Inside: *Connecticut takes aim at contingent compensation*

Market hardens for contractors' coverage in Iraq

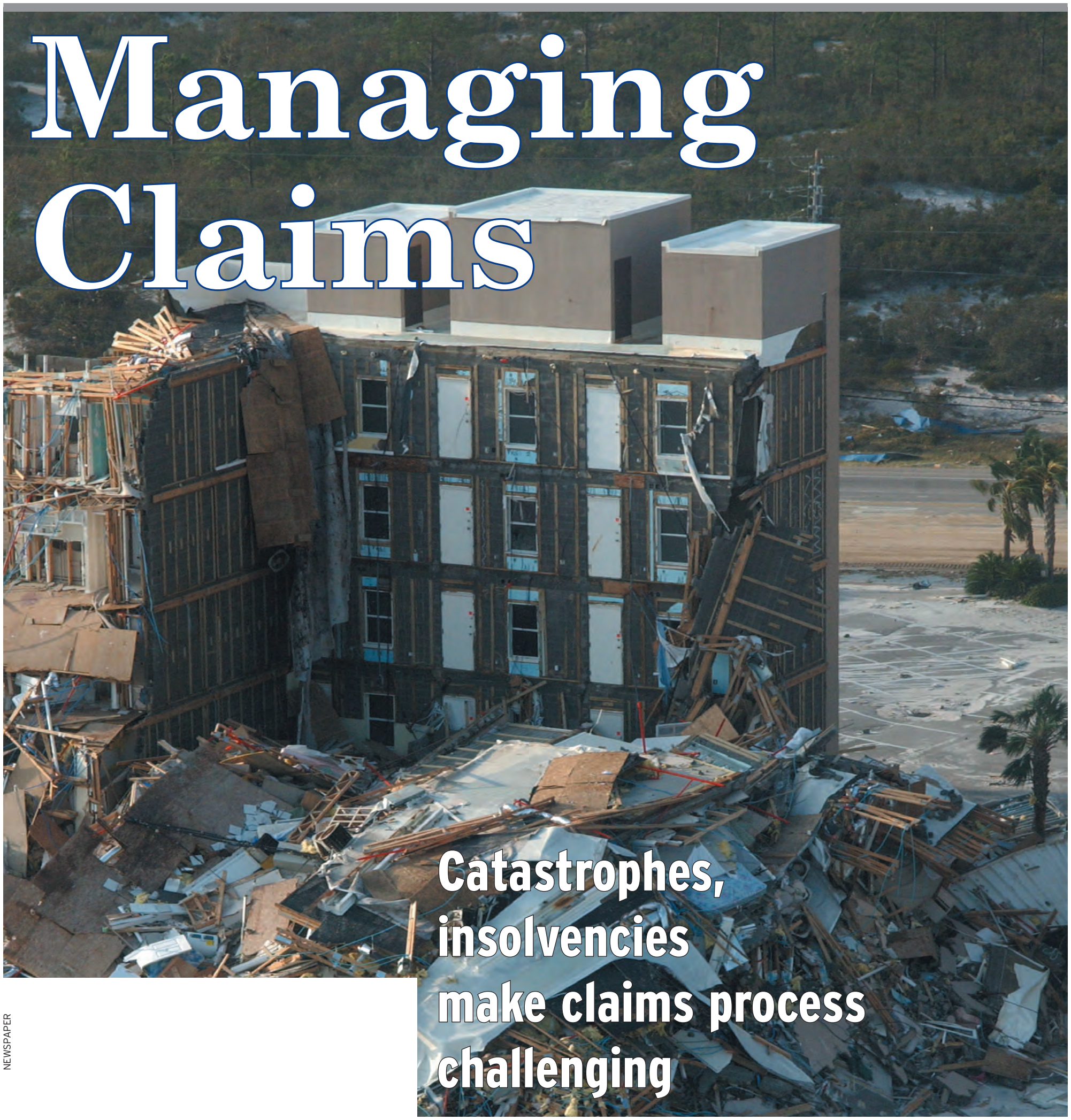
Business Insurance®

www.businessinsurance.com

January 31, 2005

$5

Managing Claims



Catastrophes, insolvencies make claims process challenging

NEWSPAPER

Tort reform efforts begin anew in Congress / 3

Metrolink covered for deadly train crash / 3

Business Insurance®

www.businessinsurance.com

January 31, 2005

$5

Blumenthal lawsuit won't roil industry

Marsh, ACE charges seen as limited, but more suits promised

By SALLY ROBERTS

HARTFORD, Conn.—Connecticut Attorney General Richard Blumenthal's allegations that a unit of ACE Ltd. made a secret payment to Marsh & McLennan Cos. Inc. are not expected to rattle the companies or the larger industry in the same way that New York Attorney General Eliot Spitzer's lawsuit against the broker did four months ago.

