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Business Insurance®

January 5, 2004

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PHOTO: GETTY

A bankruptcy court has upheld the PBGC's valuation of the liabilities of a US Airways pension plan.

Court upholds PBGC valuation method

By JERRY GEISEL

ALEXANDRIA, Va.—A bankruptcy court judge has upheld the methodology the Pension Benefit Guaranty Corp. used to determine the size of its pension plan termination claim against US Airways Group Inc.

The ruling, handed down Monday by Judge Stephen S. Mitchell of the U.S. Bankruptcy Court of the Eastern District of Virginia, involves the PBGC's takeover earlier this year of a massively underfunded pension plan that financially distressed US Airways offered its pilots.

The PBGC calculated the plan was underfunded by just over $2 billion and filed a claim in bankruptcy court against the airline for that amount. Its calculation of plan underfunding was based, among other things, on discount rates used by commercial insurers in pricing annuities. That methodology, laid out in a PBGC regulation, resulted in a discount rate of just over 5%.

But US Airways said a higher discount rate—roughly 8%—should be used to value liabilities. That rate would reflect the expected long-term rate of return that could be earned by a "prudent investor" on an asset pool consisting of 60% stocks and 40% bonds. Using the higher discount rate, the PBGC's claim would be $890 million, US Airways argued.

Judge Mitchell, in upholding the PBGC's valuation regulation, said: "Given the societal interest in protecting pension benefits, a risk-free or nearly risk-free rate to value the pension liability is more appropriate than a rate based on optimistic projections, even if those projections are widely shared by fund managers."

Even if the ruling is upheld, the PBGC's recovery from US Airways still would be small. Under a court-approved reorganization plan, unsecured creditors, such as the PBGC, will receive less than 2% of their claims, payable in US Airways stock.

US Airways said it is reviewing its options, including whether to appeal.

PBGC Executive Director Steve Kandarian called the ruling "a victory for the financial integrity of the federal pension insurance system. As Judge Mitchell's ruling makes clear, companies cannot use nonmarket assumptions to artificially slash pension underfunding."

Illinois governor pushing forward on Canadian drug plan

By JOANNE WOJCIK

CHICAGO—Illinois Gov. Rod Blagojevich is undaunted by federal authorities' rejection of his request for a pilot program that would allow his state to buy prescription drugs from Canada.

In addition, Gov. Blagojevich announced that he is working with Minnesota Gov. Tim Pawlenty to organize a February summit for the nation's governors on the drug reimportation issue.

Under the federal Food, Drug and Cosmetic Act, it is illegal for anyone other than the original manufacturer to reimport prescription drugs. But the Illinois governor has been leading a charge for allowing prescription drug reimportation from Canada, asserting that his state alone would save more than $90 million annually. Prescription drugs generally cost between 30% and 80% less in Canada because of government-imposed price controls.

Although Gov. Blagojevich has not yet received a formal response to his written proposal, a spokesman for HHS told *Business Insurance* that "we don't have authority to do what the governor was asking."

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Panel hits MGA with fraud award

Fortress Re told to pay $1.1 billon

By DOUGLAS McLEOD

NEW YORK—A Japanese insurer's $1.1 billion arbitration victory against managing general agent Fortress Re Inc. has led the insurer to seek a court ruling that Fortress Re's principals are similarly liable for allegedly defrauding it.

An arbitration panel last month awarded Sompo Japan Insurance Inc. $1 billion in actual damages and $100 million in punitive damages after finding that Fortress Re officials fraudulently concealed massive losses in an aviation reinsurance pool they managed, while siphoning out hundreds of millions of dollars for their own benefit.

The arbitration award was against Burlington, N.C.-based Fortress Re only. Sompo and another pool participant, Aioi Insurance Co. Ltd. of Japan, are separately pursuing civil fraud litigation against Fortress Re Chairman Maurice D. Sabbah; MGA President Kenneth H. Kornfeld; members of the two men's families; and two organizations, including a private school, to which Mr. Sabbah has reportedly donated more than $100 million.

Following the arbitration award, Sompo notified a federal judge in Greensboro, N.C., that it would seek summary judgment against Messrs. Sabbah and Kornfeld and the other defendants on the basis of the award. Sompo requested an

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Late News

PHOTO: EPA PHOTOS

Former Parmalat Chairman Calisto Tanzi was questioned as part of an investigation into the company's failure.

D&O insurers monitor Parmalat collapse

Italian authorities have seized Parmalat S.p.A and arrested several of its executives on charges of fraud and false accounting. The U.S. Securities and Exchange Commission also has charged the Parma, Italy-based food company with securities fraud. Among other charges, the SEC's complaint says a Cayman Islands-based Parmalat subsidiary claimed to maintain 3.95 billion euros ($4.09 billion) in a New York bank account that did not exist. "There is no doubt a high-profile case such as this will be watched closely by D&O underwriters and may impact the market," said Jeremy Miles, U.K. and Ireland retail manager for executive protection for Chubb Insurance Co. of Europe S.A. in London.

DOL clarifies rule on claim settlement

A final Labor Department rule makes it clear that employee benefit plans can settle claims against parties-in-interest, such as a plan sponsor, in exchange for cash, securities or the promise of additional benefits. The rule, which is an exemption to the prohibited transaction provisions of the Employee Retirement Income Security Act, requires that a settlement be approved by a fiduciary not involved in the litigation. The exemption was published in the Dec. 31 Federal Register.

Former HIH manager sentenced in bribe case

The Supreme Court of New South Wales has sentenced Bill Howard, the former financial services general manager of failed Australian insurer HIH Insurance Ltd., to a three-year prison term

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Spotlight Report

RISK MANAGEMENT YEAR IN REVIEW

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NEWSPAPER

Bill would eliminate tax break for punitives

By SALLY ROBERTS

WASHINGTON—Punitive damage award payments would no longer be a deductible business expense under a provision tucked away in a Senate tax bill awaiting floor action.

The Jumpstart Our Business Strength Act, S.1637, which was introduced in the Senate in September, aims to amend the Internal Revenue Code of 1986 to comply with certain World Trade Organization rulings.

In addition to various tax incentives to stimulate jobs and U.S. economic growth, the bill contains a provision that would abolish tax deductions for punitive damages payments, which employers have been able to deduct as a justifiable business expense for years.

Observers say eliminating the tax deduction is a concern for businesses.

"It's a long-accepted tax policy issue that employers should be able to deduct these as a business expense," said Dorothy Coleman, vp-tax policy for the National Assn. of Manufacturers in Washington. While NAM supports the underlying bill, it doesn't support the punitive damage provision.

"One of the problems is in the Senate there's a lot of reluctance to act on any tax bill that loses revenue," Ms. Coleman said. "So the Senate Finance Committee has been forced to come up with revenue raisers to cover it."

"The concept of all of the sudden doing away with the tax deductibility of punitive damages is troubling," said Glenn Lammi, chief counsel of the Washington Legal Foundation, a nonprofit organization based in Washington.

Mark A. Behrens, an attorney in the Public Policy Group of Shook, Hardy & Bacon L.L.P. in Washington, however, said he is confident that the provision will be excluded from any final version of the bill.

"One of the reasons why I don't expect it will be in a bill that will finally pass is it does have very serious consequences for employers," he said.

"I think when the employer community becomes more aware that it's in there, they're going to be calling their congressmen to say: 'This could have very adverse consequences for us. We're trying to create jobs and economic growth, and this is going to impede that and this should not be in any final version that passes,'" Mr. Behrens said.

P/C insurers' net income sees big 9-month jump

LOOKING UP

Property/casualty insurers posted gains in their nine-month 2003 results

Net written premium	$308.55 billion
Net income	$21.11 billion
Combined ratio*	100.3%
Surplus	$319.92 billion

* After dividends
Source: ISO, NAII

By MARK A. HOFMANN

The U.S. property/casualty insurance industry's net income for the first nine months of 2003 hit $21.11 billion—more than four times the $5.02 billion generated during the same period of 2002, according to a survey released late last month.

The study, which was prepared by the Jersey City, N.J.-based Insurance Services Office Inc. and Des Plaines, Ill.-based National Assn. of Independent Insurers, also found that the industry's consolidated surplus for the first nine months of 2003 rose about 17%, to an estimated $319.92 billion. That compares with $273.46 billion during the first nine months of 2002.

Net underwriting losses for the period stood at $5.7 billion, a significant improvement from the $18.24 billion in losses during the year-earlier period. The industry's combined ratio also improved, dropping to 100.3% from 105%.

In addition, net investment income grew 3.2% to $27.7 billion. Overall capital gains on insurers' investments totaled $19.8 billion in the nine-month period, compared with overall capital losses of $24.3 billion the year before.

Even though catastrophe losses more than doubled during the first nine months of 2003, to $10.1 billion, ISO said overall loss and loss adjustment expenses rose 5.5% during that period.

The estimates were based on reports issued by insurers that account for about 96% of all property/casualty premium in the United

See ISO/page 21

PHOTOS: AFP

Earthquakes struck parts of California and Iran (inset) in December, with the latter killing more than 20,000 people in the region near the city of Bam.

Quakes bring devastation but low insured loss

By ROBERTO CENICEROS

Insured losses are still being tallied from two recent earthquakes that struck Iran and California.

Tens of thousands of people were killed by a Dec. 26 quake that devastated the region near the city of Bam in southeast Iran. The quake, which had a magnitude of 6.6 on the Richter scale, leveled countless structures, most of which were uninsured.

"Millions of people in Iran and its neighboring countries are exposed to a similarly high earthquake risk," according to a report issued last Monday by Munich Reinsurance Co.

"This is the result of the heavy earthquake activity in this seismically very active region along the collision zone between the Arabian and Eurasian plates. The situation is made worse by the high population density in the many cities in this region and the extreme susceptibility of both the clay-brick type of buildings still common there and the modern concrete structures with inadequate earthquake resistance," the report states.

Meanwhile, a 6.5 magnitude quake that rocked central California on Dec. 22 resulted in only two deaths but could generate insured losses of $28 million to $80 million, according to estimates from AIR Worldwide Corp. in Boston.

As of last Monday, however, Jersey City, N.J.-based Property Claim Services, a unit of Insur-

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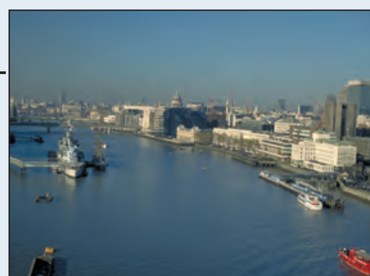
U.S. companies are facing an increase in employment-related retaliation claims, which can be difficult to defends. Page 4

Clash of beliefs, privacy creates tough exposure
Employers can face risks from the clash of privacy rules and some employees' religious beliefs. Page 4

What's hot, what's not in the new year
The *BI* staff offers predictions about the trends that will affect risk and benefit managers in 2004. Page 8

U.K. considering cap on director, auditor liability
The U.K. Department of Trade and Industry is proposing a cap on liability for corporate directors and auditors. Page 17



New underwriting slip debuts in London
A new underwriting slip for U.S. nonmarine binding authority business aims to improve coverage transactions. Page 17

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- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.
- Searchable **directories** of all the listings of industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Do you think employers should be allowed to reimport prescription drugs from Canada?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

Business Insurance (ISSN 0007-6864) Vol. 38, No. 01, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. $4 a copy and $97 a year in the U.S. $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 0293512, GST No. 136760444, Printed in U.S.A. Copyright © 2004 by Crain Communications Inc.

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Kentucky OKs formation of med mal reciprocal

By PAUL WINSTON

LOUISVILLE, Ky.—Kentucky regulators have approved the formation of a new physician-owned reciprocal insurer to cover medical malpractice liability risks.

Healthcare Underwriters Group of Kentucky will operate as a nonassessable reciprocal, which means that policyholders will not be hit with special assessments if losses are greater than anticipated. Such losses will be covered by reinsurance, the company stated.

If losses are less than anticipated, the nonprofit insurer could give its policyholder-owners either a dividend payment or a reduction in future premiums, subject to the approval of the Kentucky Department of Insurance.

The reciprocal will offer its members limits of $2 million per occurrence and $4 million aggregate.

"A hallmark of HUGKY will be an aggressive approach to defending claims. The company management team is intent on employing an aggressive defense strategy and intolerance of nuisance claims," the company stated.

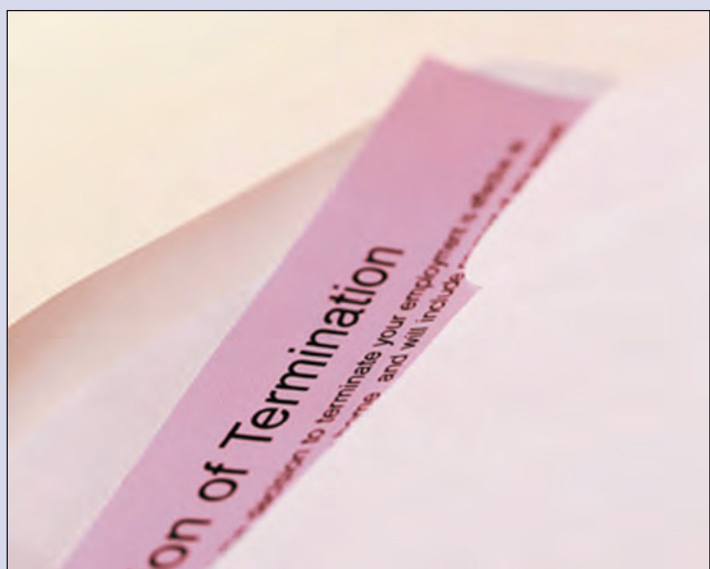
HUGKY's chief executive officer is Steven L. Salman, who is chief executive officer of Global Insurance Management Co. of Louisville, which will manage the reciprocal.

Mr. Salman also has organized a similar reciprocal for Florida doctors, Healthcare Underwriters Group of Florida, for which he also serves as CEO. That facility has not yet obtained its license from Florida regulators, a management company spokeswoman said.

The HUGKY board of directors is composed of five Kentucky physicians, and additional physicians are expected to join the board in 2004.

"It's very exciting to see doctors seize control of their future and work toward a permanent stabilization of Kentucky's medical liability insurance market," Mr. Salman said in a statement.

Mr. Salman is a former hospital risk manager and was a founder and the first president of the American Society of Healthcare Risk Management. He also has served as president and CEO of Kentucky Medical Insurance Co. and as president and CEO of Physicians Protective Trust Fund, both medical malpractice insurers that have since been acquired.



Can be easier to prove than bias

Retaliation claims a growing concern

By JUDY GREENWALD

U.S. companies are facing an increase in employment-related retaliation claims, which can be challenging for employers to disprove and to quickly dispose of through summary judgment.

Retaliation charges are generally filed when an employee claims he or she has been fired—or otherwise retaliated against—because he or she filed a discrimination, harassment or similar charge against an employer or voiced a complaint about such a practice. In some cases, employees who agree to testify on behalf of another complaining employee also contend they are victims of retaliation.

"It's one of the more fashionable claims lately," said Robert S. Blumberg, an employer attorney with Littler Mendelson in Los Angeles.

According to the U.S. Equal Employment Opportunity Commission, the number of retaliation charges more than doubled to 22,768 from 11,096 between 1992 and 2002. These claims accounted for 27% of all EEOC claims in 2002, compared with 15.3% in 1992.

Fueling the growth of claims is a growing awareness by employees of their legal rights, as well as a host of federal and state anti-discrimination and whistle-blower laws that include anti-retaliation provisions. Among the most recent federal laws to contain such provisions is the 2002 Sarbanes-Oxley Act, but they are also found in the Americans with Disabilities Act, the Age Discrimination in Employment Act and the Occupational Safety and Health Administration Act, among others.

"The protection against retaliation is kind of a fundamental principle that goes part and parcel with every other substantive protection in the workplace," whether it is to be free from harassment, discrimination or failure to be paid appropriate wages, said Jeremy J. Glenn, an employer attorney with Meckler, Bulger & Tilson in Chicago. The premise is that a law is ineffective unless it also protects those who oppose a particular illegal

See RETALIATION/page 6

Clash of religion, privacy creates difficult exposure

By MICHAEL BRADFORD

When an employee's religious beliefs clash with an employer's privacy rules, the temptation to tattle can sometimes be overwhelming.

As a result, employers are left with a hard-to-handle exposure: the possibility that a devout employee will break privacy regulations in the name of a greater good.

Dr. Gerald L. Bullock, who practiced medicine in Denison, Texas, in the 1980s, said he was stunned when a bookkeeper at his office released patient information to her church elders. As a Jehovah's Witness, the woman admitted that she was following what she perceived as her obligation to her church to report on a fellow church member's perceived sinful behavior, the doctor explained.

The patient had been treated by Dr. Bullock for a sexually transmitted disease. The Sunday after his employee released that information to church elders, the patient was expelled from the church, he said, and told not to communicate with friends and relatives in the church. "It had a major, major impact on her life," Dr. Bullock said.

The patient threatened to sue. Dr. Bullock's attorney advised the physician to immediately fire the bookkeeper and then "call this lady and do whatever she asks because you've got no defense," the doctor recalled.

After the firing and an apology, the lawsuit threat was withdrawn.

While such privacy breaches by Jehovah's Witnesses are not frequent, "it does happen," according to Gerald Bergman, a former member of the society who has written extensively on the church's practices. He teaches biology and chemistry at Northwest State Community College in Archbold, Ohio.

"Their responsibility is to the church, not to the employer," Mr. Bergman said of the approximately 1 million Jehovah's Witnesses in the United States. "The employer is secular, and, therefore, second."

Such privacy breaches, of course, could be committed by anyone who feels morally obligated to do so, noted George Head, director emeritus of the Insurance Institute of America in Malvern, Pa. "You've got to be careful not to pick on just Jehovah's Witnesses," he said.

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Sovereign immunity at center of legal dispute

Regulators cracking down on tribal alternative to comp

By ROBERTO CENICEROS

Insurance regulators from California to Connecticut are trying to thwart efforts by some American Indian tribes to offer employers alternatives designed to bypass mandatory workers compensation coverage.

