a settlement of the fraud and bid-rigging charges he filed against Marsh & McLennan Cos. Inc. in October (*BI*, Nov. 1, 2004; Oct. 25, 2004).

Earlier this month, Mr. Spitzer declined to set a timetable for a settlement, saying his investigators had to be "diligent and make sure we understand the facts" before agreeing to terms with Marsh.

In an interview on Bloomberg Television, though, the New York attorney general also suggested that Marsh is pushing for a resolution and that Aon Corp., another focus of the inquiry, may be involved in a settlement deal.

"It's clear that Marsh would like a settlement sooner rather than later," Mr. Spitzer said (*BI*, Dec. 20, 2004). He also praised Aon Chairman and Chief Executive Officer Patrick G. Ryan and said that talks with Mr. Ryan had been "easy and profitable...in terms of moving the deal forward." He likewise noted that the senior management of other companies implicated in the alleged Marsh bid rigging—including American International Group Inc. and ACE Ltd.—have been cooperating with the inquiry.

A settlement deal will not end Mr. Spitzer's investigation of industry practices, though, a spokesman for his office emphasized. The attorney general's office will likely pursue "radiating inquiries" on other issues identified during the broker compensation probe, he said.

Since launching the inquiry last spring, Mr. Spitzer's office has subpoenaed property/casualty and life/health brokers, insurers, reinsurers, reinsurance intermediaries and claims administrators, and it has recently sought information specifically on finite insurance and legal malprac-

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Late News

Serio to step down as N.Y. top regulator

New York Insurance Superintendent Gregory V. Serio will step down next month and is expected to be replaced by state Assemblyman Howard D. Mills III, R-97th Assembly District. Mr. Mills' nomination, announced last week by Gov. George E. Pataki, must be confirmed by the state Senate, which is expected to act by the end of the month. Mr. Serio is resigning to take a job in the private sector, Gov. Pataki's office announced. An Insurance Department spokesman said he could not provide further details.

Mr. Serio

SEC probes Gen Re on nontraditional products

The Securities and Exchange Commission has asked General Re Corp. to provide "documentation and information relating to non-traditional or loss mitigation insurance products," Gen Re parent Berkshire Hathaway said in a statement. Omaha, Neb.-based Berkshire said it would cooperate with the request. The SEC has been investigating the use of finite risk products in the insurance industry, having recently requested similar information from Chubb Corp., ACE Ltd., Swiss Reinsurance Co. and other companies.

Alliant Resources drops contingent commissions

Broker Alliant Resources Group Inc. and its San Diego-based subsidiary Driver Alliant Insurance Services Inc. said that they will eliminate contingent commission agreements with insurers. Alliant, which was the 14th-largest broker of U.S. business in 2004, recorded gross revenues of $158.5 million for that year. Alliant said that it derived about 5.7% of those revenues—or about $9 million—from contingent commissions.

NAIC adopts rules on broker disclosure

The National Assn. of Insurance Commissioners adopted part of

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Spotlight

YEAR IN REVIEW – RISK MANAGEMENT

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NEWSPAPER

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Casino can compel female worker to wear makeup

By JUDY GREENWALD

SAN FRANCISCO—A casino cannot be sued for sex discrimination for firing a female bartender over her refusal to wear makeup, says the 9th U.S. Circuit Court of Appeals.

In its 2-1 ruling, a 9th Circuit panel in San Francisco held that Harrah's Casino in Reno, Nev., did not violate Title VII of the federal Civil Rights Act when it fired Darlene Jespersen because she refused to wear makeup, as required under the casino's appearance rules. Ms. Jespersen's attorney plans to ask the full court to reconsider the Dec. 29 decision.

According to the opinion, Ms. Jespersen was considered an outstanding employee during the nearly 20 years she worked at Harrah's. Throughout the 1980s and '90s, Harrah's encouraged—but did not formally require—its female beverage servers to wear makeup. Ms. Jespersen tried doing so for a short time but found it "made her feel sick, degraded, exposed and violated," according to the decision.

In 2000, Harrah's implemented a "Beverage Department Image Transformation Program" that required female beverage servers to wear stockings and colored nail polish and to tease, curl or style their hair. Men were prohibited under the program from wearing makeup or colored nail polish and were required to maintain short haircuts and neatly trimmed fingernails. Shortly afterward, Harrah's amended its standards to also require female beverage servers to wear makeup under its "Personal Best" program.

Ms. Jespersen was terminated

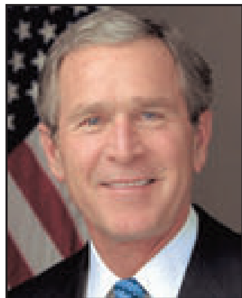
See MAKEUP/page 19

Bush expected to push for civil justice reform legislation

Tort reform proponents foresee action in 2005

By MARK A. HOFMANN

WASHINGTON—Tort reform advocates say President Bush's recent call to Congress to put civil justice reform high on its legislative agenda may have given them the boost they need to turn long-stalled proposed legislation into law.



On at least three occasions in less than a week late last month, the president called for tort reforms, sometimes outlining specific measures. Tort reform was a key topic at the White House economic summit, with the president going so far as to participate in a panel discussion of the issues. At one point, the president said that "tort costs are far higher than in any other major industrialized nation."

At another point in the conference, he called legal reform a "cornerstone" of any good economic expansion program. "We cannot have the legal system to be a legal lottery," he said. Later, the president stressed that "I intend to make this a priority issue as I stand before Congress when I give the State of the Union" address in January.

> **Congress 'needs to pass sound reforms in our medical liability, class action and asbestos litigation system.'**
> *President Bush*

The president continued to push his theme of legal reform as economic catalyst in his weekly radio address on Dec. 18 as well.

"Excessive litigation is one of the biggest obstacles to economic growth," he said, adding that "no other country faces a greater economic burden from junk lawsuits."

"When Congress convenes next year, the House and Senate need to pass sound reforms in our medical liability, class action and asbestos litigation system," he said.

The president's comments came in the wake of one of the most disheartening congressional sessions tort reformers had endured in some time. Although the House passed both class action and medical malpractice liability reform bills in its last session, the Senate failed to follow suit. The Class Action Fairness Act failed by a single vote in the Senate, whereas a series of targeted medical malpractice reform bills failed by much larger margins.

The Senate also spent much time

See TORT/page 17

United pilots' pension plan lands on PBGC

By MATT SCROGGINS

WASHINGTON—The Pension Benefit Guaranty Corp. will take over and terminate one of United Airlines' massively underfunded pension plans, saddling the federal agency with a roughly $1.4 billion loss, one of the biggest in its 30-year history.

The PBGC said last week that it had moved to terminate the United Airlines plan—one of four operated by the financially troubled air carrier—which provides pension benefits for more than 14,000 active and retired pilots.

The agency estimates that the pilots' plan is underfunded by about $2.9 billion, with $2.8 billion assets and $5.7 billion in liabilities. However, the PBGC put its actual loss from the termination at approximately $1.4 billion, because of limits on the amount of benefits the agency guarantees.

In a statement, the PBGC said the termination aims to protect it against the possibility of an even greater loss and to help Chicago-based United Airlines maintain its remaining plans.

"Ideally, the company would maintain all four of its pension plans and honor fully the promises it has made to its employees," PBGC Executive Director Bradley D. Belt said in a statement. "However, in conjunction with the company's bankruptcy proceeding, PBGC's financial advisers have come to the conclusion that United Airlines can afford at most only three of its pension plans."

By terminating the pilots' plan now, the PBGC stops the accrual of benefits in the plan, preventing an even bigger loss to the agency if the plan were terminated later.

United Airlines previously proposed to terminate all four of its defined benefit plans and replace them with defined contribution plans, though that plan has not been ratified by the company's pilots (*BI*, Dec. 27, 2004). Such a move would shift about $6.4 billion in guaranteed benefits to the PBGC, the agency earlier estimated.

The $1.4 billion loss from termination of the United Airlines pilots' plan—the third-largest claim in the agency's history—is another major blow to the PBGC's financial condition, which has deteriorated drastically over the past few years.

The agency, which has absorbed several huge losses since 2002, reported a record $23.3 billion deficit for its most recent fiscal year (*BI*, Nov. 22, 2004). The Bush administration is expected to propose tougher pension funding rules this year to reduce the PBGC's exposure to losses.

Meanwhile, the PBGC said last week that it is seeking comment on a proposed a rule that would require certain underfunded pension plans—those subject to section 4010 reporting regulations—to submit required filings electronically using the agency's Web site.

More information on the rule is available at *www.pbgc.gov/regs*.

Inside Business Insurance

Insurance rates will likely fall in 2005

Market softening is expected to continue as insurers report strong results for the first nine months of 2004, despite cat losses. Page 4

California state fund wins comp award

Two employee leasing firms must pay the State Compensation Insurance Fund $14.6 million in a workers comp scam case. Page 4

Employees seek more benefit information

A survey finds benefit cost-shifting is increasing demands on employers to educate workers. Page 4

What's in store for the New Year?

BI offers ideas on what risk and benefit managers might, or might not, expect to see in 2005. Page 8

Punitive interest award in latex allergy case

A huge punitive interest award by a U.K. court is expected to lead to earlier settlements in employment disputes. Page 15

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info about your own event.
- Searchable **directories** provide access to all the listings of industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Are drug reimportation programs likely to slow in light of a federal report finding that reimportation poses significant health risks?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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2005 will be tougher for P/C insurers to weather

Strong results of last year hard to sustain, Best predicts

By JUDY GREENWALD

U.S. property/casualty insurers reported strong financial results in the first nine months of 2004, but more challenging times lie ahead, according to a report by A.M. Best Co.

Lingering issues that could hit insurers' future results include softening market conditions, reserve deficiencies and New York Attorney General Eliot Spitzer's investigation into the insurance industry, according to the report by Devin Inskeep, senior financial analyst at the Oldwick, N.J.-based rating agency.

Still, the profits posted by insurers for the first nine months of 2004, which came in the face of a quartet of major hurricanes that made landfall during the period, illustrate the industry's current strength, the report notes.

"The industry's ability to sustain underwriting profit in light of such heavy catastrophe activity highlights the strong underwriting fundamentals present since 2001," the report notes.

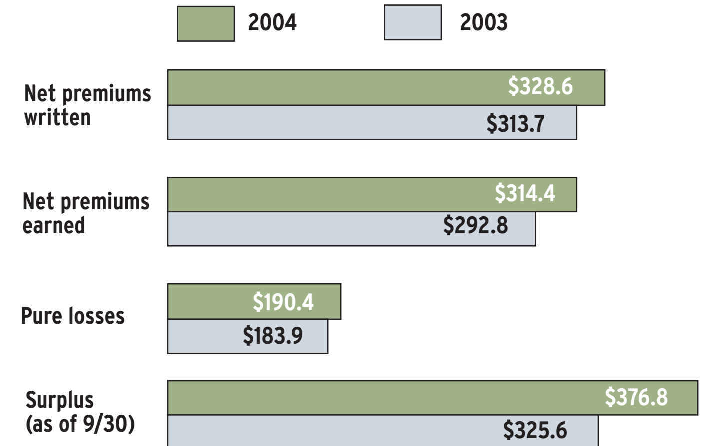
The Insurance Services Offices Inc.'s Property Claim Services unit estimates preliminary hurricane losses of $20.5 billion, of which Best estimates 55% to 70% was incurred by U.S. insurers, with the remainder absorbed by the Florida Hurricane Catastrophe Fund, non-U.S. reinsurers and others, says the report.

Despite these losses, the U.S. property/casualty industry reported $27.8 billion in net income for the nine months ended Sept. 30, 2004, a 23.2% increase over the comparable period in 2003. The industry reported a 97.8% combined ratio for the nine months, compared with 100% for the year-earlier period.

"What is keeping the industry combined ratio below 100% is clearly the surge in earned premiums, which increased an estimated 7.4% over the prior year," the report states. Earned premiums will likely continue to rise in 2005, but the growth will not be sustainable in 2006 as a reduction in premium writings affects earned premium re-

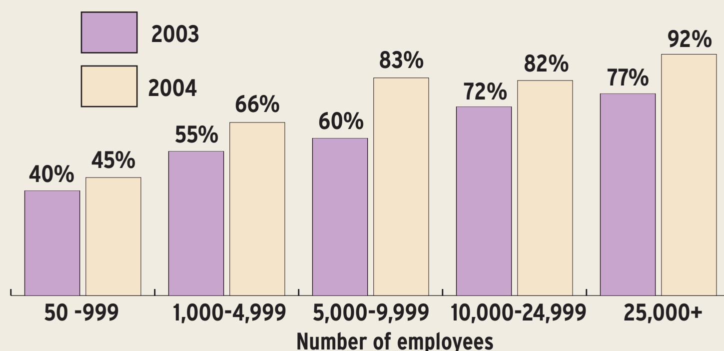
See BEST/page 6

INDUSTRY INDICATORS



Source: A.M. Best Co.

LOGGING ON FOR BENEFIT INFO



Source: MetLife Inc.

Benefit planning's value rising: Study

Workers wary of cost shifting

By RUPAL PAREKH

As workers are increasingly expected to assume more of the cost of their health benefits, employers are being pressured to enhance benefits education efforts and be more flexible about plan offerings, according to a study by MetLife Inc.

"Fewer employers are paying the full cost of their employees' insurance—and the trend is unlikely to reverse itself any time soon," the study states.

The New York-based life insurer surveyed more than 1,500 human resources and benefits managers from a broad range of industries. The majority of employers that participated in the survey represent small to midsize companies with fewer than 500 employees, with one in five companies surveyed employing more than 5,000 workers.

Among the companies that responded to the survey, 27% take on the full cost of their workers' medical coverage, with small companies making up the majority of companies that offer full coverage. Even fewer fully sponsor dental and vision care coverage, just 19% and 16%, respectively.

By contrast, 60% of the employers reported that they want employees to continue to fund some or all of their benefits costs, despite the U.S. economy showing signs of improvement.

For benefits managers, one of the biggest challenges "is that most people don't understand how expensive it can be to offer benefits," said Craig Guiffre, senior vp in the institutional business division of MetLife in New York. "The average person may not appreciate how expensive it is to provide medical care for a family," he said.

Equipping employees with adequate guidance and information about their benefits in the face of health care cost inflation, therefore, is becoming all the more crucial.