But Mr. Blumenthal could cause more serious concerns for the companies he is targeting if the follow-up allegations he has hinted at materialize, some say. If a pattern of illegal behavior is established, rather than an isolated incident, then Marsh, ACE and any other parties named could face intensified pressure.

Regardless of the follow-up, though, observers view Mr. Blumenthal's suit as simply fallout from the bombshell that Mr. Spitzer dropped on the industry last fall when he charged Marsh with bid rigging and steering clients to insurers paying the highest contingent commissions (*BI,* Oct. 18, 2004).

In a suit filed Jan. 21 in Superior Court in Hartford, Conn., Mr. Blumenthal accuses MMC, its Marsh USA Risk Services Inc. unit and ACE Financial Solutions Inc. of violating Connecticut's unfair trade practices act by engaging in a scheme whereby ACE paid Marsh a secret $50,000 commission to steer an $80 million state workers compensation contract to the insurer (*BI*, Jan 24).

Mr. Blumenthal said in his statement announcing the lawsuit that his office is investigat-

See BLUMENTHAL/page 32

Employers lend clout to uninsured

Low-cost, group-rated health care coverage at center of program

By JOANNE WOJCIK

WASHINGTON—A coalition of large U.S. employers is seeking to reduce the ranks of the uninsured through a program that will provide access to low-cost, group-rated health care coverage.

The program is the brainchild of the Affordable Health Care Solutions Coalition, which was formed last May by the Washington-based HR Policy Assn., a group of chief human resource executives from 240 Fortune 300 companies (*BI*, May 17, 2004).

"Fundamentally, they believe in our employment-based system of health care. But if we continue down the path we're on, within about five years, we won't have an employment-based system of health care. It will be a government mandate because of the cost," said Jeff McGuiness, president of the HR Policy Assn.

In addition, employers have a vested interest in reducing the number of uninsured individuals, because doing so will reduce the amount of uncompensated care costs that trickle down to commercial buyers.

Greg A. Lee, senior vp of human resources for Hoffman Estates, Ill.-based Sears Roebuck & Co. and chairman of the Affordable Health Care Solutions Coalition, will provide details of the new National Health Access program today during the World Health Care Congress in Washington.

See COALITION/page 32

PHOTO: EPA PHOTOS

Iraqi soldiers patrol near a polling station in Mosul, Iraq, as security operations are heightened before Sunday's elections.

As violence escalates, rates continue rising

Market for accident coverage remains difficult in Iraq

By PETA MILLER

BAGHDAD, Iraq—As the turmoil in Iraq continues, personal accident coverage for foreign workers in the country has become more expensive and limited, insurance experts say.

In light of increasing violence and a challenging market, in the six months that led up to Sunday's elections, the number of companies buying the coverage has slowed as they waited to see whether the elections would stabilize the country, market sources say.

Iraqi nationals were scheduled to go to the polls Jan. 30 to elect 275 members of the Transitional National Assembly. Once approved, the TNA and its nominated ministers will draft a constitution for Iraq to put to a national referen-

See IRAQ/page 30

Late News

Gallagher probe finds no improper activities

Arthur J. Gallagher & Co. said its recently completed internal investigation found no evidence of price fixing, bid rigging or improper tying arrangements. The brokerage noted, though, that it remains the subject of probes and regulatory proceedings by authorities in 15 states that are investigating certain of its business practices, including the receipt by Gallagher of contingent commissions, which it no longer accepts. In addition, the brokerage faces eight lawsuits from private litigants relating to these practices. Meanwhile, Gallagher said its gross revenues increased 17.1% to $1.48 billion in 2004, while net income rose 28.9% to $188.5 million.