The alternative programs, which are being marketed by some tribes and related businesses, essentially involve providing employee leasing services through staffing companies owned by the tribes. Rather than purchase state-approved workers compensation insurance for the employees, however, the tribes fund employee claims. They contend that their sovereign immunity from state laws—including workers comp and labor statutes—enables them to offer this alternative to nontribal employers.

California and Nebraska regulators, for example, have filed administrative orders seeking to block programs described as self-funded "Occupational Injury Indemnity and Medical Benefits" coverage, according to documents filed in both states.

Some of the tribes offering the programs contend that, as they are not selling insurance, state labor and insurance regulators are improperly interfering with their right to provide a legitimate service to employers. The tribes also argue that sovereign immunity, granted to them by the U.S. Constitution as well as by federal and state laws, precludes state insurance regulators from interfering in their arrangements.

But under the insurance statutes of most states, employers are risking fines if they get involved in such arrangements, said Ann M. Frohman, general counsel for the Nebraska Department of Insurance in Lincoln. Executives circumventing the no-fault workers compensation system also could face personal liability for injured employees, she added.

Risk managers need to be sure that any staffing company they contract with provides a certificate of insurance for workers comp coverage by a licensed insurer, Ms. Frohman said.

State regulators say the tribes' sovereign immunity argument is valid only for compensation arrangements that cover tribal employees working on tribal land. It does not extend to businesses locat-

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Retaliation: Claims against employers a concern

Continued from page 4

activity, said Mr. Glenn.

"It's something that should be on any large company's radar screen," said Donn C. Meindertsma, an employer attorney with Winston & Strawn in Washington. "Retaliation claims are often the type of claim that's added when there's another type of claim that's being brought, and with the growing number of specific statutes that protect against retaliation, it's becoming more and more of a common type of claim."

Ease of bringing claims

Henry Saveth, an attorney with Mercer Human Resource Consulting in New York, said if there is a basic discrimination-type claim brought against an employer, "you can basically add on a retaliation claim free. It's like a value added, two-for-the-price-of-one" deal.

Richard Tuschman, an attorney with Becker & Poliakoff in Fort Lauderdale, Fla., said that in some cases a retaliation claim is easier for a plaintiff to bring than other types of claims. "Under some statutes like the ADA, it's become increasingly difficult to prove a case of discrimination, and often, what the employee or his attorney has to shoot for is a claim of retaliation," he said.

Attorneys said it is not uncommon for an employee who knows he or she is facing discharge to file a trumped-up discrimination charge; then, when he or she is fired, as expected, the employee will accuse the employer of retaliation.

"They say, 'The real reason I'm getting terminated is that I complained about "x" and you're retaliating against me for that,' " said Wendy Lazerson, an employer attorney with Holland & Knight in San Francisco.

"Employees are a lot more litigation-savvy and a lot more savvy about the rules in the workplace and try to use those in their favor," said Ryan E. Griffits, an employer attorney with Thompson Coe in Dallas.

To prove retaliation, an employee must demonstrate that: the employee engaged in a protected activity, such as filing a discrimination charge with the EEOC; the employer knew that he or she had done so; the employer subsequently took an adverse employment action; and there is a casual connection between the protected activity and the adverse job action.

Legal observers say it can be particularly problematic for employers to defend such claims when there is only a short time between the original complaint and the alleged retaliation.

"Some courts have said the timing between complaining and negative action is strong evidence of retaliation," said D. Gregory Valenza, an attorney with Jackson Lewis in San Francisco.

A claim of retaliation need not be restricted to job dismissals or denials of a promotion. The courts have held this may also include other actions that have a negative impact, such as being moved to a less-desirable shift or getting a negative performance review that keeps the employee from getting a professional certification, said Fredric C. Leffler, an attorney with Proskauer Rose in New York.

However, "it does have to be something tangible," said Mr. Tuschman. "There are limits as to what would constitute an adverse employment action."

Challenges to defense

One problem for employers facing such claims is that retaliation can be easier to prove than discrimination and, in some cases, employees can pursue the retaliation charge even after the discrimination charge has been dismissed.

> **'Employees are a lot more litigation-savvy and a lot more savvy about the rules in the workplace and try to use those in their favor'**
>
> *Ryan E. Griffits*
> *Thompson Coe*

"You can sort of get a second bite of the apple," said Mr. Valenza.

To prove discrimination, an employee must establish that other, similarly situated employees were treated more favorably, said Oyvind Wistrom, an attorney with Lindner & Marsack in Milwaukee. But for a retaliation charge, the employee only must prove the causal connection between the protected activity and the allegedly retaliatory job action.

"I've seen a lot of cases, too, where the underlying discrimination test is dismissed" and the retaliation claim continues, said Mr. Wistrom. "Just because the underlying discrimination claim doesn't have any merit doesn't mean they cannot pursue a retaliation claim."

Even if it is ultimately proved that an employer is not guilty of, for instance, race discrimination, as long as the employee has a good-faith belief that his or her company's conduct was illegal, his or her action is protected against retaliation, said Mr. Blumberg. This makes retaliation easier to prove than discrimination, "because it's based on whether the employee believed the conduct was protected, and not whether the employer had actually done anything wrong."

Legal experts say it often is difficult for employers to win dismissal of retaliation claims on summary judgment, because to do so, there must be no dispute about the basic facts.

But in retaliation cases, "it is more likely the plaintiff will establish an open question of facts, and open questions of fact go to the jury or to the judge at trial for resolution," said Mr. Glenn. "Unfortunately, the longer litigation lasts, the more expensive it is for everybody."

Once summary judgment is denied, many employers prefer to settle, rather than move on to a trial and "face a jury possibly made up of other people who have been terminated from jobs," said Eve I. Klein, an attorney with Duane Morris in New York.

Another reason fighting such claims in court is unattractive to employers is that it may be easier to win punitive damages for retaliation claims than for other types of employment claims, attorneys say.

This is because the employer's alleged action is intentional "and also because the law wants to encourage people to be able to come forward and exercise their rights" under the law, said Ms. Klein.

"In some cases, because of punitive damages the retaliation claim is more significant than the underlying discrimination claim," Mr. Saveth said.

Managing the risk

There are steps, though, that employers can take to mitigate their risk of being successfully charged with retaliation, experts say.

These include:

- Having clear anti-retaliation policy.
- Having an established procedure for registering complaints.
- Promptly investigating and responding to discrimination complaints.
- Carefully training management and supervisors, communicating that retaliation will not be tolerated.
- Closely examining—and carefully documenting—adverse job actions that are made after an employee has filed a complaint.

"The company has to be sensitive to the retaliation possibilities," said Jim Kuns, a consultant with the Los Angeles-based Employers Group, a nonprofit human resources association. For instance, "the supervisor that is being complained against can't be the person you go file the complaint with," he said.

"A lot of training is currently very good about instructing people why you can't discriminate against an employee, but sometimes it is a little light on the issue of what the supervisor should do once the discrimination issue is bought up," said Mr. Saveth. "Better training is needed" to teach employees that not only is discrimination against the law but so is retaliation for filing a complaint or cooperating in an EEOC investigation, he said.

Religion: Clash with privacy creates difficult exposure

Continued from page 4

And no matter why someone feels obligated to release private information, the consequences could be dramatic for the entity that was responsible for that data.

"The ramifications of this are horrendous," said Catherine H. Gates, senior training specialist with Montgomery Insurance Co. in Sandy Spring, Md.

Ms. Gates, who teaches ethics workshops for Montgomery's agents, said, "Think of the damage if an insurance company had a lawsuit against them for the release of private information. Whether it was successful or not, they are going to lose their clients."

Even though it seems obvious that "the right thing to do is keep your mouth shut and the wrong thing to do is share the information with others," Ms. Gates said it's not hard to see the ethical dilemma for someone who would want to be loyal to a church as well as his or her employer.

For others, though, the dilemma is not so clear.

"It is definitely not appropriate to release (private information) no matter what the outside religious obligation is," said Sanford M. Bragman, Dallas-based vp, risk management at Tenet Healthcare Corp.

The Christian Congregation of Jehovah's Witnesses, the body that directs church affairs, says there is no policy forcing members to report sinful acts or divulge private information. That choice is up to members, according to Phillip Brumley, general counsel for the Brooklyn, N.Y.-based group.

"They should study the scriptures, and what they do is up to them," said Mr. Brumley. If there is a conflict, he said, a member should "think that through and decide what to do."

A 1987 article in the church's Watchtower magazine, which the church says is its most recent on the subject, advises members to consider the ramifications before taking any oath that would put them in conflict with biblical requirements. Doctors' offices, hospitals and law firms are businesses where privacy problems could arise, the article states. "We cannot ignore Caesar's law or the seriousness of an oath, but Jehovah's law is supreme," it reads.

The article further states that if a "Christian feels, after prayerful consideration, that he is facing a situation where the law of God required him to report what he knew despite the demands of lesser authorities, then that is a responsibility he accepts before Jehovah."

> **'Think of the damage if an insurance company had a lawsuit against them for the release of private information. Whether it was successful or not, they are going to lose clients.'**
>
> *Catherine H. Gates,*
> *Montgomery Insurance Co.*

It is an employee's promise, though, that appears to be an employer's only protection against the release of private information on moral grounds.

"Even if you have everybody sign something, it isn't going to stop the behavior" if a zealous employee feels obligated to release information, Ms. Gates noted. "The only thing it can do is keep the employer from being held liable," she said.

Dr. Bullock said he now hires only workers who make such promises, and, when interviewing, wants to know whether there is "anything about you that would cause you to tell on a patient," he noted. If so, the applicant isn't hired.

Nancy Hacking, director of safety and risk management at Concord Hospital in Concord, N.H., said hospital employees each year sign a confidentiality agreement stating that they will not release confidential information. Workers who violate the agreement, she said, "are subject to termination."

Apart from educating employees on what information is private, the hospital also runs "audit trails" on its electronic systems to keep tabs on who accesses such information, Ms. Hacking said.

At Tenet, ongoing training, much of it online, keeps employees aware of what information should be kept private, according to Mr. Bragman. The training covers regulations contained in the Health Insurance Portability & Accountability Act that govern privacy, he said.

Adam G. Linett, associate general counsel with the Jehovah's Witnesses, said employers shouldn't fear HIPAA penalties for unauthorized disclosures because sanctions in the act are aimed at employees.

And, Mr. Linett said, he "can't think of a single case where this has happened and resulted in a lawsuit."

Paul Winston

Editor Paul Winston's weekly column will return in the January 12 issue

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COMMUNICATIONS: New York: 212-210-0132
SUBSCRIPTIONS: Detroit: 888-446-1422

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Published weekly at 360 N. Michigan Ave., Chicago, Ill. 60601-3806, Fax: 312-280-3174, *biweb@crain.com*. Offices: 711 Third Ave., New York, N.Y. 10017-5806, Fax: 212-210-0704; 71121 Minkler St., Abita Springs, La. 70420; Fax: 985-871-4006; Suite 814, National Press Building, Washington, D.C. 20045-1801, Fax: 202-638-3155; 6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif. 90048- 4947, Fax: 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750, Fax: 408-774-1155; 34 Southwark Bridge Road, London SE1 9EU, Fax: 207-457-1440; 8157 N. Torrey Place, Tucson, Ariz. 85743, Fax: 520-579-3476; 777 E. Speer Blvd., Denver, Colo. 80203-4214; Fax: 303-733-2244; 11133 W. 108th St., Overland Park, Kan. 66210, Fax: 312 280-3174. 77 Franklin St., Suite 809, Boston, Mass. 02110-1510; Fax: 212-210-0704 $4 a copy and $97 a year in the U.S., $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Rudolf Von Bartesch, circulation manager. Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, *Business Insurance*, 711 Third Avenue, New York, N.Y. 10017-5806. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48013. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For reprints or reprint permission: Karen Brown Tucker, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806, 312-649-5319, Fax: 312-280-3174.

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Editorial

Predictions for 2004

To be continued...

With hindsight, that might have been the most appropriate epitaph for 2002, given the events and trends that we now know characterized 2003. For many risk and benefit managers, it was déjà vu all over again as the hard markets continued for both property/casualty and health insurance coverages. Coping with the challenges that insurance pricing presented occupied much of buyers' time in the past year.

But both risk and benefit managers are hopeful that the worst may be behind them, in terms of annual insurance rate increases. With any luck, that would mean that the epitaph for 2003 could read: Thank goodness that's behind us.

Apart from hard insurance pricing, other repeat issues in 2003 that challenged and perplexed buyers and the industry included: corporate governance scandals and greater regulatory scrutiny; the deteriorating financial conditions of insurers and reinsurers; crippling medical malpractice liability exposures; terrorism threats and security concerns; soaring prescription drug costs; and the failed struggle to enact key tort reforms in Congress.

But that is not to say that 2003 did not contain its share of unique and unprecedented risks. These included: the SARS outbreak in the spring, as well as a flu epidemic at year end; the deaths of more than 10,000 people in France from a heat wave that hit Western Europe in August; the war in Iraq and continued occupation by U.S.-led armed forces; the spread of mad cow disease to cattle in the United States; and a record deficit by the Pension Benefit Guaranty Corp. as underfunded plans collapsed.

Looking back to *Business Insurance's* early expectations for 2003, it would appear that our predictions were more accurate than not (*BI*, Jan. 6, 2003). For example, our predictions of what would be "in" for 2003 included: buyers considering whether terrorism coverage is worth its high cost; more states considering universal health care proposals; states enacting medical malpractice reforms; higher copayments on employer-provided benefits; alternative risk financing options; and a Medicare prescription drug benefit.

What follows are the *BI* staff's predictions of what 2004 will hold for readers.

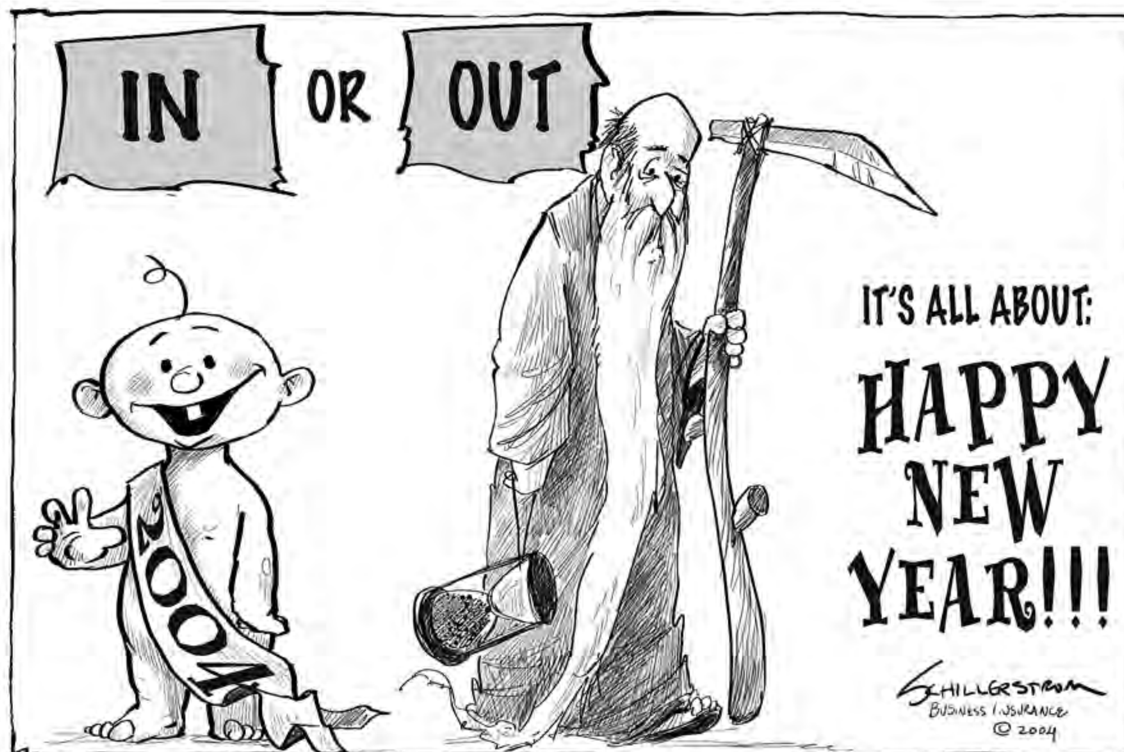
In:

- Consumer-driven health care plans.
- More additions to asbestos reserves.
- Labor actions over cost-shifting efforts.
- State medical malpractice liability crises.
- Congressional relief for pension plan funding burdens.
- Corporate manslaughter prosecutions.
- European corporate governance scandals.
- Food contamination claims.
- Purchasing prescription drugs in Canada.
- Global computer viruses spread by e-mail.

Out:

- Double-digit increases in health insurance premiums.
- Previous records for captive insurance company growth.
- Healthy people not taking advantage of flu shots.
- Continued improvement in property/casualty combined ratios.
- Cash-balance plan conversions.
- Regulatory inattention to captives writing warranty risks.
- Fast food industry victories in court.
- Lackluster returns by 401(k) savings plans.
- Expansion of the Risk Retention Act.
- Chances of federal tort reform in an election year.

Schillerstrom



Letters to the Editor

Proper model will allow technology to flourish

To the editor: As a European broker that attributes a 30% increase in our international business this year to our adoption of collaborative, client-centric, cross-enterprise technologies, I was a little surprised by the simplistic viewpoint and resultant downbeat thrust of the Dec. 1 article, "Large Risks Still Paper-based."

By its conclusion, the article had polarized discussion into an all or nothing debate. This mindset is not helpful. Of course there is a place for Internet technologies to improve efficiency and service associated with large risk syndications. And there will always be a place for face-to-face meetings to deliver value-added, personal services. This all goes without saying and should be the departure point—rather than the conclusion—of discussions. The debate should actually begin by asking what processes can be most valuably automated and what technology strategy is most likely to deliver results.

