

**Japanese insurer sues
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\$4

Big changes at Kemper prompt buyer concerns

By MICHAEL BRADFORD

LONG GROVE, Ill.—Kemper Insurance Cos.' financial difficulties will likely put some of the insurer's policyholders in a quandary.

With renewals looming, commercial risks with coverage written by Kemper will have to decide whether to stick with the Long Grove, Ill.-based mutual insurer or move coverage to another insurer in the wake of ratings downgrades, unexpected top management changes and plans to exit some large-account business, brokers say.

"The challenge is, do you remain patient with Kemper and react to the news as it unfolds or do you make a decision to move your program, even though it may not have been your strategy 30 to 60 days ago?" asked Timothy Brady, managing director with Marsh Inc.'s casualty practice in New York.

Although Kemper is working on an endorsement to its policies by a highly rated insurer, the arrangement is not expected to apply to many of the insurer's commercial lines clients. Nonetheless, Kemper has told at least one broker that it expects to renew nearly all of its accounts.

The bad news from rating services began when

Moody's Investors Service Inc. announced Dec. 20 it was lowering the insurer's financial strength rating to Ba1 from Baa1. On Dec. 24, Standard & Poor's Corp. lowered Kemper's rating to BBB- from A, and, on the same day, A.M. Best Co. downgraded the insurer to a B+ rating from A-. The services also lowered ratings on \$700 million in surplus notes issued by Lumbermens Mutual Casualty Co., Kemper's lead operating company.

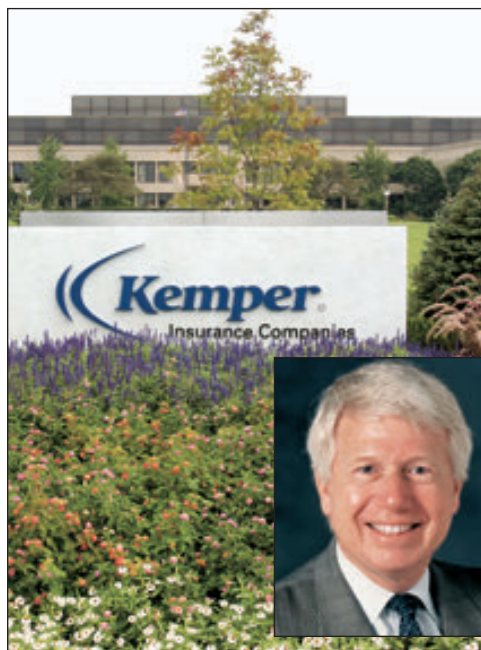
Along with Lumbermens, the pool of insurers that make up Kemper's writings includes American Motorists Insurance Co. and American Manufacturers Mutual Insurance Co.

Downgrades below an A- level rating can sometimes cause problems for insurers; brokers and policyholders often view that as a threshold between acceptable and unacceptable security.

Management changes

Kemper last week announced the sudden retirement of President and Chief Operating Officer William D. Smith on the eve of when he was slated to become chief executive officer.

Shortly after the downgrades, Kemper on Dec. 20 announced the retirement of Smith as president and chief operating officer of Long Grove, Ill.-based Kemper Insurance Cos. See **KEMPER**/page 21



William D. Smith suddenly retired last week as president and chief operating officer of Long Grove, Ill.-based Kemper Insurance Cos.

PHOTO: COURTESY OF KEMPER INSURANCE COS.

Bank, insurers settle Enron surety dispute

By DOUGLAS McLEOD

NEW YORK—J.P. Morgan Chase & Co. and 11 insurers avoided a risky jury verdict with their \$654 million settlement last week of the bank's \$1.09 billion in claims under surety bonds covering defaulted oil and gas contracts with the bankrupt Enron Corp.

Under the deal, the insurers will pay J.P. Morgan Chase about \$569 million in cash and assign to the bank rights of action against the Enron estate valued at \$85 million.

The settlement ended a month-long trial in which insurers charged they had been duped into issuing bonds on purported Enron commodity sales to affiliates of the former Chase Manhattan Corp. that were really disguised

loans to Enron from Chase. A jury in U.S. District Court in New York was about to begin deliberations in the case.

Both sides cited the risk of an all-or-nothing verdict as the key motive for settling. While Chase faced damaging evidence from internal e-mails that described pre-paid energy deals as "disguised loans," insurers faced the challenge of proving that they were totally unaware of the nature of the deals and that they relied on Chase's alleged misrepresentations, lawyers familiar with the case say.

The jury's decision would either have voided the surety bonds or obligated insurers to pay in full with interest, which would have brought the total claim to about \$1.2 billion.

See **SETTLEMENT**/page 22

Abuse claims seek to bypass med mal caps

By ROBERTO CENICEROS

Recent attempts to circumvent state laws that cap medical malpractice awards hinge on allegations that hospitals engage in elder abuse, say risk managers.

The elder abuse allegations made by plaintiffs attorneys represent the beginning of a trend that likely will trouble hospitals for years to come, said Monica Berry, vp of risk management and loss control for Rockford Health Systems in Rockford, Ill.

Elder abuse cases first flourished in Florida, where lawsuits against nursing homes netted

See **ELDER ABUSE**/page 22

Late News

West Virginia doctors protesting med mal rates

Surgeons at four West Virginia hospitals walked off the job last



week to protest rising medical malpractice insurance premiums. The walkout, which is expected to last up to

30 days, affects Wheeling Hospital and Ohio Valley Medical Center in Wheeling, Reynolds Memorial Hospital in Glen Dale, and Weirton Medical Center in Weirton.

Physicians in West Virginia have limited choice in malpractice insurers, and rates are increasing sharply, according to doctor and hospital groups.

Ohio ruling awards punitives to cancer fund

The Supreme Court of Ohio has ordered that two-thirds of a \$30 million punitive damages award against a health insurer be paid to charity instead of the plaintiff in the case. In *Dardinger vs. Anthem Blue Cross & Blue Shield*, the court ordered Anthem Blue Cross & Blue Shield and its parent, Anthem Insurance Cos. Inc., to pay \$32.5 million after it stopped paying to treat a woman suffering from brain cancer, saying the treatment was experimental. In an unusual twist, the court ordered that \$20 million of the \$30 million of punitive damages awarded be directed to a cancer research fund.

Allianz sets up D&O unit

Allianz Insurance Co. has launched a unit to provide directors and officers liability coverage for large, publicly traded companies. An Allianz announcement states that the insurer expects to become "one of the top three players in its target market, with a share of 25% or more, within three to five years." In order to attain that goal, the insurer recruited four vps with D&O responsibilities: Michele Centeno, from The St. Paul Insurance Co.; Brian Gauen, from Chubb Corp.; Brian Houghlin, from Aon Corp.; and David Scott from CNA Insurance Cos.

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Spotlight report

RISK MANAGEMENT: 2002 YEAR IN REVIEW

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Inside

Power companies try standardization project

A group of energy industry risk managers is banking on the use of ACORD data standards in gathering exposure information to make their insurance placements easier. **Page 4**

Dusting off the crystal ball

This week's editorial reviews how successful the *BI* editorial staff was a year ago in making predictions for the ins and outs of 2002 and lists staff forecasts for the year ahead. **Page 8**

Terror coverage lacking in China

Policyholders in China worried about terrorism and sabotage exposures have few markets to turn to for coverage of those risks, an informal survey reveals. **Page 17**

European pension plans see shortfalls

Europe's largest corporate pension plans are suffering from unfunded liabilities totaling nearly \$270 billion, according to a recent report by the stockbroker Dresdner Kleinwort Wasserstein. **Page 17**

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REPORTING WEEKLY ON CORPORATE RISK, EMPLOYEE BENEFIT AND MANAGED HEALTH CARE NEWS

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CONTINUED FROM PAGE ONE



PHOTO: REUTERS

The Turkish-registered tanker Vicky collided with the sunken wreck of the cargo ship Tricolor in the English Channel last week.

Tanker hits submerged hull of recent wreck

Investigators are trying to determine whether a ship that hit the sunken wreck of the Tricolor in the English Channel last week has leaked any of its cargo of diesel fuel. The Vicky, a Turkish-flagged double-hulled tanker, ran into the wreck of the Tricolor, making it the second ship to collide with the wreck since it sank in mid-December. The Vicky was carrying about 2 million gallons of diesel. Liability coverage for the Vicky is provided by the American Protection & Indemnity Club.

NAIC discloses top 2002 salaries

Salaries for the three highest-paid staff members of the National Assn. of Insurance Commissioners ranged from \$284,368 to \$194,664 in 2002.

Catherine J. Weatherford executive vp of the NAIC was paid \$284,368 last year, up 8% from 2001, for serving as



Late News

the organization's chief executive officer. Chris Evangel, managing director of the NAIC's Securities Valuation Office, was paid \$248,063, unchanged from 2001. David Wetmore, director of federal and international relations in the NAIC's Washington office, was paid \$194,664, up 5% from 2001.

Fondriaria-SAI deal completed

Fondriaria-SAI, the insurer formed by the merger of Florence, Italy-based La Fondriaria Assicurazioni S.p.A. and Turin-based Societa Assicurazioni Industriale S.p.A., began operating last week. Two of its largest shareholders, though, must still reduce their combined shareholding in the merged group to less than 30% to comply with regulatory requirements. Securities regulators ordered Mediobanca and Premafin Finanziaria—SAI's largest shareholder—to reduce their combined stake by 9.9% after ruling

that Mediobanca and SAI had acted "in concert" to win the takeover battle for La Fondriaria.



PHOTO: REUTERS

The single-hulled tanker Prestige spilled tons of fuel oil off the coast of Spain last November.

Hearing planned on single-hulled tankers

The Senate Commerce Committee this week plans to hold a hearing on the timetable under U.S. law for phasing out single-hulled oil tankers. Both a 1990 U.S. law and a 1992 international agreement call for a phaseout of single-hulled tankers by 2015. But a recent oil spill off Spain

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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 this week:

- **Searchable directories** of all the listings found in *BI*'s Market Sourcebook.
- A **searchable archive** of all *Business Insurance* articles from 1994 to the present.
- The **Datebook** calendar lists 2003 industry meetings and events and lets you add your own.
- The **Online Forum** allows readers to exchange ideas and information.

Fortress Re underreported pool liabilities, insurer and liquidator allege

MGA officers face fraud charges

By DOUGLAS McLEOD

BURLINGTON, N.C.—The top officers of aviation managing general agent Fortress Re Inc. and auditor Deloitte & Touche L.L.P. are facing fraud charges leveled by a Japanese insurer and the liquidators of a Bermuda-based Fortress Re affiliate.

Aioi Insurance Co. Ltd. charges in a lawsuit filed in a North Carolina federal court that top Fortress Re officials concealed massive losses on business written for Aioi and other members of an aviation reinsurance

pool while siphoning away huge profit commissions and dividends for themselves.

Aioi alleges, among other things, that Fortress Re used accounting gimmicks in reporting financial reinsurance contracts protecting pool members, taking credit for reinsurance recoveries under the contracts but omitting pool members' liabilities for future reinstatement premiums. As a result, Fortress Re understated the pool's liabilities by \$1.4 billion at the end of its 2001 fiscal year, according to the

complaint.

Similar allegations are leveled in a separate lawsuit filed in late November by liquidators of Carolina Reinsurance Ltd., a Bermuda company that was controlled by Fortress Re officials and that reinsured as much as 25% of the pool's business. While Carolina Re reported \$36 million in capital and surplus as of June 30, 2002, the liquidators charge, it failed to disclose \$350 million in liabilities for future reinstatement premiums.

The Bermuda liquidators, who

involving a single-hull tanker has refocused attention on the potential environmental damage such vessels can cause when they are damaged and discharge their cargo into the water.

Annuity & Life Re to transfer business to XL

Annuity & Life Reassurance Ltd. has agreed to transfer five blocks of life reinsurance business to XL Capital Ltd. to enable the life reinsurer to meet collateral requirements under its reinsurance contracts. Under the transfer agreement, XL will reinsure four of the contracts with Annuity & Life Re. Annuity & Life Re will record a \$20 million charge associated with the transfer. Last October, A.M. Best Co. downgraded Annuity & Life Re to B++ from A-.

Willis acquires benefits software provider

As part of its strategy to grow its benefits business, Willis Group Holdings Ltd. has acquired the assets of technology service provider Sunaro Inc. for an undisclosed amount. "The acquisition is consistent with our overall strategy of building key practice groups which we have identified as having strong growth potential," said Joe Plumeri, chairman and chief executive officer of the broker. Sunaro, a developer of Web-based benefits communication, enrollment and administration software, is a unit of Cyberstarts Inc.

Briefly noted

Robert Berkley has been named senior vp and head of specialty operations at **W.R. Berkley Corp.** in Greenwich, Conn. Mr. Berkley replaces Edward A. Thomas, who has become a consultant to the insurer.

See **FORTRESS RE**/page 20



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Business Insurance EXECUTIVE FORUM

Excess insurers must cover cleanup orders

By ROBERTO CENICEROS

LOS ANGELES—Excess/umbrella policies obligate an insurer to indemnify a policyholder for complying with an administrative agency's orders to clean up contamination, a California appeals court ruled late last month.

The decision in *Powerine Oil Co. Inc. vs. the Superior Court of Los Angeles County* marks a significant win for policyholders that have fought numerous coverage battles following a government agency's orders to clean up polluted sites, policyholders and attorneys say.

The appeals court decision follows a February 2001 California Supreme Court finding that favored insurers. California's high court held that primary commercial general liability policies obligate insurers only to indemnify policyholders for court judgments, not for expenses stemming from orders issued by gov-

ernment agencies (*BI*, Feb. 19, 2001).

The Supreme Court decision in *Certain Underwriters at Lloyd's of London vs. Powerine Oil Co.* left policyholders "in the wilderness," said David B. Goodwin, a policyholder attorney in the San Francisco office of Heller, Ehrman, White & McAuliffe.

Policyholders were unable to obtain coverage for administratively ordered abatements, Mr. Goodwin said, while insurers used the Supreme Court ruling to argue against providing indemnification under other types of policies.

That left policyholders uncertain about what strategy to pursue when an administrative agency ordered a cleanup. Now policyholders can obtain coverage under their excess/umbrella policies, said Mr. Goodwin, who represents Powerine. Powerine, which entered the oil refining business in the 1930s,

went into bankruptcy in 1995.

The disputes that led to Supreme Court and appeals court decisions involved different insurers. But both cases involved a water board's orders for Powerine to clean up contaminated sites and insurers' arguments that their policies covered only court judgments.

On Dec. 23, California's 2nd District Court of Appeals in Los Angeles found that nine umbrella policies issued by Central National Insurance Co. of Omaha have indemnification language that is broader in scope than the CGL policies reviewed by California's high court.

Central National, now part of ACE USA, issued the umbrella policies to Powerine between 1973 and 1983, court records show. ACE USA said it will appeal the 2nd District's ruling.

The CGL policies reviewed by California's

Supreme Court in the 2001 Powerine case address only "damages," which means court orders, according to the appellate court's analysis. The language in the CGL policies addresses damages but not expenses.

The appeals court, though, called it "clear cut" that the excess policies issued by Central National consider damages and expenses as "ultimate net loss."

Many excess policies state they cover damages and expenses as ultimate net loss, Mr. Goodwin said. "This is quite important for policyholders seeking coverage for environmental liabilities, because a lot of them have excess policies that have this kind of standard language," he said.

Umbrella policies typically pay for damages and expenses such as attorney fees, settlements, compromises and investigations, Mr.

See **CLEANUPS**/page 23



Disability insurance for Major League Baseball players has become not only more expensive, but capacity also has decreased. Industry sources say coverage is most difficult to get for players with high-value, long-term contracts, such as pitcher Tom Glavine, left, and first baseman Jim Thome.

Coverage hardens for baseball players

High disability rates may lead teams to balk

By MICHAEL PRINCE

The hard market has made its way to hardball.

Disability insurance coverage for professional athletes has firmed significantly, especially for Major League Baseball players. Over the past several years, rates for the coverage have climbed while capacity has shrunk and coverage terms have tightened.

Major League Baseball teams buy disability insurance to cover salary payments to players sidelined by injuries. In the event of an injury, an insurer pays a team a percentage of the player's salary, subject to a deductible period. Other professional sports teams typically obtain disability coverage through a leaguewide program, rather than purchase policies individually.

Rates for covering the high-salaried baseball players have increased for several years and in the past two years rates have nearly doubled, said Bill Hubbard, president of American Specialty Underwriters Inc., a managing general underwriter in Woburn, Mass.

In addition, capacity has shrunk by about half. A few years ago a team could buy upward of \$70 million of coverage on

a single player, but today it's hard to find coverage above \$30 million to \$40 million, said Jonathan Thomas, active underwriter for Creechurch Underwriting Ltd. syndicates 1607 and 2607 at Lloyd's of London.

But perhaps the most important change has been the reduction in the duration of multiyear policies that insurers are willing to write, industry insiders said.

In prior years, teams could buy policies covering players for up to five years, but today it's difficult to buy more than two years of coverage. "Three years is quite hard work now," Mr. Thomas said.