GE insurance unit adds $734 million to reserves

GE Insurance Solutions, the insurance business of General Electric Co., increased its loss reserves for the fourth quarter of 2004 by $734 million. Overall in 2004, the Kansas City, Mo.-based unit increased its reserves for business written in prior years to $1.15 billion. The reserve increases relate to asbestos and environmental liability, workers compensation, directors and officers liability and auto liability, among other things, a spokesman for GE Insurance Solutions said. Profits for the unit fell to $36 million for 2004 from $482 million, in part due to the reserve increases, the spokesman said.

Applied Micro D&O cover to help fund settlement

Directors and officers liability insurance would cover a little more than half of the $60 million settlement reached in the securities class action lawsuit against Applied Micro Circuits Corp. and various current and former officials, the company says.

See LATE NEWS/page 31

Spotlight

CLAIMS MANAGEMENT

Catastrophes, insolvencies make claims process challenging

Begins on page 9

LEADING THIRD-PARTY ADMINISTRATORS

Ranking on page 12

Stock firm not liable for losses from analyst advice

By JUDY GREENWALD

NEW YORK—Investors who blame stock analysts' reports for their losses must first establish a direct connection between the two to successfully file suit, a federal appellate court has ruled.

In a case focusing on the issue of analysts' reports, a three-judge panel of the 2nd U.S. Circuit Court of Appeals in New York held in *Lentell vs. Merrill Lynch* that plaintiffs "fail to plead that the alleged misrepresentations and omissions caused the claimed losses."

The Jan. 20 decision should have a "very significant effect on the ability to bring lawsuits against securities firms," said David C. Frederick, an attorney with Kellogg, Huber, Hansen, Todd & Evans P.L.L.C., in Washington who filed an amicus brief in the case on behalf of the U.S. Chamber of Commerce and Business Roundtable.

Observers say the decision may also anticipate and even influence the forthcoming U.S. Supreme Court decision in a comparable case, *Dura Pharmaceuticals Inc. vs. Broudo*, which focuses on false statements allegedly made by company officials. The court heard oral arguments in that case earlier this month.

The case involving New York-based Merrill Lynch & Co. Inc. concerns reports issued by former Merrill Lynch analyst Henry M. Blodget and others on two Internet-based companies, 24/7 Real Media Inc. and Interliant Inc.

The plaintiffs charge the analysts issued false and misleading statements recommending the stocks to cultivate the firm's investment banking clients, even though they did not then believe the stocks were a good investment. After an investigation led by New York Attorney General Eliot Spitzer, the issue of biased investment reports resulted in a $100 million settlement by Merrill Lynch in 2002.

The decision, which affirms a lower court ruling, focuses on the issue of "loss causation," or the link between the alleged misconduct and the economic harm suffered. The plaintiffs must allege that they would have "been spared all or an ascertainable portion" of their loss if the fraud had not occurred, the court found.

But the plaintiffs in this case, says the decision, "allege no loss resulting from the market's realization

See ANALYSTS/page 29

House to again consider bill to curb frivolous lawsuits

TORT REFORM ON THE HILL

A look at separate reform bills before Congress

Bill: Lawsuit Abuse Reduction Act

Targets: Frivolous suits, forum shopping

Key provisions:
- Sanctions lawyers who bring frivolous lawsuits.
- Curbs forum shopping by requiring that plaintiffs sue where they live or were injured, or where the defendant is based.

Bill: Class Action Fairness Act

Targets: Forum shopping, inequitable settlements

Key provisions:
- Allows the removal to federal from state court of certain multi-state litigation.
- Elevated scrutiny of noncash settlements.
- Bans settlements where legal fees exceed the award.

By MARK A. HOFMANN

WASHINGTON—Another front in the battle over federal tort reform has opened on Capitol Hill, as the House will begin considering legislation that would impose mandatory sanctions on attorneys who file frivolous lawsuits.

The Lawsuit Abuse Reduction Act, H.R. 420—which Rep. Lamar Smith, R-Texas, introduced Jan. 26—also would require that plaintiffs in civil tort actions could sue only in the jurisdiction in which they live or suffer their injury, or where the defendant maintains its principal place of business. Tort reform advocates claim that such a requirement is needed to reduce so-called "forum shopping." That occurs when plaintiffs in interstate class actions seek out the most plaintiff-friendly state jurisdictions in which to file their actions.