Commercial insurance processes in the Netherlands, just like anywhere else, are inherently collaborative. No participant in the industry is an island. Diverse institutions, playing distinct roles, constantly interact with one another, forming and re-forming cross-enterprise teams on a transaction-by-transaction basis. And the complexity involved in large commercial insurance transactions only increases with the size of the risks involved.

As a result, however technically progressive an organization may be, its ability to re-engineer the way it operates is fundamentally constrained by the behavior of its trading partners. To enable efficient collaboration and effective client service, technology developments in commercial insurance must be cross-enterprise in focus.

E-mail is the only cross-enterprise network that has ever succeeded—and is likely to continue to succeed—in insurance. But unless the necessary controls, permissions and processes are put in place, e-mail actually destabilizes trusted and efficient collaboration between participants. With recordkeeping practices undermined, e-mail has resulted in poor customer service, significant E&O exposure and no clear audit trail across complex commercial insurance transactions.

E-mail will of course continue to be widely used across the industry. However, a new approach is needed to augment this model in order to overcome its significant limitations. Unfortunately, the two alternative models for trusted and efficient collaboration between industry participants covered in Mark Hofmann's article—the proprietary and the community model—are flawed.

While proprietary developments (i.e., those sponsored by one participant) can be imposed internally and to a certain extent on major trading partners, they cannot ever

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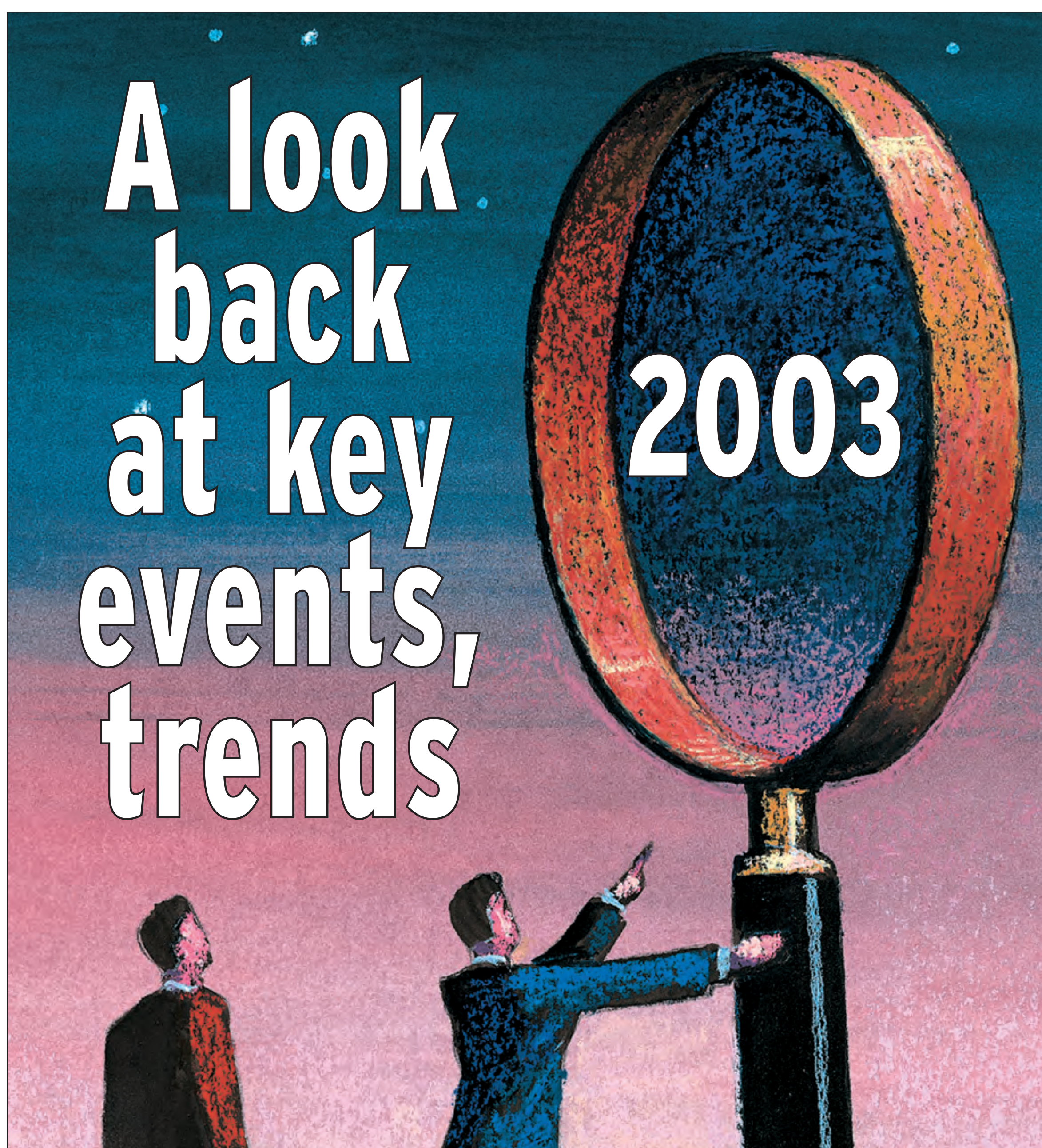
Year in Review: Risk Management

Spotlight Editor: Regis Coccia

Top stories in risk management

1. Market conditions begin to soften for some property risks
2. Alternative market booms as captive formations continue
3. Supreme Court says some punitive damage awards may violate Constitution
4. Some insurers' struggles prompt them to make big changes
5. D&O liability insurers seek to rescind coverage of several companies
6. Rating agencies downgrade big reinsurers
7. Tort, class action reform efforts gain attention in Congress
8. St. Paul/Travelers merger creates P/C giant
9. Conflict in Iraq increases global security concerns
10. Worries about reserve adequacy grow



Last year not catastrophic for risk managers

Welcome relief from costly disasters finds buyers focused on regulatory, market changes

By MICHAEL BRADFORD
and DAVE LENCKUS

Risk managers are remembering 2003 as a year of relative calm on some fronts and as a gathering storm of regulatory concerns on others.

In a sense, the biggest news of the year had to do with "the events that didn't happen," said Paul Howard, head of insurance and risk management at food retailer J. Sainsbury P.L.C. in London. "There was an expectation that there would be a terrorist-type event," which didn't occur, he noted, and risk managers "escaped a lot of natural catastrophes" during 2003.

While natural catastrophes may have spared many risk managers, some of those who worked for insurers, particularly personal lines companies, weren't so lucky.

Property losses from Hurricane Isabel, California wildfires and hailstorms in the Dallas/Fort Worth area made 2003 one of the worst ever for such losses at United Services Automobile Assn., said Christopher E. Mandel, assistant vp-enterprise risk management at the San Antonio-based insurance company.

Another issue conspicuous by its absence, though, was the failure of the risk management community—with the exception of the financial services industry—to embrace enterprise risk management during the past year, Mr. Mandel noted.

He speculated that risk managers either did not wish to assume "too much personal risk" by trying to expand their influence in their organizations or could not muster the support to pursue that endeavor.

Regulatory risks

Ensuring compliance with new regulatory concerns took up a great deal of Mr. Mandel's and other risk managers' time last year.

Because USAA operates a mutual fund company—USAA Mutual Funds Inc.—one of the most important events of 2003 was the black eye that the mutual fund industry suffered when some funds were accused of violating securities laws by allowing large institutional clients to time their investments, Mr. Mandel said.

Even though it doesn't allow such investment timing, USAA Mutual Funds had to respond to inquiries from the U.S. Securities and Exchange Commission about the practice, as have other large funds, Mr. Mandel explained.

Mr. Mandel said that the legal problems in the industry have forced him to alter his renewal strategy on his directors and officers coverage after he heard that some funds with SEC problems face "D&O pricing changes in multiples."

As a result, he said, "We have to shift strategies. The primary shift is just to make sure earlier that existing and prospective underwriters understand that USAA is not engaged in the kind of practices others are accused of."

Even companies based outside the United States also were focused on addressing the concerns of U.S. financial regulators.

"Working for a financial services company that owns a mutual fund business," said Susan Meltzer, assistant vp-risk management at Sun Life Assurance Co. of Canada in Toronto, means "the investigations into the mutual fund industry" top

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Key newsmakers of 2003 page 14

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her list of notable 2003 events.

Sun Life, like USAA, finds itself spending a lot of time on such regulatory issues, Ms. Meltzer noted, which indicates a shift in concern for her company and others.

"It's an interesting change in the risk profile for companies doing business in the U.S.," she said, including those such as hers that are based outside the country. "Whereas before they were scared of litigation, now it's the regulators."

Other regulatory concerns have kept her tied up, Ms. Meltzer acknowledged, with the federal Sarbanes-Oxley Act commanding a lot of her attention. "That's what I've been living and breathing for the last six months," she said.

The legislation imposes stricter rules on corporate governance and financial disclosures.

"I think the whole issue of directors and officers liability insurance and corporate scandals and the passage of the Sarbanes-Oxley Act has raised everybody's attention level and sensitivity in this whole arena," said Sheila Small, assistant treasurer-risk management and insurance for New York-based Verizon Communications Inc.

> **'It was a pleasant surprise: the government actually doing something to help.'**
>
> *Kevin O'Reilly*
> *Lucent Technologies Inc.*

Market shifts

Apart from regulatory issues, market changes were important events for risk managers across the globe.

"It's been interesting watching the property/casualty side," Ms. Meltzer remarked. "Things are starting to move," she said, and a "gradual softening of the market" has developed. "It's a healthier market than it was a year ago; it's not a crazy market."

Kevin O'Reilly, treasury director-risk management at Lucent Technologies Inc. of Murray Hill, N.J., said a major development in 2003 was a far more receptive insurance marketplace for Lucent's risks. That improvement, though, stemmed from the settlement of a major class action suit against the company and Lucent's return to profitability during the calendar year's third quarter, which is Lucent's fiscal fourth quarter, he said.

The Terrorism Risk Insurance Act of 2002, which requires insurers to offer terrorism coverage in several lines, was very important to Lucent last year, according to Mr. O'Reilly. The coverage allowed Lucent to negotiate property financing terms that were much lower in cost than those that would have been available if Lucent had not obtained TRIA coverage, he said.

"It was a pleasant surprise: the government actually doing something to help," Mr. O'Reilly observed.

Terrorism coverage was also a key issue in Australia, but for different reasons, according to Brad Greer, president of the Sydney-based Assn. of Risk & Insurance Managers of Australasia Ltd.

Australia's adoption of the Terrorism Insurance Act and establishment of the Australian Reinsurance Pool Corp. meant risk managers in that country were forced to pay compulsory levies for terrorism insurance. ARIMA had opposed the compulsory nature of the levies.

Mr. Greer pointed out that "insurance premiums are very heavily taxed in Australia already, and not all members want to buy terrorism cover."

As for Australia's property/casualty insurance market, hard conditions are likely to continue, especially until the impact of tort reforms passed in several states in 2003 take hold, Mr. Greer suggested.

He pointed to a recent survey of ARIMA members that indicates property/casualty insurance rates will likely continue to rise, albeit at a more modest rate, in most lines.

The survey respondents also predicted, however, that the future will bring a less-volatile market cycle in a more-concentrated marketplace, Mr. Greer pointed out.

Daniel H. Kugler, director-corporate risk management at Snap-on Inc. of Pleasant Prairie, Wis., said he was most surprised by the continuing hard casualty market, he said.

Another major development, Mr. Kugler observed, was the merger of The St. Paul Cos. Inc. and Travelers Property Casualty Corp., because it reduced the number of insurers available to risk managers.

"Is it good or bad? I don't know, but it will reduce the selection for risk managers of viable alternatives, which is always important," Mr. Kugler said. "There are other players out there, of course, but those are two big players," he said of the companies in the recent merger.

Mr. Howard of J. Sainsbury said the market's concentration into a smaller number of players "has re-emphasized the importance of forming relationships with the key markets so that they treat your risks differently from the standard norm in that sector. Organizations are taking a greater responsibility for marketing themselves," he said of insurance buyers.

Ms. Meltzer pointed out that today's insurance market provides "an opportunity for risk managers to add value" to their organizations as they differentiate themselves in the marketplace.

Mr. Kugler also cited as significant a development in the alternative risk financing market. The U.S. Labor Department's fast-track approval of International Paper Co.'s request to use its captive to reinsure group life insurance benefits was important, he said. Given that fast-track approval precedent, more employers will consider adopting similar proposals for their captives, he predicted.

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Property rate softening was top risk management story

1 Property rate relief

Insurance buyers will look back on 2003 as a year in which rising coverage costs plateaued in some places and continued to rise in others.

The property/casualty insurance market is slightly softer in some spots than it was 12 months ago but remains firm in most others.

The property market continued to recover this year from the effects of the Sept. 11, 2001, terrorist attacks, which had prompted insurers to boost rates. The law creating a federal backstop to help protect insurers against future terrorist losses calmed underwriters somewhat, and disciplined underwriting has helped keep prices stable for property risks.

Industry experts say that while property insurance buyers have seen much smaller price hikes this year—and, in some cases, falling rates—a significant softening didn't occur because insurers suffered from the effects of poor investment returns in a weak economy for much of the year.

And, on the casualty side, risk managers got much less relief from price hikes. While fewer accounts saw significant rate hikes, costs for directors and officers, medical malpractice, workers compensation and some umbrella liability risks were among those that continued to see big increases in many cases.

A third-quarter survey of members of the Washington-based Council of Insurance Agents & Brokers reflected this year's trend of a slightly softening marketplace. The membership reported that nearly one-third of their small and large property accounts and 27% of midsize accounts had no change in premiums or up to a 10% decrease on renewal and new business in the third quarter.

The CIAB members reported that rates for business interruption, commercial general liability and workers compensation coverages written for their accounts continued to rise for many, though for fewer clients than during the third quarter of 2002.

Market conditions often have their genesis among reinsurers, and insurers last January got a taste of what they would have to pass along to commercial buyers. That's when they found their own property reinsurance renewals carried small increases or flat rates while casualty renewal prices continued to climb, particularly among lines that have produced significant losses.

More of the same was predicted for 2004 by reinsurers at this year's 2003 Rendez-Vous de Septembre in Monte Carlo (*BI*, Sept. 22).

Excess and surplus lines insurers, which traditionally benefit from hard market conditions, saw that trend continue. Sources said, though, that E&S insurers' premium volume increase in 2003 probably would not match the 60% rise in 2002 (*BI*, Sept. 8).

As the economy has rebounded in the fourth quarter, insurers are seeing a boost in their returns, which should lead them to build excess capacity and begin scrambling to put it to work writing coverage lines they believe will be profitable, predicted Sean F. Mooney, senior vp and chief economist at Guy Carpenter & Co. Inc. in New York (*BI*, Dec. 1).

Mr. Mooney said he foresees a "line-specific" market hardening in the future, with certain coverages becoming restricted as a result of certain conditions or events, much as property catastrophe insurance became expensive after Hurricane Andrew.

—By Michael Bradford

2 ART market growth

The hard insurance market continued to drive insurance buyers into the alternative marketplace in 2003, with captives and other alternative risk transfer vehicles being formed at a brisk pace.

Despite a record 455 captive formations around the world in 2002, new captive activity continued unabated in 2003, with expectations that the record for new captives could fall for a third straight year. In Vermont, for example, where state regulators licensed a record 70 new captives in 2002, 58 new captives were licensed through the end of 2003's third quarter, making a new record there seem inevitable.

In domiciles around the world, much of the new captive activity was driven by high pricing in the traditional market, reduced limits or coverage unavailability.

Of particular note was an ongoing trend toward the creation of captives and risk retention groups formed to address a particularly troublesome area of the traditional market—coverage for medical mal-

practice and other health care liability lines.

In addition to forming new captives, many companies that had made little use of existing captives during the extended soft insurance market moved in 2003 to renew use of their alternative risk financing vehicle. In the hard market, the captive once again provided a way to control insurance program costs or provide a mechanism for handling the higher retentions demanded by the traditional market.

Holding the potential of future growth in the captive market in the year ahead was the U.S. Department of Labor's approval in November of International Paper Co.'s plan to use its Vermont-domiciled captive to reinsure employee group life benefits.

The Stamford, Conn.-based company's plan was the second captive benefit program approved by the Department of Labor in 2003. Earlier in the year, the department approved the application of Decatur, Ill.-based Archer Daniels Midland Co. to use its Vermont captive to reinsure group life benefits.

Particularly significant in the International Paper approval was that it was the first such program approved under an expedited review process, raising the possibility that many other employers might come forward with similar captive plans in hopes of receiving so-called "fast track" approval.

While the hard traditional market drove dramatic growth in alternative risk financing in 2003, it also posed a number of headaches for captive owners and potential captive parents. For captives needing fronting agreements, the number of insurers that have pulled out of the fronting business often left fronting arrangements prohibitively expensive, if they were available at all.

Similarly, the number of reinsurers willing to write coverage for captives shrunk as the market hardened, making coverage expensive and sometimes only available at high catastrophic levels.

—By Rodd Zolkos

3 Punitive damages

The Supreme Court edged closer to defining exactly how much is too much in punitive damage awards when it handed down its 6-3 decision in *State Farm Mutual Automobile Insurance Co. vs. Curtis B. Campbell et al.* in early April.

And the court moved in the direction many risk managers and employers had hoped, holding that under most circumstances, a punitive damage award of more than a single-digit multiple of the underlying compensatory damage award would violate constitutional due process guarantees. But by year's end, it was clear that not all courts were following the high court's lead.

The State Farm case stemmed from a dispute over the way the insurer had handled claims arising from a fatal 1981 car accident. A Utah jury initially awarded the policyholders, Curtis and Inez Campbell, $2.6 million in compensatory damages and $145 million in punitive damages, but the trial judge later reduced both awards. The Utah Supreme Court, after considering allegations regarding the insurer's conduct in other states and what it called State Farm's "immense wealth," reinstated the $145 million punitive award while letting stand the reduced $1 million compensatory award.