More and more employees are recognizing that they need to offer their employees "planning and educational tools to help them make informed choices," Mr. Guiffre said.

See SURVEY/page 6

Two PEOs must pay state fund in California comp fraud case

By ROBERTO CENICEROS

SAN BERNARDINO, Calif.—Two California professional employer organizations must pay $14.6 million to the State Compensation Insurance Fund for allegedly perpetuating a scheme to illegally reduce their workers compensation premiums and payroll taxes, a state court has ruled.

A San Bernardino County superior court in San Bernardino, Calif., late last month awarded the judgment against Ideal Payroll Plus Ltd. and Ideal Management L.P., according to a spokesman for SCIF. San Francisco-based SCIF insured the Rancho Cucamonga, Calif.-based employee leasing companies. The court rendered a default judgment because the Ideal entities did not contest the charges.

SCIF alleges that David W. Clancy Jr., a partner in the Ideal entities, enrolled workers in a "K1 dividend distribution plan." Under that plan, PEO workers received two checks for their work, the insurer said.

One check allegedly paid workers "W-2 wages," and the other one provided a dividend. But the so-called K1 dividends paid to the workers were not reported to SCIF or to state or federal tax authorities, the insurer alleges in its suit against the Ideal companies.

Dividend amounts usually totaled more than half of the employees' wages, SCIF's suit alleges.

"This type of payroll avoidance, using a dividend, we haven't encountered before," the SCIF spokesman said, although he acknowledged that underreporting payroll to obtain inappropriately low workers comp premiums does occur.

SCIF said it uncovered the alleged scheme through an audit and then cancelled its policies and filed a lawsuit seeking damages. The judgment, ordered Dec. 22, includes about $1.3 million in unpaid premium, interest and costs.

Additionally, California's insurance code allows SCIF to collect 10 times the difference between the premium paid and the properly calculated premium when an employer knowingly misrepresents its payroll to lower its workers comp insur-

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Unusual hurricane season drives record tornado activity

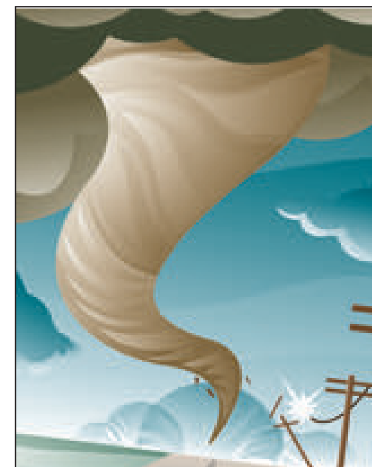
By MARK A. HOFMANN

NORMAN, Okla.—The United States endured a record number of tornadoes in 2004, according to the federal government.

In fact, last year's total of 1,717 twisters was almost 300 storms above the previous record of 1,424, which was set in 1998, and nearly 350 more than 2003's 1,368 tornadoes, the U.S. National Oceanic and Atmospheric Administration's Storm Prediction Center reported last week.

According to NOAA, the United States has experienced an average of 1,200 tornadoes annually since 1950.

The very high number of tornadoes was directly related to 2004's unusually active hurricane season, said Dan McCarthy, a warning coordination meteorologist at the Norman, Okla.-based Storm Prediction Center, in a statement accompanying the data.



"In 2004, record tornado reports were largely the result of an active hurricane season during August and September," said Mr. McCarthy. "Preliminary numbers indicate a total of 173 hurricanes reported during August," he said. That tops the previous record of 126 set in August 1979.

September's total of 247 tornadoes also easily broke the old record of 139 tornadoes set in September 1967.

A tornado outbreak in 18 Midwestern and South Central states in May 2003 caused estimated insured losses of $1.55 billion, according to information compiled by NOAA and the Insurance Services Office Inc. The most costly insured U.S. tornado loss totaled about $2.23 billion following a series of twisters in April 2001.

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Best: Rates will soften in 2005

Continued from page 4

sults, says the report.

Market conditions continue to soften, the report says. For example, in the commercial segment, net premiums increased 5.3% in the first nine months of 2004, compared with 12.2% for the comparable period in 2003. Commercial property insurance rates are flat-to-declining, and there is increased competition on larger casualty accounts, the report notes. It is "clear that the market is past its peak and that pricing will continue to soften into 2005 for the sector."

Meanwhile, although reserve charges in the commercial lines segment were moderately light during the first nine months of the year, Best expects additional reserve charges in the fourth quarter as the 1997-2001 accident years continue to develop adversely and certain insurers update their estimates for asbestos and environmental exposures.

The investigations into insurance industry practices by Mr. Spitzer and others also pose challenges. Although it is too early to estimate the eventual toll, there will be costs associated with the probes, such as those related to fines, penalties and expenses from complying with subpoenas or regulatory initiatives, the report notes. In addition, the investigations will also take up valuable resources "and may distract senior managers from the business of underwriting," Best states.

Furthermore, class action lawsuits related to the scandal "could tie insurers up in the courts for some time," according to Best.

Nonsubscribers to Best can download a PDF copy of the report for $50 from www.bestweek.com. The report is free to subscribers.

Benefits: Workers to pay more

Continued from page 4

According to the survey, 47% of the companies provided benefits information and/or enrollment options online for their employees in 2004, up from 38% in 2003.

Employers expect continued growth in this area. Among companies that currently lack online enrollment capabilities, 36% said they plan to add such capabilities to their benefits programs over the next 18 months.

"Initially, it was only the very large employers that could afford to make those investments," Mr. Guiffre noted, but now, he said, such tools are becoming more reasonably priced.

In addition, because 53% of the employers identified employee retention as the single most important benefits objective, and another 36% cited increasing employee job satisfaction as the key objective, companies are also creating more accommodating benefit plan designs and adding benefits options, according to the study.

Thirty-four percent of employers say they consider "providing a wider array of voluntary offerings" as a top benefits priority.

"The days of one-size-fits-all benefits programs are over," Mr. Guiffre said. "Employers who have been very focused on managing costs will have to shift their thinking."

In the future, he said, "I think you'll see more employers looking for ways to provide additional flexibility for employees."

"After Dempsey, Myers helped us settle the loss that 'wasn't covered' for $2 million, my boss recommended a $10,000 performance bonus."

HIGH FIVE

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Paul Winston

Resolutions for risk managers

The new year offers a chance to start over. Out with the old and in with the new. For some people, this means little more than purchasing a new calendar, while for others, Jan. 1 signifies an opportunity for them to improve.

Many avail themselves of the cultural tradition of making New Year's resolutions to correct certain behaviors or attain new goals. Some people not only remember their resolutions beyond the month of January but also do a fairly good job of achieving their goals.

Then there are people like me. I like to make plans to better myself as much as the next person, and I come up with plenty of schemes for doing just that around this time of year. But, somehow, I forget them all within a short amount of time or, worse yet, months from now ruefully remember my intention to accomplish something and how it went astray.

Paul Winston

But just because I lack the resolve to follow through with my list doesn't mean you won't do better.

To help risk managers plan to make this the year they achieve their goals, I offer a list of resolutions from which they can pick and choose.

This year, I resolve to:

Demand that my policies are received before paying the premium. Believe it or not, this still does not routinely occur. Witness the monumental policy dispute over the World Trade Center.

Read my insurance policies. How many coverage disputes could be avoided if there were a clearer understanding of coverage terms and conditions? Finding holes or unclear language before there's a problem could save you headaches later.

Pay closer attention to what my broker is charging me. Is commission-based compensation preferable to fee-based compensation? For those paying fees, do you want or need all the services for which you are being charged?

Obtain my own market intelligence. Getting your own information about market options and abilities will help you to make informed assessments of your options and the choices offered by your service providers.

In addition to traditional sources of information such as rating agencies, analysts, public records and news resources—including *Business Insurance*—new information outlets are proliferating on the Internet.

Think outside the box and consider alternative risk financing options. Does an off-the-shelf policy truly meet your needs? Maybe a bespoke policy is better for you, and maybe a captive would better address your unique needs.

Take an enterprisewide look at the exposures facing my organization. Whether it's due to new risks or the emergence of new liabilities, chances are your risk analysis could use an update. And pushing the envelope of that analysis to look at nontraditional exposures could identify potential problems before they emerge.

Reassess my preparedness for natural catastrophes. The past year showed that, more than ever, you must strive to expect the unexpected. From the four hurricanes that struck Florida to the devastating tsunami that swept through the Indian Ocean, 2004 painfully illustrated the unpredictability of Mother Nature. Having plans in place to minimize, or at least respond, in the event of a disaster is crucial.

Develop a better relationship with my service providers. If you are not already meeting your underwriters, plan to do so. And if you have only an arm's-length relationship with your broker, get to know him or her better.

Make an effort to learn about other areas of your organization. Chances are that if you compare notes with people in other departments, from human resources to operations, you'll see new ways to help others and to solve your own problems.

Pursue a professional designation or new educational opportunities. Contrary to what the Wizard of Oz said, it's not the diploma but the process of attaining it that matters. Enrolling in a course of study gives your brain a workout to develop new ideas and new ways to think about your job.

Network at conferences. The opportunity to meet new people and exchange ideas with others is as valuable, if not more so, than any canned speech or panel discussion you are likely to hear this year.

I hope these suggestions spark some resolutions of your own. And more than that, I hope that you are able to stick to whatever resolutions you make. For me, it's time to plan for that new exercise regimen and start work on the Great American Novel. Happy New Year.

Editorial Director Paul Winston's column appears fortnightly. He can be reached at pwinston@businessinsurance.com.

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Editorial

What may be in store during 2005

THE END OF THE YEAR is an opportune time to look ahead as well as back, and *Business Insurance* is continuing its tradition of predicting what we think will be "in" and "out" in risk management and employee benefits in 2005.

Our record in prognostication was decidedly mixed in 2004—some developments we predicted at this time last year did come to pass, though others didn't.

For example, among the things we said would be "in" during 2004 were: consumer-driven health plans, purchasing prescription drugs in Canada and state medical malpractice liability crises.

Consumer-driven plans indeed took root and grew rapidly last year, capped by the merger of two of the biggest providers of such health plans—UnitedHealth Group and Definity Health. Demand for lower-cost prescription drugs led many states to set up programs for residents to buy the drugs from Canada and elsewhere. Medical malpractice liability problems remain, both in terms of litigation and coverage availability.

Several of our predictions for this past year fell shy of the mark, though.

We said that double-digit increases in health insurance premiums would be "out," but those rate hikes are just now starting to slow. Healthy people not taking advantage of flu shots sounded like a realistic "out" a year ago, yet in 2004 many areas have far more vaccine supply than demand. We also thought 2004 would bring congressional relief for pension plan funding, but employers are still waiting for that. We thought more corporate manslaughter prosecutions would take place, but so far that's not the case.

While we don't have a crystal ball, we still think it's worthwhile to try to forecast what may take place in this new year. Following are some staff predictions of what readers might expect in 2005.

In:

- New broker compensation structures
- Prescription drug reimportation
- Federal class action reform legislation
- Enriched 401(k) plans
- Health savings accounts and other consumer-directed approaches
- Pension funding reform legislation
- More big losses for the PBGC
- Medicare Advantage plans
- State attorneys general investigations of insurance industry practices
- Increasingly costly natural disasters

Out:

- Contingent commissions
- Defined benefit pensions
- Optional federal charters for insurers
- Cash balance pension plan bashing
- Broad tort reform
- Double-digit increases in health care plan costs
- Benefit programs that feature little cost-sharing
- Insider-heavy boards of directors
- Financial reinsurance
- Growth of European state-based welfare systems

Schillerstrom

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Year in Review — Risk Management

Spitzer probe dominates list of year's developments

By DAVE LENCKUS

Many news stories other than the contingency commission scandal grabbed the attention of risk managers in 2004, but they all rank behind the investigation and charges leveled by the New York attorney general.

Besides the investigation into insurance brokerages' placement practices, risk managers cited the softer insurance market, the World Trade Center coverage litigation and Congress' failure to renew the government-backed terrorism program as the most important developments last year.

But risk managers overwhelmingly concur that the top story of the year was the investigation by Eliot Spitzer, New York's attorney general and aspiring governor, into the alleged bid rigging and antitrust violations behind the contingency commissions that brokerages have received to place business with insurers.

"I think it will change the face of brokering forever," said Jeffrey W. Pettegrew, executive director of the Sacramento-based California Self-Insurers' Security Fund.

"Regardless how it turns out, it will change the way we do business and the cost of business over the next year or two," said Ray Sibley, director of risk management for the city of Denver.

For many risk managers, the Spitzer investigation and all of the actual and expected fallout from it was more than the year's top story.

The investigation and its ripple effect "could be the year's top 10 stories," said Daniel H. Kugler, assistant treasurer-corporate risk management for Snap-on Inc. of Pleasant Prairie, Wis.

For example, Mr. Kugler said, because the investigation prompted many brokerages to stop accepting contingent commissions, another major issue is the "pushback from buyers" to not be the source of brokerages' replacement revenue.

Another related issue is the additional responsibility that every risk manager now has to obtain greater disclosure from their brokerages about all the sources of their income related to the risk manager's account, Mr. Kugler said.

But Susan Meltzer said she thinks that too many risk managers did not and still are not making those assessments. Many are waiting for direction from the Risk & Insurance Management Society Inc., said Ms. Meltzer, assistant vp-risk management for Sun Life Financial Inc. of Toronto. "Frankly, I think a lot of risk managers aren't doing their jobs," she said.

On a larger scale, Mr. Spitzer's contingency commission investigation and his other investigations, such as his examination of radio stations that accept payments to play new songs, should compel risk managers to assess the appropriateness of all long-standing business practices, Ms. Meltzer said.

"You have to look at whether it would hold up to a third party like Eliot Spitzer," Ms. Meltzer said.

"It's an opportunity for risk managers to help their companies take a different view on how they assess risk," she said.

Another top story of the year was the good news about insurance rates that risk managers received during coverage renewals.

Denver's Mr. Sibley noted that, except for workers compensation insurance, rates for most of the city's risks were lower or flat. When rates did rise, the increases were minimal and the reason "was very clear," unlike during the past few years, he said.

"It was a return to normalcy," Mr. Sibley said.

At Keynote Systems Inc. of San Mateo, Calif., the news about its directors and officers liability insurance rates was so good that it tops all other risk management developments during the year, noted Jack Andrews, senior manager-financial planning and analysis.