Meanwhile, the Senate Judiciary Committee is scheduled to mark up the bipartisan Class Action Fairness Act, S.5, on Feb. 3.

The House passed an earlier version of LARA last September (*BI*, Sept. 20, 2004). The Senate, however,

See LARA/page 30

PHOTO: EPA

A Metrolink commuter train collided with a Union Pacific freight train and another commuter train last week in Glendale, Calif.

Metrolink covered for Glendale crash

Company to retain first $4 million

GLENDALE, Calif.—Metrolink, which operates the commuter trains involved in a deadly collision last week in Southern California, is insured for losses stemming from the accident.

A man was arrested Wednesday after leaving his vehicle parked on the tracks in Glendale, Calif., where a Metrolink passenger train hit it, sideswiped another commuter train and derailed. At least 11 people died and more than a hundred were injured in the collision, which occurred at around 6 a.m.

Police said the man apparently parked in the train's path intending to commit suicide, then changed his mind and stood by and watched as the train slammed into his car and left the tracks.

Metrolink has $185 million in liability insurance above a $4 million self-insured retention, according to Steve Wylie, assistant executive officer for the Southern California Regional Rail Authority, which operates the commuter railroad. Much of the coverage above the retention is written by syndicates at Lloyd's of London and other European insurers, he said.

On the property side, Metrolink carries a $500,000 per-occurrence deductible. The coverage is written to limits of $100 million, the first layer by Lexington Insurance Co., a Boston-based subsidiary of American International Group Inc., according to Mr. Wylie.

The crash follows a Jan. 6 train wreck in Graniteville, S.C., that left nine dead and more than 200 injured when a Norfolk Southern Railway Co. train carrying chlorine slammed into a parked locomotive. Lexington also participated on that train's coverage program.

—By Michael Bradford

Inside Business Insurance

Government issues Medicare guidance
Regulations help employers determine whether they are eligible for a subsidy for providing prescription drug coverage. Page 4

Canadian comp rates stabilize
Improved workplace safety and return-to-work programs bring flat and reduced premiums. Page 4

Investigate the pretenders!
In his annual column, Punxsutawney Phil calls for a Spitzer investigation into other weather-prognosticating animals. Page 6

Fight against mail order drugs will backfire
Employers are not in the business of helping to support retail pharmacies, this week's editorial says. Page 8

Rules expected to reduce U.K. stress claims
But employers will be required to implement more stress management procedures. Page 8

Cover photo: A hotel damaged by Hurricane Ivan. Photo: Stacey Pardin/U.S. Coast Guard/Getty Images

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info about your own event.
- Searchable **directories** provide access to all the listings of industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Do you think it is good policy for employers to require employees to use mail order pharmacies to fill prescriptions for maintenance drugs?

Departments

Advertiser Index 30
Business Resources 24
Commentary 24
International 25
Letters 8
Opinions 8
Products & Services 22
Professional MarketPlace 26
Ticker 31
Paul Winston 6
World Updates 25

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 39, No. 05, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. $5 a copy and $97 a year in the U.S. $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A.

Most employers likely to pass two-pronged test to qualify for tax-free government contribution, experts say

Medicare Part D regs for subsidy eligibility released

By JERRY GEISEL

WASHINGTON—Final federal regulations provide additional guidance to help employers that provide prescription drug coverage to Medicare-eligible retirees to determine whether they are entitled to collect a rich government subsidy.

The regulations, proposed earlier this month by the U.S. Centers for Medicare & Medicaid Services, involve the 2003 federal law that, starting in 2006, will expand the Medicare program to cover a portion of beneficiaries' prescription drug expenses.

Under the Medicare Prescription Drug, Improvement & Modernization Act of 2003, employers that retain prescription drug coverage for retirees will receive a tax-free contribution from the government equal to 28% of the employers' annual drug costs that are between $250 and $5,000 per beneficiary. Employers would have the option of receiving this subsidy monthly, quarterly or annually.