And three-year terms are generally limited to good risks, said Hank Tafaro, business leader at BISYS-Hanleigh, an MGU for Lloyd's in Sarasota, Fla. "But some of the older players can't get more than one year of coverage," he said.

Deductible periods for the coverage also have risen. A player now generally must be out of action for 90 days, about half a baseball season, before the disability coverage kicks-in. Previously, deductible periods often lasted 60 days.

As a result, baseball teams are generally not buying coverage for players signed to

See **DISABILITY**/page 21

Oral arguments scheduled on ERISA pre-emption, FMLA Employers have stake in upcoming court debates

By MARK A. HOFMANN

WASHINGTON—How far does the Employee Retirement Income Security Act's pre-emption of state law extend where so-called "any-willing-provider" laws are concerned?

That's the question before the Supreme Court next week when the justices hear oral arguments in *Kentucky Assn. of Health Plans Inc. et al. vs. Janie Miller, Commissioner of the Kentucky Department of Insurance*. And it's no esoteric question, either, say benefit experts, for the high court's answer could have a direct impact on employers' health care costs.

Also next week, the justices will take up a case involving the Family and Medical Leave Act, with implications for public employers.

The ERISA case before the justices on Jan. 14 involves Kentucky's any-willing-provider law that forbids health care plans from dis-

criminating against any provider that practices within the geographic area served by the plan and is willing to abide by the plan's terms and conditions. About half of the states currently have some form of any-willing-provider law, though details of the laws differ.

The Kentucky Assn. of Health Plans and several individual health maintenance organizations sought to overturn the Kentucky law, on the grounds that it violated ERISA's pre-emption of state laws governing employee benefits. The HMOs argued that any-willing-provider laws don't allow managed care entities to control the number of

providers in a plan, a limit they deem necessary to contain costs.

Kentucky countered that the issue was one of insurance regulation. While ERISA generally pre-empts state law, ERISA's so-called "savings clause" upholds state regulation of insur-

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HMO negligence suit pre-empted by ERISA

By JUDY GREENWALD

NEW ORLEANS—A diabetic man who lost part of his leg after his managed care firm refused to let his doctor, who was not a participating physician in its plan, treat him cannot sue for negligence, says a federal appellate court.

A three-judge panel of the 5th U.S. Circuit Court of Appeals in New Orleans unanimously ruled in *Geneva C. Haynes vs. Prudential Health Care* that Mr. Haynes' negligence claims are expressly pre-empted by the Employee Retirement Income Security Act of 1974 because PruCare's refusal was an administrative, not a medical, decision. The Dec. 9 opinion upholds a lower federal court ruling dismissing the case.

According to the decision, Charles C. Haynes Jr. had been under the long-term care of Dr. John Norwood. He continued to be

treated by Dr. Norwood even after he became a member of the PruCare Health Maintenance Organization without protest from PruCare, though the doctor was not in PruCare's network of primary care physicians.

In late October 1999, Mr. Haynes began to suffer painful swelling in his right foot and lower right leg. When Dr. Norwood's staff tried to make an appointment for Mr. Haynes at a wound care center, it was told PruCare would not permit Mr. Haynes to receive treatment there because he needed a referral from one of its own primary care physicians.

PruCare gave him the phone numbers of three physicians in its network, but one of the numbers was disconnected, calls to the second reached only an answering machine and the third never returned his calls.

By Nov. 3, Mr. Haynes' leg swelled to the point where his toes burst open, draining

See **SUIT**/page 19



Energy industry risk managers are counting on a data standard to help them gather exposure information for underwriters.

Joule gives jolt to exposure information

By JOANNE WOJCIK

A group of energy industry risk managers is banking on the use of ACORD data standards in gathering exposure information to make their insurance placements easier and to better manage their companies' risks.

The standardization project, dubbed "The Joule" in reference to the name of a unit of energy, is a pilot implementation of the use of electronic templates created by the Assn. of Cooperative Operations Research & Development to standardize the exposure information. The

ACORD templates are written in extensible markup language, or XML, a programming language that more and more insurers are adopting.

The ACORD Energy Working Group, an association of energy risk managers whose companies also are shareholders of Bermuda-based mutual insurers Oil Insurance Ltd. and Oil Casualty Insurance Ltd., is participating in the project. The insurers are jointly funding the project, which employs technology developed by GRX Technologies, a risk management information system vendor based in Providence, R.I.

Although they have some cover-

age through OIL and OCIL, the insurers' members also must purchase insurance for their other risks, and this is where the templates should prove especially useful, explained Stefan Veit, risk analyst for Calgary, Alberta-based Nexen Inc., one of Canada's largest oil and gas exploration companies.

OIL provides individual members up to \$250 million in property, pollution liability and well control coverage, and OCIL provides excess liability capacity up to \$150 million.

The Joule's objective is to standardize the exposure information the 77 energy companies that par-

ticipate in OIL and OCIL present to their other insurers as part of the underwriting process, according to Mr. Veit.

"Even though we have OIL, and that does cover a big part of our program, we still have to go out and spend a tremendous amount of time getting our business interruption, as well as our casualty and our general liability programs put together. And then you have other ancillary lines like D&O, crime, fiduciary, even your auto, those types of things that you're going out into the market" to find, he said.

To present comprehensive information to insurers, Mr. Veit spends a considerable amount of time assembling an insurance underwriting information manual—this year's was 450 pages—that outlines all of his company's risks.

In 2002, this effort took Nexen "about 1,000 person-hours. I used all the resources available to me," Mr. Veit said.

"We put a good package of information together," he said. The manual "is the major key in getting our insurance placed. Underwriters now, especially in this hard market, they're not even going to look at you unless you do have your underwriting information."

But even with a package as comprehensive as the one that Mr. Veit produces, underwriters still seem to have more questions.

"We put a premier package together, and we're still getting questions," he said.

That's where The Joule comes in. The Joule contains electronic templates for each line of coverage programmed with the questions underwriters are most likely to ask. Risk managers can either complete the templates themselves or forward them to other divisions. To ensure that the appropriate information is included, The Joule also provides definitions and prompts.

The Joule was launched in mid-2002, and Mr. Veit will have to wait until his next renewal to see how it works for his company. But he expects it will save him a lot of time and perhaps even provide some negotiating leverage with insurers.

"Having those questions and knowing what to ask in the first place will definitely speed up the process," he said. "If you don't, you're kind of out of luck with the insurers, or you're getting charged a premium rate that you might feel is unreasonable because they don't know what the exposure is. They really do pick numbers out of the air then."

But with the use of ACORD XML standards already having saved insurers money, those efficiencies should translate into lower premiums for buyers, suggested Elizabeth Morrel, senior risk analyst at The Southern Co., an electric utility holding company based in Atlanta that is a member of OIL. Ms. Morrel also is a member of the Technology Advisory Committee of the Risk & Insurance Management Society Inc.

"Insurance is so complex and data-intensive, if you can carve out just those business processes and

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NS02-0067

Comings & Goings

Insurers:

Jean-Francois Blais has been named president and chief operating officer of AXA Canada. In addition to his new duties, Mr. Blais will continue to act as executive vp-property/casualty operations for AXA in Quebec until a successor is named.

Karen R. McCarthy has been named president and chief executive officer of The Bar Plan Mutual Insurance Co. in St. Louis. Ms. McCarthy succeeds **Jon Bilstrom**, who is joining Comerica Bank. Ms. McCarthy has been with the lawyers' professional liability insurer since 1995, most recently serving as senior vp and as president of The Bar Plan Surety & Fidelity Co.

Chris Stooke has been appointed chief financial officer and a director of Lloyd's of London managing agency Catlin Underwriting Agencies Ltd. Mr. Stooke,

currently a partner at the accounting firm PricewaterhouseCoopers L.L.P., will join the management team of Catlin on March 1.

James Kroner has been named chief financial officer of Endurance Specialty Holdings Ltd. of Hamilton, Bermuda. Mr. Kroner, who joined Endurance in December 2001 as chief investment officer, replaces **Colleen Brennan**, who left the insurer to pursue other interests.

Steven D. Rupp has been named senior underwriting manager at Uni-Ter Underwriting Management Corp., an Atlanta-based specialist in property/casualty insurance for long-term care facilities. Before joining Uni-Ter, Mr. Rupp served as Atlanta regional underwriting manager of PHICO.

Brokers:

Daryll Martin has been



Ms. McCarthy



Mr. Bush

named president and chief executive officer of Summit Global Partners Inc.'s branch operations in Austin, Texas. Mr. Martin previously was with Aon Risk Services.

David Weiss has joined London American General Agency Inc. as senior vp of its new office in Goodyear, Ariz. Mr. Weiss, who was previously with another Arizona wholesaler, will expand London American's contract and brokerage facilities in the Southwest.

The Lockton Cos. of Colorado Inc. has appointed **Mark A. Bundy** executive vp and chief operating officer and **Rachael Owens** senior vp/unit manager of

the broker's new financial and professional services unit. Mr. Bundy has served as managing vp and chief operating officer of Denver-based Lockton since October 2000. Ms. Owens formerly served as regional underwriting director of financial and professional services at the St. Paul, Minn.-based St. Paul Cos. Inc.

Michael Kearney was promoted to senior vp at William Gallagher Associates. Mr. Kearney has been with the Boston-based broker since 1996, most recently serving as vp.

Other suppliers:

Gary Broache was named senior vp and chief technology officer at RewardsPlus, a benefits automation service provider in Hunt Valley, Md. Prior to joining RewardsPlus, Mr. Broache served as chief operating officer of SYSCOM.

Steven J. Shulman has been named chief executive officer of Magellan Health Services Inc., a Columbia, Md.-based managed behavioral health care provider. Mr. Shulman is the former chairman, president and chief executive officer of Prudential HealthCare Inc.

Attorney **Richard L. Bush**, formerly with Cozen O'Connor, has joined Powell, Trachtman, Logan, Carrle, Bowman & Lombardo P.C. in King of Prussia, Pa. He will work in the law firm's employment claims and labor relations group.

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers.

Please send news of recently promoted, hired or appointed senior-level executives to: Joanne Wojcik, Business Insurance, 777 E. Speer Blvd., Denver, Colo. 80203-4212; jwoj-cik@crain.com.

Photos should be sent to: Kathy Barnes, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; kbarnes@crain.com.

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ACORD: Data project

Continued from page 4

data elements that are shared and capture them in a flexible, living standard using ACORD XML, the potential impact is significant," she said.

For example, a recent study found the potential savings for U.S. insurers at \$250 million if ACORD XML standards were implemented across the industry, Ms. Morrel said.

While the templates developed so far are used solely for collecting exposure information, GRX is building templates for claims data using XML, said Joe Underwood, product manager for GRX in Providence.

ACORD also is seeking other implementations of its templates and is working closely with RIMS to raise awareness and interest among risk managers, said Beth Grossman, assistant vp of industry relations at ACORD in Pearl River, N.Y.

"There's a real drive now, post-9/11, within the carriers and the reinsurers to really drive implementation straight from the corporate customer all the way through the insurance and reinsurance at the back end," she said.

"You should be able to extract the information in the ACORD format and send it to somebody, and that other person should be able to receive it electronically," she added.

Mr. Veit has great expectations for The Joule and recently made a presentation to other OIL/OCIL members in Bermuda about its potential.

The Joule can be used as a risk management home page and browser, providing access to information other than exposure data, such as claims records, e-mail and the stock prices of competing companies, Mr. Veit said.

The Joule can also be used for benchmarking, he said.

"You have all these companies that are together under OIL and OCIL. We are in the same industry. It's just your perfect place for understanding what's really going on in the market," he said. "I see The Joule being able to allow risk managers and companies to compare notes and experiences, best practices and just being able to even do surveys, like a RIMS benchmarking survey."

If The Joule works for the energy industry, then GRX will create other versions of the technology that can be used by other industries, according to Mr. Underwood.

"We can immediately implement what's developed as an insurance standard, or as exposure schedule standards, and risk managers can use it right away," he said. "It's actually capturing ACORD XML, and insurance carriers are equipped to receive it."

"What's great about the system is it's going to evolve," said Mr. Veit. Eventually, he said, "The Joule can become like an intranet for information about what's taking place in the insurance and risk management industry."



Paul Winston

Editor Paul Winston's weekly column will resume in the Jan. 13 issue

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Editorial

Crystal ball gazing past and present

AFTER THE TUMULT of the previous year, many people in the insurance industry spent 2002 trying to manage the varied and dramatic changes in their world.

Unfortunately for them, 2002 brought even more changes for them to cope with.

Not only were businesses coming to grips with the uncertainty posed by the risk of terrorism but they also were assessing their exposure to the sort of ethical and reputational risks that confronted companies in the wake of Enron.

In addition to these hurdles, businesses also faced the challenges of

operating in a weak economy and being buyers in a hardening market for insurance.

For their part, insurance companies in 2002 were only briefly able to enjoy the fruits of the hard market, occupied as they were with other nagging concerns, such as asbestos liabilities, soaring medical costs, rising claims and court awards, ratings downgrades and weak returns on equity. It also should be acknowledged that they were operating in the same weak economic environment as their customers.

Against this backdrop of change and uncertainty, *Business Insurance* makes its annual predictions about

what the new year might hold for our readers and reviews how successful its forecast was for the past year (*BI*, Jan. 7, 2002).

Looking back, we accurately predicted that the following would be "in" for 2002: private terrorism coverage initiatives, consumer-driven health care plans, terminating underfunded pension plans, restrictions on the amount of 401(k) investments in company stock, new ergonomics guidelines and shareholder litigation over stock price declines.

We also were on the mark with these predictions of what would be "out" in 2002: inexpensive terrorism coverage, traditional HMOs,

single-digit increases in insurance rates, dormant captive insurers and insurer coverage of film financing deals.

Where did we go wrong? We missed in predicting that: optional federal charters for insurers would get more attention, risk securitization would be used more widely, the government ultimately would not support terrorism insurance, and that renewal dates would largely shift away from Jan. 1.

In all, a fairly successful record. Now, after dusting off our crystal ball, we are ready to try it again for 2003. What follows is our staff's 15th annual predictions for the ins and outs of the new year:

IN: Employers voluntarily adopting workplace ergonomic programs.

IN: Buyers considering whether terrorism cover is worth the cost.

IN: More talk from insurers about pleasing customers as well as their shareholders.

IN: More states considering universal health care proposals.

IN: States enacting medical malpractice reforms.

IN: More companies self-insuring or going bare.

IN: Higher co-payments on employer-provided health benefits.

IN: New attention paid to integrated disability management programs.

IN: Alternative risk financing options.

IN: Medicare prescription drug coverage.

OUT: Insurance company CEOs.

OUT: Higher limits on excess casualty coverage.

OUT: Terrorism exclusions in insurance policies.

OUT: Rating agency upgrades of insurers and reinsurers.

OUT: Below-average natural catastrophe losses.

OUT: Patient protection legislation.

OUT: A surplus for the Pension Benefit Guaranty Corp.

OUT: In-house administration of benefit plans.

OUT: Boardroom ignorance of the importance of risk management.

OUT: A take-it-or-leave-it attitude by underwriters.

OUT: Chicago in April as a venue for future RIMS conferences.

Schillerstrom



Letters to the Editor

Functioning as the corporate conscience

To the editor: Whoa! I don't know who this curmudgeon Bill Ford is and I am uncertain whether I should dignify his letter with a response, but I will try, nevertheless.

Bill, I suspect that persons in leadership positions received plenty of warnings from risk managers and others regarding the vulnerabilities of the World Trade Center after the first attack in 1991. It is more likely that warnings went unheeded in favor of holding down expenses or that risk management was otherwise left to the less conscientious, as you would prefer.

Indeed, if executives in various functional areas took their risk management responsibilities seriously, there would be little need for risk management departments to bring it all together. I encounter all too many financial executives who think risk management is "insurance buying" and who haven't got a clue as to what their companies actually do—or don't do—that exposes their respective businesses to unnecessary loss. So, many risk managers function as the corporate conscience, while the Bill Fords of the world pretend to be fully clothed.

Carl J. Kotheimer
Consolidated Risk Management

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Risk Management: Year in Review

Buyers bemoan market constriction

By MICHAEL BRADFORD and DAVE LENCKUS

Swollen insurance prices and shrunken availability plagued insurance buyers throughout 2002.

The continuing constriction of the marketplace was at the top of many risk managers' lists of the year's most important events. New corporate governance rules and passage of the Terrorism Risk Insurance Act of 2002 also affected many buyers and ranked high among their choices of critical developments during the year.

Very few were able to escape the hard market conditions that were exacerbated by the terrorist strikes in 2001, fallout from corporate accounting scandals and other factors that sent insurance prices soaring.

"It's just been an unbelievable year," said W. Michael McDonald, director of risk man-

agement at Danka Business Systems P.L.C. in St. Petersburg, Fla. "Just when you said, 'It can't get worse,' it got worse. ...To me, that was the top story for risk managers."

While Mr. McDonald acknowledged that there was a need for some pricing correction after years of soft-market conditions, he stressed that "it's just such an overreaction" by insurers that have boosted premiums. Furthermore, he said, some young underwriters with no hard-market experience have created bitterness with some of their clients.