Early indications were that the company would be renewing its D&O program last October at expiring rates, Mr. Andrews said. But by the time it completed its renewals, Keynote had negotiated a double-digit percentage rate decrease, he said.

Some risk managers cited the jury verdicts in the litigation over whether the destruction of the World Trade Center's twin towers amounted to a single or two events. The issue has sparked a court battle between the facility's principal leaseholder and his property insurers, which failed to issue policies during the two months between the time they bound coverage and when the towers were destroyed.

For Lance Ewing, vp-risk management at Caesars Entertainment Inc. in Las Vegas, the December 2004 jury verdict that nine insurers must treat the World Trade Center loss as two separate events was important because of how he expects it to impact property rates.

Altogether, the December verdict and an earlier ruling and settlements mean that the WTC insurers are responsible for up to $4.68 billion of loss.

That loss, combined with the estimated $19 billion to $35 billion of insured damage caused by the four hurricanes that pummeled Florida in late summer, will force property insurers to stop offering rate decreases, Mr. Ewing predicted.

For Sun Life's Ms. Meltzer, the World Trade Center story is significant because it underscores that "the industry continues to be incapable of producing its product and issuing policies in a timely way."

Risk managers closely followed Congress' failure to extend the Terrorism Risk Insurance Act, which created a federal backstop for private insurers faced with losses arising from future catastrophic terrorist attacks. The act is scheduled to expire on Dec. 31.

Risk managers could effectively handle either the program being renewed or formally scrapped, Mr. Ewing said. But dealing with "indifference" is very difficult, he said.

John W. Lambdin, assistant treasurer and director of insurance at Weyerhaeuser Co. of Federal Way, Wash., agreed.

While the insurance market offers terrorism coverage that often is broader than TRIA coverage, it may be too expensive or not available to buyers with potentially significant terrorism risks, Mr. Lambdin said.

Risk managers said that other major stories of the year include:

- President Bush's re-election and the Republican gains in Congress during the November elections, because they bolster the chances of federal tort and asbestos liability reform during the next Congress.
- American International Group Inc.'s $126 million settlement with federal regulators to resolve fraud charges triggered by the insurer's use of nontraditional insurance products in financial transactions with PNC Financial Services and Brightpoint Inc.
- The growth of alternative risk financing.

Top risk management stories in 2004

1. Contingent commission scandal erupts
2. Back-to-back hurricanes rake Florida
3. Court rules in World Trade Center coverage controversy
4. Property/casualty market continues to soften
5. Congress fails to extend TRIA law
6. Alternative markets continue hefty growth rates
7. Presidential and congressional election results bolster hopes for tort reform
8. Insurance broker executive Michael Segal convicted on fraud and racketeering charges
9. AIG settles Brightpoint litigation
10. California enacts workers compensation reforms

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Timeline of 2004 events page 13

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1 Contingent commissions investigated

New York Attorney General Eliot Spitzer's inquiry into broker compensation was no secret for much of last year, but the impact of his charges against Marsh & McLennan Cos. Inc. stunned the risk management and insurance communities.

After months of reviewing records subpoenaed from insurers and brokers, Mr. Spitzer charged MMC in October with fraud and antitrust violations, accusing the broker of steering clients to those insurers paying it the highest contingent commissions and rigging bids to funnel business to favored companies.

Stock prices of MMC and other big brokers plunged, triggering an avalanche of lawsuits by shareholders and brokerage employees who saw a large part of their retirement savings balances evaporate.

Within weeks, several of the brokers—including MMC, Aon Corp. and Willis Group Holdings Ltd.—had pledged to stop taking contingent commissions. The move was most painful for MMC, which collected $1.27 billion in such commissions over 18 months in 2003 and 2004.

MMC's outside directors, responding to prompting from Mr. Spitzer, forced out Jeffrey W. Greenberg, the company's chairman and chief executive officer. His replacement, Michael G. Cherkasky, fired several other top officials of its Marsh Inc. brokerage unit. Insurers identified by Mr. Spitzer as having participated in alleged bid rigging—including ACE Ltd. and American International Group Inc.—also fired employees they found to be involved.

Mr. Spitzer moved quickly beyond property/casualty placements, filing fraud charges in November against Universal Life Resources Inc., a San Diego-based life and disability insurance broker, for alleged client steering.

The widening inquiry had by year end resulted in subpoenas to reinsurance brokers, reinsurers, claims administrators and insurers writing finite risk and legal malpractice products. Among the practices Mr. Spitzer is examining is reinsurance "tying," in which brokers producing a large volume of business for an insurer insist on handling that insurer's reinsurance placements, subpoenas show.

Connecticut Attorney General Richard Blumenthal, meanwhile, stepped up his own investigation of property/casualty and life/health broker compensation in the wake of the Spitzer inquiry. Law enforcement officials and insurance regulators in numerous states have done likewise, issuing flurries of additional subpoenas.

Industry observers and participants are now reduced to waiting for the next shoe to drop. So far, Mr. Spitzer has sued only Marsh and ULR, but he has suggested that more charges are in the works. Which broker or insurer becomes the next target is a matter of widespread speculation.

The Marsh revelations, though, have left many risk managers appalled.

"Price fixing is truly a breach of trust," Lance Ewing, vp-risk management at Caesars Entertainment Inc. in Las Vegas, said in an interview last October. "Many folks who feel wronged based on this situation are going to need to re-evaluate their relationship."

The fallout for Marsh remains to be seen, though at least one client—Fortune Brands Inc. of Lincolnshire, Ill., identified in Mr. Spitzer's complaint as a bid-rigging victim—switched brokers within weeks of the lawsuit.

—By Douglas McLeod

2 Florida takes a beating

Florida property owners, normally used to the threat of hurricanes, were left battle-weary after four major storms slammed into the state during the 2004 hurricane season.

Hurricanes Charley, Frances, Ivan and Jeanne teamed up to kill scores of people and cause more than $20 billion in insured property damage. Floridians were barely able to catch their breath between the storms that pounded their state before moving inland from mid-August to late September.

Despite their heavy toll on property, the hurricanes did not bring a significant tightening of insurance rates. Changes since 1992's Hurricane Andrew—which caused more than $15 billion in insured losses—left insurers less exposed to catastrophic windstorm losses and more adept at handling their exposures.

Underwriters are better able to model exposures because of technological changes since Andrew, and more careful underwriting has meant higher deductibles for many property owners.

Although the storms did result in heavy losses for some insurers, most were more heavily reinsured for hurricane losses than in 1992. Reinsurers, meanwhile, were prepared with plenty of capital to handle the storm losses.

The Florida Hurricane Catastrophe Fund, established in 1993 by the Florida Legislature, also softened the hit to insurers. The fund provided reimbursements to residential insurers for a portion of their losses.

While insurers and reinsurers weathered the storms in relatively good shape, many property owners did not.

Hurricane Charley dealt the first blow to Florida on Aug. 12, raking the state's southwestern counties and sweeping through the Orlando area before heading along the East Coast and leaving around $6.8 billion in insured damages, according to Insurance Services Office Inc.'s Property Claim Services division. Frances pounded the state three weeks later, coming ashore on Florida's south central Atlantic coast and making a second landfall on the state's Panhandle after crossing the Gulf of Mexico. The storm caused around $4.4 billion in damages.

Ivan roared in on the heels of Frances, touching down near Gulf Shores, Ala. after carving through the Caribbean causing widespread damage, most notably in Grenada. In the United States, damage from Ivan was particularly heavy along the Gulf Coast, with a total estimated at around $6 billion in insured losses. When the storm damage from the third hurricane became clear, insurers and reinsurers began to acknowledge that some property insurance renewals in the affected areas were likely to include rate hikes.

Florida's east coast was the next target. Hurricane Jeanne hit there late on Sept. 24 and followed the same path that Frances carved through the state earlier in the month. Jeanne was responsible for $3.2 billion in insured losses.

For some commercial property owners, the quartet of storms meant the end of soft property pricing.

Many policyholders that had enjoyed a slide in rates before the hurricane season now heard insurers and industry experts predicting a stabilizing of rates. While some rate decreases were still a possibility during January renewals, insurers put the word out that prices were likely to go up for those in windstorm-prone areas and remain unchanged for others.

—By Michael Bradford

3 WTC litigation continues

After three years of largely fruitless struggle against most of the World Trade Center's property insurers, WTC leaseholder Larry Silverstein finally won one last month.

A federal jury hearing the second phase of the protracted coverage battle decided that nine of the program's two dozen insurers must treat the WTC's Sept. 11, 2001, destruction as two occurrences, making them liable for up to double their $1.13 billion in total limits.

Fifteen other insurers, representing another $2.42 billion in limits, were either found liable for only one occurrence in the first phase of the litigation or had won summary judgment or settled on a one-occurrence basis before trial.

The trial's two phases, heard by different juries, dealt with two separate issues that arose from the fact that a final policy on the WTC complex had not yet been issued when the Sept. 11 terrorists struck.

The first phase determined whether an initial group of insurers—including Swiss Reinsurance Co., the program's largest participant—was bound on a policy form that Silverstein broker Willis Group Holdings Ltd. originally provided to insurers with its WTC underwriting submissions. That form, known as Wilprop, was determined before trial to treat the Sept. 11 loss as a single event.

While Silverstein argued that it was in the process of shifting coverage to an insurance company form at the time of the attack, a jury found that most of the insurers in the first phase had agreed only to Wilprop.

In the second phase, another jury had to decide how a second group of nine insurers, that were not bound on Wilprop, should treat the loss under a variety of policy forms they issued or referred to in binders. Insurers argued strenuously that they never intended to sign onto coverage terms that differed from those of the Wilprop form, but the jury decided in December that their coverage terms were, indeed, different and that they are liable for two occurrences.

The verdict was a vindication for Mr. Silverstein, who scored few other successes with the two-occurrence theory through three years of litigation.

The fight is far from over, though. Mr. Silverstein and the insurers will pursue appeals of the portions of the case they lost. Another battle is looming over an appraisal of the WTC's value at the time it was destroyed, a valuation that will determine the amount Mr. Silverstein actually collects from the insurers. While a number of the insurers are participating in a binding arbitrationlike process to fix the amount of the loss, Swiss Re and other insurers are not participating and will negotiate separately.

Meanwhile, Mr. Silverstein has filed another lawsuit against Swiss Re, charging that it has wrongly failed to pay most of its $877.5 million share of a single $3.55 billion program limit. Swiss Re counters that if Mr. Silverstein plans to rebuild, it is required only to pay its limit gradually as work proceeds.

—By Douglas McLeod

4 Market softening seen

The property/casualty market may have peaked early in 2004, but pricing overall remained disciplined throughout the year even as rates softened.

The downward trend in pricing is apparent in the data. A panel of Wall Street analysts and industry professionals, polled by the New York-based Insurance Information Institute for its annual "Early Bird Forecast," estimated an average net premium increase of 4.8% for last year, which is less than half of 2003's 9.8% growth rate.

And policy renewal prices declined for a third straight quarter, according to the "RIMS Benchmark Survey," which was conducted by the New York-based Risk & Insurance Management Society Inc. and released in October.

"Pricing momentum in the market has clearly shifted," following a series of sharp rate increases in 2001-03, said Chicago-based Fitch Ratings in a report released in December. Pricing "is flat to declining in many commercial segments in 2004, with the largest declines in property segments," says the report.

Policy deductibles and retentions and other terms and conditions, though, have not deteriorated along with pricing, according to the report, "Review and Outlook 2004-2005, U.S. Property/Casualty Insurance."

Factors contributing to the soft market, according to the Fitch report, are the significant growth in market surplus and capacity from recent operating earnings and investment gains, as well as the capital raised by existing and new market participants.

"We're well past the easy time money's been made in this business," said Stephan Petersen, an analyst with Cochran, Caronia & Co. in Chicago.

Continued on next page

Continued from previous page

Most observers believe the market will remain disciplined. The market will soften and certain segments of the industry may report poor results, "but a wholesale free-for-all deterioration in pricing, to absolutely unacceptable, anemic levels that sustain themselves for a long period of time? The answer is 'no,'" said Jack Snyder, chief marketing officer for Princeton, N.J.-based American Re-Insurance Co.

Insurers want every line to be profitable, said James Inglis, managing director at Philo Smith & Co., a Stamford, Conn.-based boutique investment bank that specializes in the insurance industry. "They're less willing to offset losses in one line for profitability in another," he said. "There are no loss leaders any more."

—By Judy Greenwald

5 TRIA extension effort fails

The year ended as it began, with uncertainty over the future of the Terrorism Risk Insurance Act, which is slated to expire on Dec. 31, 2005.

That continuing uncertainty did not reflect a lack of trying by the proponents of extending TRIA, which creates a federal financial backstop to help insurers cover losses stemming from future catastrophic terrorism.

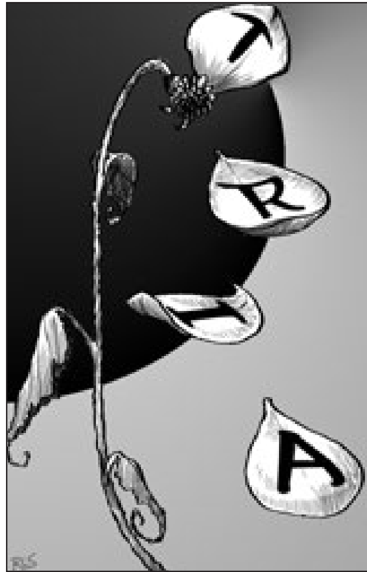
Early in 2004 they began pushing to extend TRIA by at least two years, holding that a failure to extend the act as quickly as is legislatively possible would lead to uncertainty in the insurance markets. One of their chief arguments was that some policies that would extend beyond the 2005 TRIA sunset would be negotiated before the end of 2004, thus creating the possibility that underwriters will be forced to devise policies that enjoyed TRIA protection for only the first part of their term.

Their efforts received a tragic boost in March, when Islamic terrorists bombed 11 trains during the morning rush hour in Madrid, Spain, killing 191 people. Pressure began building in Congress for extending TRIA, and, shortly before lawmakers recessed for their July 4 break, a bipartisan group of House members unveiled legislation to extend TRIA through 2007.

The House Financial Services Committee moved with relative speed on the matter. In late September, the panel unanimously approved a two-year extension of TRIA. The measure also extended TRIA to cover group life insurance as well as property insurance.