To qualify for the subsidy, an employer's prescription drug benefit must be at least actuarially equivalent to the benefit that retirees would receive from Medicare Part D, that part of Medicare through which prescription drug benefits will be offered. An actuary retained by the employer would have to certify that the plan is equal to or better than Medicare Part D.

While more regulatory guidance is yet to come, the final regulations do outline how this actuarial equivalence test would be run.

Two-pronged test

In order to be considered at least actuarially equivalent to Medicare Part D, employers' retiree prescription drug plans would have to pass each prong of a so-called two-pronged test.

Under the first prong, an employer would compare—based on its claims data—the expected prescription drug costs per retiree under its plan with the expected prescription drug costs if the retirees were receiving coverage through Part D. If the average expected costs of the employer's plan exceeded those of Part D, the employer plan would be considered more valuable than Part D and it would pass the first prong.

Under the second prong, retiree premium contributions would have to be subtracted from the value of the plan, as calculated under the first prong of the test. Similarly, retiree premiums for Part D, now estimated to be about $35 a month when the program starts in 2006, would be subtracted from the value of Part D.

If, after these calculations, the net cost of the employer plan was at least equal to Part D, then it would pass the second prong of the two-prong test and would be eligible to receive the Medicare subsidy.

Experts say most employer retiree prescription drug plans are more generous than Medicare Part D, en-

See SUBSIDY/page 29

CANADIAN COMP COST COMPARISON

2005 employer premiums in Canadian dollars, as set by provincial workers compensation boards

Province	2005 rates*	2004 rates*
Alberta	$1.83	$1.98
British Columbia	$1.98	$2.06
Manitoba	$1.70	$1.70
New Brunswick	$2.19	$2.20
Newfoundland and Labrador	$3.19	$3.24
Northwest Territories/Nunavut	$2.07	$2.24
Nova Scotia	$2.65	$2.57
Ontario	$2.19	$2.19
Prince Edward Island	$2.33	$2.39
Quebec	$2.27	$2.15
Saskatchewan	$1.97	$2.05
Yukon Territory	$1.74	$1.51

* Per $100 Canadian of insurable earnings
Source: Provincial workers compensation boards

Widespread rate reductions reported

Canadian provinces see success controlling workers comp costs

By GLORIA GONZALEZ

The efforts of Canadian employers to control workers compensation costs are apparently paying off, with most provinces reporting that employer premiums for workers comp coverage have stabilized or decreased for 2005.

Observers credit improved workplace safety and return-to-work procedures, as well as financial incentives to prevent workplace accidents, for the flat or reduced premiums that have come after years of significant premium increases.

For example, employers in Alberta in 2005 will see a 7.6% decrease in average premiums from 2004 rates, down 15 cents to $1.83 Canadian ($1.51) per $100 Canadian ($82.59), reversing a six-year trend of soaring premiums, according to the Workers Compensation Board of Alberta.

Meanwhile, employers in British Columbia will experience a 4.1% decrease, as average premiums drop eight cents to $1.98 Canadian ($1.64) in 2005, according to the Workers Compensation Board of British Columbia.

Canadian workers comp coverage is provided largely by provincial workers comp boards and financed by employer-paid premiums. Employers have no control over the rates set by the boards; rates for each company in a given sector reflect the loss experience of that sector, though those companies that have low incident levels within a sector are eligible for individual rebates.

Employer premiums have been rising in recent years,

See CANADA/page 28

GM sues RSA for asbestos cover

Insurer left U.S. units with inadequate funds, carmaker says

DETROIT—General Motors Corp. is suing Royal & SunAlliance Insurance Group P.L.C., charging the London-based insurer with dodging millions of dollars in asbestos-related claims brought against the carmaker.

In its suit, filed Jan. 26 in a Michigan state circuit court, Detroit-based GM seeks payment for claims it says are covered under policies written in the United States by Royal & SunAlliance U.S.A. Inc., Royal Indemnity Co. and Royal Insurance Co. of America covering the period between 1955 and 1971.

GM charges that RSA itself should pay the claims because it left the American entities with insufficient funds to meet obligations to policyholders for asbestos-related exposures and other long-tail liabilities when RSA withdrew from the U.S. commercial insurance market in 2003.