The continuing hardening, especially in the area of directors and officers liability, was the year's most significant development for Snap-on Inc., said Daniel H. Kugler, Snap-on's director of corporate risk management.

The Pleasant Prairie, Wis.-based toolmaker was hit with significant D&O rate hikes and "surprising" premium increases for general liability and workers compensation coverages,

Mr. Kugler said. That led to what he called a "major shift" in Snap-on's risk financing strategy—the retention of more risk.

Bradley R. Wood, vp., risk management, at Marriott International Inc. in Bethesda, Md., also pegged the hard market as a top risk management concern. At Marriott, as at Snap-on, the conditions caused the company to retain more risk. "We retained portions of virtually all lines of coverage," Mr. Wood said.

Mr. Kugler also expressed concern about higher costs from a shrinking number of fronting insurers and problems with reinsurers that are dictating the pricing on primary coverages. "In our auto renewal, we talked more about the reinsurance on the program than the primary, and how that affected pricing," he said. "In the old days, when you got the primary pricing, that was the end of the discussion."

Susan R. Meltzer, assistant vp-insurance and risk management at Sun Life Financial in Toronto, pointed out that even though prices are rising, in most cases, "the market is open for business and is distinguishing between good business and bad business." That makes the current hard-market cycle and underwriting practices different than those in the past, she noted.

The hard market also topped the list for John R. Phelps, director of risk management at Blue Cross & Blue Shield of Florida Inc. in Jacksonville. The accounting scandals and their impact on the D&O market also were near the top of his list and ranked high with other risk managers as well.

"Risk managers don't understand the implications of the Sarbanes-Oxley Act," said Danka's Mr. McDonald. "But the next time their D&O renews, they'll understand it." He

Continued on next page

Ongoing tight market ranks as top risk management story

1 A hardening market

A hardening insurance market squeezed risk managers a little tighter in 2002.

The terrorist attacks of 2001 and corporate accounting scandals

helped fuel the market's constriction, pushing up prices for property coverage and directors and officers insurance. Meanwhile, insurers made moves to improve profitability in troubled lines such as medical malpractice, commercial umbrella and commercial automobile, which led to further tightening.

Also, asbestos and environmental liability risks were underreserved, and insurers pushed up rates to cover shortfalls in those lines.

Renewals became a time of anxiety for many risk managers in 2002. Insurers found a new eagerness for gathering underwriting information, and their scrutiny was reflected in rate hikes that were 100% or more for some lines.

Medical malpractice rates saw some of the biggest jumps, with triple-digit increases not uncommon for hospitals. One West Coast hospital reported a combined in-

Continued on next page

Top 10 risk management stories of 2002

-  **Property/casualty market continues to harden**
-  **Congress passes terrorism insurance backstop legislation**
-  **Accounting scandals hit D&O market, spur corporate reforms**
-  **OSHA issues voluntary guidelines on ergonomics**
-  **World Trade Center coverage battles continue**

-  **Lloyd's of London adopts market reforms**
-  **Reinsurance market undergoes consolidation**
-  **U.S. Supreme Court limits scope of ADA**
-  **Asbestos liabilities cause concern about reserves**
-  **Reinsurance woes hurt Mutual Risk Management**

Continued from previous page was referring to the corporate governance reform legislation that was prompted by accounting scandals uncovered at Enron Corp. and other large companies.

Mr. McDonald emphasized that it is critical for risk managers to understand the act so that they can properly represent their boards of directors when detailing their risks to underwriters. "It's a pretty onerous piece of legislation," he said.

"The D&O market is seeing the effects of corporate governance issues out there and the general accounting challenges we all face," said Mr. Wood. "It's borne out in higher retentions and prices in D&O coverage. It's the line most impacted by changing business conditions."

'There is more and more proof that risk management is the foundation of good corporate governance.'

Susan R. Meltzer
Sun Life Financial

The increased prominence of corporate governance was at the top of Ms. Meltzer's list. "There is more and more proof that risk management is the foundation of good corporate governance," she said.

Ms. Meltzer noted that Sun Life, as a Canadian company with assets in the United States, faces the challenge of integrating risk management procedures to deal with requirements in the Sarbanes-Oxley legislation without adding layers of reporting to procedures already in place to deal with local corporate governance requirements.

The flurry of accounting scandals highlights the importance of risk management reaching the corporate board, agreed Chris Duncan, vp-finance and chief risk officer for Atlanta-based Delta Air Lines Inc. "It's the responsibility of the boards to understand the hazard risks and the nonhazard risks of the companies they govern," Mr. Duncan said.

Also at the top of Mr. Duncan's list is the growing credit risk posed by reinsurers as well as primary underwriters. "Historically, you looked at the credit risk of just the direct insurer," he said. "You just can't do that anymore."

"To have confidence in the insurer's promise to pay, you have to have confidence in the reinsurer's ability to pay," Mr. Duncan said.

Mr. Kugler said downgrades in the financial ratings of reinsurers were a major concern in 2002. Snap-on had to replace a reinsurer on one program because of a downgrade, he pointed out.

Mr. Duncan and other risk managers also referred to the passage of the Terrorism Risk Insurance Act of 2002 as a major story in 2002. "I think it's an entirely appropriate role for the federal government to play," said the airline risk manager. Insurers, he said, "are not geared up" financially to assume terrorism and war risks. Mr. Duncan added that airports "are merely borders" that should be protected by the government.

The Blues' Mr. Phelps said the

new law is among the top stories because so much confusion exists over how the coverage will work.

"I suspect it will be helpful from the standpoint of making capacity available," said Marriott's Mr. Wood. "We should see some moderation in pricing" for high-profile risks, he added.

For some, the absence of news became news. "No hurricanes hit Florida this year," said Mr. McDonald. "I'd like to have more of that. It was a pretty quiet year."

In all, risk managers face lots of uncertainty as 2002 winds down.

"I can't imagine the world being any more unsettled than it is right now," said Mr. Wood. "We are more challenged as risk managers than at any time in history."



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top risk management stories
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Top risk management
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A 2002 timeline
of risk management events
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crease of 800% in its medical malpractice, directors and officers, workers compensation and property insurance coverages.

And as employers have suffered through price hikes, insurers have enjoyed rising profits.

Property/casualty insurers reported a combined \$4.6 billion in profits for the first half of the year, a

66.4% increase over the same period in 2001, according to a survey by the Jersey City, N.J.-based Insurance Services Office Inc. and the Sacramento, Calif.-based National Assn. of Independent Insurers. The quarterly market index released by the Washington-based Council of Insurance Agents & Brokers showed premiums continued to rise in the third quarter, with more than 60% of midsize and large accounts handled by CIAB members reporting increases of 20% to 50%.

Analysts say the hard market likely will continue at least through 2003, even though insurers' profits are growing. Low interest rates that dampen investment income and the need to maintain adequate reserves for asbestos claims, among other factors, will mean rising prices for the near future, analysts predict.

Insurers point out that they are forced to raise rates in some cases because they are facing their own rate hikes. Like insurers, reinsurers have struggled to overcome years of soft market conditions, low investment income and the same losses insurers have faced. That means they now are charging more for

coverage and insurers are passing the increases along to buyers.

After first-half results that showed 30 reinsurers with a 117.4% combined ratio, industry observers projected that reinsurance prices would continue to rise for at least another year.

—By Michael Bradford

2 Terrorism coverage

Just when it appeared that legislation creating a federal terrorism insurance backstop would be put off until the next Congress—or perhaps forever—the lame ducks of the 107th Congress put aside their differences and approved a measure that President Bush signed into law on Nov. 26.

That was almost a year to the day after the House of Representatives passed its own version of federal terrorism insurance legislation. What followed kept risk managers, insurers and the business community as a whole on edge for nearly a year.

The Senate didn't move with the House's speed. In fact, the Senate didn't move at all for more than six months, as lawmakers wrestled over what, if any, limits on punitive damages should apply to building owners and other victims of terrorism found liable for negligence. While the House measure had contained broad protections, the measure that ultimately emerged from the Senate remained largely silent on tort reform.



That wasn't the only difference in the approaches taken by the two chambers. The House bill would have created a government loan program to help insurers pay losses from future acts of terrorism, with the understanding that insurers would repay the loans. The Senate measure, though, essentially called for a cost-sharing arrangement in which the federal government would act as a reinsurer against catastrophic terrorist attacks.

President Bush, meanwhile, launched a high-profile campaign for the enactment of terrorism insurance legislation, holding that it was necessary to jump-start the economy. Advocates of the legislation regarded the president's efforts on behalf of the bill—and his willingness to craft a compromise on the measure's tort provisions—as key to breaking the congressional logjam and setting the stage for approval by the post-election session of the Terrorism Risk Insurance Act of 2002.

As year-end renewals approached, risk managers, brokers and insurers all scrambled to figure out exactly how the law would affect the marketplace. There was no single answer to that question. There was, however, a single heartfelt hope that, after working a year to achieve a key yet elusive legislative goal, the product of that struggle would never be needed.

—By Mark A. Hofmann

3 D&O liability insurance

A crisis in the directors and officers liability insurance market dogged risk managers throughout 2002, as corporate accounting misdeeds drove insurers to restrict their coverage offerings and raise prices.

Even before "corporate scandal" became a daily news utterance during 2002, corporations were fending off a growing number of securities-related lawsuits. Diving stock prices fueled plaintiffs' allegations of mismanagement.

But those lawsuits didn't generate the media attention that followed revelations about unscrupulous accounting practices at companies such as Enron Corp. and WorldCom Inc. The accounting practices at those companies sparked

widespread distrust of corporate America and ignited the D&O market crisis.

Insurers panicked, for instance, when news broke in June that Clinton, Miss.-based WorldCom inappropriately classified \$3.9 billion in expenses as capital expenditures. Following that news, insurers briefly stopped renewing coverage for other telecommunications entities and companies, such as banks, that provided services to WorldCom.

The event caused Christopher E. Mandel, the president of the New York-based Risk & Insurance Management Society Inc., to remark that "it's going to blow the lid off the D&O market."

Each reported scandal exposed insurers to hundreds of millions of dollars in potential losses. And, like investors, insurers were learning to be wary of the audit reports that were supposed to verify corporate financial statements.



Revelations about the involvement of accounting firm Arthur Andersen in the Enron debacle taught insurers that they could not rely on auditor's reports when underwriting their D&O accounts. So insurers said that before issuing new policies, they would begin delving deeper into corporations' management practices.

The landscape changed rapidly. Institutional investors that previously believed that suing corporations for negligence reflected poorly on their investment decisions suddenly sought lead-plaintiff status in a host of securities class-action lawsuits alleging fraud.

Because of all the focus on business behavior, "corporate governance" emerged as a much-touted phrase. And in July, the Sarbanes-Oxley Act became law, intending to reform corporate auditing practices. The act, among other requirements, calls for principal executives and financial officers to certify information contained in quarterly and annual reports.

But as the year ended, neither development provided much immediate help to risk managers, who had to work harder than before to find competition for their D&O business.

Yet obtaining coverage became a pressing concern as the year's news stories pushed more directors and officers to inquire about the protection available to them.

—By Roberto Cenicerio

Continued on next page

Continued from previous page

4 Ergonomic guidelines

After Congress rescinded an 11th-hour Clinton administration ergonomics rule in early 2001, risk managers and insurers wondered what would come next in the debate over federal ergonomics standards.

It took more than a year for the answer, but what they got was well worth the wait.

Instead of issuing what employers would have viewed as a one-size-fits-all mandatory standard for all workplaces, the Labor Department announced last April that the Occupational Safety and Health Administration would take a more-collaborative approach to the problem of workplace-related repetitive motion injuries.

As outlined by Labor Secretary Elaine Chao, the new approach would emphasize voluntary safety guidelines, provide assistance to employers seeking to meet OSHA standards and promote further ergonomics research.

OSHA would also target its enforcement efforts on employers and industries that had been prosecuted for ergonomic problems in the past,



as well as on businesses whose ergonomics practices violated the agency's "general duty clause," which requires employers to maintain safe workplaces.

Within two weeks of announcing the new program, OSHA revealed that nursing homes would be the subject of its first industry-specific guidelines. The agency later announced that it would draft guidelines for retail grocery stores and poultry processing operations as well.

The new approach drew praise from the business community for its flexibility.

But it came under considerable

fire from organized labor and some powerful lawmakers, such as Senate Health, Education, Labor and Pensions Committee Chairman Edward Kennedy, D-Mass., who charged that the voluntary approach would not protect workers adequately.

A legislative attempt to force the agency to promulgate a new ergonomics rule went nowhere, though, despite initial bipartisan backing.

By year's end, the ergonomics issue had largely run out of steam, at least for the short term. OSHA had issued no final guidelines for any specific industry, and risk managers' and insurers' attention had turned to other legislative and regulatory matters.

—By Mark A. Hofmann

5 WTC disputed coverage

More than a year after the Sept. 11, 2001, terrorist attack, World Trade Center leaseholder Silverstein Properties remains mired in litigation with roughly 20 insurers over its contention that the Twin Towers' destruction was two events, entitling it to double its \$3.55 billion policy limit.

The dispute is headed toward a trial that is expected to begin in the spring. In the meantime, U.S. District Judge John S. Martin has issued a series of pre-trial rulings that have favored insurers in some cases and Silverstein in others.



Last month, Judge Martin denied motions by three insurers—units of Chubb Corp., American International Group Inc. and Zurich Financial Services Group—for summary judgment that they are bound by a Willis Group Holdings Ltd. policy form that the judge has already determined would treat the loss as a single event.

The decision followed the judge's

September ruling that three other insurers—units of Hartford Financial Services Group, Royal & SunAlliance P.L.C. and The St. Paul Cos.—are bound under the Willis form and are liable for only one occurrence.

While evidence showed that the Hartford, Royal and St. Paul units clearly agreed to the Willis form, the evidence was not clear enough in the cases of Chubb, AIG and Zurich to avoid a trial on the question, Judge Martin indicated.

Silverstein, meanwhile, says that it was in the process of shifting the WTC program to a Travelers Property Casualty Corp. form issued after the attack. This form contains no definition of occurrence and would treat the loss as two events, the developer argues, though Judge Martin in June denied Silverstein's request for a summary judgment to that effect.

The 2nd U.S. Circuit Court of Appeals has agreed to hear Silverstein's appeal of the Travelers ruling and the grant of summary judgment to Hartford, Royal and St. Paul.

The outcome of the overall case is difficult to predict, legal observers agree. Assuming the dispute goes to trial, Judge Martin has made it clear that a jury will examine each insurer's understanding of which policy form it had agreed to as of Sept. 11, 2001. The answer may vary for each insurer.

—By Douglas McLeod

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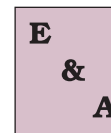
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AGENT/BROKER TOPICS

A MONTHLY EDITORIAL SECTION SENT EXCLUSIVELY TO AGENTS, BROKERS AND CONSULTANTS

Web Strategies



Few agents have staff dedicated to managing Web sites

By MICHAEL BRADFORD

For agencies, having a Web site and an in-house specialist looking after it is a rare combination.

"I would say the typical agency doesn't do its own Web site," said Mark Parrish, president of Ajasent Inc. in West Monroe, La. Those that do have dedicated Web technicians are scarce, he said, with only the very largest agencies taking on such information technology responsibilities.

Even an agency large enough to have an IT department may not have a staffer whose job is solely to look after the Web site. "I'm not familiar with any agencies with a person dedicated to overseeing Web activity," said Laura Nettles, president of Nettles Consulting Network Inc. in Atlanta. Ms. Nettles noted that Web responsibilities usually fall to someone who has other IT duties as well.

A typical agency has six employees, according to Jeff Yates, executive director of the Agents Council for Technology, which is part of the Independent Insurance Agents & Brokers of America in Alexandria, Va. Such small staffs don't allow one person to concentrate solely on Web activity, experts agree, and that means most agents have to look for outsiders to maintain their Internet presence.

"I definitely do not see any kind of hiring of a Web master for a full-time position," said Mr. Parrish. "It would be a very small percentage" of agencies that would have such extensive Web duties and the resources to hire such a person, he noted.

Ms. Nettles suggested that agencies with Web sites sophisticated enough to do more than marketing are likely outsourcing that responsibility to consultants that specialize in Web design and maintenance. Many of those that have an in-house IT staffer are using the site for simple marketing practices, she said.

When the site goes beyond marketing, it demands more time to maintain, Mr. Parrish pointed out. "What makes the difference is when you cross over to the sites that do customer support," he said.

Such sites may provide services that are "kind of like online banking," he said,

See WEB/next page

AGENT/BROKER TOPICS

Web: Many agencies outsourcing site management duties

Continued from previous page
including such functions as the issuance of insurance certificates or automobile insurance cards.
The game changes when agencies develop such functional sites, Mr. Parrish noted. "That puts you into the next level," he said, and while a sophisticated Web presence may not justify hiring or assigning someone full-time to look after it, it could mean that someone in the agency is given Web oversight as part of his or her responsibilities.
For many agencies, Web oversight may be getting short

shift if it's done in-house, according to Ms. Nettles. Because a staffer often has several duties in addition to keeping up with Web activity, "the Web site is low on the priority list," she said, and that often means that sites aren't what they should be.
Mr. Parrish pointed out that most agency sites "are usually pretty static" and are hosted by an outside service. Such sites generally are "kind of a Yellow Pages brochure-type deal," he explained, and one person at the agency may be in charge of communicating any changes to the hosting service.