But a variety of factors dashed supporters' hopes that reauthorization could be completed before Congress adjourned.

Some critics of extending the federal terrorism insurance program said that reauthorization should wait at least until the Treasury Department issued its report on the terrorism insurance market, a report that is not due until the middle of this year. The White House, which had vigorously pushed for initial enactment of TRIA, did not advocate early reauthorization, either.



In addition, Senate Banking Committee Chairman Richard Shelby, R-Ala., showed no inclination to follow House Financial Services Committee Chairman Mike Oxley, R-Ohio, in vigorously pushing for the bill. In fact, Sen. Shelby—who had been one of 11 senators to oppose enactment of TRIA in 2002—showed no interest in the issue, despite widespread support for reauthorization from committee members.

And in the House, where TRIA appeared to have the best chances, an effort by supporters to placate House Majority Leader Tom DeLay, R-Texas, by extending it for only six months cost the measure critical Democratic support. Extension advocates withdrew the proposed six-month measure on Oct. 8.

Although supporters held some small hope that the measure could be brought up during November's post-election lame-duck session, nothing happened. With expiration looming as negotiations over insurance policies extending well in 2006 and beyond continue, supporters hope they can achieve early in the new Congress what they could not in the whole of 2004 and put TRIA extension on the congressional fast track.

—By Mark A. Hofmann

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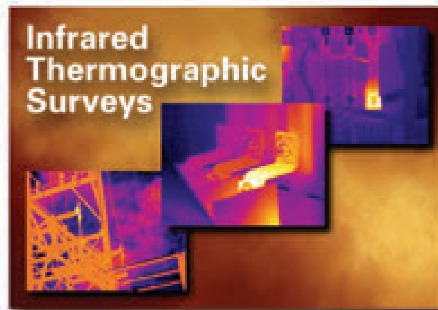

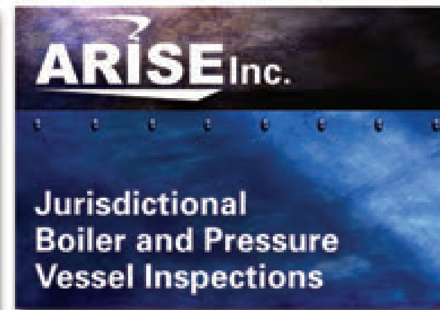

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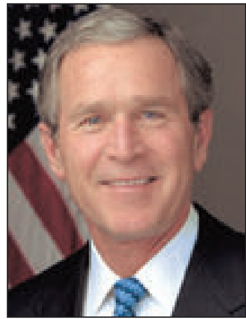
Newsmakers command year's headlines

From his State of the Union address to the farthest stretches of the campaign trail, President **George W. Bush** made his commitment to tort reform quite clear.

That was particularly true in regard to medical malpractice liability reform, which the president repeatedly cited as critical to making health care available to more Americans. That was one issue upon which he never strayed off message.


President Bush

Despite the president's use of the bully pulpit, though, civil justice reforms failed to win congressional approval before the November elections.

Now reform advocates hope the results of those elections will change that state of affairs. President Bush's re-election guaranteed that what is probably the most pro-tort reform administration in history can continue to push for such measures as class action reform and medical malpractice reform. In fact, the president promised to push for a variety of civil justice reforms during his economic conference last month.

Add to that promise a solid pro-reform majority in the House and the replacement of some of the Senate's most vocal opponents of tort reform with lawmakers who are far more sympathetic to their cause, and civil justice reform advocates have reason to hope that the president will spend some of the considerable political capital he has accrued to turn his calls for reform into reality.

* * *

When **Ernie Csiszar**, the new president of the Property Casualty Insurers Assn. of America, calls for regulatory reform, people should listen. Mr. Csiszar is one of the world's most experienced insurance regulators.

In September, he left the post of South Carolina's director of insurance, as well as the presidency of the National Assn. of Insurance Commissioners and subsequently became president and chief executive officer of the Des Plaines, Ill.-based PCI.

Mr. Csiszar

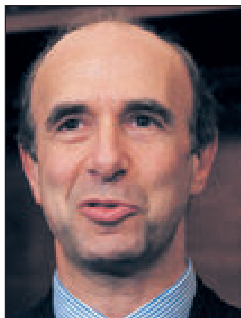
Mr. Csiszar, who was born in Romania and is fluent in five languages, also previously served as the NAIC's representative to the International Assn. of Insurance Supervisors and chaired several of its key subgroups.

From his perspective, the U.S. insurance industry is hampered by a disjointed regulatory system that needs serious reform in order to be an effective mechanism for risk transfer, Mr. Csiszar says.

The industry should support federal modernization legislation as a way to encourage uniformity within the framework of a state-based system, Mr. Csiszar says. He also warns that New York Attorney General Eliot Spitzer's investigations should not sidetrack modernization efforts.

* * *

Last year wasn't a great one for the Greenberg family, but **Jeffrey W. Greenberg** had the worst of it. Mr. Greenberg was forced out as chairman and chief executive officer of Marsh & McLennan Cos. Inc. after New York Attorney General Eliot Spitzer sued the company for fraud and made it clear he would not negotiate with Mr. Greenberg.


Mr. Greenberg

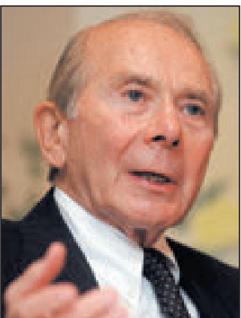
The lawsuit also implicated American International Group Inc., run by Mr. Greenberg's father, Maurice R. Greenberg, and ACE Ltd., run by his brother, Evan Greenberg. The other two Greenbergs have kept their jobs.

For Jeffrey Greenberg, it was a long fall from the heights of a stellar career. In the early 1990s, as a senior executive of AIG, he was widely considered his father's heir apparent. After quitting AIG abruptly, though, he joined MMC Capital Inc. in 1995 and moved from chairman of that MMC unit to CEO of MMC itself in 1999 and MMC chairman in 2000.

Despite being out of work, Mr. Greenberg is not suffering financially. He beneficially owned almost 750,000 shares of MMC stock when Mr. Spitzer filed his lawsuit, and the shares plummeted to less than $23 a share from more than $46. Ten days after the suit, though, he exercised options to buy another 540,000 shares at prices ranging from $14.48 to $20.64, and now owns about 1.3 million shares, according to U.S. Securities and Exchange Commission filings. The stock closed Dec. 28 at $32.36 per share.

It has been a tough year for **Maurice R. Greenberg**, American International Group Inc.'s chairman and chief executive. He has long been revered as an icon in the industry, but some are beginning to question how long he can hang on.

New York-based AIG was cited, though not named as a defendant, in bid-rigging allegations made by New York Attorney General Eliot Spitzer in his suit against New York-based Marsh & McLennan Cos., which at the time was headed by Mr. Greenberg's son, Jeffrey W. Greenberg.

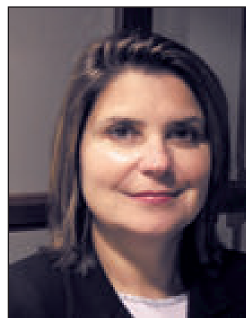

Mr. Greenberg

Then came Brightpoint and PNC. AIG reached a $126 million settlement with federal regulators over financial transactions between AIG units and Pittsburgh-based PNC Financial Services and Plainfield, Ind.-based Brightpoint Inc., in a dispute over the use of nontraditional insurance products that may not have involved the transfer of risk.

But that was not all. According to news reports, federal prosecutors are investigating possible stock price manipulation by Mr. Greenberg in 2001, when AIG was in the midst of buying American General Corp.

* * *

Mary Roth was no stranger to the office when she was named the fifth executive director of the Risk & Insurance Management Society Inc. in October.


Ms. Roth

She had assumed the executive director's duties in August, when John J. Hampton resigned from the position to pursue consulting work. In 2000, she served as acting director after Linda Lamel's contract expired, and she held the position until Mr. Hampton was hired later that year.

Ms. Roth has drawn wide praise from RIMS members during her tenure at the New York-based organization. She joined the society in 1985 and held the post of executive deputy director before being named chief operating officer, a position she held from July 2004 until her appointment as executive director.

* * *

Patrick G. Ryan, chairman and chief executive officer of Aon Corp., the world's second-largest insurance brokerage, announced in September that he plans to retire as chief executive.

Mr. Ryan will relinquish his CEO post once a successor is named but plans to stay on as chairman.

Until now, he has probably been best known for his leadership role in the widespread brokerage consolidation movement of the 1990s, as Aon's numerous acquisitions vaulted it into the global insurance marketplace.

Mr. Ryan

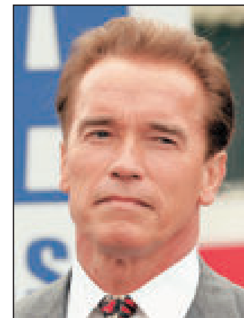
But recent events leave his legacy uncertain. Aon, along with several other brokerages, has been subpoenaed as part of New York Attorney General Eliot Spitzer's broader investigation into insurance industry compensation practices, though Aon has not been charged with any illegal activities.

There have been some confusing statements in connection with the investigation. Mr. Ryan acknowledged in early December that some Aon Corp. employees have failed to follow Aon's code of conduct. But shortly afterward, the company also said that an internal review has found no evidence that Aon solicited fictitious quotes, engaged in bid rigging or violated antitrust laws by tying reinsurance to retail placements.

* * *

After years of attempting to win workers compensation reforms, California employers finally got their way in 2004, when Gov. **Arnold Schwarzenegger** muscled legislators into handing him a landmark bill to sign.

Fixing the state's notoriously dysfunctional workers comp system was a hot-button issue that the "Governator" campaigned on in 2003. Back then, voters recalled former Gov. Gray Davis and replaced him with the former action movie hero.


Gov. Schwarzenegger

Once Gov. Schwarzenegger was elected, fixing the workers comp system became a top priority in his economic recovery plan for California. Some of the governor's allies in the state's business community funded a petition drive to put workers comp before voters.

In truth, many employers didn't want the issue put before voters, as called for in the petition. But the threat of doing so helped the governor convince a Democratic-controlled Legislature to hand him a reform bill. He signed the legislation in April.

Today, attorneys for workers comp claimants continue to attack some of the legislation's reforms, particularly the implementation of new rules for rating disabilities.

* * *

As the year drew to a close, **Michael Segal** awaited sentencing on his June conviction on federal fraud and racketeering charges and sought a release from jail to seek medical treatment.

Considered a flight risk by U.S. District Court Judge Ruben Castillo, Mr. Segal had been held at a federal facility in Chicago since his conviction on 26 counts of racketeering, fraud, embezzlement and other charges related to activities at his Chicago-based Near North National Group Inc. Among other things, prosecutors alleged Mr. Segal looted Near North's insurance premium trust account of $35 million for his and his company's use.

Mr. Segal

Mr. Segal was convicted after a six-week trial, at which time he was ordered to forfeit $30 million in illegal gains and 60% of his interest in Near North. Although some of the minor counts were later overturned, the most serious counts have been upheld.

In early December, an attorney for Mr. Segal told the judge that the convicted insurance industry executive may suffer from lupus and sought his release from prison for health reasons. While previous bond requests had been unsuccessful, a group of Mr. Segal's friends said they were willing to post up to $2 million in property on his behalf. Nevertheless, the judge turned down the request.

Mr. Segal is scheduled to be sentenced on Jan. 19. He could face more than 20 years in prison.

* * *

"It ain't over 'til it's over" could be **Larry Silverstein**'s motto. After losing the first phase of a lawsuit to collect two policy limits from 10 World Trade Center property insurers, Mr. Silverstein scored a victory in the second phase against a separate group of nine insurers.

The victory means that Mr. Silverstein, the WTC's leaseholder, stands to collect up to $4.68 billion—a single program limit of $3.55 billion from all insurers, plus an extra $1.13 billion from the nine insurers found liable for two occurrences.

Mr. Silverstein

Mr. Silverstein said he was "thrilled" by the verdict, and well he might be. The 10-week first-phase trial, and the two years of legal wrangling that preceded it, were largely a grueling series of setbacks for the resilient Mr. Silverstein, who lost ruling after ruling and, ultimately, the first-phase jury verdict. The federal judge presiding over the trial even barred Mr. Silverstein from attending after he violated a gag order by criticizing insurers during a press conference.

The second-phase jury verdict was a vindication of the huge amount of time and money Mr. Silverstein has spent on his two-occurrence argument. But it's not over. Both sides will pursue appeals, and further wrangling is likely over an appraisal of the WTC's value at the time it was destroyed.

* * *

Insurance brokers may well join certain Wall Street professionals in wishing **Eliot Spitzer** the best of luck in his recently announced plan to run for governor of New York. If he wins, he might leave them alone.

Brokers and insurers last year got a taste of the Spitzer treatment, already familiar to mu-

See NEWSMAKERS/next page

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Timeline of notable developments in risk management during 2004

JANUARY

■ The Alliance of American Insurers and the National Assn. of Independent Insurers complete their merger, forming the Property Casualty Insurers Assn. of America. NAII President Jack Ramirez is named president of the group.

■ A corporate governance scandal at Parma, Italy-based Parmalat S.p.A. raises fears that European directors and officers liability costs will skyrocket.

■ An explosion at a Skikda, Algeria, gas plant owned by La Societe Nationale Sonatrach kills more than 20 workers and causes about $500 million in insured property damage. It is the most costly of a trio of winter energy losses that ultimately cost underwriters about $1 billion.

■ President Bush in his State of the Union address calls for tort reform in general and medical malpractice reform in particular. Business and insurance groups hail his remarks as a welcome call for action.

FEBRUARY

■ The World Trade Center coverage trial begins in New York. At issue is whether the Sept. 11, 2001, terrorist attacks that destroyed the twin towers constituted one occurrence or two under Silverstein Properties Inc.'s $3.5 billion insurance program.

■ A grand jury indicts Oklahoma Insurance Commissioner Carroll Fisher on charges that he mishandled continuing education funds and illegally operated a charity. Mr. Fisher's attorney denies that his client is guilty of wrongdoing. In September, Mr. Fisher is impeached by the Oklahoma House on charges including neglect of duty and corruption; he resigns before his Senate trial begins.

■ The Senate begins consideration of medical malpractice reform that would limit the liability of health care professionals providing obstetric and gynecological services. Supporters ultimately fail to gather enough votes to block a threatened filibuster.