In an opinion written by Associate Justice Anthony Kennedy, the U.S. Supreme Court overruled the Utah court. "Few awards exceeding a single-digit ratio" to compensatory awards can pass constitutional muster, and in some cases, the acceptable ratio could be much lower, wrote Justice Kennedy. In its decision, the court followed the path it had first laid out in its landmark 1996 decision in *BMW vs. Gore*, when it found that punitive damages could be so disproportionate as to be unconstitutional.

The immediate impact of the decision was for the high court to clear its docket of several punitive damage cases by remanding them to lower courts for reconsideration in light of the *State Farm* decision. Tort reform advocates cheered.

But the cheering grew somewhat muted in November, when an Alabama jury levied a punitive damage award about 185 times the underlying compensatory damage award on ExxonMobil Corp. in a dispute involving natural gas royalties. The jury's action appeared to set the stage for further litigation to determine when punitive damage awards are so punishing that they cross the line into unconstitutional territory.

—By Mark A. Hofmann

4 Insurer struggles

While many property/casualty insurers enjoyed the benefits of the hard market and double-digit rate increases last year, the picture was far less rosy for others.

Kemper Insurance Cos., for example, shut down or sold off much of its commercial insurance and services operations. Royal & SunAlliance Insurance Group P.L.C. announced its withdrawal from the U.S. market, and both Hartford Financial Services Group Inc. and CNA Financial Corp. reported losses because of major reserve charges.

Kemper's troubles began in December 2002, when several rating agencies downgraded the Long Grove, Ill.-based insurer's financial strength rating below A-. Kemper curtailed its underwriting operations and voluntarily entered runoff. In April, it sold the renewal rights to its middle-market business to Minneapolis-based St. Paul Cos. Inc. after an earlier deal with an investor group fell through.

In July, Kemper announced that it had sold its services unit, Kemper Services, to Los Angeles-based Platinum Equity L.L.C. for an undisclosed sum. Following the purchase, the former unit was renamed Broadspire.

U.K. insurer RSA said in September that it would increase its reserves by $1.26 billion and exit the United States to focus instead on business in Canada, Scandinavia and the United Kingdom. As part of its restructuring plan, it sold renewal rights to a large part of its U.S. commercial insurance business, which accounted for $1.17 billion in net premiums, to The Travelers Indemnity Co., a subsidiary of Hartford, Conn.-based Travelers Property Casualty Corp.

Hartford Financial announced its $3.91 billion gross asbestos reserve increase in May. The charge resulted in a $1.4 billion first-quarter net loss.

Continued on next page

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When it announced the reserve increase, the insurer also said it would raise $1.85 billion in new capital, cut 1,500 jobs and exit the assumed property/casualty reinsurance business as part of an overall plan to improve its capital position and operating performance and cut costs.

Chicago-based CNA's $1.61 billion net loss for the first nine months of 2003 reflected more than $2 billion in reserve strengthening and other charges. As part of a plan to shore up its capital, parent company Loews Corp. announced in November the purchase of $750 million of CNA's new-series nonvoting convertible preferred shares. Loews has promised up to $1.4 billion in capital support.

Another part of CNA's plan fell into place in December, when the insurer announced it would sell its group benefits business, CNA Group Life Assurance Co., to The Hartford for about $500 million in cash.

CNA said the sale of its group benefits operation will result in about a $200 million loss in the fourth quarter of 2003 but generate an aftertax gain of about $100 million on a statutory basis.

—By Judy Greenwald

5 D&O difficulties

Several companies facing big directors and officers liability exposures had another tough year trying to collect from D&O insurers that want to rescind their policies.

In a trend that began with the first wave of corporate accounting scandals in 2002, D&O insurers have continued to sue for policy recisions on grounds ranging from charges of companies submitting false financial data in coverage applications to alleged fraud by company management.

Last year saw a new barrage of D&O declaratory judgment actions as the first round of recision lawsuits continued to wend their way through the courts. Some insurers sought to void coverage only for specific directors and officers accused of wrongdoing, while others sought to rescind entire policies.

Some of these fights are likely to go on for a while. In the case of Adelphia Communications Corp., for example, a federal bankruptcy judge recently halted most action in a D&O recision suit pending the criminal trial of several former Adelphia officers, scheduled for early 2004.

Xerox Corp. became one of the latest recision targets in November, when one of its excess D&O insurers, a unit of American International Group Inc., filed suit to rescind its $25 million policy. The AIG unit charged, among other things, that it had relied on false Xerox financial statements that were part of the company's D&O coverage application. The suit followed a June 2003 settlement in which six former Xerox officers agreed to pay $22 million to settle Securities and Exchange Commission charges that they inflated the company's revenues by $3 billion and its earnings by $1.4 billion between 1997 and 2000.

Throughout the year, nearly a dozen primary and excess insurers of HealthSouth Corp. filed recision complaints in several different courts following revelations that the Birmingham, Ala.-based company had recorded $2.5 billion in bogus earnings starting in the 1990s to meet stock analysts' expectations. Former HealthSouth Chairman Richard Scrushy was indicted on federal fraud charges in November after guilty pleas by 15 former HealthSouth executives, including five former chief financial officers.

Meanwhile, in a growing number of cases, policyholders—among them Qwest Communications International Inc. and Bermuda-based Tyco International Ltd.—have opted to halt recision battles by agreeing to pay insurers substantial additional premiums to maintain coverage.

In Qwest's case, D&O insurers agreed to pay their full $350 million limits into a trust account in exchange for $157.5 million in additional premiums from Qwest.

Tyco, meanwhile, halted most of its coverage litigation with D&O insurer Chubb Corp. by agreeing to pay Chubb and other D&O insurers $92 million to "maintain and extend" its program.

—By Douglas McLeod

Timeline of developments in risk management in 2003

January

The federal terrorism backstop appears to be calming a jittery market as property insurance and reinsurance rates begin to level off for risk managers and insurers renewing their accounts in January. But while the property market continues to stabilize during the rest of the year, the casualty market—especially directors and officers liability coverage—remains difficult.

Risk managers for health care facilities and public entities face unprecedented questions about whether the national smallpox vaccination plan could increase their employers' medical malpractice and workers compensation exposures.

In the wake of ratings downgrades and management changes, Kemper Insurance Cos. announces the sale of renewal rights for several of its books of business. In March, the Long Grove, Ill.-based insurer said it would also sell its middle-market account business and transform its remaining operations into a third-party administrator.

February

Growing prospects of war in Iraq drive some multinational companies to develop or dust off crisis management plans, though the Sept. 11 terrorist attacks gave many U.S. organizations an early start on risk management efforts that should protect them from repercussions of war.

Michael Segal, owner of Near North National Group, signs a letter of intent to sell his company's brokerage operations to Frontenac Co. L.L.C., a Chicago-based private equity investment firm. The sale comes as Mr. Segal faces federal insurance fraud and racketeering charges. The Frontenac deal unravels in August, and Chicago-based Hub International Ltd. steps in with a proposal to purchase Near North. Three weeks later, Hub terminates negotiations and the beleaguered Near North begins selling off its brokerage operations in parts, including the sale of its Chicago office to Mesirow Insurance Services Inc.

Few risk managers are opting to purchase the terrorism coverage insurers must offer as mandated by the Terrorism Risk Insurance Act. In addition to carrying a high cost, the coverage is too limited, risk managers say.

March

Soaring prices and diminished coverage in the commercial property/casualty insurance marketplace fuel an unprecedented level of captive insurer activity. A record 455 captives were formed around the world in 2002, far surpassing the prior record of 316 in 2001. Captive managers located in the world's largest domiciles report continued growth in 2003.

Nightclub tragedies in Chicago and Rhode Island put loss control and safety onto center stage at such establishments. But a nightclub industry representative stresses that although the catastrophes occurred within days of each other and resulted in at least 120 deaths, the events are anomalies and are not symptomatic of a wider problem in the industry.

April

Marking the reversal of a five-year trend, Lloyd's of London reports profitable results for its 2002 underwriting year. Lloyd's 2002 profits of £834 million ($1.34 billion)—reported on an annual accounting basis for the first time—are a dramatic contract to the market's worst-ever loss in 2001 of £3.11 billion ($4.53 billion).

The spread of severe acute respiratory syndrome, or SARS, in China is prompting contingency underwriters to impose exclusions and employers to adopt precautions. Questions also arise as to whether commercial insurance policies would respond should a similar SARS outbreak occur in the United States.

The Supreme Court rules 6-to-3 in *State Farm Mutual Automobile Insurance Co. vs. Campbell et al.* that a punitive damage award could be so disproportionate to the underlying compensatory damage award as to be unconstitutional.

A report released by the Australian Royal Commission investigating the $5.3 billion Australian ($3.20 billion) failure of HIH Insurance Ltd. says mismanagement led to the insurer's spectacular collapse. The report also includes 61 recommendations that would bring about changes in corporate governance, insurance regulation, financial reporting and other insurance-related activities in Australia's insurance market.

Continued on next page

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May

World Trade Center leaseholder Silverstein Properties Inc., already embroiled in litigation over property coverage for the WTC's twin towers, files a new lawsuit against Industrial Risk Insurers and Westport Insurance Corp. involving another building destroyed in the Sept. 11, 2001, terrorist attack. Silverstein charges that the insurers plan to pay out only half of the $860.1 million limit on a policy covering 7 World Trade Center, which collapsed several hours after the towers fell.

Hartford Financial Services Group Inc. boosts its asbestos reserves by $3.91 billion, surprising many insurance analysts. The insurer said it also plans to raise $1.85 billion in new capital, cut 1,500 jobs and exit the assumed property/casualty reinsurance business as part of an overall plan to improve its capital position and operating performance and to cut costs.

Renowned hurricane storm researcher William Gray faces a funding shortage after Bloomington, Ill.-based State Farm Mutual Automobile Insurance Co. and San Antonio-based USAA Group discontinue their annual contributions to Mr. Gray and his team of meteorology researchers at Colorado State University in Fort Collins.

June

The Supreme Court rules in *Desert Palace Inc. vs. Catharina F. Costa* that direct evidence of discrimination is not required for a plaintiff to bring a mixed-motive case under Title VII of the Civil Rights Act. In such cases, adverse employment decisions are allegedly motivated by both legitimate and discriminatory reasons.

A Pennsylvania court judge rules that four large policyholders of defunct insurer Legion Insurance Co. can obtain direct payment of their claims from Legion's reinsurers.

July

Standard & Poor's Corp. downgrades SCOR S.A. to BBB+ from A-, delivering a serious blow to the French reinsurer. In response, SCOR says it plans to raise capital by spinning off its life reinsurance operations.

Some of Gerling Group's large commercial policyholders offer to put up their own capital to help bolster the beleaguered German insurer.

The Senate Judiciary Committee narrowly approves legislation that would replace the current litigation-based system for compensating victims of asbestos-related diseases with a national no-fault trust fund that would be paid for by defendant companies and their insurers. At year end, though, the measure is placed on hold until next spring.

August

The U.S. Senate approves a treaty to standardize a worldwide system for compensating victims and their families for injuries and deaths resulting from crashes of international passenger jet flights. The new liability system, known as the Montreal Convention, would eliminate the patchwork of government regulations and voluntary airline industry agreements on airline liability to international passengers.

A massive blackout strikes portions of the northeastern U.S. and parts of Canada, shutting down many businesses and causing disruptions to commerce across both nations. The number of insurance claims from the power outage, however, is small.

September

U.K. insurer Royal & SunAlliance Insurance Group P.L.C. exits the U.S. market as part of a sweeping restructuring plan that also includes raising more than $1.5 billion to boost reserve deficiencies and shedding 1,000 more jobs.

A New York federal judge clears the way for victims of the Sept. 11, 2001, terrorist attacks to sue airlines, the World Trade Center's owner and operator and other defendants. Meanwhile, five large insurance groups file a lawsuit against the parties allegedly responsible for the attacks, including the al Qaeda terrorist organization and the governments of Saudi Arabia and Iran.

Hurricane Isabel slams into North Carolina and Virginia, then moves up the Eastern seaboard causing an estimated $1 billion in insured damages.

October

A district court judge in Florida overturns the state's countersignature law on constitutional grounds paving the way for more efficiency in insurance transactions.

Arnold Schwarzenegger ousts Gray Davis in California's widely publicized gubernatorial recall election. The Hollywood action-star-turned-politician makes good on his promise to reform the state's ailing workers compensation system in December by proposing an extensive reform bill to the state Legislature.

The Senate fails by one vote to limit debate and move forward with a class action reform bill. That measure, a version of which was passed by the House early in the year, would, among other things, permit the removal of certain interstate class actions to federal court from state court, to prevent forum shopping.

November

Wildfires engulf Southern California, causing more than $1 billion in damages, although most of the losses fall on personal lines insurers.

In another example of banks buying insurance distributors, bank-owned BB&T Insurance Services Inc. moves to acquire McGriff, Seibels & Williams Inc., which could move the combined entity into the ranks of the world's largest brokers.

Travelers Property Casualty Corp. and The St. Paul Cos. Inc. announce they will merge to form The St. Paul Travelers Cos., the nation's second largest commercial insurer with $20 billion in net written premiums.

December

Senate Majority Leader Bill Frist, R-Tenn., decides to put off consideration of asbestos liability reform legislation until next March.

Congress reaches an agreement on class-action reform legislation on the eve of the Senate's Thanksgiving recess. The Senate-backed compromise to the Class Action Fairness Act, which was passed by the House of Representatives addresses, among other things, attorney fees in class action settlements, compensation to class members and interstate class action reforms.

A magnitude 6.5 earthquake occurs, centered near Cambria, Calif. The temblor and a series of aftershocks are felt in Los Angeles, but damage mainly occurs in smaller communities in Southern California. Two people are killed by falling structures.

10 who made insurance-related headlines in 2003

Warren Buffett is used to stirring fellow investors into action with his public statements about particular stocks, but this year it was fellow reinsurers that were forced to sit up and take notice as he publicly warned of a certain unnamed reinsurer that had allegedly stopped playing claims.

The renowned investor and chairman of Berkshire Hathaway Inc. used his annual letter to shareholders to warn of a large reinsurer that "has all but ceased paying claims, including those both valid and due" (*BI*, March 17).

Mr. Buffett

The comment immediately started speculation as to the identity of the unfortunate reinsurer. Observers initially targeted Cologne, Germany-based Gerling Global Re, which stopped underwriting in 2002, as the likely subject of Mr. Buffett's comment. But after a swift denial by Gerling and several brokers who had dealings with the reinsurer, the speculation broadened to include just about every reinsurer of any size out there. Mr. Buffett refused to end the mystery but remained the center of much attention throughout the year as the head of the only reinsurer left in the world that still has an AAA rating.

* * *

If there is a linchpin figure behind the planned merger of Hartford, Conn.-based Travelers Property Casualty Corp. and St. Paul, Minn.-based The St. Paul Cos. Inc., it is St. Paul Chairman and Chief Executive Officer **Jay S. Fishman**.

Mr. Fishman

Mr. Fishman, 51, who joined St. Paul in 2001, had previously been at the Travelers, most recently as its chairman, president and CEO. He will serve as CEO of the combined company and is expected to become its chairman in 2006. Mr. Fishman is also expected to be a key factor if the merger, which will create the nation's second-largest commercial insurer, is ultimately a success, say observers.

"It's a bit unusual and probably in their favor" that Mr. Fishman is familiar with both entities, said John Iten, a director at Standard & Poor's Corp. in New York.

Mr. Fishman brought several key Travelers people with him when he moved to St. Paul, said Mr. Iten. "From that perspective, the integration might not be as rocky as it would be with some other organizations, where the cultures were more different and you didn't have this commonality of management," he said.

* * *

With workers compensation costs a major 2003 rallying point for California employers, Insurance Commissioner **John Garamendi** grabbed headlines throughout the year by pushing for system reforms.

Insurance industry observers in Sacramento say the commissioner at times took credit for workers comp reform efforts that actually came from legislators and the governor's office. Still, employers and insurers say he listened to their requests and encouraged legislators to act on them.

Mr. Garamendi

Mr. Garamendi also made news in August, announcing he would run for governor. A few days later, though, he decided against running in the October recall election that eventually handed Arnold Schwarzenegger the governor's job.

In October, the commissioner floated the idea of a 24-hour health care plan. He said it would combine health coverage currently provided under employee benefit plans, workers compensation insurance, automobile insurance and third-party liability policies.

* * *

For 21 years, **William Gray** has issued hurricane forecasts predicting the frequency and magnitude of storms that insurers and others could expect for the season. But the future of the renowned forecasts clouded over this year when he said he was losing funding.

Mr. Gray

Bloomington, Ill.-based State Farm Mutual Automobile Insurance Co., which funded Mr. Gray's team of meteorology researchers at Colorado State University in Fort Collins for three years, ceased its yearly $125,000 contribution in 2002. San Antonio-based USAA Group also discontinued its $75,000 annual contribution. While describing the research as valuable, the insurers cited the need to control costs.

While the project continues to get support from the National Science Foundation and from Boston-based Lexington Insurance Co., Mr. Gray spent much of 2003 trying to get more funding.

"By cutting my project way back, not paying myself and actually contributing some money from my personal accounts, I've been able to keep things going," he said in an interview in December. Asked how long that can last, Mr. Gray replied: "I will not close down shop, even if I have to pay for it myself."

* * *

Andy Haste became group chief executive of London-based insurer Royal & SunAlliance Insurance Group P.L.C. in April and has directed a sweeping restructuring of the company.

Mr. Haste

In September, RSA announced the sale of the renewal rights of a large part of

Continued on next page

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its U.S. commercial lines business to Travelers Indemnity Co., a unit of Hartford, Conn.-based Travelers Property Casualty Corp. The company also raised £960 million ($1.70 billion) through a share issue this fall—a capital raising aimed largely at plugging holes in the group's reserves, notably for liabilities—including asbestos claims—in the United States.

The company has also spun off its operations in Australia and New Zealand, sold its U.K. health care business, sold its U.S. surplus lines operation and announced 1,000 job cuts in the United Kingdom this year. Mr. Haste was formerly chief executive of London-based AXA Sun Life P.L.C.

* * *

"Turbulent" is perhaps a mild characterization of the kind of year **Sen. Orrin Hatch**, R-Utah, experienced in 2003.