"If you just peruse the industry's Web sites," said Ms. Nettles, "it's pretty much still marketing and not really interactive."
As far as functions and sophistication are concerned, "it's kind of all over the lot as to what agents are doing," said Mr. Yates.
The decision to hire someone with responsibility for overseeing a site may rest not on whether the agency is large enough to justify it but on whether the agency is more interested in marketing or customer service, Ms. Nettles noted. "It depends more on the agency philosophy," she said, and

if that philosophy centers on customer service, a Web site that reflects that focus is going to need more attention.
Edgar J. Higgins, the owner of Thousand Islands Agency in Clayton, N.Y., said he wanted someone other than himself to handle the Web duties, allowing him to concentrate on what he does best. "Even though I'm a real technology user, my real focus is business," he explained.
Mr. Higgins didn't look far for someone to handle the Web duties for Thousand Islands. He gave the job to his son, who also works in

the insurance profession and had the right combination of industry knowledge and technological savvy.
Thousand Islands' site is service-oriented, offering policyholders functions that allow them to do such things as examine policy language and make some changes to their policies. "We're not using it as a marketing device," Mr. Higgins said. "It's a customer information and customer service tool."
He suggested that agency owners whose offspring are not as inclined as his own to take on the company's Web activities should look for someone who has the same combination of skills as his son.

'Before you set out to build (an agency Web site), ask, "What do I expect, from a business perspective, to achieve with this vehicle?" '

*Edgar J. Higgins
Thousand Islands Agency*

Disinguished Program Dev.
4 column x 10"

There are plenty of people who know how to design Web pages, Mr. Higgins noted, but finding Web designers with insurance credentials is a little tougher. An ideal recruit likely would be someone who started out in the insurance business and moved to the technology side, he said.
Mr. Parrish said that recruiting an IT person internally is a good idea for small and medium-sized agencies. That will ensure that the person who takes the job has some insurance experience, he explained, and it's usually easier to train someone with insurance knowledge to work with technology than vice versa.
Ms. Nettles said agents should carefully check the references of outside vendors that are hired to do Web work. "Take a look at the work the third party has done," she said. "There are a handful of vendors working in our industry."
In any case, Mr. Higgins said, "one thing is very important to an agent thinking of building a Web site. Before you set out to build one, ask, 'What do I expect, from a business perspective, to achieve with this vehicle?'" Too many people simply throw a site together and leave it alone, he pointed out, squandering the advantages such a tool offers.

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AGENT/BROKER TOPICS

Zurich system promotes underwriting consistency

By RODD ZOLKOS

Using a new Web-enabled system of underwriting workstations, Zurich North America expects to be able to apply consistent underwriting discipline throughout the organization, always based on the company's best current underwriting thinking.

The online platforms are designed to link Zurich underwriters across the target markets in which they work, while providing a single, easily accessible site for information on the company's best underwriting practices.

"The derivation of it was really how do we apply our best underwriting thinking and deliver it to the underwriter to service our customers and make the best underwriting decisions every single time," said Rob Fishman, chief underwriting officer at Zurich North America.

'What we want to think of the underwriter doing is going to a tool kit. ... We want to put in front of them those things relevant just to that account and market segment in an efficient way.'

*Rick Harold
Zurich North America*

Mr. Fishman also is chief executive officer of the Schaumburg, Ill.-based insurer's manufacturing services business unit, which is at the forefront of the underwriting workstations initiative, working closely with other Zurich North America units and the company's information technology department.

Because the system is Web-enabled, Zurich expects ultimately to be able to use it in interactions with brokers, customers and reinsurers, Mr. Fishman said.

"It speaks to efficiency, too, when you're talking about electronic transfer of data wherever possible," said Rick Harold, the Zurich Financial Services Group unit's Schaumburg-based director of workstation development.

At its heart, the new workstation system allows the company to monitor underwriting decisions as they are being made and respond quickly to underwriting trends or changes in exposure with appropriate underwriting training, Mr. Fishman said.

"It is Web-enabled," he said of the system, "and it has what we call a 'knowledge center' that is integrally part of the workstation."

The knowledge center provides a spot underwriters can check online for both internal and external information relevant to the type of exposure in question, as well as allowing the underwriter to contact others in the Zurich organization electronically for information or

New workstations with a 'knowledge center' give access to internal, external info sources

assistance. The knowledge center also provides a site for storing new information.

"What we want to think of the underwriter doing is going to a tool kit," Mr. Harold said. "We want to put in front of them those things relevant just to that account and market segment in an efficient way."

Mr. Fishman said the new system

is already producing benefits in Zurich's underwriting. By providing a system for single data entry, the system is bringing increased efficiency, he said. Meanwhile, the ability to apply Zurich's best underwriting thinking consistently on all the company's underwriting decisions should reduce loss rates, he said.

And, Mr. Fishman said, the system should provide additional benefits down the road during future turns in the market cycle. "This really helps prepare us for when the market changes by having better selection of business and better data," he said.

The company started the workstation initiative by rolling out

an underwriting platform for its largest property accounts in 2002. Other workstation platforms are being modeled on the large property system.

Zurich is currently expanding the workstations to other property markets. Some system components are already in place for Zurich North America's workers compensation business, and the company is in the process of building systems for its auto and general liability underwriters, Mr. Fishman said.

See UNDERWRITING/next page

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AGENT/BROKER TOPICS

Agent, broker Web sites good for customer relations

By Shannon Martin

In a world in which the average teen-ager is adept at finding information on the Internet and rising insurance premiums have consumers shopping around for competitive rates and value-added service, an agency or brokerage Web site should be an integral part of doing business.



Today's time-pressed personal lines customers and business owners don't want to rely solely on customer

service representatives when looking for quotes or policy information. As with many other industries, from online banking to shopping, people often want the convenience and speed of a "self-service" option. In a hard market, where disciplined customer relationship management retains clients and attracts newcomers, an agency or broker Web site should provide instant access to detailed policy information and related services whenever the customer needs it.

In addition to a good staff, providing customers with 24/7 Internet access to the information they need is the most efficient CRM tool—it's like having a CSR working around the clock.

Here are five features that no insurance Web site should be without:

• **One-stop shopping.** Agents and brokers have been

A/BT Perspective

complaining for years about the hassle of having to log in and retype prospect data into various insurer Web sites to obtain quotes, and automation providers and insurers are finally allowing real-time data interface. Now agents and brokers should provide the same convenience for their customers.

Agency Web sites should be a "one-stop shop" for access to the sites of the insurers they represent. Prospects and customers should be able to click on a link and be taken directly to an insurer's Web site—without having to leave the agency's site. When looking for rates, a customer or prospect should be able to enter information once at your site for updating policies and receive immediate quotes from various insurers. While there is plenty of poking around and price shopping, most of those consumers who prefer to buy online—and those numbers are still pretty small—still say they want a local agent as part of the value package.

Agents should provide a listing of services they provide—for example, insurance, financial services, employee benefits, etc.—and they shouldn't assume that consumers understand all that agents do.

The site also should contain direct links to local businesses, online Yellow Pages, the Chamber of Commerce and other relevant sites. Some agents also provide bulletin boards for customers to post business-related questions and answers.

• **Secure self-service.** Don't just present "brochure-ware." Allow your customers 24/7 access to their personal account information, whether they're at home, at the office or in a hotel room. Agents should assign each customer a personal login and password to provide secure access to the same information stored in the agency

In addition to a good staff, providing customers with 24/7 Internet access to the information they need is the most efficient CRM tool.

management system. Customers should be able to view policy information, such as account activity, and claims and billing information. In addition, they should be able to print their own certificates of insurance and auto ID cards.

For example, one agency focusing on commercial lines offers a menu of services on its site. Here is a partial list: review my personal and company information; make changes to my personal or company information; review my current insurance coverages; check a premium payment; change something on one of my policies; replace, edit, remove or add a driver, vehicle or equipment on my policy; change or add a certificate holder, additional named insured or loss payee; request an insurance form; get insurance quotes; and

find out about bonds, employee benefits and financial services.

Don't underestimate the value of these services on your Web site. Business owners are busy, and when they need a piece of paper related to their insurance, they can't always wait for, or find after hours, a CSR to print and fax one. For example, one agency says the time of day when a contractor orders an insurance certificate is, on average, 7 p.m. Because most agencies are closed at this hour, a business owner would appreciate being able to print out his or her insurance certificate immediately, without having to wait for the next business day.

• **Real-time data.** When a customer logs in to an agency Web site with a password to view personal policy information, it should be exactly the same as if he or she were given personal access to your agency management system. With real-time data transfer, data should always be current.

• **Extended communication.** Obviously, the point of the Web site is to enhance customer service, not eliminate it. Agents should make sure that the site has e-mail links to CSRs for fast turnaround. Better yet, customers should be able to receive immediate attention from agency staff by typing in questions using a text chat feature.

• **User friendliness.** The Web site should be user-friendly while at the same time providing as much information as possible. To serve its purpose, the site's various screens and links need to be clearly and logically organized for ease of navigation without getting lost. Remember that even though many consumers are more technologically sophisticated than in the past, the site should be accessible to even the most technologically challenged customer. An easily navigated Web

site will provide the best impression of the agency to all customers and prospects.

Some agents have rotating banner advertisements from businesses they insure, but those should be added with caution. Don't include ads that pop up and take over the site.

Provide the basics for an "at-a-glance" look at the office and staff. This includes office hours, emergency claim numbers, employee listings and photos. Pictures of the agency staff make the site more inviting and provide a personal touch; include photos of CSRs and producers next to their e-mail links.

Sound simple? It is; that's the point. With insurance so confusing and seemingly impersonal to consumers, try to keep it personal. Agency owners need to show their people. Isn't that why customers do business with them in the first place?

And why not provide customer testimonials—also with photos—about great service? The story always sounds better when a third party tells it.

Providing customers with an attractive, user-friendly site that allows instant access to their policy information whenever they need it is an easy way for an agent or broker to build relationships. Customers enjoy having policy information at their fingertips, and producers and CSRs can spend less time on the phone answering simple inquiries in order to focus on what they do best: selling to prospects, rounding existing accounts and managing risk rather than paperwork.

Shannon Martin is product manager for Applied Systems, an insurance technology provider based in University Park, Ill.

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Underwriting: Seeking consistency

Continued from previous page

All the workstations will be component-based, allowing underwriters to gain access to new features as they are installed. Typical workstation features include tools for catastrophe modeling, pricing, risk selection, location and building valuation, risk engineering, reinsurance, claims and customer relationship management.

In addition to providing underwriters with the online system, "we also surround it with extensive training and underwriting thinking as part of the deployment," Mr. Harold said.

To ensure the workstations' relevance across the company, Zurich involved cross-functional teams in the system's development and its testing, Mr. Fishman said.

The response from those using the underwriting workstations thus far has been overwhelmingly positive, Mr. Fishman said. "And we have other parts of the Zurich system outside of the U.S. who want to get access to it," he said.

"The feedback that I'm getting, both internally and externally, is that this is the right vehicle and it's state of the art and it will stand the test of time," Mr. Fishman said.

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2002 Newsmakers

10 who made insurance-related headlines in 2002

Maybe President **George W. Bush** should add "risk manager in chief" to his titles.

Throughout the year, he hammered home the message that the nation needed a federal terrorism insurance backstop program to revive construction in urban areas. Congress-

President Bush

ional approval of such a program—the top post-Sept. 11 legislative priority for risk managers and insurers alike—seemed doomed more than once, but the president never gave up. In the end, he got what he wanted, when the lame-duck Congress passed the Terrorism Risk Insurance Act of 2002 just in time for Thanksgiving.

The president also spent the year promoting another goal he shares with risk managers—tort reform—although with less immediate success than he enjoyed with terrorism insurance legislation. But as the terrorism insurance debate underscored, President Bush does not give up easily. Don't be surprised if he brings the same degree of commitment and salesmanship to reform efforts if, as expected, Congress begins tackling asbestos liability reform in the spring.

You can't please all of the people all of the time, as Department of Labor Secretary **Elaine Chao** found out when she tried to defuse the controversy surrounding a federal ergonomics standard.

Even though there's obviously no

love lost between the Labor Department secretary and organized labor because of her efforts, she managed to dispose of the ergonomics issue in a way that satisfied risk managers and insurers alike.

After Congress rescinded a last-minute Clinton administration rule that would have imposed mandatory ergonomics standards on many workplaces, Ms. Chao inherited the task of creating a new government approach to the issue. Heeding the concerns of the business community at large that one-size-fits-all standards wouldn't work and would instead increase costs without commensurate benefits, Ms. Chao responded with a plan that relies on voluntary safety guidelines and targeted enforcement.

Despite cries of outrage from organized labor and its congressional allies—and an aborted legislative attempt to force the promulgation of a new ergonomics standard—Ms. Chao has pushed ahead with her plan. With GOP majorities in both houses of Congress ensured by the November elections, her voluntary approach appears secure.

John Garamendi's name recognition has paid off during 2002, helping him grab headlines and win the race for California insurance commissioner.

In November, 46% of the Californians who went to the polls voted to return Mr. Garamendi to the post

he held from 1991 to 1995. Back then, he was known for his duels with insurers and his colorful quips. "If an insurer hasn't sued me by 8 a.m., I consider it a slow day," was one of his favorites.

When campaigning during 2002, Mr. Garamendi told insurers that, if elected, his relationship with them would be different this time. The market, he said, differs from that of the 1990s, when he had a mandate to impose rate reductions. The task

now, he told them, is to encourage more insurers to enter California's market. Yet Mr. Garamendi

also promised voters that he would take a strong stand to protect consumers' interests.

Insurers say they remained concerned that they could suffer from a pro-consumer stance aimed at furthering Mr. Garamendi's political career.

It was a traumatic year for **Rolf Hueppi**, the longtime head of Zurich Financial Services Group.

After 35 years at the Swiss insurer—including 11 as its chief executive officer—Mr. Hueppi resigned as CEO in February and, when that failed to satisfy investors, resigned as chairman in May. "I consider it desirable and important that the new leadership of our group can be established unencumbered by the ongoing public controversy surrounding me," he said.

In the months before his resigna-

tion, Mr. Hueppi had come under increasing investor pressure as ZFS' profits and share price flagged.

The resignation included a severance package worth 6.2 million

Swiss francs (\$4.1 million). In his tenure at ZFS, Mr. Hueppi oversaw the transformation of the insurer into a leading worldwide financial services operation.

The demise of several Pennsylvania-based insurers made for regular trips to the courts for the state's top insurance regulator, **Diane Koken**.

At the start of the year, Ms. Koken, as Pennsylvania's insurance commissioner, placed PHICO Insurance Co. in liquidation, after the Insurance Department determined that ef-

orts to rehabilitate the Mechanicsburg-based medical malpractice insurer would fail. In April, Ms. Koken won court approval to place Mutual Risk Management Ltd.'s insurance units in the United States into rehabilitation, following the insurers' problems with reinsurance recoverables for program business. Later in the year, she sought to place the units in liquidation and is still awaiting court approval.

Ms. Koken also continued to deal with the fallout from the Reliance Insurance Co. liquidation. Her department sued Saul Steinberg and other Reliance directors for breach of fiduciary duty and negligence, alleging that Mr. Steinberg used dividends from Reliance to fund his "lavish lifestyle" despite the Philadelphia-based insurer's precarious financial position.

Ms. Koken also sued Reliance's auditor, Deloitte & Touche L.L.P., alleging it failed to investigate and disclose Reliance's poor financial condition.

Perhaps the most dangerous place to stand in 2002 was between shareholders and the courthouse door after a company's stock dropped in value. As the number of

shareholders' suits grew, rates for directors and officers coverage soared.

Fueling investor rage was a series of high-profile corporate scandals that revealed previously unseen levels of creative accounting and outright fraud. Adding to the anger of investors was the apparent lethargy of the U.S. Securities and Exchange Commission and its chairman, **Harvey Pitt**.

As one company after another collapsed and investors and pension plan administrators watched stock values drop, the public outcry for Mr. Pitt's agency to aggressively change how it oversees corporate accounting grew. With each new scandal, though, Mr. Pitt was seen as a laggard in that effort.

When accusations of accounting fraud enshrouded Mr. Pitt's appointee to head a newly created SEC oversight board designed to fight just that problem, Mr. Pitt's tenure with the SEC ended. But Mr. Pitt's November resignation did not end the criticism of his job. As the year ended, an investigation by the U.S. General Accounting Office criticized Mr. Pitt's leadership in identifying and vetting appointees to this board.

Sax Riley, who retired at the end of 2002, steered Lloyd's of London through one of the most turbulent periods in its 300-year history.