RSA that year sold the renewal rights of large parts of its U.S. commercial business to Travelers Property Casualty Corp. unit Travelers Indemnity Co., which assumed no RSA liabilities (*BI*, Sept. 8, 2003). It also boosted its reserves in 2003, in part for U.S. asbestos exposures.

GM in recent years has been named as a defendant in asbestos suits around the country.

"As a result of Royal & SunAlliance's actions, General Motors has lost, or will lose, the very insurance protection for long-tail liabilities such as asbestos-related and environment-related liabilities for which it paid the Royal defendants millions of dollars in premiums over a 70-year insurance relationship," the lawsuit states.

GM has not specified the amount it seeks to recover, but it contends that its general liability policies written by RSA units entitle it to "hundreds of millions of dollars of unaggregated insurance coverage for bodily injury and property damage."

A spokeswoman for Charlotte, N.C.-based Royal & SunAlliance USA said she had not yet seen the lawsuit but noted that sister unit Royal Indemnity Co. had previously conducted an investigation into the policies in question and "concluded that GM has failed to demonstrate that it's entitled to coverage."

As part of that investigation, Royal Indemnity had requested policyholder documents and claims-related information from GM, and the company failed to provide any such documentation, she said.

RSA USA on Jan. 26 filed a declaratory judgment action in the Superior Court of Delaware, where the carmaker is incorporated, to refute its duty to pay or indemnify GM.

—By Rupal Parekh

Increased market competition tempers surplus cover demand

By ROBERTO CENICEROS

The surplus lines insurance industry saw a significant downturn in premium growth during 2004, according to stamping offices in several states.

The San Francisco-based Surplus Lines Assn. of California, for example, announced earlier this month that "there is clearly a slowing in the demand for increased surplus lines coverage in California," with 2004 premiums showing "a mere 8.24% increase" over 2003. In contrast, surplus lines premiums in California jumped 43.1% in 2003 over 2002.

Premiums written in New York grew 29.5% in 2004 compared with 2003, according to the Excess Line Assn. of New York. That is in contrast to a 60.8% jump in 2003 compared with 2002.

The slowing growth rate stems from lower prices driven by increased competition, with some standard and surplus lines insurers now relaxing their underwriting standards to gain market share, said Marshall Kath, chief executive officer for Colemont Insurance Brokers.

Mr. Kath also is a member of the board of directors for the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd. Colemont is a Dallas-based wholesale specialty company that recently changed its name from Heath Insurance Brokers.

"The term 'underwriting discipline' seems to have left our landscape and (has been) replaced with the term 'market share,'" Mr. Kath said.

Comparing 2004 with 2003, the rate of premium volume growth dropped in most of the 15 states with stamping offices, according to the Austin-based Surplus Lines Stamping Office of Texas, which annually compiles premium data from all 15 offices.

Stamping offices help assist their states in the oversight of surplus lines markets. The offices review approximately 80% of all E&S insurance placements nationwide, according to NAPSLO.

Total premium volume in the 15 states increased 36.8% when comparing 2003 with 2002, according to Texas' office. Colorado, Mississippi and Montana have yet to report premiums handled by their stamping offices for 2004, though, so a total for the year is not yet available, noted Philip Ballinger Jr., general manager for the Texas office.

For the 12 states that have reported premium totals for 2004, only Nevada's surplus lines premium growth outstripped gains in 2003,

See SURPLUS/page 29

Los Angeles archdiocese, AIG in dispute over abuse claims

LOS ANGELES—An American International Group Inc. lawsuit claiming the Archdiocese of Los Angeles is withholding information regarding sexual abuse by priests is merely a delaying tactic in settling claims, an attorney for the archdiocese said.

The archdiocese wants to reach fair settlements quickly with 544 claimants alleging abuse, said Donald Woods Jr., a partner at Hennigan Bennett & Dorman L.L.P. in Los Angeles.

But the archdiocese's insurer wants "to engage in a long period of discovery from the plaintiffs," said Mr. Woods, who represents the Archdiocese of Los Angeles. "They see that to their advantage, delaying and putting this out as far as possible."

AIG declined to comment. However, The Insurance Co. of the State of Pennsylvania, Granite State Insurance Co. and American Home Assurance Co.—all units of New York-based AIG—filed a U.S. District Court lawsuit in Los Angeles on Jan. 24, Mr. Woods said.