MARCH

■ Pennsylvania's Supreme Court strikes down the state's asbestos liability reform law. The 2001 law had limited corporations' successor liability for asbestos claims assumed as a result of mergers and acquisitions.

■ Terrorists detonate 10 bombs on commuter trains during rush hour in Madrid, Spain, killing more than 200 people. Amid renewed interest in terrorism coverage, U.S. insurers and risk managers begin an effort to reauthorize the Terrorism Risk Insurance Act—which provides a federal terrorism coverage backstop—for an additional two years before its slated Dec. 31, 2005, sunset. Neither house of Congress passes such a measure before the end of the year, though.

■ House Financial Services Committee Chairman Mike Oxley, R-Ohio, and Rep. Richard Baker, R-La.—chairman of the committee's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises—outline a "roadmap" to state-based insurance regulatory reform. The proposal does not call for optional federal charters for insurers.

■ Evan G. Greenberg is named successor to Brian Duperreault as chief executive officer of ACE Ltd.

APRIL

■ Lloyd's of London reports a marketwide profit of £1.89 billion ($3.38 billion) for 2003, more than double its profit for 2002, which was the market's first profitable year since 1997.

■ Noted meteorologist William Gray at Colorado State University predicts an unusually active Atlantic hurricane season.

■ California lawmakers approve a bill mandating sweeping changes to the state's workers compensation system, which Gov. Arnold Schwarzenegger later signs.

■ Senate leaders unveil a revised asbestos liability reform bill. The measure, which would replace the current litigation-based system for compensating victims of asbestos-related diseases with a $114 billion trust fund paid for by defendant companies and their insurers, never picks up enough support to withstand potential filibusters.

■ New York Attorney General Eliot Spitzer begins his investigation into whether insurance brokers' contingent commission agreements with insurers represent a conflict of interest. The three largest brokerages—Aon Corp., Marsh & McLennan Cos. Inc. and Willis Group Holdings Ltd.—are among the companies subpoenaed.

MAY

■ A New York jury sets the stage for another phase of the WTC coverage battle between Silverstein Properties Inc. and its insurers by holding that nine of the underwriters bound coverage on a policy form that defined the WTC's Sept. 11 destruction as a single event. That decision, though, does not spell out the exposure of the rest of the underwriters.

■ MMC acquires Kroll Inc., a security consulting and risk mitigation services firm, for $1.9 billion.

■ Ohio lawmakers approve legislation that sets minimum medical criteria that must be met before claimants seeking damages for exposure to asbestos and silica and mixed dust can pursue their cases. The laws are the first statewide laws of their kind.

JUNE

■ Senate Majority Leader Bill Frist, R-Tenn., delays consideration of a class action reform bill in hopes of gathering enough Democratic support to the bring the measure to a final vote. This strategy ultimately fails.

■ Mississippi, long blasted by businesses as one of the most plaintiff-friendly jurisdictions in the nation, approves comprehensive tort reforms.

■ The Supreme Court rejects strict liability for a sexual harassment claim in its decision in *Pennsylvania State Police vs. Nancy Drew Suders*. The decision means that, under most circumstances, an employer must be given the right to defend itself against liability in such cases.

■ The Sept. 11 Victim Compensation Fund closes after paying or agreeing to pay almost $7 billion in settlements, covering 5,531 death and injury claims.

■ A federal jury convicts Michael Segal, owner of Chicago's Near North National Group Inc., and the brokerage on federal fraud and racketeering charges. A judge in December overturns seven minor counts against Mr. Segal and Near North but upholds the most serious counts.

JULY

■ Risk managers and insurers report an easing of both rates and conditions on many coverages at midyear renewals. Even workers compensation coverage shows signs of improvement.

■ A dispute over nongermane amendments dooms the Class Action Fairness Act in the Senate; supporters vow to continue the fight.

■ The United Kingdom's Assn. of Insurance & Risk Managers learns that risk managers will likely not have to apply to be regulated as insurance intermediaries—as had been feared—when the Financial Services Authority takes over the regulation of brokers in January 2005.

AUGUST

■ A Cook County, Ill., judge approves a class action lawsuit against Aon for allegedly breaching its fiduciary duty to its clients by accepting contingent commissions without disclosing them to policyholders. Aon holds that the claims lack merit. A California consumer group later files a similar suit against Aon, Marsh and Willis.

■ Jack Hampton steps down as executive director of the Risk & Insurance Management Society Inc. RIMS' chief operating officer, Mary Roth, assumes Mr. Hampton's duties on a temporary basis and is later named executive director.

■ Hurricane Charley hits Florida. The first major hurricane of the season causes about $7 billion in insured property damage. In the coming weeks, three more hurricanes

Continued on next page

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Gala Dinner – Bob Chinn's seafood restaurant - Wednesday, Feb. 23.
Keynote Speaker - Bill Majcher, Officer in Charge, Vancouver Integrated Market Enforcement Team (IMET) - Thursday, Feb. 24.
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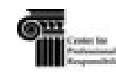
Center for Professional Responsibility

Newsmakers: 10 who led news

Continued from previous page

tual fund managers and securities analysts. Subpoenaing e-mails and other records, Mr. Spitzer, New York's attorney general, has taken on conflicts of interest in industries that had treated them for years as the normal course of business.

Mr. Spitzer

In the securities industry, it was ties between equity analysts and investment bankers; in the mutual fund industry, it was acquiescence to market timing by favored customers. And in the insurance industry, it was insurers' payment of contingent commissions to brokers who were already compensated for placing clients' coverage.

Since taking over as attorney general in 1999, he has covered a range of issues beyond financial services companies, from the responsibility of out-of-state power companies for Northeastern air pollution to alleged labor abuses in the greengrocery industry.

A graduate of Princeton University and Harvard Law School, Mr. Spitzer served as an assistant Manhattan district attorney from 1986 to 1992, where he became the chief of its labor racketeering unit. He has also worked as a lawyer in private practice.

If Mr. Spitzer's resume eventually includes a stint as New York governor, some in the insurance industry may breathe a sigh of relief.

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Commentary

Future could look dim without TRIA

Excerpt from "Zips: An Economic History of the United States, 2001-2010," Hofmann and Hofmann, eds.; Washington, 2019...

As the 109th Congress convened in early 2005, risk managers, commercial real estate concerns and insurers had reason for guarded optimism over the future of the Terrorism Risk Insurance Act. Although proponents of extending the act for another two years past its scheduled Dec. 31, 2005, demise had failed to win reauthorization in the waning days of the last Congress, they were heartened by the House Financial Services Committee's unanimous vote in favor of extending the act in late September.

The new Congress, though, didn't seem in any hurry to move on the issue. Part of the reason was the sheer size of President Bush's legislative agenda. Part of the reason was also the fact that the Treasury Department appeared to be in no hurry to issue its legally mandated report on TRIA's performance. The report was due by June 30, and, as spring progressed, it appeared as though the report would not be issued until then.

Mark A. Hofmann

Treasury beat the deadline by two days. The June 28 report showed that TRIA's mere existence had indeed made terrorism insurance both available and affordable. But the law's impact on the creation of a private terrorism insurance market remained unclear. The report found that insurers were offering some stand-alone products, but the private capacity for terror coverage fell far short of what the market needed.

Nevertheless, opponents of extending TRIA latched onto the report's finding that a modest private market had emerged. A left-right coalition of free-market purists, corporate welfare opponents and tort reform foes emerged to block reauthorization.

Although the House Financial Services Committee again approved extension legislation, that was as far as the effort progressed. With the White House on the sidelines this time around rather than pushing for TRIA as it had in 2002, the reauthorization effort failed, and TRIA expired on Dec. 31, 2005.

At first, the loss of the TRIA backup did not cause market upheaval. Insurers offered limited terrorism coverage to some policies and added terrorism exclusions to others. Some commercial construction projects in central cities went on hold as lenders demanded coverage that simply didn't exist. But with the economy healthy, these dislocations drew little attention.

The events of April 19, 2007, changed that. Islamic terrorists chose the 12th anniversary of the Oklahoma City bombings to launch the deadliest assault on U.S. soil in history. Simultaneous strikes on lower Manhattan, Chicago's Loop and San Francisco's financial district claimed more than 13,000 lives and caused more than $87 billion in property damage. The terrorist group, which claimed ties to Al Qaeda, also attacked London's Canary Wharf, although that attack fortunately proved less deadly and destructive than the terrorists had intended.

Of course, April 19 happened to also fall on the 232rd anniversary of the battles of Lexington and Concord, and Americans once again rallied and pulled together. But they didn't pull together as closely as they had in the wake of the Sept. 11, 2001, attacks. And as damage totals mounted, it became quite evident that insurers were going to take a hard look at coverage questions and make sure that exclusions did indeed stick.

In the confused aftermath, policyholders sought redress from state insurance regulators, state attorneys general, Congress and the courts. This final venue would determine exactly what policy language meant. Of course, various courts did not read policy language in exactly the same way. The result was a financial crap shoot for policyholders and underwriters.

Further complicating the legal mess was the flood of personal lines claims. Soon, no fewer than seven class actions against national insurers began winding their way through the courts of Madison County, Ill., a jurisdiction particularly loathed by corporate defendants.

Without the TRIA backup and with the clogging of the courts, insurers moved cautiously on claims. The economy, battered by a loss of unprecedented magnitude, slid into recession. The insurance industry's response to the events of April 19, 2007, became a key issue in the 2008 presidential campaign, overshadowed only by questions about how the United States could have been caught so unaware for the second time in less than a decade.

Following the Democratic landslide in November's election, President-elect Eliot Spitzer announced that a thorough investigation of the insurance industry and its practices would be one of his administration's first orders of business...

Senior Editor Mark A. Hofmann can be reached at mhofmann@businessinsurance.com.

Continued from previous page

will make landfall in the United States, and total damage from the four storms exceeds $20 billion.

SEPTEMBER

■ Converium Holding A.G. announces that, following reserve boosts and ratings downgrades into the B level, it will put its North American reinsurance unit into runoff.

■ Patrick G. Ryan, chairman and chief executive officer of Aon, announces that he will step down as CEO when a successor is found.

OCTOBER

■ Eliot Spitzer sues Marsh & McLennan Cos. Inc., charging the broker with bid rigging and self-dealing in its placement of clients' business. He also announces that two former American International Group Inc. executives have pleaded guilty to felony charges related to the allegations.

■ Lloyd's of London announces that it will tap the capital markets for the first time to bolster its Central Fund. The market expects to raise around $900 million to back the fund, whose reinsurance program expires at the end of the year.

■ MMC Chairman Jeffrey Greenberg resigns and is replaced by Michael Cherkasky, former head of Marsh's Kroll unit. Marsh, Willis and Aon are among the brokerages that end the use of contingent compensation as the Spitzer probe widens.

NOVEMBER

■ President Bush's re-election heartens tort reform supporters. The exit of several senators opposed to tort reform also gives civil justice reform advocates reason to hope that their agenda will face smoother sailing in the new Congress than it has in any before.

■ AIG offers to pay $126 million in penalties and disgorgement payments to settle charges by regulators and prosecutors over financial transactions between AIG units and PNC Financial Services and Brightpoint Inc.

■ A survey conducted jointly by *Business Insurance* and The National Alliance Research Academy shows that buyers and brokers have widely divergent views on contingent commissions. In fact, three-quarters of the buyers say that bonus or loyalty compensation paid to brokers by insurers for volumes of business placed with them amounts to a conflict of interest. The majority of the brokers see no such conflict.

DECEMBER

■ An investigation commissioned by Marsh Ltd. in London determines that brokers there occasionally steered clients to insurers that paid the highest contingent compensation. The investigation, though, finds no evidence of bid rigging.

■ A New York jury finds that some of the property policies covering the World Trade Center can be read to treat the Sept. 11, 2001, attacks as two events, thereby increasing the possible coverage available to compensate Silverstein Properties to $4.68 billion, though adjusting disputes continue.

■ Aon's London arm says that it will impose upfront charges on certain London market placements, following the loss of contingent commissions.

■ A major tsunami causes widespread devastation in Asia. Tens of thousands are killed.

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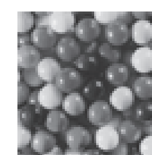

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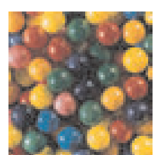

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Self-regulation of U.K. actuaries 'weak, ambiguous, too limited': Report

Actuary regulation needs revamp

By SARAH VEYSEY

LONDON—A government-backed report criticizing actuaries in the United Kingdom has proposed changing the current system of self-regulation.

The Morris Review of the Actuarial Profession interim report was published in late December and found that, among other things, "there has been insufficient transparency in actuarial advice," that "there has been inadequate scrutiny, challenge and market testing of actuarial advice by users," and that "professional standards have been weak, ambiguous or too limited in range."

The report also said self-regulation "has not been sufficient" to address these and other issues.

Sir Derek Morris, a former chairman of the U.K. Competition Commission and currently provost of Oxford University's Oriel College, was appointed to report on the actuarial profession after a previous review, triggered by the 2000 collapse of London-based Equitable Life Assurance Society, highlighted concerns about the industry.

That report, conducted by Lord Penrose and published in March 2004, was commissioned after Equitable Life closed its doors to new business following a ruling that its policy of awarding differential bonuses to holders of guaranteed-rate annuities was unlawful (*BI*, Oct. 27, 2003).

Among the findings of the Penrose report were a lack of comprehensive actuarial standards, a lack of scrutiny and audit of actuarial calculations and a reluctance among actuaries to challenge other members of the profession.

The Morris report was wider in scope and is based on written responses from interested parties and a series of consultation meetings in the United Kingdom and Ireland. It investigated the market for actuarial services, the overall regulatory framework and the future role of the Government Actuary and the Government Actuary's Department, which offers actuarial advice to government ministers and departments.

The report found that the actuarial advice given to U.K. occupational pension plans is almost exclusively provided by consulting actuaries, with few pension plans having in-house actuarial staff. Although there are many small to medium-size actuarial firms, some respondents were concerned that the market was dominated by large, global firms that offer other services in addition to actuarial advice, the report found.

The report found that while there is a good choice of actuarial service providers for pension plans, there is little market testing and a widespread reluctance to switch providers, indicating "that this choice is not often fully exercised."