The chairman of the Senate Judiciary Committee proved himself to be the chamber's most effective tort reform advocate. He successfully shepherded medical malpractice liability reform, class action reform and an ambitious plan to replace the current litigation-based system for compensating victims of asbestos-related diseases with a national no-fault trust fund through a committee known for its acrimony. As tasks go, it wasn't easy, and Sen. Hatch's perseverance was key to his achievement, at least temporarily.

Sen. Hatch

But ultimate success remains elusive. Both the malpractice and class action reform bills faltered before the threat of filibusters. The asbestos plan stalled without coming to a vote. Although a last-minute compromise appeared to breathe new life into class action reform, with a vote possible in the spring, the year ended with Sen. Hatch looking more and more likely to have to fight the other reform battles yet again.

* * *

Although Supreme Court justices generally win renown for their legal rather than their mathematical abilities, risk managers and others found reason to hail Associate Justice **Anthony Kennedy** for the formula he set out in a punitive damages case decided on April 7.

Justice Kennedy

In the opinion he wrote for the court majority in *State Farm Mutual Automobile Insurance Co. vs. Curtis Campbell et al.*, Justice Kennedy provided the clearest indication yet of when punitive damages may be so disproportionate to compensatory damages as to become unconstitutional. The case involved a punitive damage award 145 times the underlying award, a multiple the majority found unacceptable.

In fact, "few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process" guarantees under the Constitution, he wrote. In cases in which the compensatory award was itself "substantial," the acceptable ratio could be as low as one to one, he wrote.

The decision had immediate repercussions as the high court sent numerous punitive cases back to lower courts to be reconsidered in light of Justice Kennedy's new math.

* * *

Lord **Peter Levene**, chairman of Lloyd's of London, has had a busy first year in the post.

He has led the rallying cry to reduce so-called nonauthorized reinsurers' U.S. funding requirements, urged Lloyd's business to expand further into Europe and headed the market's application for a license to do business in China, among other efforts.

Lord Levene

Lord Levene, a former Lord Mayor of London and the first Lloyd's chairman to come from outside the market, has frequently called for relaxation of requirements that foreign reinsurers hold 100% of their gross liabilities in trust in U.S. states in which they operate.

Eliminating that requirement would allow insurance to be priced more competitively, Lord Levene has argued, because the cost burden on reinsurers is passed onto insurers in the form of higher premiums. "Insurance companies, in turn, must charge policyholders, so the price of these requirements is often borne by the ordinary policyholder," he told one American audience last year.

* * *

Arkansas Insurance Commissioner **Mike Pickens** spent much of his year-long term as president of the National Assn. of Insurance Commissioners beating the drum for continued regulation of the insurance industry at the state level.

"The state regulatory system is inherently strong when it comes to protecting consumers because we understand local needs and local market conditions," Mr. Pickens said in testimony before Congress in November.

Mr. Pickens

"However, we agree with critics that there is a need to make the system more uniform, reciprocal and efficient," he said. "The states are well under way in our efforts to modernize state regulation where improvements are needed, while preserving the benefits of local consumer protection that is the real strength of state insurance regulation," Mr. Pickens said.

More progress may be made sooner because NAIC regulators at their December 2003 quarterly meeting were generally receptive to critics' urgings that the NAIC speed up its modernization plan, which includes streamlining insurer and producer licensing as well as product approvals. The original plan called for deadlines ranging from year-end 2003 to year-end 2008.

See **NEWSMAKERS**/next page

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Commentary

Industry winners worthy of a cigar

Awards, unfortunately, are a much-debased currency. The entertainment industry has scads of them, enough to provoke parodies like the Award Show Award Show and the Golden Turkey Awards. Thousands of trophies are doled out annually by industry groups ranging from the National Spa & Pool Institute to the National Cartoonists Society.

On the theory, though, that the insurance industry doesn't have enough of its own, a secret committee meeting at an undisclosed location no longer in the vicinity of Hartford, Conn., has announced the following prizes in recognition f outstanding achievements in 2003:

The **Sgt. York Sharpshooter Award** is being shared by the managements of Travelers Property Casualty Corp., ACE Ltd. and Hartford Financial Services Group Inc. for their years of setting asbestos reserves within only a few billion dollars of the correct levels. Their achievement has confirmed successive approximation as the foundation of actuarial science.

Douglas McLeod

Proving that it can hold its own with the most asbestos-scarred insurer—if not with the rest of the federal government—the Pension Benefit Guaranty Corp. takes this year's **That's the Second Biggest Evaporation of Surplus I've Ever Seen Award.**

The **Rosebud Prize**, sponsored by the Citizen Kane Society, goes to Warren Buffett, who announced last March that one of the world's largest reinsurers had "all but ceased paying claims." Mr. Buffett didn't name the reinsurer, and no one has ever figured out what he meant.

Lloyd's of London takes the annual **Adam Smith Award** for posting its first profit in five years, for the 2002 underwriting year. Startled Lloyd's members are said to be uncertain what to do with the money and are considering reinsuring each other several times or buying a football club.

After a hard-fought battle, the **Gen. Douglas MacArthur Award** goes to Kemper Insurance Cos., which faded away last year. The result was being protested by rivals Gerling Global Re and Trenwick Group Ltd., but they've stopped calling. Competition is expected to be even more intense next year.

The **Model This! Award** goes to Bermuda catastrophe reinsurers, who were surprised to find themselves in the middle of an actual hurricane last September. Damage was lighter than predicted.

The **One Unclean Hand Washes the Other Award** goes to 11 insurers that claimed they unwittingly guaranteed about $1 billion of J.P. Morgan Chase & Co. loans to Enron Corp., which disguised the loans as commodity deals to keep debt off its books. Chase, which settled regulatory charges that it aided the loan scheme, sued to collect on the guarantees, and the insurers paid a $654 million settlement rather than try to convince a jury that they'd been kept in the dark.

The **ITT Corp. Mastodon Award** is being shared by Travelers and The St. Paul Cos. Inc.; Anthem Inc. and WellPoint Health Networks Inc.; and John Hancock Financial Services Inc. and Manulife Financial Corp. These companies boasted impressive work last year in support of the investment banking industry, though rumors that all six will merge into one entity appear premature.

Sen. Orrin Hatch wins the 2003 **Sisyphus Prize** for his efforts pushing the boulder of asbestos reform legislation uphill while insurers and manufacturers stood by debating whether he was going in the right direction. Sen. Hatch's reward will be to start over at the bottom of the hill this year.

The **Country Joe & the Fish Award** goes to Minnesota Gov. Tim Pawlenty, who—even though he is only 42—recalled the option of going to Canada when the issue of prescription drug costs came up.

Chubb Corp. and several other directors and officers liability insurers win the **Extended Warranty of the Year Award** for collecting $92 million in additional premiums from Tyco International Ltd. in lieu of canceling its D&O coverage. The winners are reportedly consulting with former Tyco Chairman Dennis Kozlowski about a possible victory celebration in Sardinia.

The 2003 **Physician Heal Thyself Grant** goes to Marsh & McLennan Cos. Inc. for missing the risks of the impending mutual fund scandal at subsidiary Putnam Investments Inc. The grant will include a free risk assessment at Putnam by Aon Risk Services.

Meanwhile, The Home Insurance Co., widely thought to have been killed off in 1995, wins the annual **Rasputin Prize.**

Asbestos claims finally finished off The Home in 2003, forcing it into liquidation after eight years of state supervision. It is now officially defunct. Definitely.

Congratulations to these winners, and here's hoping that 2004 produces as many worthy contenders.

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

Newsmakers: Leaders of 2003

Continued from previous page

* * *

World Trade Center leaseholder **Larry Silverstein** is known for doggedness and optimism, but you couldn't blame him for feeling discouraged on at least one front last year.

Mr. Silverstein has been locked in a legal and public relations battle with WTC property insurers over his contention that the Sept. 11, 2001, attack on the Twin Towers represented two occurrences entitling him to two $3.55 billion policy limits. The question hinges in part on which of two policy forms governs the program: a form prepared by broker Willis Group Holdings Ltd.—which a federal judge has already ruled would restrict the loss to one limit—or a form produced by Travelers Property Casualty Corp. and favored by Mr. Silverstein.

Mr. Silverstein

In September, the 2nd U.S. Circuit Court of Appeals handed a victory to the insurers: It affirmed lower court rulings that the Willis form would in fact treat the attack as one occurrence and that a trial must determine which form governs the program and whether the Travelers form would allow one payout or two.

The property coverage trial is scheduled to start Feb. 9.

Mr. Silverstein, meanwhile, has gone about his business, launching construction of a new office tower on the site of the former 7 World Trade Center and developing plans for the remainder of the WTC site.

Comings & Goings

Mr. Downs

Mr. Pugh

Agents/brokers

Willis Group Holdings Ltd. has made two senior-level appointments: **Kevin Downs** has been named executive vp of the broker's healthcare practice group. Mr. Downs, who will be based in Chicago, previously was senior vp in Marsh Inc.'s National Health Care Group. **Randy Pugh** has been named regional executive officer of Willis' Pacific Northwest region. Previously, Mr. Pugh was chief executive officer of the broker's Anchorage, Alaska, office.

Wachovia Insurance Services, based in Winston-Salem, N.C., has named **Stewart McDowell** as president, replacing David Holton, who is retiring. Previously, Mr. McDowell was chief operating officer of Willis Group Holdings.

Insurers

Society Insurance has named **James P. Thomas** as president and CEO. He replaces Michael L. Wagner, who retired. Previously, Mr. Thomas was vp and COO of the Fond du Lac, Wis.-based company.

Kevin Clinton has been named CEO of East Lansing, Mich.-based American Physicians Capital Inc., which writes liability insurance. Previously, he was CEO of American Physicians Assurance Corp. and succeeds William Cheeseman, who retired.

Philadelphia-based Reliance Standard Life Insurance Co. has named **Andrew Orear** as regional managing director for the company's western region. Before joining Reliance, Mr. Orear was regional vp for Sun Life Financial.

Peter J. Willitts has been named president of Liberty International Management (Bermuda), a subsidiary of Boston-based Liberty Mutual Insurance Co. Before joining Liberty Mutual, Mr. Willitts was chief financial officer for Marsh Inc.'s captive practice.

Surplus lines

Paul B. Nowak has been named a partner at Alexander Morford & Woo Inc., a Redmond, Wash.-based excess and surplus lines broker. Mr. Nowak is the manager of the executive liability department.

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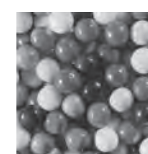

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New underwriting slip for nonmarine binding authority

London aims to ease U.S. placements

By SARAH VEYSEY

LONDON—A new underwriting slip for U.S. nonmarine binding authority business debuted in the London market at the Jan. 1 renewal.

The standard slip to be used when placing binding authority business within the Lloyd's of London and London company markets is the latest innovation of the London Market Principles project, which began in 2001 to explore ways to improve market processes.

The new slip, NMA2860, was developed after consultation with brokers and underwriters and will be used by some at the January renewals, according to the LMP Programme Office.

Benefits of the new slip for policyholders include speeding up the placement of binding authority business, reducing the costs associated with placing that business and providing greater clarity of coverage terms and conditions at the time of placement. Under some current underwriting slips, small details are often left to be arranged later.

The LMP sought to use existing forms in the London market for binding authority business and incorporate them into a standardized slip, explained Roy Laker, a consultant in the LMP Programme Office.

Because the slip uses a standard form, contracts are clear to brokers and underwriters at inception, he said. That, in turn, speeds up the process of getting the relevant documentation back to the U.S.-based agent placing the business at Lloyd's, he noted.

Several brokers are already using the binding authority slip, said Mr. Laker, and its use may at some point become mandatory.

Earlier in 2003, the LMP intro-

See LMP/page 20

PHOTO: LONDON TOURISM

The London Market Principles project is working to improve processes in the London market, which is one of the world's largest insurance marketplaces.

PHOTO: AGENCE FRANCE PRESSE

FIFA had to obtain replacement cancellation coverage for the 2002 World Cup after an AXA unit terminated its policy.

AXA gets penalty over FIFA cover

By REGIS COCCIA

ZURICH, Switzerland—A German court ruled late last month that a unit of AXA S.A. wrongly terminated cancellation insurance that it wrote for the FIFA World Cup 2002, according to the Federation Internationale de Football Assn.

Zurich-based FIFA sued AXA Colonia Versicherung A.G., which wrote about 20% of a cancellation coverage program along with dozens of other insurers, after AXA terminated the coverage following the Sept. 11, 2001, terrorist attacks. The consortium of insurers had agreed to provide a total of 944 million euros ($845.1 million) of cancellation coverage to the tournament (*BI*, Nov. 5, 2001; Oct. 15, 2001).

The district court in Cologne, Germany, ruled Dec. 22 that AXA had violated its contractual obligations and that the insurer could not assume in late 2001 that there was a heightened risk of terrorism for the World Cup matches scheduled to take place in Japan and South Korea the following year, according to a FIFA statement.

In October 2001, FIFA obtained replacement cancellation coverage for the World Cup from National Indemnity Co., a unit of Omaha, Neb.-based Berkshire Hathaway Inc.

The court further ruled that AXA and the other insurers must pay compensation to FIFA amounting to their participation in the coverage program. FIFA said it now will consider taking action against the other joint insurers on the program but did not identify them.

AXA officials could not be reached for comment.

U.K. directors, auditors may get liability relief

DTI says reforms needed because of changes in litigation, insurance

By CAROLYN ALDRED

LONDON—The U.K. Department of Trade and Industry is proposing a cap on liability for corporate directors and auditors.

Both the Assn. of Insurance & Risk Managers and the Institute of Chartered Accountants in England & Wales favor a move away from unlimited civil liability for these risks. The groups argue that limiting liability would help relieve some of the insurance difficulties that auditors and directors now face.

The DTI in December released a consultative document, "Director and Auditor Liability," that outlines the proposal.

Also last month, the government introduced the Companies (Audit, Investigations and Community Enterprise) Bill, which contains corporate governance requirements similar to those in the Sarbanes-Oxley Act enacted in the United States in 2002.

The U.K. bill, intended to improve the reliability of financial reporting and auditor independence, would require directors to state that they have not withheld any relevant information from their auditors; impose independent auditing standards, monitoring and disciplinary procedures on accounting firms; and require companies to publish details of nonaudit services provided for them by their auditors. The bill pending in Parliament would apply to both internal and external directors.

Auditor liability is discussed in the DTI document. According to the DTI, reforms are needed because developments in the last 70 years have meant that the 1929 Companies Act, which restricted the ways in which directors and auditors can limit their liability, is no longer appropriate.

"There are growing concerns that the law does little to recognize that directors face legal action from breach of duty even when they have acted in good faith and in the belief that their decisions were in the best interest of the company," the paper states.

Auditors, who are exposed to unlimited liability for their mistakes, "are also concerned about the availability and cost of insurance, including self-insurance," the DTI adds.

In a statement calling for auditors liability reform, the ICAEW argues that "mid-tier firms are discouraged from entering the listed firm audit market given the unlimited, and hence uninsurable, risk that follows."

The ICAEW also points out that there is a "very real risk that one or more of the largest accountancy firms will be brought down by the unlimited liability they currently carry."

David Gamble, executive director of AIRMIC in London, said that limits are needed for directors liability.

"A limit on liability will provide more certainty to companies, their

See LIABILITY/page 20

World Updates

Australian court tosses out DVT suit

Two airlines are not liable for a passenger's deep-vein thrombosis, the Court of Appeal in Victoria, Australia, ruled. Brian Povey claimed blood clots in his legs were "caused by an accident" on board or following a Qantas Airways Ltd. flight from London to Bangkok and a British Airways P.L.C. flight from Bangkok to Sydney via Kuala Lumpur that he took in February 2000. He sought damages under the Warsaw Convention, but the court found his injury did not constitute an accident under the convention. A similar finding by a U.K. court prevented 24 DVT claimants from seeking compensation from 18 airlines (*BI*, July 7, 2003).

Swiss Re expands Asian operations

Zurich-based Swiss Reinsurance Co. said it has received a license to open a nonlife reinsurance branch office in Japan. The new branch, expected to open in April, will be headed by Akinori Kaneko, who is currently president and representative director of Swiss Re Services Co. Ltd. In mid-December, the reinsurer opened a branch office in Beijing, managed by Eric Gao, to provide both life/health and property/casualty services in China.

ACE guarantee unit files for IPO

ACE Ltd.'s financial guarantee subsidiary, AGC Holdings Ltd., has filed with the Securities and Exchange Commission to make an initial public offering during the first half of 2004. The number of shares and price range have not been determined, Bermuda-based ACE said in a statement. ACE's vice chairman, Dominic J. Frederico, will become president and chief executive officer of AGC Holdings. Meanwhile, Michael Schozer has been named president of ACE Guaranty Corp., a monoline bond insurance unit of ACE. He previously worked at Ambac Assurance.

Briefly noted

Matson, Driscoll & Damico L.L.P., an Atlanta-based forensic accounting firm specializing in insurance losses and litigation, opened a Singapore office Jan. 1....Gallagher Bassett Services Inc., a unit of Itasca, Ill.-based Arthur J. Gallagher & Co., acquired the remaining 50% stake in an Australian joint venture, Wyatt Gallagher Bassett Pty. Ltd. The joint venture, formed in 1997 with Wyatt Group, provides claims management services throughout Australia and New Zealand. Terms were not disclosed.

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For additional information contact:

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First Pavilion's principal offices are located in New York City and Glen Rock, New Jersey.

Contact: Michael A. Paone
266 Harristown Road, Suite 200
Glen Rock, NJ 07452
mpaone@firstpavilion.com

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Qualifications:

Bachelors Degree in business administration, marketing, healthcare administration, or related field.