During Mr. Riley's term as chairman, the world-famous insurance market experienced one of its darkest hours—a record loss of £3.11 billion

(\$4.53 billion) for the 2001 year. But Mr. Riley will be remembered as the man who succeeded in pushing through a series of reforms designed to modernize the market and return it to profitability.

The reforms of the so-called Chairman's Strategy Group include replacing Lloyd's traditional three-year accounting system with annual accounting and introducing a franchise system for Lloyd's syndicates.

Continued on next page

Continued from previous page

Despite opposition from some groups of individual investors, members of Lloyd's approved of the reform package in a vote at an extraordinary general meeting held Sept. 12.

Mr. Riley left Lloyd's celebrating record capacity for 2003 of £14.25 billion (\$22.84 billion). And he handed over the chairmanship to Peter Levene, Lord Levene of Portoken, the first-ever "outsider" to the Lloyd's market to be elected to the post.

At the helm of the world's second-largest insurance brokerage, **Patrick G. Ryan** faced a challenging year, as Aon Corp. recorded its worst-ever bottom-line results in the second quarter and came under scrutiny with the U.S. Securities and Exchange Commission over accounting matters.

Although Aon quickly resolved the issues with the SEC and reported improved third-quarter earnings, the brokerage still faced an uphill

battle—namely, disposing of its underwriting operations.

Aon originally planned to spin off Combined Specialty Group Inc. due to the conflicts of owning an insurance brokerage and an underwriter in early 2002, but it delayed the move in the second quarter, citing difficult market conditions. Then, in the third quarter, Aon said it would try to sell all or parts of the underwriting units. In November, Aon scrapped those plans, citing the unfavorable mergers and acquisitions market, and said it would instead help the Combined management team to transfer to other companies. Shortly thereafter, Aon sold Combined's property/casualty insurance subsidiary, Sheffield Insurance Corp., to Bermuda-based AXIS Specialty Ltd.

For **Michael Segal**, owner of Chicago-based Near North National Group Inc. and its Near North Insurance Brokerage Inc. unit, trouble came early in 2002, with his arrest in January by FBI agents at a hotel

near his company's Chicago offices.

Mr. Segal was initially charged by federal prosecutors with illegally using up to \$20 million in a Near North premium fund trust account for his own and his company's use, then making false statements to the Illinois Department of Insurance to conceal those activities.

Shortly after his arrest, Mr. Segal stepped down as Near North's chairman and chief executive officer, and his company named an independent board and appointed a new management team.

In October, a federal grand jury handed down a 16-count superseding indictment against Mr. Segal, charging him with insurance fraud, mail fraud and racketeering.

Mr. Segal has maintained his innocence, pleading not guilty to the charges. He is scheduled to go to trial April 7.

Real estate developer **Larry Silverstein** is used to bouncing back from adversity.

The 71-year-old Mr. Silverstein, who built his father's small leasing business into a real estate fortune, lost several buildings to his lenders in the New York City real estate bust of the early 1990s, a reversal he shared with many developers. By the end of the decade, though, he was building again.

In 1999, he entered the competition to take over a long-term lease on the World Trade Center com-



Mr. Silverstein

plex but initially appeared to have lost out to rival Vornado Realty Trust. The deal between Vornado and the Port Authority of New York and New Jersey, the WTC's owner, fell apart at the last minute, though, and Mr.

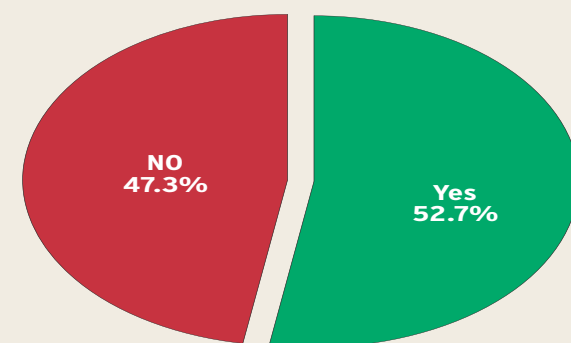
Silverstein stepped in to take the keys to the Twin Towers and become the biggest commercial landlord in New York.

The Sept. 11, 2001, terrorist attack, which came only weeks after Mr. Silverstein took over the complex, turned what would have been the crowning achievement of his career into his biggest challenge.

As he battles insurers over the extent of the WTC's property coverage, he is focused on rebuilding, starting with the 7 World Trade Center property that he developed in 1987 and that was the last of the buildings to fall on Sept. 11.

2002 Opinions

Are your company's directors and officers concerned about the adequacy of your D&O coverage to protect them?



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2002 developments in the field of risk management

January

Insurance and reinsurance buyers with January renewals confront all the hallmarks of a classic hard market, including higher prices, reduced capacity and more restrictive terms. The hard market continues throughout the year.

Silverstein Properties Inc. sues Travelers Indemnity Co., one of the insurers of the World Trade Center, charging that the Sept. 11, 2001, terrorist attacks represented two occurrences, entitling Silverstein to two full-limit recoveries. In December, a federal appeals court agrees to consider Silverstein's appeal of lower court rulings that the attacks were a single occurrence.

Lloyd's of London introduces proposed market reforms to make the market more transparent. The reforms, adopted in September, include moving to one-year accounting, phasing out unlimited liability underwriting and changing Lloyd's regulatory structure.

The U.S. Supreme Court rules on two cases involving the Americans with Disabilities Act. In *Toyota Motor Manufacturing vs. Ella Williams*, the court unanimously holds that inability to perform a specific job does not necessarily make a worker disabled. The court later rules 6-3 in *Equal Employment Opportunity Commission vs. Waffle House Inc.* that an arbitration pact does not bar the EEOC from suing an employer.

February

Michael Segal, chief executive officer of Near North National Group, resigns after being named in a federal complaint alleging misappropriation of premium funds. That complaint is later dismissed, but

Mr. Segal is ultimately indicted on insurance fraud, mail fraud and racketeering charges. Mr. Segal, who has pleaded not guilty, faces an April 2003 trial. Meanwhile, the Chicago-based broker appointed new management.

Major U.S. airlines unveil plans to form a Vermont-based risk retention group to provide \$1.5 billion in war risk liability insurance, following the private insurance market's severe tightening. The RRG, dubbed Equitime, would rely on reinsurance provided by the federal government. Private insurers blast the proposal, and uncertainty over the government's role keeps the plan on the ground for the rest of the year.

An Insurance Services Office Inc. position paper contends that the effectiveness of terrorism exclusions is undermined by the fact that standard property policies in 30 jurisdictions require coverage of fire following a loss. While most states approve terrorism exclusions for commercial lines policies, five do not. At year end, California, Florida, Georgia, New York and Texas have not generally allowed coverage limitations related to acts of terrorism.

Mutual Risk Management Ltd. announces it is exploring several options, including a possible sale, as it faces financial problems and rating downgrades. Despite significant reserve additions, MRM's insurance units are later placed in rehabilitation by Pennsylvania, and the company taps new management for its remaining operations. MRM in December announces a debt restructuring plan designed to extricate its ongoing captive management and brokerage business from its defunct program insurance operations.

March

European airlines announce plans for an excess-of-loss pool, dubbed Eurotime, for their third-party terrorism liability risks, similar to a proposal by U.S. airlines. Later, the European Union endorses a similar proposal offered by the International Civil Aviation Organization for a vehicle known as Globaltime, effectively scuttling Eurotime.

General Electric Co. is rumored to be considering the sale of its Employers Reinsurance Corp. unit because of poor returns. GE later confirms it is exploring a sale of the unit, the world's fourth-largest reinsurer based on net premiums.

Citigroup Inc. spins off its Travelers Property Casualty Corp. unit, in an initial public offering, ending the combination that prompted financial services modernization legislation in 1999.

April

Labor Secretary Elaine Chao announces that the Occupational Safety and Health Administration will use voluntary safety guidelines and targeted enforcement to address ergonomics-related injuries, replacing a Clinton-era rule.

Six insurance and reinsurance companies form a Luxembourg-based company to provide property coverage for acts of terrorism in Europe. Special Risk Insurance & Reinsurance Luxembourg S.A. is formed with 500 million euros (\$521.9 million) of committed capital.

In the latest of a series of restructuring moves, The St. Paul Cos. Inc. said it plans to spin off its reinsurance units, transferring the business to a new Bermuda company, Platinum Underwriters Holdings Ltd.

May

Kemper Insurance Cos. enters a series of stock and reinsurance deals with Berkshire Hathaway Inc. as part of a large-scale restructuring that could ultimately lead to Kemper's demutualization.

Hilb, Rogal & Hamilton Co., which traditionally targeted middle-market accounts, moves to boost its presence among larger clients by acquiring Hobbs Group L.L.C. in a \$274 million cash-and-stock deal.

Lloyd's of London Chairman Sax Riley announces plans to allow individuals and institutions to invest in Lloyd's without becoming members. The change aims to make it easier for investors to enter and exit the market.

June

Aon Corp. delays plans to spin off its Combined Specialty Group Inc. underwriting operation. Later, Aon says it will sell all or part of Combined but, amid an unfavorable market climate, ultimately scraps that plan.

The St. Paul Cos. Inc. agrees to pay \$975 million to settle an asbestos claim by Western Asbestos Co. Along with an earlier settlement, the action raises concerns over the ultimate cost of asbestos claims.

In *Chevron USA Inc. vs. Mario Echazabal*, the U.S. Supreme Court unanimously rules that the Americans with Disabilities Act does not require employers to place workers in jobs that could cause serious injury or death.

July

President Bush and members of Congress recommend corporate governance reform, as the stock market reels in response to concerns over accounting practices. The president later signs the Sarbanes-Oxley Act, which sets out new governance rules.

Pool Reinsurance Co. Ltd., the U.K. government-backed reinsurance pool for terrorism coverage, expands its coverage to "all risks," including such exposures as contamination, impact by aircraft and flood damage.

August

Gerling Reinsurance pulls out of the U.S. property/casualty market to concentrate on European business. Later, Gerling Konzern Allgemeine Versicherungs A.G. exits property/casualty and life reinsurance business to focus on primary insurance.

Lloyd's of London will claim the full £350 million (\$561.4 million) annual limit on its Central Fund reinsurance program for 2001 to help pay losses stemming from the Sept. 11 terrorist attacks.

It is Lloyd's first claim on the five-year policy that took effect Jan. 1, 1999.

September

A year after the Sept. 11, 2001, terrorist attacks, the ultimate cost remains unknown, with some saying the final figure might not be known for years.

Widespread flooding in Europe during the summer continues in many regions. Swiss Reinsurance Co. later estimates the floods caused 2.0 billion euros (\$2.09 billion) in insured losses.

October

Three insurers sue to rescind directors and officers liability coverage written for bankrupt Adelphia Communications Corp., claiming Adelphia knew its financial statements were fraudulent when it applied for the coverage. Along with a similar move by D&O insurers of Enron Corp., some observers see Adelphia's insurers' move as a trend toward such litigation.

A.M. Best Co. downgrades several units of Bermuda-based Trenwick Group Ltd. to B+ from A-, triggering a default under a \$230 million letter of credit facility that Trenwick had used to capitalize its Lloyd's of London underwriting operations. Trenwick ultimately finds new letters of credit for its Lloyd's operations but faces a variety of other financial hurdles that lead it to embark on a number of restructuring moves, including pulling out of the specialty insurance business.

November

Peter Levene, Lord Levene of Portsoken, is elected chairman of Lloyd's of London, the first in Lloyd's history to be selected from outside the market. He replaces Sax Riley, who is retiring after two years in the post.

Victories in midterm elections give the Republican Party control of both houses of Congress, raising the potential for tort reform.

After nearly a year of effort, Congress passes a terrorism insurance measure that is quickly signed into law. Under the Terrorism Risk Insurance Act of 2002, the government will act as a backstop for future terrorism losses.

December

In announcing six-month fiscal results, Equitas Ltd. says it sees asbestos-related claims rising in the United States. The Lloyd's of London runoff reinsurer also said it might have to increase asbestos reserves.

Lloyd's of London announces it will have capacity of £14.25 billion (\$22.86 billion) in 2003, the most in the market's history.

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January 6, 2003

European employers facing pension shortfalls

By BENJAMIN SEEDER

LONDON—Europe's largest corporate pension plans are suffering from unfunded liabilities totaling 257 billion euros (\$269.4 billion), a report from stockbroker Dresdner Kleinwort Wasserstein estimates.

The estimate is based on European company filings as of Dec. 31, 2001, and assumes a 15% drop in the market since then and a discount rate one percentage point lower.

"They are very realistic assumptions, given the markets are down further than that," said Karen Olney, the European equities analyst who wrote the report.



The report also cautions that most European companies, like their U.S. counterparts, have extremely optimistic return assumptions and higher-than-expected discount rates on future liabilities.

Ms. Olney found the average return assumption was 7.2%, with a high of 14% for London-based SABMiller P.L.C. Other high assumptions were reported by Groningen, Netherlands-based telecommunications carrier KPN N.V., 9.5%; and Thyssen Krupp A.G. of Duisburg, Germany, 9.2%.

Discount rate assumptions averaged 6.1%. That's about one percentage point over the return on AA-rated corporate bonds, the benchmark most European regulators suggest pension plans stick to when calculating discount rates, which judge the present value of future pension liabilities.

"Many companies were well above" the 6.1% average, Ms. Olney said. "When this falls by one (percentage point), we assume the liability increases by 10%."

The most aggressive discount rate assumptions were SABMiller, with 13%; money management firm Old Mutual P.L.C. of London, with 8.9%; and London-based mining group Anglo-American P.L.C., with 8.2%.

"People have really got to return to reality and notch down these assumptions (because) they will filter

See PENSIONS/page 19

Survey finds few markets for exposure

Terror cover lacking in China

By MICHAEL BRADFORD

Policyholders in China worried about terrorism and sabotage exposures have few insurance markets to turn to for coverage of those risks, an informal survey reveals.

The risk of a terrorist attack in China is "slight to moderate," according to respondents who participated in the 10-question survey recently conducted by Ringo Ma, marketing manager in the Shanghai branch of AIU Insurance Co., a unit of New York-based American International Group Inc. Those who seek coverage for those exposures generally look to foreign insurers to provide it, according to the respondents.

Mr. Ma sent 50 questionnaires to risk managers, brokers and AIU underwriters and marketers.

He received 25 replies to the survey, with 11 responses coming from within AIU and the remainder from risk managers and insurance brokers.

The survey showed that most buyers don't look to local insurers to provide the coverage because the buyers don't believe that those underwriters offer it. Sixty percent of all respondents said they are not familiar with local insurers writing insurance for terrorism and sabotage risks.

Of those polled, 36% said that they have considered purchasing the coverage or have been asked to arrange it. Approximately 60% said they would prefer to buy the coverage on a separate policy rather than as an endorsement on other coverage.

According to survey respondents,

the commercial entities most at risk in China are large power and energy operations and infrastructure projects.

More than 40% of the respondents said they believed that insurers based outside of China are the best source of coverage for terrorism and sabotage risks.

AIU is among the insurers writing the coverage, providing combined limits of up to \$100 million for the terrorism and sabotage risks. Policyholders in China can purchase as much as \$75 million for property risks and up to \$25 million in business interruption coverage. The minimum premium for the coverage is \$50,000 per year, according to Mr. Ma.

Survey results are available from Mr. Ma by e-mailing him at ringo-fq.ma@aig.com.

Broker Alexander Forbes Ltd. names new group CEO

LONDON—Rael Gordon has been appointed group chief executive of Alexander Forbes Ltd. in London. Mr. Gordon succeeds Graeme Kerrigan, who will become nonexecutive chairman of the group.

Mr. Gordon was named chief executive-designate of the South Africa-based group in April 2002, when he also took over responsibility for the

company's African operations. Previously, he was chief executive of the Alexander Forbes subsidiary Investment Solutions.

Alexander Forbes is the world's eighth-largest insurance broker, with gross revenues of 4.30 billion rand (\$454.9 million) for the year ended March 31, 2002.

—By Sarah Veysey



Mr. Gordon

Insured natural cat losses flat

By SARAH VEYSEY

Insured losses from natural catastrophes occurring in 2002 totaled \$11.5 billion, the same figure as last year, according to Munich Reinsurance Co.

Economic losses rose to \$55 billion from \$35 billion in 2001, largely due to floods in Europe, the Mu-

nich, Germany-based reinsurer said in its 2002 analysis of natural catastrophes.

European flooding constituted the largest insured loss in 2002, totaling about \$3 billion, according to Munich Re.

Windstorm Jeanett in Western and Central Europe caused an insured loss of \$1.5 billion, while tor-

nadoes and severe storms in the United States in April accounted for insured losses of another \$1.5 billion.

Munich Re estimates that around 11,000 people were killed by natural catastrophes in 2002, down from 25,000 in 2001.

Copies of Munich Re's analysis are available at www.munichre.com.