In a statement, Paul Thornton, a senior partner at Watson Wyatt Worldwide in London, said the consulting firm welcomed Sir Derek's report and will respond in detail to the interim report.

Mr. Thornton pointed out that, particularly recently, consulting actuaries have played a large role in advising sponsoring employers about changes to defined benefit pension plans, often called final salary plans in the United Kingdom. "It is clear that Sir Derek is keen to ensure that actuaries are able to carry on their important work in assisting (pension plan) trustees and scheme sponsors to provide final salary pension schemes," he said.

The actuarial profession in the United Kingdom is self-regulated,

See **ACTUARIES**/next page

Punitive interest payment to spur change

Latex allergy case may push U.K. employers to seek early settlements

By CAROLYN ALDRED

SWANSEA, Wales—A significant punitive interest settlement negotiated earlier this month will likely encourage U.K. employers to seek earlier settlements for personal injury claims, some legal experts say.

Employers may prefer to accept settlement offers rather than risk paying significantly higher damages as a result of judicially imposed additional interest payments that are now legal under U.K. law, they say.

On Dec. 8, UNISON, Britain's largest public services trade union, negotiated a settlement of £333,000 ($645,754) on behalf of one of its members, former nurse Alison Dugmore, who developed a life-threatening allergy to latex while working at two hospitals in Swansea, Wales.

The settlement comprised £240,000 ($465,408) in compensatory damages and £93,000 ($180,346) in punitive interest.

Ms. Dugmore's employer, Swansea National Health Service Hospital Trust, agreed to the settlement while the case was pending before the Court of Appeal in Swansea. A lower court had ruled in June that Ms. Dugmore should receive £240,000 in compensatory damages and £114,000 ($221,069) in punitive interest.

"It sends out a clear message to employers that they should make offers early or face paying out not only for damages for injury but punitive interest on top," said UNISON General Secretary Dave Prentis in a statement.

UNISON and Ms. Dugmore had offered to settle the case for £110,000 ($213,312) in December 2001, but the trust rejected the offer, said Michael Antoniw, a Cardiff-based partner in the law firm of Thompsons who represented Ms. Dugmore.

Punitive interest was established under modifications made in 2002 to the Civil Procedural Rules. Under the prior rules, plaintiffs who refused to settle and whose award was less than the defendant's original offer are required to pay the legal costs of both parties. The amended rules allow for defendants to pay punitive interest in an attempt to redress the apparent imbalance, said Mr. Antoniw.

Judges can impose punitive interest on compensatory damages from the time an offer is first made to the time a court award is made. Punitive interest is based on a standard base rate, which is currently 4.5%, but judges have the discretion to impose up to an additional 10% in interest payments.

In the Dugmore case, the trial court awarded the maximum 14.5%, and the final settlement was for 11.5% interest on damages and 10% on costs for a three-year period, said Mr. Antoniw.

"This is the highest punitive interest award made since the law changed and will definitely make employers sit up and take notice," said Mr. Antoniw. "When insurers and defendants complain about the cost of litigation, they should consider how much they can save by settling earlier. By not settling this case, they tripled their final bill," he said.

"The size of this award will make employers keener to settle," agreed Patricia Noone, a partner with the Manchester-based plaintiffs law firm of Pannone & Partners.

A U.K. nurse's allergic reaction to latex gloves led to a record punitive interest settlement.

The punitive interest award in the case illustrates that defendants can face significant damages awards if they refuse to settle, said Allison Dias, partner in charge of the personal injury department of London-based defendant law firm Davies Arnold Cooper.

"The punitive interest awarded in the Dugmore case is a huge sum," she said.

The case has also led hospitals in the United Kingdom to address the issue of latex allergies.

According to UNISON, Ms. Dugmore gave up nursing in December 1997, after she suffered a series of anaphylactic shocks as a result of using latex gloves coated in cornstarch. She first reported having problems with the gloves in 1993.

Ms. Dugmore's case originally broke legal ground in 2002, when the High Court held employers strictly liable to ensure that employees are protected from harmful substances such as latex.

As a result of the decision, dozens of latex injury cases have been settled in the health care industry alone, said Mr. Antoniw, adding that cases also arise in other industries including food handling and hairdressing.

The recent award to Ms. Dugmore "has again highlighted the risks associated with the use of rubber products," according to a statement from the National Health Service. The NHS also acknowledged that that there has been an increased incidence of latex allergy in health care workers "because of the increasing use of latex gloves to prevent transmission of bloodborne infections."

In a recent advice bulletin, the NHS recommended that that "the use of latex products should be risk assessed and, wherever possible, alternatives used."

As a result of Ms. Dugmore's case, several NHS Trusts have reviewed their procedures and practices regarding latex gloves.

For example, the Scottish NHS Trust of Argyll & Clyde currently is undergoing trials using gloves made from toughened vinyl and nitrite instead of latex, said Eugene Waclawski, director of occupational health at the trust, which is based in Paisley, Scotland.

Last year the trust used 75,000 boxes of latex gloves.

World Updates

U.K. pension deficits see little change: Study

The overall funding deficit of the pension plans of the United Kingdom's largest 100 public companies is almost unchanged compared with a year ago, according to a study by Watson Wyatt Worldwide. The research found that the aggregate deficit of FTSE 100 companies is £61 billion ($117.34 billion), compared with £60 billion ($107.05 billion) at Dec. 31, 2003. Although companies have increased contributions to their plans, these have been offset by reduced bond yields and other factors, Watson Wyatt said.

ZFS sells stake in Thai insurer

Zurich Financial Services Group has sold its 25% stake in Bangkok, Thailand-based nonlife insurance company Thai Zurich Insurance Co. Ltd. to Sri Brothers Co. Ltd. and Pailuck Co. Ltd. Terms of the deal were not disclosed. Thai Zurich Insurance recorded written premiums of $42 million in 2003, ZFS said in a statement.

Australia revises pension accounting

The Australian Accounting Standards Board has published revisions to its AASB 119 Employee Benefits standard, Australia's equivalent of the International Accounting Standards Board's IAS 19. The amended AASB standard will allow employers operating defined benefit plans to either recognize actuarial gains and losses in those plans immediately in their accounts or to spread them out over time. A similar amendment was announced by the IASB earlier in December.

AEGON sells Spanish nonlife operations

Dutch insurer AEGON N.V. has sold its nonlife operations in Spain, AEGON Seguros Generales, to Italian mutual company Reale Mutua Group. The deal was valued at about 250 million euros ($310.4 million). AEGON said its Spanish nonlife business generated gross premiums of 187 million euros ($232.2 million) in the first nine months of 2004.

U.K. pension group elects chairman

Robin Ellison has been elected chairman of the London-based National Assn. of Pension Funds. Mr. Ellison, head of strategic development, pensions, at the London-based law firm of Pinsent Masons, will take over from Terry Faulkner at the association's annual conference in May. Mr. Faulkner is group pensions and benefits manager at Rexam P.L.C.

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Actuaries: Report proposes regulatory changes

Continued from previous page

with two bodies—the London-based Institute of Actuaries and the Edinburgh, Scotland-based Faculty of Actuaries—responsible for both the regulation of the profession and its promotion.

Some interested parties expressed their concerns about this dual role, according to the Morris report. And the report said that while most respondents praised the skills of most actuaries in the United Kingdom, many felt that much could be learned from actuaries in other countries.

Concern exists, according to Sir Derek's report, that the U.K. actuarial profession "is not, or not any longer, at the forefront of thinking in terms of its broad regulatory role, and that it needs to find ways of developing a more innovative or more responsive stance if it is to exemplify best practice in the field."

Some respondents said that the self-regulation of actuaries has led to insufficient standards, perceived conflicts of interest and a lack of transparency.

But others noted that a strength of self-regulation was that it was focused on the work of actuaries, as well as being cost-effective.

The report said that three proposed models for the regulation of the profession should be considered: the continuation of self-regulation, independent oversight of that self-regulation or full statutory regulation.

In a joint statement, the Faculty of Actuaries and the Institute of Actuaries said they recognized calls for changes to the self-regulation of the profession. But, they said, the options Sir Derek outlined "go beyond the changes we could introduce using our own powers and existing resources."

The associations said that they would welcome comments from their members on Sir Derek's proposals.

The report also found that most clients of the Government Actuary's Department were satisfied with the service they received. The review committee, though, plans to consider whether public service pension plans—which are currently obligated to use the department's services—should be allowed a choice of actuaries.

The "central question for this review, and for the actuarial profession, is how it can encourage and ensure the availability of best practice actuarial services to users," Sir Derek said in a statement.

Comments are invited to be submitted by February, and the review's recommendations will be published in the spring.

The Faculty of Actuaries and the Institute of Actuaries jointly said that consultation meetings for members of the profession would now be held to discuss the report's findings.

Adrian Waddingham, chairman of the Assn. of Consulting Actuaries, said that "our initial thoughts are that, of the three alternative models of regulation outlined in the interim assessment, the model of independent oversight is certainly favored." Mr. Waddingham noted, though, that a suitable body to carry out such oversight must be found.

The Government Actuary's Department said it welcomed the report and that it would respond in full to the points raised.

The Morris report can be viewed at , and the Penrose report at *www.hm-treasury.gov.uk*.

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT • SOUTHERN DISTRICT OF NEW YORK

In re Petition of Board of Directors of **CAVELL INSURANCE COMPANY LIMITED,** Debtor in a Foreign Proceeding.	In a Proceeding Under Section 304 of the Bankruptcy Code Case No. 04-B-17990 (CB)

NOTICE IS HEREBY GIVEN that, in connection with the Petition filed on December 21, 2004, pursuant to section 304 of the Bankruptcy Code (the "Petition"), with respect to **Cavell Insurance Company Limited** (the "Company"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an Order to Show Cause for Preliminary Injunction, dated December 22, 2004 (the "Order"), pursuant to which a hearing will be held on **January 12, 2005 at 2:00 p.m.** before the Honorable Cornelius Blackshear in Room 601 of the Bankruptcy Court, One Bowling Green, New York, New York (the "Hearing"), to consider the Petitioner's Request for a Preliminary Injunction on the terms as substantially set forth below:

1. enjoining all Scheme Creditors (as defined in the Order) from: (a) seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds of such property; (b) commencing or continuing any action or legal proceeding in connection with any Claim (as defined in the Order) (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, against the Company or any property in the United States that is involved in the foreign proceeding, 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 obtained in connection with any Claim against the Company, and commencing or continuing any act or action or legal proceeding in connection with any Claim (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim arising out of a Claim against the Company, or any of the Company's property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; (d) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever); (e) drawing down any letter of credit established by or at the request of the Company in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (f) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the trust, escrow or similar arrangement;

2. requiring all persons and entities in possession, custody or control of the Company's property in the United States or the proceeds thereof, to turn over and account for such property to the Petitioner;

3. requiring all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf or at the request of the Company, or parties to any trust, escrow or similar arrangement in which the Company has an interest, to (a) provide notice to the Petitioner's United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, the Company, or any withdrawal from, setoff against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Petitioner to assess the propriety of such drawdown, withdrawal, setoff, or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff, or other application, and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff or other application, was made and provide such notice and other information contemporaneously therewith; and (b) turn over and account to the Petitioner for all funds resulting from such drawdown, withdrawal, setoff or other application, in excess of amounts expressly authorized by the terms of any contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established.

All parties-in-interest opposed to the Petitioner's Request for a Preliminary Injunction must appear at the Hearing at the time and place set forth above. All papers submitted for the purpose of opposing the Petitioner's Request for a Preliminary Injunction shall be filed with the Bankruptcy Court with a copy to Chambers of the Honorable Cornelius Blackshear and served on Chadbourne & Parke LLP (Attn: Howard Seife, Esq.) so as to be received on or before January 10, 2005 at 5:00 o'clock p.m., New York time. The Order and supporting papers will be made available upon request at the offices of the Petitioner's United States counsel at the address below:

CHADBOURNE & PARKE LLP
Attorneys for the Petitioners • 30 Rockefeller Plaza • New York, New York 10112 • (212) 408-5100
Attn: Howard Seife, Esq. • Francisco Vazquez, Esq.

LEGAL NOTICE

NOTICE OF TERMINATION OF SOLVENT SCHEME OF ARRANGEMENT

IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES)

CHANCERY DIVISION

COMPANIES COURT

No 2390 of 2004

IN THE MATTER OF

BLACKFRIARS INSURANCES LIMITED

and IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN in the matter of Blackfriars Insurances Limited (the "Company") that, following the implementation of the Company's scheme of arrangement (the "Scheme") on 23 July 2004 and the subsequent payment of all Scheme Creditors' Claims (as defined in the Scheme), the Scheme terminated on 23 December 2004.

All Scheme Creditors' payments have been despatched by telegraphic transfer.

The Scheme has been implemented in accordance with its terms and, accordingly, it has been terminated and no further payments shall be made to Scheme Creditors by the Company in respect of Scheme Creditors' Claims.

Should you have any questions regarding this notice, please address them to Elaine Crawford at Unilever UK, Walton Court, Station Avenue, Walton-on-Thames, Surrey KT12 1UP, United Kingdom, telephone: +44 (0) 1932 261 692, Facsimile: +44 (0) 1932 261 705, email: Elaine.crawford@unilever.com.

Dated: 3 January 2005

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT • SOUTHERN DISTRICT OF NEW YORK

In re Petition of Board of Directors of **UNIONE ITALIANA (UK) REINSURANCE COMPANY LIMITED**, Debtor in a Foreign Proceeding.	In a Proceeding Under Section 304 of the Bankruptcy Code Case No. 04-B-17989 (CB)

NOTICE IS HEREBY GIVEN that, in connection with the Petition filed on December 21, 2004, pursuant to section 304 of the Bankruptcy Code (the "Petition"), with respect to **Unione Italiana (UK) Reinsurance Company Limited** (the "Company"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an Order to Show Cause for Preliminary Injunction, dated December 22, 2004 (the "Order"), pursuant to which a hearing will be held on **January 12, 2005 at 2:00 p.m.** before the Honorable Cornelius Blackshear in Room 601 of the Bankruptcy Court, One Bowling Green, New York, New York (the "Hearing"), to consider the Petitioner's Request for a Preliminary Injunction on the terms as substantially set forth below:

1. enjoining all Scheme Creditors (as defined in the Order) from: (a) seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds of such property; (b) commencing or continuing any action or legal proceeding in connection with any Claim (as defined in the Order) (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, against the Company or any property in the United States that is involved in the foreign proceeding, 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 obtained in connection with any Claim against the Company, and commencing or continuing any act or action or legal proceeding in connection with any Claim (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim arising out of a Claim against the Company, or any of the Company's property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; (d) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever); (e) drawing down any letter of credit established by or at the request of the Company in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (f) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the trust, escrow or similar arrangement;

2. requiring all persons and entities in possession, custody or control of the Company's property in the United States or the proceeds thereof, to turn over and account for such property to the Petitioner;

3. requiring all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf or at the request of the Company, or parties to any trust, escrow or similar arrangement in which the Company has an interest, to (a) provide notice to the Petitioner's United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, the Company, or any withdrawal from, setoff against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Petitioner to assess the propriety of such drawdown, withdrawal, setoff, or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff, or other application, and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff or other application, was made and provide such notice and other information contemporaneously therewith; and (b) turn over and account to the Petitioner for all funds resulting from such drawdown, withdrawal, setoff or other application, in excess of amounts expressly authorized by the terms of any contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established.