- Five years experience in sales/marketing/business development
- Five years experience in healthcare
- Writing experience, including responding to proposals, website content, and other materials
- Experience in independently meeting and presenting to potential customers
- Working knowledge of health benefit and insurance systems
- Experience in customer service and retention
- Computer literacy and systems familiarity

Preferred Qualifications:

- Masters Degree in business administration, marketing, healthcare administration, or related field
- Experience with care management services, products, programs, and systems

Qualis Health offers a market-competitive salary, full benefits + retirement package, free parking, easy freeway access (Northgate area), and a dynamic working environment. Please refer to job #658 and website for instructions on how to apply for our positions at www.qualishealth.org or Fax resume and cover letter to (206) 361-5400, or mail to Qualis Health, PO Box 33400, Seattle, WA 98133-0400.

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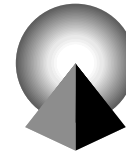

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Highly skilled and motivated CPA with insurance agency experience. Computer skills and strategic thinking are required. Applied experience in CPCU would be helpful.

COMMERCIAL LINES MANAGER

Experienced, enthusiastic and motivated leader to oversee commercial lines department in a growing agency. Agents license is required. Applied experience and CPCU would be helpful.

Please fax resume to Stan Plappert at 239-261-2803.

HELP WANTED

National Accounts Construction Manager

One of the nation's leading Property and Casualty brokers is seeking an experienced individual with national account experience to lead our Construction Industry Team.

- 10+ years of major account casualty program design
- Extensive experience with OCIP's and CCIP's
- Proven track record of working with builders risk, high deductible and paid loss insurance products
- A full working knowledge of commercial insurance and risk management solutions for national accounts
- Management and proven Leadership skills with the strongest of values placed on service to others
- Must be able to relocate to the Midwest
- The ability to travel

Qualified candidates should send their confidential resume and salary history to: **businesshire@yahoo.com**

LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
COMPANIES (WINDING-UP)
1992 : No. 331
IN THE MATTER OF THE COMPANIES ACT 1981
AND IN THE MATTER OF

DESERT INSURANCE COMPANY LIMITED

IN LIQUIDATION

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It is anticipated that a Final Dividend will be paid during early January 2004.

Creditors requiring further information should contact the Joint Liquidators in writing at the following address:

Desert Insurance Company Limited - In Liquidation, PricewaterhouseCoopers, P.O. Box HM 1171, Hamilton HM EX, Bermuda (Fax: 441 295 1242)

PETER C.B. MITCHELL *Joint Liquidator*

Desert Insurance Company limited - In Liquidation

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DATED this 5th day of January, 2004.

Stephen Lowe

Official Receiver and Provisional Liquidator

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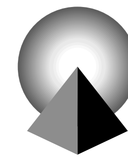

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PETER C.B. MITCHELL *Joint Liquidator*

Desert Insurance Company limited - In Liquidation

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DATED this 5th day of January, 2004.

Stephen Lowe

Official Receiver and Provisional Liquidator

Business Insurance, Professional Marketplace Department, 360 N. Michigan Ave., Chicago, IL 60601-3806

*To place your ad, contact **Irais Amleshi** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: iamleshi@crain.com*

LEGAL NOTICE

NOTICE OF SANCTION OF
SCHEME OF ARRANGEMENT
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT
No. 6313 of 2003
IN THE MATTER OF

MARLON INSURANCE COMPANY LIMITED
(at all material times known as Vesta (UK) Insurance Company Limited) and
AIOI INSURANCE COMPANY OF EUROPE LIMITED
(formerly known as The Chiyoda Fire and Marine Insurance Company (UK) Limited)

AND IN THE MATTER OF SECTION 425 OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an Order dated 15 December 2003 made in the High Court of Justice in the above matter, the schemes of arrangement (together "the Trident Pool Scheme") between Marlon Insurance Company Limited and Aioi Insurance Company of Europe Limited ("the Scheme Companies") and their respective Scheme Creditors in relation to their Trident Pool Business only (as defined in the Trident Pool Scheme) pursuant to section 425 of the Companies Act 1985 which were voted on and overwhelmingly approved by Scheme Creditors at the meetings held on 4 December 2003, were sanctioned.

A copy of the Order sanctioning the Trident Pool Scheme was filed with the registrar of companies on 16 December 2003, and the Trident Pool Scheme became effective for both Scheme Companies on that date.

Claim Forms will be sent to Scheme Creditors by 27 January 2004. Scheme Creditors must ensure that completed Claim Forms are returned to Omni Whittington Insurance Services Limited at the address shown below by 20 April 2004, the Bar Date under the Trident Pool Scheme.

Should you have any questions regarding this Notice, please address them to Omni Whittington Insurance Services Limited at Omni Whittington Court, Whitfield Street, Gloucester GL1 1NA, England, telephone 01452 428100 or if outside the United Kingdom (+44) 1452 428100, fax number 01452 428079 or if outside the United Kingdom (+44) 1452 428079.

LEGAL NOTICE

NOTICE OF SANCTION OF
SCHEME OF ARRANGEMENT
IN THE HIGH COURT OF JUSTICE (IN ENGLAND)
CHANCERY DIVISION
COMPANIES COURT
No. 6314 of 2003
IN THE MATTER OF

TRINITY INSURANCE COMPANY LIMITED
(formerly known as Trident Insurance Company Limited and Trident General Insurance Company Limited)

AND IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an Order dated 15 December 2003 made in the High Court of Justice in the above matter, the scheme of arrangement (the "Amending Scheme") between Trinity Insurance Company Limited ("Trinity") and its Scheme Creditors (as defined in the Scheme) pursuant to section 425 of the Companies Act 1985 which was voted on and overwhelmingly approved by Scheme Creditors at the meetings held on 4 December 2003, was sanctioned. A copy of the Order sanctioning the Amending Scheme was filed with the registrar of companies on 16 December 2003, and the Amending Scheme became effective on that date.

Claim Forms will be posted on Trinity's Website at www.trinityinsurance.co.uk by 27 January 2004. Scheme Creditors should access their Claim Form via that Website and should email their completed Claim Form to trinity@omniwhittington.co.uk by 20 April 2004, the Bar Date under the Amending Scheme. Any Scheme Creditors who require a hard copy Claim Form to be sent by post should contact Omni Whittington Insurance Services Limited, at Omni Whittington Court, Whitfield Street, Gloucester GL1 1NA, England, telephone 01452 428100 or if outside the United Kingdom (+44) 1452 428100, fax number 01452 428079 or if outside the United Kingdom (+44) 1452 428079.

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Should you have any questions regarding this Notice, please address them to Omni Whittington Insurance Services Limited at the address shown above.

LEGAL NOTICE

NOTICE OF FINAL DIVIDEND
NOTICE TO CREDITORS AND CONTRIBUTORIES OF INTENTION TO APPLY FOR RELEASE

MENTOR INSURANCE LIMITED

IN LIQUIDATION

Notice is hereby given that a final dividend of 2.77 cents has been declared in this matter and that the same will be mailed to creditors whose claims have been previously admitted in this liquidation on January 31, 2004. This brings the overall dividend distributed to creditors to 75.27 cents.

If you otherwise had any claim against Mentor Insurance Limited ("the Company") and have not filed your claim in accordance with the Scheme of Arrangement implemented in respect of the Company, or if you did file a claim in accordance with the Scheme of Arrangement but excluded any claim which otherwise would be valid, then to that extent your claim will be expunged and the Joint Liquidators will proceed to make the final dividend without regard to such claim.

The Scheme of Arrangement was approved by creditors on February 23, 1993 and sanctioned by the Supreme Court of Bermuda on March 23, 1993. The final filing deadline for creditors of the Company under the Scheme of Arrangement was set at June 30, 1993.

Furthermore, the Joint Liquidators intend to redistribute previously uncashed dividends to the original recipients in conjunction with this final dividend distribution. If you believe that you are entitled to this final dividend distribution and may have entitlement to previously unclaimed dividend distributions, please contact the Joint Liquidators at the following address and fax number:

Ernst & Young, Reid Hall, #3 Reid Street, Hamilton HM 11,Bermuda, Attention: Peter Howley, Fax number: (441) 295 5193, Email address: peter.howley@bm.ey.com

If you desire the dividend to be paid to some other person or entity, you must sign and lodge with the Joint Liquidators the necessary authority. All dividend checks will be cancelled at the expiration of six months from the date of issue (July 31, 2004) and any unclaimed dividends will then be transferred to the Accountant General in Bermuda.

After August 31, 2004, the Joint Liquidators intend to apply to the Supreme Court of Bermuda for release and further take notice that any objection you may have to the granting of release must be notified to the Court within twenty-one days of this date.

Dated this 12th day of December 2003

CHARLES W. KEMPE, Jr., FCA and
NIGEL J. HAMILTON, FCA *Joint Liquidators*

LEGAL NOTICE

NOTICE OF EFFECTIVE DATE
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
No. 6366 of 2003
IN THE MATTER OF

BLACK SEA AND BALTIC GENERAL INSURANCE COMPANY LIMITED

(In Scheme of Arrangement)
and IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that by an Order dated 8 December 2003 made in the High Court of Justice in England and Wales in the matter of Black Sea and Baltic General Insurance Company Limited ("the Company") a scheme of arrangement pursuant to section 425 of the Companies Act 1985 ("the Scheme") between the Company and its Scheme Creditors (as defined in the Scheme), which was at meetings held on 2 December 2003 in London, voted on and approved by the requisite majorities of each class of Scheme Creditors, was sanctioned. An office copy of the Court Order sanctioning the Scheme was delivered to the Registrar of Companies for registration on 23 December 2003. The Effective Date of the Scheme is therefore 23 December 2003.

Dan Schwarzmann and Nigel Rackham, partner and director respectively in the United Kingdom firm of PricewaterhouseCoopers LLP, are the Joint Scheme Administrators responsible for implementing the Scheme. Anybody believing themselves to be a Scheme Creditor who has not received notice of the Effective Date of the Scheme, should contact the Joint Scheme Administrators at the address below.

Claim Forms containing the Company's estimates of Scheme Claims have been sent to all known Scheme Creditors. Blank Claim Forms are also available upon request to the Scheme Administrators at the address below. Scheme Creditors have until the Bar Date, which is 31 March 2004, to submit and confirm details of their claims by returning the Claim Forms with, in the case of Claim Forms which have been amended, appropriate supporting documentation. Anyone believing themselves to be a Scheme Creditor who does not return their Claim Form before the Bar Date will not, although bound by the Scheme, participate in Scheme distributions. The Joint Scheme Administrators are not required to take account of any Claim Forms, amendments to Claim Forms, or to admit claims, of which they receive notification after the Bar Date.

It is requested that Claim Forms are returned or submitted to the Joint Scheme Administrators, Black Sea and Baltic General Insurance Company Limited, c/o PRO Insurance Solutions Limited, One Great Tower Street, London EC3R 5AH, United Kingdom, fax number +44 (0) 20 7623 3318, telephone number +44 (0) 20 7283 2918, e mail pro_bsbhelpline@pro-ltd.co.uk

All other enquiries should be addressed to the Joint Scheme Administrators at the above address.

Dated this 23rd day of December 2003

LEGAL NOTICE

Kingscroft Insurance Company Limited
Walbrook Insurance Company Limited
El Paso Insurance Company Limited
Lime Street Insurance Company Limited
Mutual Reinsurance Company Limited
(jointly called KWELM)

For the attention of Scheme Creditors, Policyholders, Retrocessionaires and Brokers

The Scheme Administrators of the KWELM Companies, Chris Hughes and Ian Bond, will be holding meetings at the following venues at which they will be providing attendees with background on the current status of the KWELM companies, explaining the current proposal for early closure, and responding to questions and queries which scheme creditors and policyholders may wish to raise.

Monday 12 January 2004
10:00am - The Westin Bonaventure Hotel, 404 S Figueroa Street, **LOS ANGELES**, CA 90071. Tel: 213 624-1000.
2:00pm - Sheraton New York Hotel & Towers, 811 Seventh Avenue, **NEW YORK,** NY 10019. Tel: 212 581-1000.

Tuesday 13 January 2004
2:00pm - The Westin Galleria Hotel, 5060 West Alabama, **HOUSTON**, TX 77056. Tel: 713 960-8100.
2:00pm - The Westin Pittsburgh Convention Center, 1000 Penn Avenue, **PITTSBURGH,** PA 15222. Tel: 412 281-3700.

Wednesday 14 January 2004
2:00pm - The Westin Grand, 2350 M Street NW, **WASHINGTON**, DC 20037. Tel: 202 429-0100.

Thursday 15 January 2004
10:00am - The Westin Chicago River North Hotel, 320 North Dearborn, **CHICAGO**, IL 60610. Tel: 312 744-1900.

Tuesday 20 January 2004
3:00pm - John Stow House, 18 Bevis Marks, **LONDON** EC3A 7JB. Tel: 020 7645 4700.

Note all times are local time.

Scheme Creditors and Policyholders are welcome to attend at any convenient venue.

To confirm attendance at one of the USA meetings please telephone, mail, fax or email: Jennifer Leung, KWELM — New York Office.

KWELM Suite 1803, 599 Lexington Avenue, New York, NY 10022-6069, USA. Tel: 212 838-9486.
Fax: 212 838-5999. Email: jmlkwelm@att.net

To confirm attendance at the London meeting please telephone, mail, fax or email:

Amanda Riley, KWELM, John Stow House, 18 Bevis Marks, London EC3A 7JB. Tel: 020 7645 4780.
Fax: 020 7645 4901. Email: Amanda.Riley@kmsl.co.uk

The formal meeting of creditors at which voting will take place on the proposals for earlier closure will be held on 29 January 2004 in London.

Further details are available via the KWELM website **(www.kwelm.com)**, via the KWELM helpline **(+44 (0) 20 7645 4991)** or email **creditor.helpdesk@kwelm.com**

Need a **Legal Notice** or **Request for Proposals** published?

BI **Call Irais Amleshi at (312) 649-5340**

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

Petition of Gareth Howard Hughes, Nigel James Hamilton and Jacqueline Barbara Stephenson, as Joint Provisional Liquidators of

MUNICIPAL GENERAL INSURANCE LIMITED,

a Debtor in a Foreign Proceeding.

Return Date: January 21, 2004
Time: 10:00 a.m.
Objection Deadline:
5:00 p.m., January 16, 2004

In a Proceeding UnderSection 304 of theBankruptcyCode

Case No. 94-B-41329 (CB)

NOTICE OF MOTION FOR PERMANENT INJUNCTION PURSUANT TO SECTION 304(b) OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that pursuant to an order of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), a hearing will be held on January 21, 2004 at 10:00 a.m., or as soon thereafter as counsel may be heard (the "Return Date"), before the Honorable Cornelius Blackshear in Courtroom 601 of the Bankruptcy Court which is located at The Alexander Hamilton Custom House, One Bowling Green, New York, New York, 10004, to consider the motion (the "Motion") of the Provisional Liquidators of Municipal General Insurance Limited (the "Company") for entry of an order pursuant to 11 U.S.C. §§ 105(a) and 304(b) granting the Petition in this case and permanent injunctive relief (the "Order") giving full force and effect in the United States to the Scheme of Arrangement (the "Scheme") between the Company and its Scheme Creditors (capitalized terms not defined herein shall have the meaning defined in the Scheme).

The Provisional Liquidators have proposed the Scheme pursuant to section 425 of the Companies Act 1985 of Great Britain. The requisite statutory majorities of creditors (i.e. a majority in number representing 75% in value of those in each class present and voting in person or by proxy) approved the Scheme on December 5, 2003 and the Scheme was sanctioned by the High Court of Justice of England and Wales (the "High Court") on December 18, 2003. By their Motion, the Provisional Liquidators have requested entry of the Order that would: (A) grant the Petition in this case, recognize the Scheme Administrators as the exclusive representatives of the Company, and give effect to the Scheme in the United States so that it binds all Scheme Creditors; (B) except as provided expressly in the Scheme or at the express written direction of the Scheme Administrators, permanently enjoin all entities from (i) transferring any property of the Company or property involved in the Scheme, or the proceeds of such property (collectively, the "Related Property") to third parties; (ii) drawing down any letter of credit established on behalf of the Company (a "Letter of Credit"), or withdrawing from, setting off against or otherwise applying property that is the subject of any escrow or trust or similar arrangement (an "Escrow") in which the Company has an interest, in excess of what is expressly authorised by any related agreement; (iii) commencing or continuing any legal action or proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) (an "Action") involving the Company or the Related Property, or any of the Company's representatives or agents (the "Agents") or any of their property, or seeking discovery against the Company; (iv) enforcing any judgment, assessment, order or award, or commencing or continuing any Action to create, perfect or enforce any lien, set-off or other claim against the Company or the Related Property, or any of the Agents or any of their property; (v) enforcing any statute, rule or requirement of federal, state, or local law or regulation (a "Security Requirement") requiring the Company, or any of the Agents to establish security of any kind as a condition of prosecuting, defending or appealing any Action and such Security Requirement will be rendered null and void for such Actions but the Order shall not affect any security in existence at the Effective Date or its replacement; (vi) commencing or continuing any Action against the Company, the Provisional Liquidators, the members of the Informal Creditors' Committee or any of their respective predecessors, directors, officers, agents, employees, representatives, financial advisers or attorneys (the "Pre-Scheme Parties") or any of them with respect to any claim or cause of action in law or in equity, arising out of or relating to any action taken or omitted to be taken as of the Effective Date by any of the Pre-Scheme Parties in connection with the section 304 case or in preparing, disseminating, applying for or implementing the Scheme or the Order; (vii) commencing or continuing any Action against the Scheme Administrators, the Company, the members of the Creditors' Committee, the Scheme Actuary, the Independent Actuary, the Scheme Adjudicator, or any of their respective successors, directors, officers, agents, partners, employees, representatives, financial advisers or attorneys (the "Scheme Parties"), or any of them, with respect to any claim or cause of action, in law or in equity, which may arise out of the construction or interpretation of the Scheme or out of any action taken or omitted to be taken by any of the Scheme Parties in connection with the administration of the Scheme; (C) require (i) all entities in possession, custody or control of property of the Company, or the proceeds thereof, to turn over and account for such property or its proceeds to the Scheme Administrators; (ii) all entities in possession, custody or control of any records of the Company to deliver such records to the Scheme Administrators, and all persons having any records relating to the Company's business or to any matter which may affect the administration of the Company's estate or the Scheme, to preserve them and submit them to the Scheme Administrators for examination; (iii) all entities that are beneficiaries of Letters of Credit, or any parties to any Escrow, to provide notice to the Scheme Administrators and their United States counsel of any drawdown on any Letter of Credit, or any withdrawal from, set-off against, or other application of property that is the subject of any Escrow (any of which, a "Draw"), together with information sufficient to permit the Scheme Administrators to assess the propriety of such Draw, including, without limitation, the date and amount of such Draw and a copy of any agreement pursuant to which such Draw was made and provide such notice and other information contemporaneously therewith; and turn over and account to the Scheme Administrators for all funds resulting from a Draw in excess of the amount expressly authorised by the agreement pursuant to which such Letter of Credit or Escrow was established; (iv) parties to any Action in which a liability of the Company may be established to place the Scheme Administrators and their United States counsel on the master service list of any such Action and ensure that such counsel receives copies of all documents served by the parties to such Action or issued by the tribunal or other official having jurisdiction over such Action and all correspondence circulated to parties named on any service list; and (D) further provide that (i) except as specifically set forth in the Order, nothing in the Order prevents the continuance or commencement of an Action against or involving any party other than the Company but no settlement or judgment in any such Action shall be binding on or enforceable against the Company or the Related Property; (ii) the High Court has exclusive jurisdiction to hear and determine any Action and to settle any dispute relating to the interpretation of the Scheme, or to any action taken or omitted by any of the Scheme Parties in connection with the administration of the Scheme; (iii) the Scheme Administrators are authorized to transfer to the foreign proceedings any property of the Company located in the United States; (iv) the Bankruptcy Court shall retain jurisdiction with respect to the Order, requests for any additional relief in the case and all adversary proceedings in connection therewith; and (v) no action taken by the Provisional Liquidators or the Scheme Administrators, their successors, the Agents, or any of them, or their counsel, in acting in connection with the Scheme, the Order, the section 304 proceeding, any further order for additional relief in the section 304 proceeding, or any adversary proceeding in connection therewith as the Court may make shall be deemed to constitute a waiver of the immunity afforded to the Provisional Liquidators, the Company or the Scheme Administrators, their successors, agents or representatives pursuant to section 306 of the United States Bankruptcy Code.