—By Roberto Ceniceros

Benefit executives are invited to take part in health cost study

Business Insurance and Concentra Preferred Systems are co-sponsoring a national health care cost containment study and are inviting employee benefit managers and benefit executives to take part.

All respondents completing the online survey will receive a benchmark comparison of their results to their industry segment and the nation at large. Each respondent also will receive a final copy of the report, "The Health Care Cost Containment Index: Measuring the Savings Opportunities for America's Employers."

The deadline for completing the survey is Thursday, Feb. 10. *Business Insurance* will report on the results of the study in an upcoming issue.

To participate in the survey, please visit *www.concentra-mail.com/bistudy*.

Paul Winston

Pretenders must be investigated

Groundhog Day is almost here. Time again for me to be coaxed from my cozy stump and asked to whisper the secret forecast for spring into the ears of the town fathers of Punxsutawney, Pa.

If it's sunny and I see my shadow, the story goes, it's a signal for six more weeks of wintry weather and road salt for you. If, on the other hand, it's cloudy, then the remainder of the season will be mild.

It's an important job, and my track record is as good as any human meteorologist; which is to say, I'm right about 40% of the time.

You might think that making such a momentous forecast would be easy—that anyone, even you, could do it—but you would be wrong. Do you have the mystical abilities of a weather woodchuck? Could you, by staring at your shadow, divine a long-range forecast for the next six days? Would people throw a party in your honor and feed you ice cream to remain in your good graces? I thought not.


Punxsutawney Phil

But there are others who do not have your wisdom. These days it seems that almost everyone is pitching a version of a cuddly rodent to forecast the weather. Ohio has Buckeye Chuck. Georgia has General Beauregard Lee. Ontario has Wiarton Willie. And nearly a dozen others, mostly in zoos, claim the same abilities. I've suffered those charlatans in silence for years. At least, I reasoned, they were brethren of the same noble species.

Now, however, some folks looking to encroach on my turf are taking things a bit too far. The town of Lexington, N.C., I recently read in a scrap of newspaper lining my stump, is planning something called "Groundhawg's Day," as if we'd be fooled by the subtle change in spelling. Lexingtonians plan to drag a 65-pound potbellied pig named "Lil Bit" into the morning to perform the ritual. In a sickening twist of irony, these folks are using the porcine prognostication to draw attention to their celebrated tradition of barbecued pork! Does Lil Bit understand that she could become the guest of honor in more ways than one? The horror. The horror.

And in a similar gastro-meteorological tie-in, Shreveport, La., relies on a lowly crustacean, a mudbug named "Claude the Crawfish," to forecast the weather. I hope I don't need to remind you that crawfish are a staple of the Cajun diet.

What's next, I ask you? Will such blatant and poorly executed copyright infringement be allowed to stand?

Will the townsfolk of Dungeness, Wash., let a few celebrity crabs loose to scuttle in the streets and wave their eyestalks around, before tossing them into a pot? Will Forth Worth let a Texas longhorn sniff the air in advance of a giant chili cook-off?

Feb 2 is *my* day to shine, so to speak. Not a potbellied pig, nor a crawdad, crab or a steer. It's called Groundhog Day for a reason, you know. They didn't make a movie about those other guys.

For this reason, I have sought help from the highest legal authorities in the land. Yes, I have alerted the offices of New York Attorney General Eliot Spitzer, seeking to enlist his aid to stamp out this criminal trampling of my rights. I made clear to him that New York's own Dunkirk Dave notwithstanding; many citizens of the Empire State rely on my weather services, which should give him all the jurisdiction he needs to tackle this international problem.

I also suggested that if he digs deep enough, he might find evidence of fraud in the activities of some of these other weather animals. They have a fiduciary duty to predict the weather, but in fact are merely posturing to advertise on behalf of shady barbecue conglomerates, or Shreveport tourism officials.

If my plea is successful and Mr. Spitzer heeds my call to action, perhaps my groundhog ways will serve another purpose: If Mr. Spitzer on Feb. 2 comes to the aid of Punxsutawney Phil, it could signal a shifting of his investigative priorities and an early end to the turmoil caused by his probe of the insurance industry. On the other hand, if he stays in his figurative stump, then I can only predict six or more weeks of troubled times ahead.