THE 10 LARGEST NATURAL CATASTROPHES IN 2002

Ranked by insured losses, in millions of dollars

Date	Country/region	Event	Fatalities	Economic losses	Insured losses
Aug. 4-20	Europe	Floods	230	\$18,500	\$3,000
Oct. 26-27	Western, Central Europe	Winter Storm Jeanett	33	2,300	1,500
April 27-May 5	U.S., 17 states	Tornadoes, severe storms	10	2,000	1,500
Sept. 23-Oct. 3	Caribbean, U.S.	Hurricane Lili	8	2,000	750
Nov. 10-11	U.S., esp. Tennessee, Ohio, Alabama	Tornadoes	36	600	460
Sept. 8-9	France	Floods	23	1,200	450
Jan. 30-Feb. 1	U.S. East, Midwest	Winter storm	28	400	300
Feb. 26-27	Germany, U.K.	Winter Storm Anna	3	500	300
Sept. 18-25	Central America, Caribbean, U.S.	Hurricane Isidore	15	850	250
March 8-11	U.S., esp. Iowa, Illinois, Michigan	Severe storm	0	250	210

Source: Munich Reinsurance Co. NatCat Service; BI

World Updates

Arch, Mapfre join French aviation pool

La Reunion Aérienne, the Paris-based aviation insurance pool, added two members Jan. 1. Arch Insurance Co., a New York-based unit of Arch Capital Ltd. in Hamilton, Bermuda, and Mapfre Industrial S.A. in Madrid, Spain, will join the pool's six existing members. The addition of Arch and Mapfre will not increase the capacity offered by the pool, a La Reunion spokesman said. La Reunion accounts for between 12% and 15% of the worldwide insurance market for airlines and aviation manufacturers, he said.

SCOR share offering raises \$396.2 million

SCOR S.A. has raised 381 million euros (\$396.2 million) through a private offering of shares. The rights issue was fully subscribed, said the Paris-based reinsurer. The offering is part of a turnaround plan SCOR announced last year after it forecast a loss of 425 million euros (\$442.0 million) for 2002. SCOR's plan also includes scaling back writings in some lines, such as nontraditional reinsurance, and focusing on European and Asia-Pacific business. French insurer Groupama, SCOR's largest shareholder, also raised its stake from 18.0% to 19.2%.

Royal Mail addresses pension shortfall

Royal Mail, the U.K. postal service, said it is facing a funding shortfall of £330 million (\$529.3 million) in its pension fund and is seeking to raise the price of stamps to offset the deficit. London-based Royal Mail blamed market conditions for the shortfall in its pension fund, which had assets of £15.6 billion (\$25.02 billion) in March. The fund has about 443,000 members. In a submission to the post office regulator, Royal Mail called for the scrapping of a proposed price freeze on stamps. Royal Mail said it was not planning to raise the price of postage stamps but wanted the flexibility to do so, if necessary.

Briefly noted

Houston-based HCC Insurance Holdings Inc. has completed its acquisition of Madrid, Spain-based St. Paul Espana, Compania de Seguros S.A. The company will be renamed Houston Casualty Co. Europe, Compania de Seguros S.A. but will operate as HCC Europe, the holding company said in a statement....David Harris has been appointed to the new post of operations director at Lloyd's of London insurer Amlin P.L.C. Mr. Harris, currently U.K. claims manager for general insurance business at AXA U.K., will take up the post on Feb. 1.

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Errors & Omissions

Due to an error, an incorrect fax number appeared in a Help Wanted ad for **Claims Technician** in the December 16, 2002 issue.

The correct fax number is
(260) 459-5911.

The complete ad can be viewed at www.businessinsurance.com.

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THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE LIQUIDATION
 OF OAK CASUALTY INSURANCE COMPANY

02 CH 20927

NOTICE OF CLAIM FILING DEADLINES AND PROCEDURES

PLEASE TAKE NOTICE, that on November 19, 2002, the Circuit Court of Cook County, Illinois, entered an Agreed Order of Liquidation With a Finding of Insolvency ("Agreed Order of Liquidation") against Oak Casualty Insurance Company ("Oak"). Nathaniel S. Shapo, Director of Insurance of the State of Illinois, is the statutory and court-affirmed Liquidator of Oak (the "Liquidator").

TAKE FURTHER NOTICE, that pursuant to the Agreed Order of Liquidation, all rights and liabilities of Oak and its policyholders, creditors and stockholders, and all other persons interested in its property or assets, are fixed as of November 19, 2002, unless otherwise provided in subsequent orders of the Court.

TAKE FURTHER NOTICE, that on December 16, 2002, the Circuit Court of Cook County, Illinois, entered an Order Providing for the Filing of Claims and the Setting of Claim Filing Deadlines ("Claim Filing Order"). Pursuant to the Claim Filing Order, all persons, companies or entities who have, or may have claims against Oak, its property or assets, or against an Oak insured or policyholder, shall have the right to present and file with the Liquidator proper proofs of claim on or before November 19, 2003 at 4:30 p.m. (C.S.T.).

TAKE FURTHER NOTICE, that any insured under an insurance policy issued by Oak shall have the right to present and file with the Liquidator a proper proof of claim setting forth a contingent claim on or before November 19, 2003 at 4:30 p.m. (C.S.T.). No contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the fourth priority level, 215 ILCS 5/205(1)(d), unless such claim has been liquidated and the insured claimant has presented and filed evidence of payment of such claim to the Liquidator on or before November 19, 2004 at 4:30 p.m. (C.S.T.). Any contingent claim for which a proper proof of claim is filed on or before November 19, 2003 at 4:30 p.m. (C.S.T.), but which is not liquidated on or before November 19, 2004 at 4:30 p.m. (C.S.T.), may be estimated pursuant to 215 ILCS 5/209(4)(b) for purposes of participating in any distribution of estate assets that may be made at the fifth priority level, 215 ILCS 5/205(1)(e), unless otherwise directed by the Court.

TAKE FURTHER NOTICE, that the form and required contents of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with, and may be obtained from, the Liquidator of Oak, c/o the Office of the Special Deputy Receiver, located at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed "filed" with the Liquidator upon the Liquidator's receipt thereof. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Liquidator further reserves any and all defenses available to Oak upon all filed claims. All proofs of claim must be duly sworn to before an officer authorized to take oaths.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS, COMPANIES OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIM AGAINST OAK, ITS PROPERTY OR ASSETS, OR AGAINST AN OAK INSURED OR POLICYHOLDER, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE NOVEMBER 19, 2003 AT 4:30 P.M. (C.S.T.)

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Pensions: European employers facing shortfalls

Continued from page 17

through to income statements," Ms. Olney said.

An example is Stuttgart, Germany-based auto manufacturer Daimler Chrysler A.G., whose pension shortfall Dresdner Kleinwort Wasserstein estimates could rise to about 9.9 billion euros (\$10.38 billion) this year, assuming a one percentage point reduction in the company's discount rate assumption.

Daimler Chrysler's 9% return assumption is way too high for long-

term returns, said Christian Schlenger, managing director with investment consulting firm Alpha Portfolio Advisors GmbH in Bad Soden, Germany.

"That strikes me as overly optimistic, or even wishful thinking," he said.

Many European companies are lowering their return assumptions, said David Pauls, a consulting actuary with Watson Wyatt Worldwide in Zurich, Switzerland. And, many companies have already boosted contributions in order to make up

some of their shortfalls.

'There is a reluctance' among employers to cut plan return assumptions. 'There is a knowledge of what will happen to the P&L statements.'

David Pauls
Watson Wyatt Worldwide

Siemens A.G., the Munich, Ger-

many-based electronics group, last month surprised the market with an additional 800 million euro (\$838.6 million) contribution to its pension plans. This was on top of the 1.8 billion euros (\$1.89 billion) in cash contributed earlier in the year.

Peter Bakker, chief executive of Dutch postal group TPG N.V. in Groningen, Netherlands, told investors that the company would have to pay 70 million euros (\$73.4 million) per year into its pension plan, which had accumulated a shortfall of 206 million euros

(\$215.9 million). Mr. Bakker hasn't said whether the postal group would notch down its return assumption of 9.5%—an act that would make the deficit, and the required cash contribution remedy, worse.

Beverages group Allied Domecq P.L.C. of Bristol, England, announced in October that it had increased pension contributions by £16 million (\$25.7 million) per annum.

Executives at Anglo-Dutch engineering company GKN P.L.C. of Redditch, England, last month told investors GKN's pension deficit had increased to "in excess of £700 million" (\$1.12 billion), and that contributions would be increased to £45 million (\$72.2 million) per year to cover the cost.

Watson Wyatt's Mr. Pauls expects other European companies to cut their assumptions and announce increased pension expenses next year, too.

But he acknowledged: "There is a reluctance. There is a knowledge of what will happen to the P&L statements. The pressure is there to not do anything or to keep the change to a minimum."

Benjamin Seeder is a reporter for Pensions & Investments, a sister publication of Business Insurance.

Suit: Law pre-empts litigation

Continued from page 3

blood, pus and other fluids. He was taken to a hospital emergency room. There, a PruCare physician unsuccessfully tried to save his leg and it was amputated on Nov. 12.

The PruCare physician told Mr. Haynes that his leg could have been saved if he had received timely treatment from the wound care center, according to the opinion.

Mr. Haynes sued PruCare, and his mother continued the litigation after he died from unrelated causes in April 2001.

The court ruled that PruCare made a "purely administrative decision," and therefore Mr. Haynes' negligence claims, which fall under state law, are pre-empted by ERISA.

"Though the end result of Haynes losing part of his leg is tragic, his claim is based solely on the administration of his health benefits," says the decision.

Geneva C. Haynes, administratrix of the Estate of Charles Haynes Jr., deceased vs. Prudential Health Care, member-Aetna U.S. Healthcare, "PruCare" a Kentucky corporation or association contracting with SLS Inc. for the provision of medical insurance and health care services; 5th U.S. Court of Appeals, No. 01-60801.

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No 5774 of 2002
IN THE MATTER OF
**ASSURANTIEMAATSCHAPPIJ
"DE ZEVEN PROVINCIEËN" NV
(ALSO KNOWN AS "THE SEVEN
PROVINCES" INSURANCE
COMPANY LIMITED);
"TRANSATLANTICA"
HERVERZEKERING
MAATSCHAPPIJ NV;
NATIONALE-NEDERLANDEN
INTERNATIONALE
SCHADEVERZEKERING NV (ALSO
KNOWN AS "NV THE
NETHERLANDS INSURANCE
COMPANY EST. 1845 LIMITED");
NATIONALE-NEDERLANDEN
SCHADEVERZEKERING
MAATSCHAPPIJ NV; AND
MERCANTILE MUTUAL
INSURANCE (AUSTRALIA)
LIMITED;**
AND IN THE MATTER OF THE
COMPANIES ACT 1985

AND IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
No. 3052 of 2002
IN THE MATTER OF
**MERCANTILE MUTUAL
INSURANCE (AUSTRALIA) LIMITED
ACN 35 000 456 799**
AND IN THE MATTER OF THE
CORPORATIONS ACT 2001

NOTICE IS HEREBY GIVEN that, by an Order dated 16 December 2002 made in the High Court of Justice in England and Wales in the matter of Assurantiemaatschappij "De Zeven Provinciën" NV, "Transatlantica" Herverzekering Maatschappij NV, Nationale-Nederlanden Schadeverzekering Maatschappij NV, Nationale-Nederlanden Internationale Schadeverzekering NV and Mercantile Mutual Insurance (Australia) Limited (the "Companies") and, in the case of Mercantile Mutual Insurance (Australia) Ltd, by an Order dated 20 December 2002 made in the Federal Court of Australia, the schemes of arrangement (the "Schemes") between the Companies and their respective Scheme Creditors (as defined in the Schemes) pursuant to section 425 of the Companies Act 1985 and, in the case of Mercantile Mutual Insurance (Australia) Limited ACN 35 000 456 799, section 411 of the Corporations Act 2001, which were voted on and overwhelmingly approved by Scheme Creditors at the meetings held on 11 December 2002, were sanctioned. Copies of the orders sanctioning the Schemes were filed with the registrar of companies and, in the case of Mercantile Mutual Insurance (Australia) Ltd, lodged with the Australian Securities and Investments Commission, on 20 December 2002 and the Schemes became effective on that date.

Claim Forms will be sent to all Scheme Creditors of whom the Companies are aware. It is requested that Scheme Creditors submit completed Claim Forms by 20 March 2003 to "Mark Jones (PC253)" at PricewaterhouseCoopers, Plumtree Court, London, EC4A 4HT, United Kingdom. Returned Claim Forms must reach this address on or before this date.

Should you have any questions regarding this Notice, please address them to Mark Jones, PricewaterhouseCoopers, Plumtree Court, London, EC4A 4HT, United Kingdom. Telephone: +44 (0) 20 7804 4281. Facsimile: +44 (0) 20 7804 5203. Email: mark.z.jones@uk.pwcglobal.com.

LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION
2002 : No. 514
**IN THE MATTER OF MUTUAL RISK MANAGEMENT LTD.
IN THE MATTER OF THE COMPANIES ACT 1981, SECTION 99
ADVERTISING OF SCHEME MEETINGS**

NOTICE IS HEREBY GIVEN that by an Order dated 19th December 2002 the Supreme Court of Bermuda has directed meetings (the "Scheme Meetings") of certain creditors ("Scheme Creditors," as defined in the scheme of arrangement referred to below) of Mutual Risk Management Ltd. (the "Company") to be convened for the purpose of considering and if thought fit approving (with or without modification) a scheme of arrangement (the "Scheme") proposed to be made between the Company and its Scheme Creditors and that such Scheme Meetings will be held at 44 Church Street, Hamilton HM 12, Bermuda on 5th February 2003. The Scheme Meetings will be held as follows:

Class A Scheme Creditors Scheme Meeting commencing at 11:00 a.m. (Bermuda time);
Class B Scheme Creditors Scheme Meeting commencing at 11:00 a.m. (Bermuda time) or at such time as the Scheme Meeting of Class A Scheme Creditors concludes; and
Class C Scheme Creditors Scheme Meeting commencing at 12:00 noon (Bermuda time) or at such time as the Scheme Meeting of Class B Scheme Creditors concludes.

All Scheme Creditors are requested to attend on the date and time set out above. Registration for all Scheme Meetings will commence at 10:30 a.m.

If you have not received copies of the Scheme, Explanatory Statement (required to be furnished to all Scheme Creditors under the provisions of section 100 of the Companies Act 1981) and/or the Proxy/Voting Claims Form for the Scheme Meeting in respect of which you are a Scheme Creditor, you may obtain copies from the Company at 44 Church Street, Hamilton HM 12, Bermuda (attn: Angus H. Ayliffe: Fax (441) 292-1867).

Scheme Creditors may vote in person at the said Scheme Meetings or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their stead.

Scheme Creditors must return the completed Proxy/Voting Claims Form so as to reach the Company at 44 Church Street, Hamilton, Bermuda (attn: Angus H. Ayliffe) on or before 3:00 p.m. (Bermuda time) on 31st January 2003. Faxed Proxy/Voting Claims Forms will not be accepted.

By the said Order, the Court has directed that the Chairman of the Scheme Meetings shall be David Ezekiel, Chairman and Chief Executive Officer of the Company, or in his absence Angus H. Ayliffe, Chief Financial Officer, and has directed the Chairman to report the results of the said Scheme Meetings to the Courts. In addition, the Court has ordered that the Chairman shall have the ultimate discretion to determine the value, if any, to be attributed to a Scheme Creditors vote.

The said Scheme will be subject to the subsequent approval of the Supreme Court of Bermuda.

DATED this 7th day of January 2003.
Angus H. Ayliffe
Secretary
Mutual Risk Management Ltd.

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
IN RE PETITION OF JOHN GIBBONS,
AS ADMINISTRATOR OF
NEW CAP REINSURANCE
CORPORATION LIMITED,
DEBTOR IN FOREIGN PROCEEDINGS
CASE NO. 99-BJ-42752 (CB)

NOTICE IS HEREBY GIVEN THAT ON DECEMBER 18, 2002, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") PURSUANT TO 11 U.S.C. § 304. THE ORDER SHALL REMAIN IN EFFECT UNTIL JUNE 25, 2003 (THE "INTERIM PERIOD"). A HEARING TO CONSIDER WHETHER THE ORDER SHALL BE CONTINUED AFTER THE INTERIM PERIOD IS SCHEDULED TO BE HELD ON JUNE 18, 2003 AT 2:00 P.M. (THE "RETURN DATE") BEFORE THE HONORABLE CORNELIUS BLACKSHEAR, IN ROOM 601 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE CORNELIUS BLACKSHEAR AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

CHADBOURNE & PARKE LLP
ATTORNEYS FOR THE PETITIONERS
30 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10112
(212) 408-5100
ATTN: HOWARD SEIFE, ESQ.

REQUEST FOR PROPOSALS

LEGAL NOTICE
CITY OF NAPERVILLE
REQUEST FOR PROPOSALS
RFP 03-102

**HMO Medical Plan and
Stop Loss Coverage**

The City of Naperville, Illinois is requesting proposals from qualified organizations for a Health Maintenance Organization (HMO) medical plan option, and individual and aggregate stop loss coverage for the self-insured medical PPO plan.

Proposals will be received at the City of Naperville, 400 S. Eagle Street, Naperville, IL 60540 until **February 3, 2003 at 3:00 P.M.** local time.