Copies of the Scheme Document, the Motion, the form of the Proposed Permanent Injunction Order to be presented on the Return Date and the Memorandum of Points and Authorities in Support of the Motion are available to review by fax, email or written request to the Provisional Liquidators' counsel at:

Allen & Overy
1221 Avenue of the Americas
New York, New York 10020
(212) 610-6399 (Facsimile)
Attention: Theresa D'Agostino
theresa.d'agostino@allenovery.com

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must be made in writing describing the basis therefor and shall be filed with the Court electronically in accordance with General Order M-182 by registered users of the Court's electronic case filing system, and by all other parties in interest, on a 3.5 inch disc, preferably in Portable Document Format (PDF), Word Perfect or any other Windows-based word processing format, with hard copy to the Chambers of the Honorable Cornelius Blackshear, and served upon Allen & Overy, 1221 Avenue of the Americas, New York, New York 10020 (Attention: Ken Coleman and Stephen Doody), counsel to the Provisional Liquidators so as to be received on or before January 16, 2004 at 5:00 p.m., New York time.

Dated: New York, New York
December 24, 2003

ALLEN & OVERY
Attorneys for the Provisional Liquidators
Ken Coleman (KC 9750)
Stephen Doody (SD 9768)
1221 Avenue of the Americas
New York, New York 10020
(212) 610-6300

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re
Petition of Dan Yoram Schwarzmann and Douglas Nigel Rackham, as Joint Provisional Liquidators of BLACK SEA AND BALTIC GENERAL INSURANCE COMPANY LIMITED,
Debtor in a Foreign Proceeding.

In a Proceeding Under Section 304 of the Bankruptcy Code

Case No. 98-B-46759 (CB)

NOTICE OF PERMANENT INJUNCTION AND ORDER PURSUANT TO SECTION 304
GIVING EFFECT TO SCHEME OF ARRANGEMENT IN THE UNITED STATES

Notice is hereby given that, in connection with the motion filed on November 11, 2003, pursuant to section 304 of the Bankruptcy Code (the "Motion"), by Dan Yoram Schwarzmann and Douglas Nigel Rackham, as Joint Provisional Liquidators of Black Sea and Baltic General Insurance Company Limited (the "Company"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has entered a permanent injunction order dated December 22, 2003 (the "Order"), among other things:

1. Providing that the Scheme of Arrangement (as defined in the Order) shall be given full force and effect in the United States, and shall be binding on and enforceable against all Scheme Creditors (as defined in the Order) in the United States;

2. Permanently enjoining all persons and entities from taking any action in contravention of, or inconsistent with, the Scheme of Arrangement;

3. Permanently enjoining and restraining all persons and entities from: (a) repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds thereof, to any person or entity other than the Scheme Administrators (as defined in the Order); (b) commencing or continuing any action or legal proceeding in connection with any claim arising out of a contract of insurance, reinsurance or retrocession entered into with the Company (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 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 over any of its property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; (d) drawing down any letter of credit established by, on behalf 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 (e) 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 contract and any related trust or other agreement pursuant to which such trust, escrow, or similar arrangement has been established; except, however, no drawing against any letter of credit, trust, escrow or similar agreement shall be made in connection with any commutation unless the amount has been agreed in writing with the Scheme Administrators or permitted by further Order of the Court;

4. Requiring that all persons and entities in possession, custody or control of property of the Company in the United States, or the proceeds thereof, shall turn over and account for such property or its proceeds to the Scheme Administrators;

5. Permanently enjoining all persons and entities from commencing or continuing any action or other legal proceeding (including, without limitation, arbitration, or any other judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) against the Company, the Provisional Liquidators, the members of the Informal Creditors' Committee, or their respective directors, officers or agents, employees, representatives, financial advisors or attorneys (the "Pre-Scheme Parties"), or any of them, with respect to any claim or cause of action, in law or in equity, arising out of or relating to any action taken or omitted to be taken as of the Effective Date of the Scheme of Arrangement by any of the Pre-Scheme Parties in connection with the Provisional Liquidation proceedings, this section 304 proceeding or in preparing, disseminating, applying for or implementing the Scheme of Arrangement or the Order;

6. Permanently enjoining and restraining all persons and entities from commencing or continuing any action or other legal proceeding (including, without limitation, arbitration, or any other judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) against the Company, the Scheme Administrators, the Provisional Liquidators, the members of the Creditors' Committee, or their respective directors, officers, agents, employees, representatives, financial advisors or attorneys (the "Scheme Parties"), or any of them, with respect to any claim or cause of action, in law or in equity, arising out of or relating to the construction or interpretation of the Scheme of Arrangement or any action taken or omitted to be taken by any of the Scheme Parties in connection with the Provisional Liquidation proceedings or the administration of the Scheme of Arrangement; and

7. Authorizing the Provisional Liquidators and the Scheme Administrators to transfer to the foreign proceeding for distribution pursuant to the Scheme of Arrangement any monies or assets of the Company located in the United States which the Provisional Liquidators or the Scheme Administrators have or may hereafter recover.

Copies of the Order, Scheme of Arrangement and Motion are available upon written request to the undersigned counsel:

Chadbourne & Parke LLP
Attorneys for the Scheme Administrators
30 Rockefeller Plaza
New York, New York 10112
(212) 408-5100
Attn: Howard Seife, Esq.
Francisco Vazquez, Esq.

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LMP: London aims to ease placements of U.S. risks

Continued from page 17

duced a placement slip for other types of nonbinding authority business, and Lloyd's mandated its use, starting Feb. 1, 2004.

"We are determined to continue to streamline business processes in the Lloyd's market, and to ensure that the terms of insurance contracts are agreed and clear before they come into force. Mandating the use of LMP slips is another step along this road," Nick Prettejohn, Lloyd's chief executive, said in a statement in November. "Our policyholders will benefit from greater contract clarity, which will help to ensure that the whole process of placing insurance" and claims agreements are "quicker and more efficient," he said.

The International Underwriting Assn., the trade body representing London company market insurers, also welcomed the slip.

The IUA said in a statement it did "intend to strongly promote and encourage the initiative within the company market."

Stephen Cane, chairman of the IUA, said in the statement that the IUA would write to all its members to recommend that they adopt the slip as a market standard.

At the Oct. 1, 2003, renewals, 80% of business at Lloyd's was placed using an LMP slip, according to Mr. Laker. And an analysis of takeup at the Jan. 1, 2004, renewals is under way.

'We are determined to continue to streamline business processes in the Lloyd's market, and to ensure that the terms of insurance contracts are agreed and clear before they come into force.'

Nick Prettejohn
Lloyd's of London

Improving the quality and consistency of underwriting slips used in the London insurance market is just one of the aims of the LMP project.

The LMP initiative is jointly backed by Lloyd's; the Lloyd's Market Assn., which represents underwriters at Lloyd's; the London Market Insurance Brokers' Committee, and the IUA. It aims to reform the London insurance marketplace to make it more efficient, to improve customer service, to simplify processes within the market and to reduce costs.

One aim of the project is to establish an electronic repository for claims files, to improve the efficiency of claims settlement.

Several brokers and underwriters are currently piloting such a repository, according to Mr. Laker.

"I am confident that the claims repository will be in use during" 2004, said Simon Sperryn, chief executive of the LMA.

The repository would create one electronic file for a claim, and all parties to the claim would have access to that file, he explained.

One of the reasons that market practitioners are likely to start using such a repository fairly quickly is that they have a monetary incentive to do so. "We have all got savings to make," Mr. Sperryn said.

"Of course, the more important driver in a sense is the competitiveness point—we want to give a better service to our customers," he noted. "And that is what is behind the LMP program. Certainty of contract and faster claims payment is what we are after."

Letters to the Editor

Continued from page 8

be universally implemented. Moreover, if every organization invested in proprietary initiatives, a patchwork of bilateral links between participants would result, with inconsistency and, hence, inefficiency experienced by all.

The proprietary model places an overwhelming technological and business burden on a risk management department or brokerage, not only in adapting internal systems and processes to interact with the wide variety of markets we engage on a daily basis, but also in forcing end-users to utilize multiple interfaces. Making risk managers or brokers log in to insurer or broker systems actually promotes inefficiency and reduces service levels.

Frustrated efforts to create a community-wide exchange, whether it be Kinnect or GRX, evidence the failings of the alternative model. Although conceptually attractive, community initiatives, whereby a central hub is created for all participants to collaborate in a standard way, are unworkable.

In practice, this model inevitably satisfies only a small subset of the community's collaborative needs. Apparent financial commitment of participating organizations typically dissolves as business realities overwhelm theoretical visions.

Never, for example, has a group of insurers stated that risk managers and brokers can only deal with them through a single hub. Equally, the need for a hub to have an owner creates tension, especially when major participants realize that hubs involve storing petabytes of mission-critical information associated with every transaction in a central repository outside of their direct control.

The delivery of next-generation collaboration capabilities—such as cross-enterprise filing, information and process management—requires a new model that acknowledges and balances the pros and cons of proprietary and community approaches. This model, which is both distributed and interoperable, allows each participant to control its own collaboration infrastructure and information repositories, whilst complying with universal standards for information (XML) and application integration (Web services) to enable interoperability between participants.

Under this model, which is flourishing for even the most complex coinsurance risks in the Netherlands, each participant acquires (by building or buying) the requisite collaboration capabilities and integrates those capabilities into their existing systems. Software companies dedicated to insurance then provide a suite of components to assist each participant in acquiring these capabilities, often building on existing systems' assets. At Meijers Assurantien, we have found Riskclick Inc. to be the most reliable technology partner with a strong record in delivering against this kind of approach.

These collaborative capabilities are then tied to central Web services that "glue" all the participants in the network together, enabling trusted, efficient interoperability and collaboration. In my market, such an interoperable yet distributed model is already yielding cost savings, restoring certainty to large commercial insurance transactions and truly empowering the risk manager. If *Business Insurance* opened its eyes to innovation overseas, then perhaps your verdict on the march toward paperless transactions for large risks would be less gloomy.

Michel J. R. Schaft
Chief Operating Officer
Meijers Assurantien BV
Amsterdam, Netherlands

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

We reserve the right to edit letters for clarity or space. We will not publish unsigned letters.

Please send your letters to:

Letters to the Editor, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: pwinston@crain.com

Liability: DTI proposes reforms

Continued from page 17

shareholders and their insurers," he said.

Meanwhile, London law firm Mishcon de Reya said that more "businessmen and women will be rendered uninsurable in the next 18 months because the risks are just too great."

In a survey of directors and officers liability insurers and brokers conducted recently by the law firm, more than 70% have seen an increase in the number of claims made under directors liability policies, and 93% expect to see a further increase in the next 18 months.

"Post-Enron, all eyes have been on the U.S. because of the scale of claims, but it is happening in the U.K. as well and will get worse," said Adam Epstein, a commercial litigation partner at Mishcon de Reya. "In the last 18 months alone, the volume of claims made against directors liability policies has rocketed, according to insurance professionals we spoke to and they are convinced it is just the tip of the iceberg."

The DTI points out that in recent years other countries have introduced more protection for honest directors and liability limits for auditors.

Australia, New Zealand and many U.S. states now have a business judgment rule, where a director's actions can be justified if seen to be acted on in good faith and in the interests of the corporation. D&O policies generally contain clauses barring coverage for corrupt or illegal acts.

Meanwhile, Austria, Germany and Greece have statutory financial limits to an auditor's liability, while Denmark, Luxembourg, the Netherlands and Spain permit liability to be limited by contract.

Australia, Canada and the United States, meanwhile, have begun to move toward proportional liability—whereby courts would apportion liability among auditors, directors and companies—for economic loss, the DTI said but did not elaborate on those reforms. The DTI, however, rejected consideration of proportional liability in the United Kingdom.

Options proposed by the DTI include allowing companies to limit the liability of their directors; pay the legal costs incurred by a director up front and/or allow directors to be indemnified by third parties.

Meanwhile, proposed options for auditors include allowing audit firms to negotiate a limit on liability with clients. This limit could be based on a multiple of the audit fee; a multiple of total fees paid to the auditor, including non-audit fees; a multiple of the auditor's revenues or a fixed rate, variable according to a firm's size.

The DTI also proposes that companies disclose arrangements in their annual reports and make such arrangements subject to shareholder approval.

The DTI's consultation document can be viewed online at *www.dti.gov.uk/cld/auditors_directors.pdf*. The department is accepting comments until March 12, 2004.

Deadline nearing for TPA directory

Business Insurance will publish its online Directory of Third-Party Administrators in conjunction with the Feb. 2 issue.

The issue will include a ranking of the top 10 claims administrators and a Spotlight report on claims management.

The directory is published as an editorial service; there is no charge to be included.

Eligible companies must submit a completed directory questionnaire by the extended deadline of Jan. 21.

The online directories will be available to *Business Insurance* subscribers on *www.businessinsurance.com* and will be included in *BI's* 2004/2005 Market Sourcebook, a special printed compilation of directories and rankings that will be published in December 2004.

To be eligible for the directory, a company must provide claims administration services to self-insured employers on a direct, unbundled basis. TPAs must generate at least $500,000 in gross revenues and must report revenues to be listed in the directory.

If your company meets the criteria but has not yet received a questionnaire, please contact Directory Editor Kevin Edison at 312-649-5279. Directory questionnaires also can be downloaded at *www.businessinsurance.com*.

ADVERTISER INDEX

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Quakes: Insured losses minimal

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ance Services Office Inc., had not declared the California quake a catastrophe. PCS generally defines as catastrophes insured losses that are expected to exceed $25 million. AIR also is a unit of ISO.

Despite its magnitude, the California earthquake did not cause more dramatic damage because its epicenter was in a thinly populated region about halfway between Los Angeles and San Francisco, according to Munich Re's analysis of 2003 natural catastrophes.

A total of 70 earthquakes worldwide caused damage during 2003, the German reinsurer reported. The quakes resulted in thousands of deaths and approximately $6 billion in economic losses but only about $100 million in insured losses, according to the report.

Temblors in 2003 included one in February that shook northwest China, destroying or damaging 70,000 buildings, the report states. Another earthquake, with a magnitude of 6.8, rocked Algeria in May. That quake killed about 2,200 people and generated a tsunami in the Mediterranean that destroyed about 150 yachts.

The toll also includes the Iranian quake late last month. Despite heavy damage and more than 20,000 deaths, insured losses from the Iranian quake will be minimal, said Laurie Johnson, vp-catastrophe response for Risk Management Solutions Inc., a Newark, Calif.-based catastrophe modeling company.

There is very little penetration of insurance services in the region, Ms. Johnson explained.

Total worldwide insured losses caused by natural catastrophes in 2003 increased to about $15 billion, from $11.5 billion the previous year, according to Munich Re. Economic losses during 2003 rose to more than $60 billion from $55 billion in the prior year, mainly because of tornadoes, heatwaves, forest fires and severe flooding in Asia and Europe.

Overall, more than 50,000 people worldwide were killed in natural catastrophes of all types during 2003, according to Munich Re. that is nearly five times as many as were killed in 2002. The earthquake in Iran and a heatwave in Europe each claimed tens of thousands of lives and drove up the year's total.

A copy of the Munich Re catastrophe report is available online at *www.munichre.com*.

Polluters pay billions in cleanup costs

By BRUCE GEISELMAN

WASHINGTON—Polluters paid $2.9 billion to reduce pollution and clean up contamination during fiscal year 2003 as a result of enforcement actions by the federal government.

That is about $1 billion less than in the previous year. But the amount of pollution reduced, treated or properly managed as a result of enforcement actions increased from 260 million pounds in fiscal year 2002 to 600 million pounds in 2003, according to estimates released Dec. 11 by the U.S. Environmental Protection Agency.

Calling the numbers "impressive," EPA Assistant Administrator John Peter Suarez said the facts demonstrated the agency's commitment to a vigorous enforcement and compliance assurance program, which is the program he oversees.