All parties-in-interest opposed to the Petitioner's Request for a Preliminary Injunction must appear at the Hearing at the time and place set forth above. All papers submitted for the purpose of opposing the Petitioner's Request for a Preliminary Injunction shall be filed with the Bankruptcy Court with a copy to Chambers of the Honorable Cornelius Blackshear and served on Chadbourne & Parke LLP (Attn: Howard Seife, Esq.) so as to be received on or before January 10, 2005 at 5:00 o'clock p.m., New York time. The Order and supporting papers will be made available upon request at the offices of the Petitioner's United States counsel at the address below:

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Reimportation: Report cites risks of foreign drugs

Continued from page 1

According to the report, released late last month, the volume of unapproved prescriptions entering the United States has grown massively. Approximately 12 million prescription drug products, at a total price of nearly $700 million, entered the United States through Canada last year alone, primarily through purchases via the Internet and American consumers traveling north of the border.

"Some means of drug importation may be relatively safe in specific instances," the report states, but it warns that "there are significant risks associated with the way individuals are currently importing drugs."

Many drug importation transactions take place through poorly regulated and sometimes bogus Internet operations that provide consumers with products that are inferior to U.S.-approved drugs, the task force found.

The Food and Drug Administration has staunchly opposed the importation of prescription drugs from other countries. Under federal law, it is illegal for anyone other than the original manufacturer to reimport prescription drugs into the United States.

Nevertheless, a growing number of states and municipalities openly support drug reimportation, citing the fact that prescriptions can be purchased at reductions of 20% to 50% from Canada and other countries that—unlike the United States—impose price controls on drugs.

Illinois, Kansas, Maine, Minnesota, Maine and Wisconsin have all established means by which state residents can obtain imported medications, and Caldwell County, N.C., and Burlington, Vt., this year set up programs through which their employees can acquire prescriptions from Canada.

While the task force report did not rule out the possibility of creating a commercial importation program using authorized foreign wholesalers and sellers in the United States, it emphasized that developing and implementing such a program would carry substantial costs and require appointing additional authorities. The increased costs, in turn, would lower the potential savings for consumers, according to the report, while "overall national savings from legalized commercial importation will likely be a small percentage of total drug spending."

The study also sought to discount the generally held public notion that most imported prescription drugs are less expensive than American drugs; generic medications are typically less expensive in the United States than they are abroad, it said.

Furthermore, the study said, legalizing importation would bode poorly for the future of the drug industry, because commercial importation would eliminate research and development incentives for the manufacture of new drugs. Making importation legal also raises litigation risks, the study said, because U.S. consumers and entities may not have legal recourse against foreign pharmacies, distributors or suppliers.

"If Congress were to pass legislation that did not address the serious safety concerns identified in the task force report, or if Congress were to pass legislation that discouraged innovation or stifled competition," wrote Secretary Thompson in a letter to members of Congress, "the President's senior advisers would recommend a veto."

> **'Importing medicines from abroad is not a long-term solution to the health care challenges patients face.'**
>
> *Dr. Paul Anthony*
> *Pharmaceutical Research & Manufacturers Assn.*

The Chicago-based American Medical Assn. said that it "applauded" the report for the "strong emphasis it placed on ensuring patient safety and drug affordability."

A spokeswoman for the office of Illinois Gov. Rod R. Blagojevich, meanwhile, asserted that the task force's study "does not bring any new or valuable information to the drug importation debate."

"If HHS really wanted to help Americans afford their medications, it would take a close look at the I-Save-Rx model we've put in place that has already helped thousands of people to safely obtain medications from Canada and the United Kingdom," the spokeswoman said, referring to the Illinois' online importation program.

"Importing medicines from abroad is not a long-term solution to the health care challenges patients face," said Dr. Paul Antony, chief medical officer for the Washington-based Pharmaceutical Research & Manufacturers Assn., in a statement.

PhRMA maintains that there are several safe and cost-effective alternatives to importing medicines, such as increasing the use of generic drugs and making use of the Medicare prescription drug benefit, slated to begin in January of 2006.

"Our position would be very similar to what PhRMA said," a spokesman for New York-based Bristol Myers Squibb Co. said.

Representatives from the pharmaceutical companies Pfizer Inc., Wyeth, AstraZeneca P.L.C. and GlaxoSmithKline P.L.C. could not be reached for comment.

Sean Brandle, a vp at benefit consulting firm The Segal Co. in New York, said he doubts that Canada could supply the United States with all of the prescription drugs it consumes each year. "On a large scale, it's economically unfeasible," he said.

And while Segal neither advocates nor condemns drug reimportation, it does stress to clients that "it is technically illegal" and that "it's a real golden opportunity for things like counterfeiting," Mr. Brandle said.

Sue Reinardy, administrator of Wisconsin's Department of Health and Family Services, said, "I think the report missed the opportunity to outline how importation could be done safely."

House Minority Leader Rep. Nancy Pelosi, D-Calif., called the arguments against reimportation "tired" in the face of "evidence that drug reimportation can be done safely and effectively."

The Bipartisan Drug Import Coalition, composed of U.S. representatives from several states, also stated it was disappointed with the outcome of the task force report but said it is not discouraged.

"With a wide majority of our congressional colleagues and the American people in support of importation, we will continue to push forward to pass importation legislation next year," the coalition said in a statement, referring to legislation that would sanction drug imports from Canada and Europe, introduced in February 2004 by Rep. Gil Gutknecht, R-Minn.

"We will not stop fighting to establish a workable and effective plan to open our prescription drug markets and allow all Americans to access affordable drugs," the coalition said.

Tort: President's calls for reform praised

Continued from page 3

wrangling over the creation of a national no-fault trust fund to compensate victims of asbestos-related diseases. The trust fund, which would have been paid for by defendant companies and their insurers, also failed to move forward in the Senate.

The president's words were just what pro-tort reform forces had been waiting to hear.

"I think they were pretty important," said Lawrence Fineran, vp-regulatory and competition policy at the National Assn. of Manufacturers in Washington. "It certainly signals that it's going to be a high-priority agenda item for him, and, certainly, his comments that he is going to talk about it in the State of the Union gladdened many hearts in the legal reform community."

"I think it sends a strong signal to the Senate leadership to get their ducks in a row early on this and to start sending them measures," Mr. Fineran said. "The perfect place to start is the Class Action Fairness Act, because that one, more than any other legal reform measure, is just ready to go."

"Presidential leadership is absolutely essential to achieving meaningful legal reform," said David Winston, senior vp-federal affairs in the National Assn. of Mutual Insurance Cos.' Washington office. "The president has made legal reform one of the Big Three items on his legislative agenda for the 109th Congress—which includes Social Security reform, tax reform and tort reform. NAMIC is obviously very pleased that the president not only is following through on a major campaign theme but has been personally involved, even participating personally in the lawsuit abuse panel during the White House economic conference, which was extraordinary."

The Risk & Insurance Management Society Inc. also greeted the president's comments.

"RIMS is pleased to learn that President Bush plans to highlight two issues important to RIMS during the first year of his new term," said Janice Ochenkowski, vp-external affairs for New York-based RIMS.

"Class action reform is very important to RIMS members, as the cost of class action litigation puts many of our members at a competitive disadvantage to their global competitors. Medical malpractice is another important issue to our members, who need critical services from physicians and facilities in all parts of the U.S. The expense of malpractice insurance is driving doctors out of certain geographic areas and away from high-risk specialties; facilities are closing, leaving communities without necessary medical services," said Ms. Ochenkowski, who is also senior vp-global finance at Chicago-based Jones Lang LaSalle Inc. "We hope to see tort reform legislation enacted during 2005."

"He's going to put the full weight of the White House behind trying to move these, and he's taking his case directly to the American people," said Julie Gackenbach, assistant vp-federal affairs for the Property Casualty Insurers Assn. of America in Washington.

> **'Presidential leadership is essential to achieving meaningful legal reform,' and President Bush's level of personal involvement 'was extraordinary.'**
>
> *David Winston,*
> *National Assn. of Mutual Insurance Cos.*

"This is the first time any president has put civil justice reform on a top agenda," said Victor Schwartz, general counsel for the Washington-based American Tort Reform Assn. "I think the most important aspect of this is calling attention to the issue. There are many other issues in front of Congress and in front of state legislatures, and I think the fact that the president of the United States has listed this as a priority will, at the very least, see that both Congress and state legislatures give attention to the issue."

"The results will be up to Congress, but it certainly put things up on the radar screen so the issue gets attention, as contrasted to many others that are competing for the agenda of Congress and state legislatures," Mr. Schwartz said.

One insurance group was pleased that the president moved beyond his past reform themes to encompass asbestos liability reform as well.

"We're very encouraged that the president—who has been a supporter of class action and medical liability reform—has added asbestos to the list of tort reforms that he wants to get passed in Congress," said a spokesman for the American Insurance Assn. on Washington. "We welcome the president's leadership and will work with the administration to get passage of needed tort reform legislation."

The president's push for reform is likely to be helped by changes in the Senate's composition, said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

"Our parochial interest in legal reform not withstanding, it's hard to identify a set of issues on which the election results would have such a clear impact," Mr. Wood said.

Class action reform efforts, in particular, will be affected by the election results, he said. "Class action was probably the most frustrating ordeal over the past two years, because it was always about the margin of one, two or maybe three votes. A four-vote net plus in the Senate makes a huge difference."

"I think everyone in the business community was gratified to see that the president intends to makes a translation of the election results in the legal reform arena," Mr. Wood said. "Honestly, I don't think it's going to require a tremendous amount of political capital."

But Mr. Wood noted that some Republican lawmakers have been unwilling to support federal tort reform efforts, holding that such issues should be decided by the states.

"Isn't it funny how members of Congress on both sides of the aisle invoke the states' rights admonition whenever it suits their philosophy?" he noted.

An opponent of the president's efforts made the same point.

"I think that the president's strong support for placing restrictions on our legal system will help move some of those proposals along but certainly doesn't mean that the proposals will pass, because the proposals still face considerable opposition" from both sides of the aisle, said Pamela Gilbert, a attorney with the Washington law firm of Cuneo Waldman & Gilbert L.L.P.

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Tsunami: At least 100,000 dead

Continued from page 1

ic Rim, but the Indian Ocean lacks one because of the expense and the rarity of tsunami activity, experts note (see related story).

Sources say survivors' misery will be compounded because many lack insurance to replace their dwellings and businesses. In fact, coverage was so scarce that losses are not expected to have a material impact on insurers or on the state of the world insurance market, experts contend.

It is not unusual for a catastrophe in that area to produce a horrific loss of life and huge economic losses while triggering "modest insurance losses," said Robert P. Hartwig, senior vp and chief economist at the Insurance Information Institute in New York. "The penetration rate of property insurance products in this part of the world is pretty low."

In Indonesia, for example, just $8 per capita was spent on nonlife insurance in 2003, compared with $1,980 per capita in the United States, according to the III.

Despite the extent of the tsunami's destruction, insured losses are expected to be well below those from the hurricanes that struck the United States in 2004, Mr. Hartwig said. Those storms left more than $20 billion in insured damage.

Local market impact

The tsunami's impact will be greatest on local insurance and reinsurance markets, according to Bryon Ehrhart, president of Aon Re Services in Chicago. And it's too early to predict just how severe that impact might be, he said.

Insurance and reinsurance rates could rise in the affected area, much as they did in Florida after hurricane season, Mr. Ehrhart suggested. "You might also see changes in how coverage is provided. Until people get a handle on this risk, they may consider excluding it," he said, pointing out that tsunami exposures are not as thoroughly modeled as hurricanes and earthquakes.

A small Bangkok-based reinsurer, Thai Reinsurance Public Co. Ltd., is expecting claims of around 100 million baht ($2.6 million), said its senior vp, Chuanchai Cheausamut.

Duncan Spooner, a partner in the Hong Kong office of Trowbridge Deloitte, said most local insurers have adequate reinsurance to withstand the tsunami losses. The "brunt of the claims will be borne by the world's global reinsurers, whose greater capital base enables them to withstand such catastrophes," he said.

Local insurers' "financial security should not be threatened, and it is likely that losses will be recouped in the coming year, as premiums will probably rise on the back of these claims," Mr. Spooner said.

Fitch Ratings said losses to "some regional insurers may be large" and could spur increased demand in the region for finite risk reinsurance products. While U.S. primary insurers "are not likely to incur material losses" from the catastrophe, some "may have modest exposure on property owned by multinational companies," a Fitch statement said.

Business interrupted

Any significant claims likely will come from resort properties, said Mr. Hartwig, with the potential for large claims from marine and shipping risks and infrastructure exposures. "But compared to the scale of the human suffering, the insurance losses will be relatively modest," he pointed out.

Sofitel, a brand of the Accor hotel chain, has suffered losses from the tsunami. The chain said last week that, of 415 guests at its Sofitel Khao Lak in Phang Nga, Thailand, it had accounted for 135. In a statement on its Web site, the chain said the property was "severely damaged" by the water.

John Hall, London-based global business unit director at GAB Robins Group, said in a statement the claims adjuster has received "several claims from our global and Asian clients, including utilities and international hotel chains."

Hotel chains may be facing "prolonged business interruption" losses, said Suzanne Douglass, managing director with Willis Group Holdings Ltd. in New York. The tsunami hit during a busy tourist season, and indications are that the tourist trade, particularly in the Phuket area of Thailand, "will be out of the running for quite a period of time," she said.