Those desiring to submit proposals may obtain copies of the specifications between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, in the Purchasing Division at the above address, or by downloading from the City's website.

<http://www.naperville.il.us>.

The City reserves the right to reject any or all proposals.

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Business Insurance

Fortress Re: Underreporting of liabilities alleged

Continued from page 2

A lawyer representing Fortress Re's officials said they will vigorously defend both the Aioi and Carolina Re liquidators' complaints.

"Aioi reaped millions upon millions of dollars per year from the program, about which they were knowledgeable," said Elliott M. Kroll, a partner with London Fischer L.L.P. in New York. "The defendants took no salary or other funds in bad faith."

A spokeswoman for Deloitte, which audited Fortress Re and Carolina Re and faces fraud and negligence charges, said, "Deloitte believes that the financial statements were fairly presented and that its work was performed in accordance with appropriate professional standards. The firm will vigorously defend the lawsuits."

Though generally little known until last year, Fortress Re, founded in 1979, was a major player in aviation reinsurance, writing more than half of all worldwide aviation reinsurance risk in layers between \$50 million and \$400 million by the late 1990s, according to court filings.

The Burlington, N.C.-based MGA

wrote the business for a pool of three Japanese insurers: Aioi, which took 48% of the pool's risk; Nissan Fire & Marine Insurance Co. Ltd., which took 26%; and Taisei Fire & Marine Insurance Co. Ltd., which also took 26%.

Huge losses from the Sept. 11, 2001, terrorist attacks, though, forced Taisei into bankruptcy in late 2001. Nissan—since merged into Sampo Japan Insurance Inc.—then terminated its contract with Fortress Re and launched an examination of the MGA's records, leading the insurer last year to sue Fortress Re officials for breach of fiduciary duties and fraud (*BI*, March 18, 2002).

Last week's complaint by Aioi, filed in U.S. District Court in Greensboro, N.C., includes similar charges.

In addition to Msrs. Sabbah and Kornfeld, the suit names John W. Hinshaw, Fortress Re vp and treasurer; Glenn A. Drew, the MGA's general counsel and a nephew of Mr. Sabbah; Zmira Sabbah and Lee or B. Sabbah, Mr. Sabbah's wife and daughter, respectively; and the trustees of three Sabbah family trusts that owned stock of Fortress

Re and Carolina Re.

The suit charges that Fortress Re knowingly underpriced business and held down incurred-but-not-reported loss reserves in order to inflate management fees and an annual 33.33% profit commission.

In the lawsuit, Aioi Insurance Co. Ltd. charges that Maurice D. Sabbah and Kenneth H. Kornfeld used Carolina Reinsurance Ltd. as a 'virtual cash machine' to benefit themselves.

In addition, much of the retrocessional coverage Fortress Re placed after 1991 to protect pool members was financial reinsurance that committed pool members to repay ceded losses over a period of years in the form of reinstatement premiums, the suit says. While the MGA reported its underwriting results net of financial reinsurance recoveries, it did not report the pool's huge fu-

ture obligations to pay reinstatement premiums, materially misstating the pool's actual results, Aioi charges.

Deloitte itself calculated that the pool's unbooked liability for reinstatement premiums grew from \$275 million at the end of its 1999 fiscal year to \$1.2 billion in 2000 and \$1.4 billion in 2001, according to Aioi.

At the same time, Msrs. Sabbah and Kornfeld used Carolina Re as a "virtual cash machine" to benefit themselves, Aioi charges. The two men formed the Bermuda reinsurer in 1984 and gradually increased its share of retrocessions from the pool from 6% to 25% as of 1992.

Carolina Re was also covered under the financial reinsurance arrangements set up for the pool, and similarly failed to record its liabilities for future reinstatement premiums, the suit says. Although the liabilities far exceeded the reinsurer's capital and surplus by mid-1999, Mr. Sabbah and Mr. Kornfeld continued to assure pool members that Carolina Re was financially secure, Aioi alleges.

Carolina Re's liquidators level similar allegations in their com-

plaint, which names Mr. Sabbah, his wife and daughter, the Sabbah family trusts and Mr. Kornfeld.

The reinsurer's failure to report future reinstatement premium liabilities violated Bermuda statutory accounting requirements and allowed Carolina Re to continue operating for more than two years after its capital was impaired, the suit charges. As of June 30, 1999, Carolina Re's net unbooked liabilities of \$70 million already exceeded its capital and surplus of \$56 million, the suit says.

Meanwhile, \$388 million of the \$485 million in premiums collected by Carolina Re between 1991 and 2001 went to Mr. Sabbah and his family and Mr. Kornfeld as dividends. These payments included \$80 million for the 1999-2000 and 2000-2001 fiscal years, when Carolina Re's unbooked liabilities exceeded its capital and surplus and dividend payments would have been illegal under Bermuda law, the liquidators allege.

The Aioi and Carolina Re liquidators' complaints both charge that Deloitte knew of the underreporting of liabilities by Fortress Re and Carolina Re and failed to act.

Court: Employers have a stake

Continued from page 3

ance. Both a federal district court and a divided panel of the 6th U.S. Circuit Court of Appeals upheld the state law.

In its Sept. 7, 2000, opinion, the appeals court panel's majority said that while the Kentucky law did indeed "relate to" benefits, the state retained the right to regulate the managed care organizations. "The Kentucky Act meets the common-sense test in that it clearly does regulate insurance. The fact that it includes within its reach HMOs as well as traditional insurance companies does not take it out of the realm of insurance regulation."

The Kentucky Assn. of Health Plans appealed, and the Supreme Court agreed to review the matter.

Employers' cost concerns

Employers as well as managed care organizations have a stake in the case, say observers.

"We're concerned about the costs of health care since health care costs and legal fees are two of the largest components of cost increases for manufacturers recently. The any-willing-provider laws stand to increase costs further for employer-offered plans by complicating the contract process and claims administration process," said Quentin Riegel, vp-litigation for the National Assn. of Manufacturers in Washington.

"I think the cost element is one that's certainly important" in the case, said Mark Hamelburg, an attorney and principal in the Washington Resource Group of Mercer Human Resource Consulting.

"With the way prices are going up so dramatically for employer-

provided coverage, I think many people would view that cost and the increasing number of uninsured as a higher priority than it was in the 1990s. I think everybody is likely to be concerned if states are able to regulate away some of the approaches that managed care organizations use to try to control costs," Mr. Hamelburg said.

"As we know, cost increases filter down to employers and, ultimately, to employees. In the end, that's going to be the prime concern for employers if the court were to say ERISA does not pre-empt any-willing-provider laws such as Kentucky's," Mr. Hamelburg said.

He added that the court's decision could have an impact beyond the Kentucky law's reach. "The issue may not be just any-willing-provider law but the court's analysis can have very important implications in all the other areas that ERISA pre-emption may be involved in. Every time the court comes out with a decision on ERISA pre-emption, the lawyers pore through the case and try to determine what implications it might have for other types of state laws dealing with benefits," he said.

"The largest thing, from employers' perspective, is this an example of state legislators taking health benefits alternatives off the table," said Karen Ignagni, president of the American Assn. of Health Plans in Washington.

"Basically, what the legislation does is say to employers they cannot negotiate with a group of physicians and, in exchange, receive preferred rates on behalf of their employees. The health insurers in this case are the intermediaries who do the negotiations for the employers,

but many employers like to do this directly," Ms. Ignagni said. "The court is going to decide whether or not the states should be allowed to do this."

Stephanie Kanwit, the AAHP's general counsel, noted that Kentucky's any-willing-provider law is broader than that of many other states. While some state laws apply only to hospitals, the Kentucky law applies to a wide range of health care entities, Ms. Kanwit said.

The Kentucky law "vitiates the concept of negotiation. You are prevented from approaching groups of hospitals, providers, etc. to negotiate a network" that would provide services for your employees, Ms. Ignagni said.

Suits over leave

The FMLA case before the court on Jan. 15—*Nevada Department of Human Resources vs. William Hibbs*—revolves around the question of state immunity from lawsuits. Mr. Hibbs, a former state employee, used state-provided paid time off to care for his ailing wife but, according to court papers, was informed by the state that the paid time off would count against the federally permitted 12 weeks of FMLA leave. Mr. Hibbs took more time off than the 480 hours guaranteed by the FMLA and lost his job.

He sued the state, claiming that it had violated the FMLA, but a lower court said that the Constitution's 11th Amendment's grant of state sovereign immunity shielded Nevada from such suits. The 9th U.S. Circuit Court of Appeals reversed the district court, though, and set the stage for the Supreme Court arguments.

Deadline nearing for TPA directory

Business Insurance will publish its online Directory of Third-Party Administrators in conjunction with the Feb. 3 issue. The issue will feature a ranking of the 10 largest 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 simply submit their completed directory questionnaires by the extended deadline of Jan. 20.

Online directories will be available to *Business Insurance* subscribers at www.businessinsurance.com and will be included in the 2003/2004 Market Source-

book, a special printed compilation of all *BI* directories and rankings, which will be published in December 2003.

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

If your company meets the criteria but has not received a questionnaire, please contact Assistant Directory Editor Carrie Brittain at 312-649-5313. Questionnaires also can be downloaded at www.businessinsurance.com.

Crain's Workforce names new publisher

COSTA MESA, Calif.—*Workforce* magazine, a sister publication of *Business Insurance*, has named a new publisher and associate publisher.

Todd Johnson, former corporate facilities director for Crain Communications Inc., is *Workforce's* new publisher, and Ron Spink, the magazine's advertising director, is associate publisher.

Mr. Johnson, as corporate facilities director for *Business Insurance's* publishing company parent, managed office construction and relocations in cities including Chicago, Detroit, New York and London. He

also established offices in Boston, San Francisco and Oberpfaffenhofen, Germany. Prior to joining Crain in 1995, Mr. Johnson held management positions at Royal Maccabees Insurance Co.

Mr. Spink has been *Workforce's* advertising director since joining the magazine in 1997. Before that, he was director of marketing and sales for BPA International.

Crain acquired *Workforce*, a Costa Mesa, Calif.-based monthly covering the human resources field, in July 2002. The magazine recently celebrated its 80th anniversary.

Kemper: Ratings downgrades, management changes

Continued from page 1

30 issued a statement wishing Mr. Smith well in future endeavors and noting that his six-year tenure at the insurer would end the following day. Last May, Kemper said Mr. Smith would succeed David B. Mathis as CEO and chairman.

The Dec. 30 statement said Mr. Mathis would postpone his April 2003 retirement and form an office of the chairman—made up of himself and several senior Kemper executives—to lead the insurer.

In addition to Mr. Mathis, the office of the chairman comprises: Dennis R. Brand, senior vp and chief risk officer; Patricia A. Drago; executive vp and leader of Kemper's Client Services Group; William A. Hickey, executive vp and chief financial officer; Robert A. Lindemann, senior vp and president of American Manufacturers' Mutual Insurance Co.; and Gary J. Tully, senior vp and president of Kemper Financial Protection and Kemper International.

Berkshire backing

In response to the ratings downgrades, Kemper arranged for Berkshire Hathaway Inc.'s National In-

demnity Co. to provide a cut-through endorsement on policies issued starting Jan. 1. National Indemnity holds an A++ Best rating.

The cut-through agreement with National Indemnity is subject to regulatory approval. If it is approved, Kemper has agreed to repurchase for \$125 million Berkshire Hathaway's equity investment in a stock insurance subsidiary that Kemper formed in May to facilitate the investment and raise capital.

In its downgrade, Best cited concerns over the effect of the repurchase on Kemper's capitalization. Best also noted the "potential for further adverse development in loss reserves...across most major lines of business."

Moody's also mentioned Kemper's "strained capital position and limited financial flexibility." Lumbermens, the lead insurer in the group, showed about a \$100 million reduction in statutory surplus during the first nine months of 2002, Moody's said. That would represent about a 6.6% decline from a year-end 2001 surplus of \$1.51 billion. And, Kemper's "substantial reliance on reinsurance" is a strategy that is "typically not viable over the long term," Moody's said.

Standard & Poor's downgrade also referred to weak operating performance and capital adequacy problems but was more upbeat in one respect. "Kemper remains committed to maintaining balance-sheet strength, customer focus and a strong workers compensation

'The cut-through endorsement will make a huge difference. But their biggest problem is going to be getting their good customers to stay.'

Tom Gallagher
Gallagher Risk Management Services

franchise," said Frederic A. Sklow, S&P's credit analyst, in a statement.

Kemper declined to comment on the downgrades or the endorsement beyond a statement by Mr. Mathis that the cut-through would give Kemper "the backing to continue operating our core business while we restructure our operations in preparation for demutualization, a process which we believe will ultimately enable us to access the capital needed to improve our balance

sheet, enhance our ratings and profitably execute our business plan."

Impact on large accounts

During a meeting with a broker-age last week, though, Kemper said it would not offer the cut through endorsement to accounts the insurer considers "risk management business," said a broker who attended the meeting.

Kemper also told brokers it is trying to sell its Kemper Risk Management unit, one broker familiar with the plan said. As a result, "we are not looking at Kemper as an option for large accounts," he said.

The risk management unit includes workers compensation, general liability and commercial auto coverages. Those lines accounted for about \$1.29 billion of the company's 2001 net premiums, a Kemper financial report stated. A Kemper spokeswoman would neither confirm nor deny a possible sale of the unit.

While not all of the insurer's commercial accounts are large entities with professional risk managers, about 400 policyholders will not be offered the endorsement, the broker who attended the meeting said.

The broker said Kemper indicated that its risk management clients generate about \$2.5 billion in losses from around 300,000 claims in a calendar year.

Kemper stated last week that it expects about 90% of accounts to renew, despite the downgrades and the exemption of risk management business from the cut-through endorsement, the broker said.

Other client questions

Brokers are continuing to meet with Kemper to determine how to advise their clients.

"The Kemper news has people worried," said Tom Gallagher, president of Gallagher Risk Management Services, a unit of Arthur J. Gallagher & Co. in Itasca, Ill. "It's not good. The cut-through endorsement will make a huge difference. But their biggest problem is going to be getting their good customers to stay."

Gallagher clients with long-term relationships with Kemper are "getting their hands around the situation" and trying to determine whether to keep coverage with the insurer, Mr. Gallagher said.

A spokesman for Chicago-based Aon Corp. said the brokerage has a good relationship with Kemper, "but, in light of recent events, we have taken steps to reassure" customers" and are "prepared to present alternatives if needed."

"We're in constant dialogue with risk managers," said Marsh's Mr. Brady. "It's obviously a very big subject for any customer of Kemper."

Moving an account on such short notice makes dealing with matters such as collateral, special accounts claims handling and services related to risk management information systems difficult, Mr. Brady said.

Kemper Insurance Co.'s newly formed office of the chairman



Mr. Mathis



Mr. Brand



Ms. Drago



Mr. Hickey



Mr. Lindemann



Mr. Tully

Disability: Coverage tightening

Continued from page 3

one-year contracts, said Joe Addison, managing director at Aon Entertainment Practice Group in Atlanta.

Even if a player gets hurt at the start of the season, his team must wait half a season before collecting. And policies now only pay about 60% of a player's salary, compared with 70% in the past. So, for example, if a player has a one-year contract paying him \$10 million, and the policy pays 60% of salary, the team can collect a maximum of \$3 million.

Teams with players signed to two-year contracts are more likely to buy the coverage, but with rates so high, many teams have decided to self-insure the risk, Mr. Tafaro said.

"We're seeing more people saying on two-year deals 'it's not worth it,'" to buy disability coverage, Mr. Addison said.

While he wouldn't comment on individual players, Mr. Thomas said that, in general, pitchers in their

30s with long-term contracts pose problems for teams obtaining coverage. These players are high-risk because they have played many years at a demanding position and have high-paying, long-term contracts.

One such player is left-handed pitcher Tom Glavine, who will be 37 next season and who recently signed a contract with the New York Mets worth \$35 million over three years. The Mets would not comment on whether the club has bought disability coverage for Mr. Glavine.

Baseball teams often are unable to obtain adequate coverage for marquee players signed to big-money, multiyear contracts, Mr. Thomas said.

A player that falls into this category is first baseman Jim Thome, who signed a lucrative free-agent contract in December, a six-year deal with the Philadelphia Phillies worth \$85 million. Calls to the Phillies were not returned.

The problem does not only in-

volve players who sign this year, Mr. Thomas noted. Many teams are having to renew coverage on large multiyear contracts at much higher rates and with shorter coverage periods, he said.

While the hard insurance marketplace has hurt teams, Mr. Thomas does not believe that coverage availability problems are the primary reason teams are signing players to shorter-term deals.

Other factors have influenced teams more in their contract position, he said, but insurance has worked into teams' thinking. "It's a bit more than a coincidence" that teams are signing players to shorter-term contracts now, Mr. Thomas said.

But one aspect of teams' activities that has changed is that insurers have gotten involved earlier in the process of signing a player. In the past, teams had conditional coverage when a player signed. But now coverage won't start until the insurer has all the underwriting medical information it requires, meaning

that teams don't officially sign players until the insurance is in place, Mr. Thomas said.