Some agency critics, including several Democrats in Congress and environmentalists, have questioned whether the agency is underfunding enforcement efforts and reducing referrals for criminal prosecution.

The new report shows that 471 criminal enforcement cases were initiated in 2003, compared with 477 cases in fiscal year 2000—the last year of the Clinton administration.

The agency referred 228 cases for prosecution in 2003, down from 236 in 2000, and the government brought charges against 247 defendants in 2003, a decline from 360 in 2000. The government issued $71 million in fines in 2003 vs. $122 million in 2000 and $62 million in 1999.

However, the agency is concentrating its efforts on reducing pollution and protecting public health and not on filing charges, Mr. Suarez said. "We don't count our success in the number of notices of violation we write, as some would suggest," he said.

The EPA's report is available online at *www.epa.gov*.

Bruce Geiselman is a reporter for Waste News, a sister publication of Business Insurance.

ISO: P/C net income jumps

Continued from page 3

States.

"To insurers' credit, much of the progress to date reflects increased attention to the fundamentals of our business—solid underwriting, cost-based pricing and careful claim settlement," said Don Griffin, the NAII's assistant vp for business and personal lines, in a statement.

"Now, the $64,000 question is how long will insurers maintain their focus on the fundamentals? Each improvement in insurers' results makes it that much harder to resist the temptation to ignore the fundamentals and go for market share," he said.

John J. Kollar, ISO's vp for consulting and research, said in a statement that "rate increases have continued to moderate, with rates for some coverages and market segments now flat to down."

"All else being equal, insurers will have an increasingly difficult time maintaining growth in net income as rate increases wane," Mr. Kollar said.

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Fortress Re: Principals accused

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immediate hearing, though none had been scheduled as of last week.

Elliott M. Kroll, a lawyer with Herrick, Feinstein L.L.P. in New York representing Fortress Re, declined to comment on the award. Fortress Re General Counsel Glenn Drew could not be reached, though he was quoted in a Greensboro newspaper saying that the company will "continue to explore all avenues available to defend Fortress Re and its officers and will respond accordingly in due course."

Sompo, a successor to Nissan Fire & Marine Insurance Co. Ltd., originally sued Fortress Re and its principals in 2002 when an audit prompted by Sept. 11, 2001, terrorist losses uncovered what the insurer alleged was a longstanding pattern of fraud (*BI*, March 18, 2002). Sompo was part of a three-member aviation pool that also included Aioi and the now-insolvent Taisei Fire & Marine Insurance Co. Ltd.

According to Sompo, Fortress officials reported pool underwriting profits of up to $150 million a year between 1995 and 2001, when the pool in fact suffered consistent losses that have added up to $3.4 billion, most of them incurred before the terrorist attacks.

The pool's misleading financial results—achieved partly through Fortress Re's use of finite reinsurance that transferred no risk—allowed the MGA's officials to take huge, undeserved profit commissions, the insurer charged.

In addition, Fortress Re arranged for 25% of the pool's business to be ceded to a Bermuda retrocessionaire, Carolina Reinsurance Ltd., that was controlled by the MGA's principals and that returned most of the premium it received to Mr. Sabbah, his family members and Mr. Kornfeld as dividends, the suit alleged.

Carolina Re was declared insolvent by $350 million and ordered liquidated by a Bermuda court in late 2001. Its liquidators are suing Messrs. Sabbah and Kornfeld and others in a North Carolina state court.

In 2002, a Greensboro federal judge ordered that the charges against Fortress Re itself be arbitrated, while Sompo's suit against the other defendants proceeds separately.

According to Sompo Japan Insurance Inc., Fortress Re officials reported pool underwriting profits of up to $150 million a year between 1995 and 2001, when the pool in fact suffered losses of up to $3.4 billion.

A three-member arbitration panel issued its ruling against Fortress Re on Dec. 16 after hearing 19 days of testimony.

The panel found that the MGA, through Messrs. Sabbah and Kornfeld, engaged in actual and constructive fraud, violated their management agreement and knowingly misrepresented and failed to disclose material facts about the pool's financial results.

The arbitrators also found that Fortress Re fraudulently allowed hundreds of millions of dollars of pool funds to be paid out in "illegitimate" profit commissions or ceded to Carolina Re.

The award's $1 billion in actual damages includes $888 million for the insurer's 26% share of the pool's $3.4 billion in losses, along with $22 million in Fortress Re commissions on fictitious profits and $99 million in losses on business the MGA forced the insurer to front for Taisei.

The arbitrators were Paul E. Dassenko, the panel's umpire and a former officer of the Transit Casualty Co. receivership; Caleb E. Fowler, former president of CIGNA Corp.'s property/casualty operations; and Andrew Maneval, a former officer of ITT Hartford Insurance Group.

About a month before the arbitration ruling, Sompo filed an amended complaint against Fortress Re officials and others in U.S. District Court in Greensboro. Among other things, it added as defendants The Oklahoma City Community Foundation Inc. and The American Hebrew Academy Inc., a Greensboro-based private school founded by Mr. Sabbah.

According to the complaint, the two institutions are holding about $120 million donated by Mr. Sabbah and his family after Mr. Sabbah diverted the money from pool members.

None of the defendants has answered the amended suit.

Business Week magazine last month named Mr. Sabbah as one of the country's 50 most generous philanthropists, citing his $100 million gift to The American Hebrew Academy.

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Tribal: Alternatives bypass work comp

Continued from page 4

ed off tribal lands, they contend.

American Indian businesses providing these services disagree.

"That's the big rub here," said Carl Romstadt, vp of sales and marketing for Mainstay Business Solutions. Mainstay was formed in May by the Blue Lake Rancheria, a federally recognized Indian tribe based on 34 acres of reservation land near Eureka, Calif.

Mainstay provides human resource staffing to businesses that are "nontribal" and located off the reservation, according to a lawsuit filed by Mainstay challenging California regulators.

The lawsuit, filed in a state court in San Francisco, seeks to stop California Insurance Commissioner John Garamendi and Director of Industrial Relations Chuck Cake from attempting to "shut down a legal and honorable enterprise."

The suit states that sovereign immunity "extends to tribal business enterprises, whether conducted on or off the reservation." The tribe has hired attorneys, lobbyists and public relations specialists to argue its case, Mr. Romstadt said.

Mainstay employs Indian and non-Indian workers to meet clients' staffing needs, according to its lawsuit. As employees of the tribe, these individuals are governed by the tribe's "occupational injury ordinance." Benefits are provided under "Occupational Injury Indemnity and Medical Benefits Coverage," according to promotional literature provided by Mainstay.

The occupational ordinance gives tribal employees the right to occupational injury benefits, "which are equal, if not superior to, those provided under the statutory workers' compensation system," the lawsuit states.

Employers that contract with Mainstay are told of the alternative arrangements. Employees sign statements explaining that their benefits are provided under Mainstay's system and not under the state's workers compensation mechanism, Mr. Romstadt said. This way, he said, all parties are aware of the arrangements.

Mainstay's occupational benefits include an extensive self-funded preferred provider network and generous chiropractic and physical therapist visits when necessary to return injured employees to work as soon as possible, Mr. Romstadt said.

All benefit disputes are governed through a tribal court system, rather than through the state workers compensation system. Should an employee want to hire legal representation, he or she must pay for the attorney, Mr. Romstadt said. In contrast, under California's workers comp system, an attorney would be provided for the claimant.

Mainstay's arrangements offer employers a low-cost alternative to California's "broken" workers compensation system, Mr. Romstadt said. And state regulators should embrace—rather than oppose—such programs, he argues.

But state regulators cite several potential problems with the tribal plans.

California's Department of Insurance, for example, alleges in court papers that several insurance agents offered employers an opportunity to lower their costs by switching their workers compensation insurance coverage to a Mainstay Business Solutions program.

It is possible that some agents were selling Mainstay's arrangements as workers compensation insurance when they should not have done so, Mainstay's Mr. Romstadt said.

Mainstay Business Solutions offers employers a low-cost alternative to California's 'broken' workers compensation system.

Carl Romstadt
Mainstay Business Solutions

In Connecticut, the Insurance Department has issued a cease-and-desist order against several entities, including a company called First American Staffing. First American claims to be a corporation organized under the laws of one or more American Indian Tribes, according to the regulatory order.

First American sometimes uses lease-back arrangements, in which an employer terminates its workforce, which is then hired by a staffing company and leased back to the employer.

The Connecticut cease-and-desist order also alleges that First American made claims that it provides workers compensation coverage, but the state contends it is actually evading applicable insurance statutes.

First American could not be reached for comment.

Nebraska's Department of Insurance on Nov. 14 filed a similar cease-and-desist order against a Sioux City, Iowa, resident named Mark Hubble. According to the order and affidavits provided by the Department of Insurance, Mr. Hubble recruited tribal entities to purchase ownership in staffing firms "for the purpose of offering tribal protection" to an "unauthorized workers compensation program" he administers.

Mr. Hubble is affiliated with employee staffing entities in several states and the Ponca tribe, Ms. Frohman said. A number of insurance companies he also claims to be associated with are not authorized by state insurance regulators, Ms. Frohman said.

Mr. Hubble could not be reached for comment. But he has not challenged the Nebraska Department of Insurance's cease-and-desist order, Ms. Frohman said. "That tells me a lot," she added.

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Late News

Continued from page 1

but has suspended the sentence because he is cooperating with the investigation into HIH's collapse. Mr. Howard pleaded guilty in late December to receiving "improper cash payments" totaling $124,000 Australian ($93,000) from a former director of a subsidiary of the collapsed insurer. An Australian commission found that shortfalls in reserves, mismanagement and other activities led to HIH's insolvency in 2001.

New York licenses first group captive

The New York State Insurance Department has added to its captive ranks with the licensing of a group captive, Customer Asset Protection Co. CAPCO will provide excess insurance to a group of 14 financial institutions, including Bear Stearns Cos. Inc.; Credit Suisse First Boston; Goldman, Sachs & Co.; J.P. Morgan Chase & Co.; Morgan Stanley; and FMR Corp. CAPCO's insurance will sit excess of coverage provided the Securities Investor Protection Corp., which reimburses investors in the event of insolvencies of securities broker-dealers.

Swiss Re expands Asian operations

Zurich-based Swiss Reinsurance Co. said it has received a license to open a nonlife reinsurance branch office in Japan. Before receiving approval for a reinsurance branch, Swiss Re operated a liaison office in Japan that provided services other than reinsurance. The new branch, which is expected to open in April, will be headed by Akinori Kaneko. Mr. Kaneko is president and representative director of Swiss Re Services Co. Ltd. In mid-December, the reinsurer opened a branch office in Beijing, managed by Eric Gao, to provide both life/health and property/casualty services in China.

Ohio hospitals form malpractice insurer

The Ohio Department of Insurance has licensed a new medical malpractice liability insurer formed by the Ohio Hospital Assn. OHA Insurance Solutions Inc. plans to begin offering coverage to physicians Jan. 1 and to hospitals starting in March. The insurer was capitalized with $10 million from the hospital association, with additional capital from individual hospitals.

Insurers to combine P/C, life businesses

Multiline insurers Cotton States Insurance Group of Atlanta and Bloomington, Ill.-based COUNTRY Insurance & Financial Services have agreed to form an alliance between their property and casualty operations and to merge life businesses. Cotton States Mutual Insurance Co. business will be combined with a P/C pool operated by COUNTRY. The alliance will allow each insurer to spread their risk over a wider geographic area by sharing their earnings and losses, a spokeswoman for COUNTRY said.

Briefly noted

A.M. Best Co. has downgraded the financial strength rating of **National Service Contract RRG** to B++ from A-. The Hawaii-domiciled risk retention group was formed in 1995 and has not incurred any claims so far, but Best cited concerns about potential liabilities arising from NSC's reinsurance agreement with its majority owner, Interstate National Dealers Services. INDS issues vehicle service contracts, for which the RRG writes aggregate stop-loss contractual liability coverage and is exposed to adverse loss reserve development by INDS, according to Best....Surplus lines executive **Denis deBaroncelli**, 57, died on Nov. 21 and memorial services were held in Los Angeles and Kansas City. During his career, Mr. DeBaroncelli served as president of First Specialty Insurance Co., a surplus lines unit of GE Capital Insurance Group, and as president of ZC Insurance Co., now part of Converium Holding Ltd. He most recently was vp of product development for London American General Agency Inc. of San Diego....A.M. Best Co. lowered its financial strength rating for **Employers Reassurance Corp.** to A- from A. ERAC is an Overland Park, Kan.-based unit of GE Capital Insurance Group, that specializes in accident and health products. The company exited the life reinsurance market in 2003....**David Ahl** has joined the New York State Insurance Department as director of captive development, reporting to Senior Deputy Superintendent Peter Molinaro. Mr. Ahl worked for the insurance department until September 2001, when he became senior director of industry development at the Empire State Development Corp....Briarcliff Manor, N.Y.-based **USI Holdings Corp.** has acquired The Benefits Team, a Houston-based employee benefits brokerage specializing in middle-market clients. Terms were not disclosed....A.M. Best Co. has downgraded the financial strength rating of **Medical Assurance of West Virginia Inc.** to B from A-, with a negative outlook. Best said the downgrade follows the termination of a quota-share reinsurance agreement by the medical malpractice liability insurer's ultimate parent, ProAssurance Corp.

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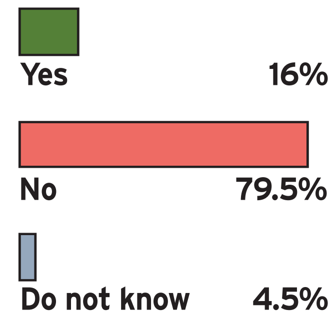
Items in the Late News column originally appeared in *BI*'s Daily News feature on *www.businessinsurance.com.* Visit the *BI* Web site to sign up to receive *BI*'s Daily News by e-mail.

Online Poll

[12/22 - 12/31]

Do you think Congress will enact any significant tort reform legislation in the upcoming presidential election year?



Yes	16%
No	79.5%
Do not know	4.5%

BI Stock Index

[12/29 - 12/31]

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

Indicator	Value	Change
BI Stock Index	2,182.16	1.82
Dow Jones	10,453.92	1.71
S&P 500	1,111.92	2.14

Largest gains

Gainsco Inc.	8.70%
SCOR	7.88%
Harleysville Group	5.10%
NYMagic Inc.	3.35%
PXRE Group Ltd.	3.28%

Largest losses

Old Republic Intl. Corp.	-32.71%
EMC Insurance Group Inc.	-3.91%
Seibels Bruce Group Inc.	-3.26%
Unitrin Inc.	-2.30%
SCPIE Holdings Inc.	-1.89%

Weekly change by market segment

Brokers	-0.20%
Insurers/Reinsurers	-1.21%
Managed Care Organizations	0.14%

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

Drugs: Governor pushing Canada plan

Continued from page 1

Despite that, "the plan has not changed," said a spokeswoman for Gov. Blagojevich, who on Dec. 22 sent a letter to Health and Human Services Secretary Tommy Thompson seeking permission to launch the first federally approved drug importation pilot program.

The letter, co-written by Rep. Rahm Emanuel, D-Ill., asserts that the new Medicare Prescription Drug, Improvement and Modernization Act of 2003, which President Bush signed last month, includes language giving the HHS secretary the power to certify importation of drugs from Canada on a demonstration project level.

The text of the bill states that the secretary, after consulting with the U.S. trade representative and the commissioner of U.S. Customs, "shall promulgate regulations permitting pharmacists and wholesalers to import prescription drugs from Canada into the United States." However, it also stipulates that the new rules must require that safeguards be in place to ensure that each prescription drug imported under the regulations "is safe and effective for the intended use."

Gov. Blagojevich's letter appealed to Mr. Thompson's sense of entrepreneurship, comparing the proposed Canadian drug pilot project to the innovative "workfare" program Mr. Thompson instituted as governor of Wisconsin, which required numerous waivers from federal law.

"Your innovation in Wisconsin's approach to welfare reform demonstrates that when given the chance to do so, states can often successfully use their own ideas to meet the major challenges of the day. That kind of innovation is clearly needed with it comes to bringing down the price of prescription drugs," the letter states.

Gov. Blagojevich said he would work closely with HHS and the FDA to implement his pilot program, which would include:

- The use of a preferred drug list made up predominantly of brand-name drugs for long-term usage that can be obtained more cost-effectively in Canada than in the United States.
- A requirement that participants first have eligible prescriptions filled by licensed Illinois pharmacies before obtaining refills through the reimportation program.
- Periodic reporting to HHS of the pilot program's effectiveness and cost savings.

However, officials from both HHS and the U.S. Food and Drug Administration disagree on whether the new Medicare reform legislation gives Mr. Thompson the authority to approve any Canadian drug importation pilot project.

"The problem is that both Gov. (Rod) Blagojevich and other governors...believe that this Medicare bill that passed recently allows the secretary of HHS to provide a waiver to allow a given state to import these drugs. And it appears that some members of Congress have told them they interpreted it this way," said Bill Hubbard, the FDA's associate commissioner for policy and planning in Washington, who has been assigned by HHS Secretary Thompson the task of reviewing whether the governor's proposal can be allowed under the new Medicare law.

"Our reading is that the law says the secretary can allow the importation of drugs from Canada broadly, or nationally, if he can certify that it can be done safely, and then it instructs the secretary to do a study on that matter with very explicit and detailed instructions as to what to study, what questions to ask, what data to collect. That study is just now beginning," he said.

In addition to Illinois and Minnesota, the states of Colorado, Iowa and New Hampshire; several cities in Massachusetts; and Montgomery County, Md., announced plans to explore Canadian drug reimportation during 2003.

The Governors' Prescription Drug Summit will be held following the National Governors Assn. Winter Meeting on Feb. 24, 2004, in Washington. The agenda and location are still being finalized, according to a statement from Gov. Pawlenty's office.

PHOTO: SCOTT OLSON/GETTY IMAGES

Illinois Gov. Rod Blagojevich has asked Health and Human Services Secretary Tommy Thompson for a waiver to import prescription drugs from Canada.