Computer companies with facilities in the region were assessing their operations late last week.

A spokesman for Intel Corp. said neither of its two facilities in Malaysia suffered damage or disruptions to production or service at the facilities. "There was no impact on our operations in the area at all."

Insurers and reinsurers began to react to the crisis last week.

"We expect our exposure to be limited to holiday resorts, personal accident, travel insurance and marine risks," said a Lloyd's of London spokesman. It was impossible last week to determine the extent of the marketplace's exposure because communications to the area were restricted, he added.

Munich Reinsurance Co. said its losses will be below $100 million euros ($135 million) and called that amount a "limited claims burden" for the Munich-based reinsurer.

Still, the amount is enough to prompt Munich Re to consider how it assesses its exposures in the region, according to John Pyall, head of regional nonlife claims and underwriting services in the reinsurer's Singapore office. "This will get us thinking more about long-term risk management," he said.

Mr. Pyall said Munich Re's exposures include coverage written on oil drilling platforms in the region affected by the waves.

Swiss Reinsurance Co. said it expects its losses to be below 100 million Swiss francs ($88.2 million).

A spokesman for Hannover Reinsurance Co. said the reinsurer expected its losses from the tsunami to be in the "low double-digit million euros" range, while Bermuda's ACE Ltd. said it did not expect any material losses.

American International Group Inc. Chairman and Chief Executive Officer Maurice R. Greenberg said in a statement that early indications are that "AIG will not have significant business exposure or losses," and Australian insurer QBE Insurance Group Ltd. said its losses from the event are not expected to be extraordinary because the insurer has reduced its exposure in Asia and augmented its reinsurance protection for catastrophic events.

Coverage questions

Insurers will be sorting out some coverage questions as they work to settle claims in the coming weeks.

Because the tsunami was triggered by an earthquake, policyholders and their underwriters will be looking closely to determine whether such events are excluded in property policies.

Mr. Ehrhart of Aon Re said flood coverage alone likely will apply, even though the flooding was the end result of an earthquake. Policies generally carry "very specific definitions of an occurrence," he noted, and coverage decisions are going to be made according to that wording.

Even though flood coverage is likely to be triggered, Mr. Ehrhart acknowledged that "there may be some substantial debate, depending on what the policy says."

Ms. Douglass said while flood coverage may apply in some instances, it may not in many others.

"If you look at the definition of an earthquake," she noted, it includes tsunamis in most policies, while that language could be absent in flood coverage. Insurers could take the stance that, because the "proximate cause of the tsunami was an earthquake," only earthquake cover will apply, she added.

"You will have to look very carefully at the applicable definitions" to understand whether coverage applies, Ms. Douglass said.

Sarah Veysey and J. Nils Wright contributed to this report.

Fraud: PEOs to pay SCIF

Continued from page 4

ance bill, according to SCIF.

"We hope that this judgment will send a strong message and serve as a deterrent against other companies who are considering defrauding California's workers compensation insurance system," Charles Savage, SCIF vp and general counsel, said in a statement.

SCIF said it is still pursuing civil action against individuals involved in the alleged scheme, including Mr. Clancy. California law prohibits SCIF from commenting on possible criminal action, but a spokesman for the California Department of Insurance, which prosecutes fraud, said the agency has been notified of the case. He declined to elaborate.

Mr. Clancy could not be reached for comment, but a spokeswoman for the office of Robert F. Schauer, an attorney representing Mr. Clancy, said that a default judgment was issued because Mr. Clancy's operations are defunct. Furthermore, such a judgment does not prove SCIF's allegations, the spokeswoman said.

Employees of the leasing companies paid taxes, and the businesses' workers comp arrangement was a form of self-insurance, according to Mr. Schauer's office.

Region lacks warning system

The death toll from the tsunami that devastated parts of Asia last week could have been lower had a tidal warning system been in place, but cost considerations and the rarity of tsunamis in the Indian Ocean meant that there was little impetus to establish such a system.

Despite its staggering destructiveness, a tsunami with the force of the one that struck Dec. 26 is an event that residents of the Indian Ocean region had hardly considered. Residents and governments had concentrated on other issues rather than an expensive system that would sound an alert in the unlikely event that a tidal wave were spawned.

Tsunamis are more common in the Pacific Ocean, where a system of buoys that transmit information about the formation of waves is in place to send a warning if a seismic event occurs, said Michael Schlacter, chief meteorologist at Weather 2000 Inc., a meteorological consulting firm in New York.

Such a system to detect a tsunami is not in place in the Indian Ocean, Mr. Schlacter pointed out, because "it is a less frequent event." The last major tsunami in the Indian Ocean occurred more than 100 years ago.

But another important reason for the lack of a system comes down to economics, Mr. Schlacter said. Many of the areas along the Indian Ocean coastlines are impoverished, and a warning system, "as part of their budget, is a low priority," he said. Instead, governments concentrate on efforts such as "feeding people and disease prevention rather than setting up an expensive detection network," he said.

"I am not surprised that there is not such a system in place," said Duncan Spooner, a partner in Trowbridge Deloitte's Hong Kong office. "The recent seaquake is the largest event of this magnitude in living memory. It would have taken considerable foresight to imagine a catastrophe of this extent."

Even if a warning system had been in place, it might have had little effectiveness against the recent tsunami, sources note.

The speed of the waves, by some estimates more than 400 mph, meant they would likely have raced to shore before a large evacuation could have been undertaken, sources say. And property would have had little chance against withstanding such force, regardless of any warning.

"Obviously, detection and prediction can help, but it's not going to mitigate the physical effect," said Mr. Schlacter.

Property owners in the region have few choices when preparing for the possibility of such an event, experts say.

Building codes are not stringent in most parts of the region and, therefore, do little to encourage property owners to strengthen their buildings against earthquakes and tidal waves.

"Building codes in many of these areas are absolutely nonexistent," said Robert P. Hartwig, senior vp and chief economist at the New York-based Insurance Information Institute. "Certainly, resorts and hotels build to certain standards, but that doesn't mean they can withstand a 40-foot wall of water."

Many of the property owners in poor areas would not be able to afford the cost of meeting strict building codes, and governments are unlikely to impose such a burden on them, Mr. Schlacter pointed out.

In addition, far fewer properties in the region are covered by insurance than in more developed countries.

Those property owners that can afford insurance should carefully review their coverage, said Mr. Spooner.

It is important "to read the small print of their policies and make sure they cover natural disasters such as this one. In the wake of this disaster, it would not be surprising if some insurers opted not to cover beachfront properties against the risk of tsunamis," he said.

—By Michael Bradford

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Late News

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proposed model legislation on broker disclosure during a Dec. 29 conference call of its members. The model measure amends the NAIC's current Producer Licensing Model Act. The commissioners approved the portion of the measure that requires brokers to disclose to their customers the amount of compensation they receive from an insurer and how that compensation is calculated. During the call, the commissioners also agreed that the NAIC Task Force on Broker Activities should give further consideration to the development of additional requirements.

Reserves improve for U.S. insurance industry

The domestic property/casualty insurance industry had a reserve deficiency of $43.5 billion to $61.5 billion as of year-end 2003, according to Fitch Ratings. This is an improvement from the estimated $46 billion to $77 billion deficiency at year-end 2002, according to a report issued by the rating agency. Fitch said the year-end 2003 figure reflects deficiencies in long-tail casualty lines for accident years 1997-2002, including general liability, workers compensation, medical malpractice and commercial multiperil; asbestos exposures from prior to the early 1970s; and other identified and unidentified latent exposures, including environmental claims, tobacco, silica or other product liability losses.

Watson Wyatt subpoenaed by Spitzer's office

Watson Wyatt & Co. Holdings disclosed in a filing with the SEC that it has received a subpoena from New York Attorney General Eliot Spitzer's office. Watson Wyatt said it would cooperate with the request, which seeks information on compensation for insurance placements, including so called "override" payments. Such payments accounted for less than 0.2% of the firm's revenues over the past four years, the company said.

Final rules released on HIPAA compliance

Three government departments have issued identical final regulations concerning group health coverage under the Health Insurance Portability and Accountability Act of 1996. The rules, promulgated by the departments of Health and Human Services, Labor and Treasury, set limits on pre-existing condition exclusions that can be imposed, among other things. The rules also require group health plans and group health insurers to offer "special enrollment" under certain situations. The final regulation, which appears in the Dec. 30 Federal Register, becomes effective for plan years starting on or after July 1, 2005.

Treasury, IRS issue 401(k) regulations

The Treasury Department and Internal Revenue Service have released final regulations regarding 401(k) plans. Among other things, the regulations, which appeared in the Dec. 29 Federal Register, remove the disaggregation requirement of Employee Stock Ownership Plan and non-ESOP portions of a plan for nondiscrimination testing purposes. The regulations also clarify hardship distribution rules. The new rules apply to plan years beginning on or after Jan. 1, 2006, but plan sponsors are allowed to apply the final regulations to any plan year that ends after the rules appeared in the Federal Register.

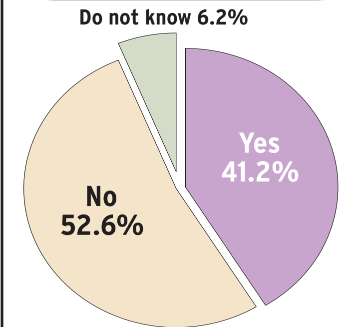
Briefly noted

The New York State Assembly Insurance Committee has rescheduled a public hearing on the investigations into **brokerage compensation practices**. The hearing, originally scheduled for Dec. 6, 2004, will be held Jan 7.... Maryland Gov. Robert Ehrlich pledged to veto House Bill 2, a compromise **medical malpractice reform bill** approved last week by the Democratically controlled Legislature. The Republican governor, who convened a special legislative session last week to deal with the state's medical malpractice problems, particularly objected to the bill's call for a special tax on health maintenance organizations to pay for a fund that would partially offset doctors' malpractice insurance costs....The California Insurance Department has sent letters of inquiry to the California-domiciled insurance units of Woodland Hills, Calif.-based Zenith National Insurance Corp., asking about its **arrangements and dealings with its agents and brokers**, according to the workers compensation insurer. California's insurance department has joined New York Attorney General Eliot Spitzer in investigating broker compensation and other practices. Zenith said it will cooperate with the inquiry and believes it is in compliance with all applicable statutes and regulations.

Online Poll

[12/27-12/30]

Do you think Social Security should be amended to allow beneficiaries to invest their contributions?



Spitzer: End not near

Continued from page 1

tice lines of coverage.

The latest comments from Mr. Spitzer's office followed a report. in The New York Times that Mr. Spitzer—who has announced plans to seek the Democratic nomination for governor of New York—intended to cede the insurance and other investigations to federal authorities.

The attorney general's office denied the report as "absurd" and said it mischaracterized Mr. Spitzer's observation that federal agencies, notably the Securities and Exchange Commission, have stepped up enforcement actions and may play a larger role in future investigations.

"The office has many active investigations that will be pursued as aggressively as ever," the statement read. "Several significant developments will occur early in the New Year that will again demonstrate that this office is a national leader in protecting the interests of investors and consumers."

Makeup: Appearance rule upheld

Continued from page 3

when she refused to follow the rule on makeup. She sued the casino, charging it with sex discrimination.

In upholding a lower court decision dismissing the case, the appellate court said Ms. Jespersen "had the burden of producing admissible evidence that the 'Personal Best' appearance standard imposed a greater burden on female beverage servers than it does on male beverage servers. ...She has not met that burden."

The court said the U.S. Supreme Court's 1989 decision in *Price Waterhouse vs. Hopkins*, in which the court held an employer may not force its employees to conform to sex stereotypes, does not apply. The *Price Waterhouse* case involved an employee who was told her partnership chances would be improved if she learned to behave more femininely, including by wearing makeup.

Although "we have applied the reasoning of Price Waterhouse to sexual harassment cases, we have not done so in the context of appearance and grooming standards cases, and we decline to do so here," the decision states.

In his dissent, Judge Sidney R. Thomas said: "Harrah's fired Jespersen because of her failure to conform to sex stereotypes, which is discrimination based on sex and is therefore impermissible" under civil rights law. In addition, "Jespersen created a triable issue of fact as to whether the policy imposed unequal burdens on men and women, because the policy imposes a requirement on women that is not only time-consuming and expensive but burdensome for its requirement that women conform to outdated and impermissible sex stereotypes."

A spokesman for Harrah's said there is "a long history of case law that upholds employers' right to impose certain appearance standards on employees who are dealing with the public, and this is just the latest in that series of cases."

Gary Peck, executive director of the Las Vegas-based American Civil Liberties Union of Nevada, which submitted an amicus brief on Ms. Jespersen's behalf, said: "We think it is odd that the majority would argue that the case wasn't about sex discrimination when the rules that were enforced were so obviously intensely gender-based and gender-based in a way that plays to gender stereotypes. It's really not about job performance."

Ms. Jespersen's attorney, Jennifer C. Pizer, senior counsel in Lambda Legal Defense & Education Fund Inc.'s Western regional office in Los Angeles, said in a statement that the decision "misapplies key legal precedents that have protected working women for many years." Title VII "requires the protection of women from burdensome sex stereotypes," but the appellate decision "makes those protections hollow," said Ms. Pizer.

Darlene Jespersen vs. Harrah's Operating Co. Inc., No. 03-15045, 9th U.S. Circuit Court of Appeals.

BI Stock Index

[12/27 - 12/30]

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

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

Index	Value	Change
BI Stock Index	2371.30	-0.10
Dow Jones	10,800.30	-0.25
S&P 500	1213.55	.028

Largest gains

Company	Change
Unico American Corp.	4.42%
Farifax Financial Holdings Ltd.	3.81%
Allmerica Financial Corp.	3.65%
HCC Insurance Holdings	3.55%
United HealthGroup	3.35%

Largest losses

Company	Change
Vesta Insurance Co.	-6.74%
Baldwin & Lyons Inc.	-3.75%
EMC Insurance Group Inc.	-3.53%
CNA Surety	-2.60%
ProAssurance	-2.35%

Weekly change by market segment

Segment	Change
Brokers	0.45%
Insurers/Reinsurers	-1.08%
Managed Care Organizations	1.13%

Source: FinancialContent Inc. (http://financialcontent.com)

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