In addition, underwriters are gathering greater amounts of infor-

mation about players and their medical histories before writing a policy, Mr. Addison said.

"Underwriting has become so detailed," he said.

Business Insurance

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Elder abuse: Suits aim to circumvent damages caps

Continued from page 1

multimillion-dollar verdicts, said Linda Walker, director of risk finance for Catholic Healthcare West in San Francisco.

A billboard recently placed along a Southern California freeway, though, illustrates how attorneys in other states are attempting to apply similar tactics against hospital systems.

The billboard named specific hospitals and urged anyone with elderly relatives injured in those facilities to contact the law firm advertised on the billboard, Ms. Walker said.

The allegations are expensive to defend against, risk managers say. And even if plaintiffs attorneys do not succeed in their early attempts against hospital corporations, the discovery process provides them with facts about the companies' finance and management practices that can help them pursue future cases.

Lawsuits alleging elder abuse have not surfaced in all states and were rare until recently, said Ms. Berry, who is the immediate past president of the Chicago-based American Society for Healthcare Risk Management. But a few of the lawsuits have surfaced in states such as Wisconsin, where laws limit the non-economic damages plaintiffs

may win in medical malpractice cases, Ms. Berry said.

"That tells you people are thinking more creatively, or thinking outside of the box, to skirt around those caps," she said.

In 1995, Wisconsin limited to \$350,000 the non-economic damage award a plaintiff could win in a malpractice case, except for those cases involving death. The limit is adjusted annually for inflation, with the amount now at more than \$400,000. Wisconsin also limits attorney fees in medical malpractice cases.

Currently, 11 states cap non-economic damage awards in medical malpractice lawsuits, according to information provided by the American Tort Reform Assn. in Washington.

Seven other states cap non-economic awards stemming from all civil actions or personal injury lawsuits, and two states limit the total amount of compensatory damages recoverable from medical liability claims.

The elder abuse allegations come at a time when tort reform advocates and the health care industry are pushing more states and the federal government to adopt similar laws that would limit the attorney fees and non-economic damages

plaintiffs may receive from medical malpractice lawsuits.

California's Medical Injury Compensation Reform Act, implemented in 1975, is widely viewed as

The fact that a few suits have surfaced in states that limit non-economic damages in malpractice cases 'tells you people are thinking more creatively...to skirt around those caps.'

Monica Berry
Rockford Health Systems

model legislation, said Sherman Joyce, the president of ATRA. California's MICRA places a \$250,000 limit on non-economic damage awards. It also caps the amount of contingency fees plaintiffs attorneys may earn.

But the upsurge in claims alleging elder abuse represents attempts to circumvent MICRA, said Michael Evans, senior vp and chief risk officer for Sacramento, Calif.-based Sutter Health. "That is a mechanism by which they hope to avoid any limitations on damages and, particular-

ly, some of the attorney fee provisions," he said.

Mr. Evans said that the elder abuse claims he has seen typically stem from patients that break out with decubitus ulcers, commonly known as bed sores. Bed-ridden patients may routinely suffer from bedsores when they have extensive medical conditions that do not permit them to be moved frequently, Mr. Evans said.

"What we are seeing is all these decubitus claims turning into elder abuse claims," he said. "They are claiming people can't get decubitus unless there is elder abuse, which is absolutely ridiculous."

Plaintiffs also have sued hospitals claiming other types of allegations that effectively circumvent state laws limiting malpractice caps.

About two years ago, for example, a lawsuit against a hospital in the Midwest alleged that its administrators made staffing decisions that adversely affected patient care, Ms. Berry said. That lawsuit received widespread publicity, and since then, plaintiffs have filed many more similar claims, she said.

As another example, plaintiffs attorneys in California have relied on an Unfair Competition Act, which is part of state's Business and Professional Code (BI, Sept. 28, 1988). The

law allows lawyers to sue for "unfair business practices" on behalf of the public interest.

Attorneys have applied the act in a variety of attempts to skirt MICRA, including charging that hospitals engage in unfair business practices when they claim to provide a certain level of care but allegedly fail to do so, Mr. Evans said.

Smart attorneys will always look to skirt medical malpractice damage caps, acknowledged ATRA's Mr. Joyce. But their creative efforts do not erode the need to push more states and the federal government to cap damage awards, he said.

The caps are necessary to open up a constricting medical malpractice insurance market, reduce premiums and encourage medical providers to reintroduce services they have abandoned because they haven't been able to obtain coverage, tort reform advocates argue.

In the meantime, said Ms. Walker of Catholic Healthcare West, hospitals must take certain measures to protect themselves. She stressed that all complaints should be taken seriously, investigated, documented and acted upon.

Furthermore, Ms. Walker said, hospitals should establish skin assessment policies that meet the needs of their elderly patients.

Settlement: Bank settles Enron surety dispute

Continued from page 1

"It was a 100% probable maximum loss," one lawyer familiar with the case said. "There was no ability to mitigate that amount. It was all or nothing."

Given those circumstances, the settlement "appears to be an intelligent compromise all around," said Drew Berry, a partner with McCarter & English L.L.P. in Newark, N.J., who was not involved in the case.

The court battle arose from a series of deals in which a pair of Jersey, Channel Islands, companies affiliated with Chase—Mahonia Ltd. and Mahonia Natural Gas Ltd.—pre-paid Enron for future oil and gas deliveries. The contracts were secured with surety bonds and went into default shortly before Enron filed for bankruptcy in December 2001.

J.P. Morgan Chase sued the insurers for payment soon after Enron's Chapter 11 filing, but insurers countered that the bonds should be voided because the underlying contracts were shams. The Mahonia entities never intended to take delivery of any oil or gas, but instead were the first leg in a series of circular transactions in which Enron would buy back the same commodities at a higher price. The transactions thus amounted to disguised loans from Chase to Enron that could not legally be secured by sureties, the insurers charged.

Evidence produced at trial last month included several 1999 e-mails in which current J.P. Morgan Chase Vice Chairman Donald

Layton—formerly head of international markets for Chase Manhattan—without referring to Enron specifically, describes the bank's involvement in pre-paid energy deals as "disguised loans." In testimony last Monday, Mr. Layton said that he did not recall

'We believe our firm acted appropriately in all transactions.' The risk of an adverse jury verdict compelled the bank to settle.

William B. Harrison Jr.
J.P. Morgan Chase & Co.

whether he had the Enron deals in mind when he wrote the e-mails and that he didn't intend to suggest that such deals were deceptive.

Settlement talks got underway in earnest last Tuesday and continued throughout New Year's Day with three insurance company chief executives and bank officials pushing for a deal, lawyers familiar with the case say.

By Thursday morning, documents for a settlement between the bank and 10 of the insurers had been completed, with only one insurer—Liberty Mutual Insurance Co.—still holding out. Liberty joined the settlement later that morning as U.S. District Judge Jed S. Rakoff was instructing the jury.

Of the \$654 million gross settlement amount, \$110.2 million will

be contributed by Chubb Corp.'s Federal Insurance Co.; \$46.7 million by two units of CNA Financial Corp.; \$92.3 million by Fireman's Fund Insurance Co.; \$24.5 million by Hartford Fire Insurance Co.; \$13.4 million by Liberty Mutual; \$93.7 million by Lumbermens Mutual Casualty Co.; \$33.2 million by SAFECO Insurance Co. of America; \$80.4 million by St. Paul Fire & Marine Insurance Co.; and \$159.6 million by two units of Travelers Property Casualty Corp.

Each of the insurers has the option of assigning its rights of action against the Enron estate under the bonds to J.P. Morgan Chase for 13 cents on the dollar, effectively giving each insurer a 13% credit against its gross settlement payment. If all 11 insurers exercise this option, the cash payments to the bank will total about \$569 million, with rights of action valued at \$85 million going to the bank.

Several of the insurers intend to take this approach.

Chubb, for example, said it will pay \$95.8 million in cash after assigning its claims against Enron. Because Chubb set up a reserve in 2001 for its full exposure on Chase's claims, though, the settlement will result in an \$88 million pretax credit to Chubb's fourth quarter 2002 earnings, the insurer said.

Others reporting that they will take the credit for an assignment of rights include Travelers, which announced that it will pay about \$139 million in cash; CNA, which



PHOTO: REUTERS

At the heart of J.P. Morgan Chase's settlement with its insurers was a series of oil and gas contracts between Enron Corp. and Chase Manhattan Corp. affiliates secured by surety bonds.

said it will pay \$40.7 million; Hartford, which said it will pay \$21 million; and Liberty Mutual, which said it will pay "less than \$12 million."

J.P. Morgan Chase, meanwhile, announced that it will take a pretax charge of about \$400 million in the fourth quarter of this year in connection with the settlement and another pending court case involving a separate Enron contract backed by a letter of credit.

"We believe our firm acted appropriately in all transactions involving the insurance companies," J.P. Morgan Chase Chairman and Chief Executive Officer William B. Harrison Jr. said in announcing the settlement and related charge. The risk of an adverse jury verdict compelled the bank to settle, Mr. Harrison said.

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For the Record

This roundup of news from the previous week is generated by *BI's* Daily News reporting. To get breaking news as it occurs, log on to www.businessinsurance.com, or sign up online for free *BI* Daily News by e-mail.

GE workers plan strike over benefit cost-shifting

General Electric Co. union workers are threatening to strike over the company's plans to raise health care co-payments. The International Union of Electrical-Communications Workers of America will conduct the strike against the diversified manufacturer if "GE persists in provoking a strike by arbitrarily implementing the co-pay increases," the union said in a statement. "At the same time (GE) is taking money out of the pockets of workers and retirees, the company is lavishing perks on current and retired executives, most excessively to former CEO Jack Welch."

OSHA ordered to act on carcinogen standard

A three-judge panel of the 3rd U.S. Circuit Court of Appeals ordered

OSHA and the two groups that sued the agency over its failure to issue a standard for the carcinogen hexavalent chromium to enter mediation to agree on a schedule for the rulemaking. If OSHA, the Public Citizen Health Research Group and the Paper, Allied-Industrial, Chemical and Energy Workers International Union can't agree on a schedule, the court will set its own. OSHA began working on the standard for hexavalent chromium—which is used in metal alloy manufacture—in 1993.

PXRE enters quota-share deal with Bermuda startup

PXRE Group Ltd. has entered into a \$194 million quota-share catastrophe reinsurance transaction with a Bermuda special-purpose reinsurer capitalized by private institutional investors. The agreement with P-1 Re Ltd. provides PXRE with protection against property catastrophe, marine, aviation, satellite and per-risk losses for at least two years. Salomon Smith Barney served as placement agent in connection with the private placement of the investor

equity in Hamilton, Bermuda-based P-1 Re.



PHOTO: PHOTOGRAPHER SHOWCASE

Outgoing Pennsylvania Gov. Mark Schweiker announced Dec. 30 that two new med mal insurers would begin operating in the state.

Pennsylvania licenses two med mal insurers

Pennsylvania's insurance regulator has licensed two more medical malpractice insurers to offer coverage in the state. The insurers, Pennsylvania Health Providers Reciprocal Exchange and the United Central PA Reciprocal Risk Retention Group, will add capacity in a state where malpractice rates have soared. In another move, then-Pennsylvania Gov. Mark Schweiker on Dec. 30 directed the insurance commissioner to request that private medical malpractice insurers postpone the collection of the Medical Care Availability and Reduction of Error fund assessment payments from health care providers until April 30.

Bankers' group forms risk advisory committee

The American Bankers Assn. has created an operating risk committee as a way to help banks reduce losses and comply with new capital regulations. The newly formed committee will look at all types of operational risks, which the Basel

Committee on Banking Supervision has defined as "direct or indirect loss resulting from inadequate or failed internal processes, people and systems, or from external events." Operational risks include robbery, workplace safety, internal fraud and computer security, according to the Washington-based ABA.

Online Poll [12/30 - 1/3]

Should buyers have to pay more now to make up for insurer underpricing of the past?

Yes

53.9%

No

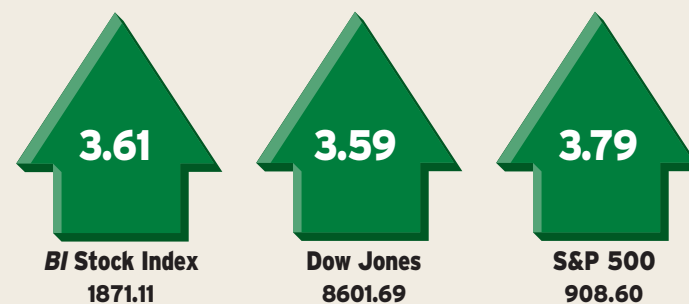
46.1%

Take part in our weekly poll at www.businessinsurance.com.

BI Stock Index [12/30 - 1/3]

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



Largest gains

Unico American Corp.
AXA-UAP Group
PXRE Corp.
Gainsco Inc.
Hub International

18.15%
11.98%
11.59%
11.11%
10.94%

Largest losses

Wellchoice Inc.
SCOR
Baldwin & Lyons Inc.
ACE Ltd.
United Fire & Casualty

-14.16%
-10.39%
-7.08%
-5.26%
-3.12%

Weekly change by market segment

Brokers	3.09%
Insurers/Reinsurers	3.09%
Managed Care Organizations	1.98%

Source: CNET Investor (investor.cnet.com)

Cleanups: A policyholder win

Continued from page 3

Goodwin said. And umbrella policies typically drop down to fill gaps in underlying coverage and provide coverage just above a policyholder's retention.

Policyholders should not have to argue over whether administrative orders are covered, said Ellen Vinck, vp of risk management in San Diego for United States Marine Repair and a board member of the New York-based Risk & Insurance Management Society Inc.

The appeals court decision is welcome news because excess policies

typically provide greater coverage limits than do primary CGL policies, Ms. Vinck said. "That is where the money is," she said.

The appeals court finding overturns a Los Angeles trial court's summary judgment in favor of the insurer. The trial court was constrained by the Supreme Court's ruling in the 2001 *Powerine* case and agreed with the insurer that it did not have to indemnify the insured, court records indicate.

But the trial court ignored critical differences in the language contained in umbrella policies and the

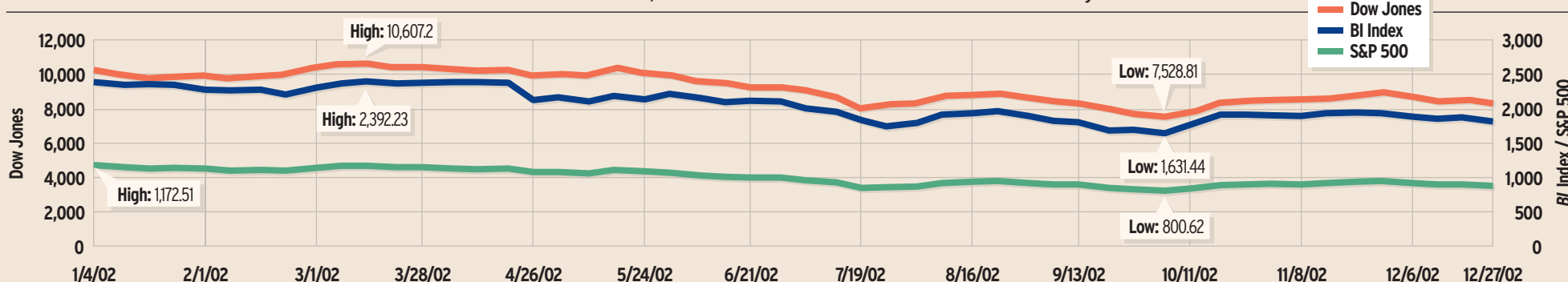
CGL policies at issue in the first *Powerine* case, the appeals court found.

The appeals court ordered the trial court to vacate its summary judgment favoring the insurer. The case now returns to the trial court to determine whether Central National owes *Powerine* coverage in this instance.

Powerine Oil Co. Inc. vs. the Superior Court of Los Angeles County; Superior Court of Los Angeles County; No. B156216.

2002 stocks in review

Business Insurance Index, Standard & Poor's 500 Index and Dow Jones Industrial Average



Source: CNET Investor (investor.cnet.com)

GRAPHIC BY ADAM DOI

Corporate scandals, the continued threat of terrorism and the possibility of war with Iraq combined to push the stock markets down in 2002. The Dow Jones Industrial Average, the Standard & Poor's 500 Index and the *Business Insurance* Index all dropped by 19.0% or more during the year. The S&P 500 fared worst, losing 25.3% of its value. The *BI* Index was down 24.0%, and the Dow dropped by 19.1%. All three indexes hit their weekly low point on Oct. 4, with the *BI* Index closing that week at 1,631.44, down 31.3% from Jan. 4; the Dow closed at 7,528.81, down 26.7%; and the S&P closed 800.62, down 31.7%. Since that time, each index has risen around 10%. The *BI* Index started the year at 2,375.86 and hit its highest point of the year the week of March 15, when it closed at 2,392.23. The Dow opened the year at 10,259.70, and it, too, hit its high point the week of March 15, closing at 10,607.20. The S&P opened the year at its high point of 1,172.51.