Punxsutawney Phil hijacks this space once a year to comment on issues important to him. You can reach him at pwinston@businessinsurance.com, in care of Editorial Director Paul Winston, whose commentary will return in a fortnight.

Business Insurance

Vice President/Publisher: Martin J. Ross III (New York)
Editorial Director: Paul D. Winston (*Chicago*)
Editor: Regis J. Coccia (*Chicago*)
Editor-at-Large: Jerry Geisel (*Washington*)
Managing Editor: Gavin Souter (*Chicago*)
Assistant Managing Editor - Graphics: Kathy L. Barnes (*Chicago*)
News Editor: Matt Scroggins (*Chicago*)
Senior Editors: Michael Bradford (*New Orleans*); Meg Fletcher, A.R.M. (*Chicago*); Judy Greenwald (*San Jose*); Mark A. Hofmann (*Washington*); Dave Lenckus (*Tucson*); Douglas McLeod (*New York*); Sally Roberts (*Denver*); Joanne Wojcik (*Denver*); Rodd Zolkos–*Industry Focus* (*Chicago*)
Bureau Chiefs: Roberto Ceniceros (*Los Angeles*); Sarah Veysey (*London*)
Associate Editors: Gloria Gonzalez (*New York*); Peta Miller *(London)*
Staff Reporter: Rupal Parekh (*New York*)
Correspondents: Carolyn Aldred (England); Elizabeth Fry (Australia)
Copy Editor/Graphics: William Murphy (*Chicago*)
Copy Editors: Mary B. Nick (*Chicago*); Joe Walker (*Chicago*)
Directory Editor: Kevin P. Edison (*Chicago*)
Assistant Directory Editor: Carrie A. Peinado (*Chicago*)
Online Editor: Kathy Downing (*Chicago*)
Online Producer: Amy R. Kepka (*Overland Park*)
Executive Assistant/Reprint Manager: Karen Brown Tucker (*Chicago*)
Editorial Cartoonist: Roger Schillerstrom (*Chicago*)

Advertising Director: Kenneth F. Luker Jr. (*New York*)
Director - Business Development : Robert L. Niesse (*Chicago*)
Interactive Sales Manager: Chris Crain (*New York*)
District Managers: Laura Booth (*Irvine*); Ron Kolgraf (*Boston*); William J. McGuire (Chicago); Robert B. Murray (*New York*); John L. Phillips (*Chicago*)
Classified Advertising Manager: Tina Vasilakis (*Chicago*)
Assistant to the Publisher: Pat Ghazvini (*New York*)
Advertising Traffic: Monique Murray (*New York*)
Production Manager: J. Thomas Janka (*Chicago*)

Circulation Manager: Rudolf Von Bartesch (*New York*)
Circulation Coordinator: Craig Bowman (*Detroit*)

Director of Communications: Ronnie I. Drachman (*New York*)
Promotion Manager: Michael Ambrosio (*New York*)
Promotion Coordinator: Barbara O'Brien (*New York*)

EDITORIAL: Chicago: 312-649-5200; Denver: 303-282-4260; London: 44-207-457-1400; Los Angeles: 323-370-2455; New Orleans: 985-871-1090; New York: 212-210-0100; San Jose: 408-774-1500; Tucson: 520-579-1937; Washington: 202-662-7200
ADVERTISING: Boston: 617-292-4856; Chicago: 312-649-5276; Irvine CA: 949-255-5355; New York: 212-210-0133
SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by Crain Communications Inc.

Chairman: Keith E. Crain
President: Rance Crain
Secretary: Merrilee Crain
Treasurer: Mary Kay Crain
Executive Vice President/Operations: William A. Morrow
Senior Vice President/Group Publisher: Gloria Scoby
Group Vice President/Technology, Circulation, Manufacturing: Robert C. Adams
Corporate Director/Production & Manufacturing: Dave Kamis

G.D. Crain Jr. Founder (1885-1973)
Mrs. G.D. Crain Jr. Chairman (1911-1996)
S.R. Bernstein Chairman-executive committee (1907-1993)

Published weekly at 360 N. Michigan Ave., Chicago, Ill. 60601-3806, Fax: 312-280-3174,*biweb@crain.com*. Offices: 711 Third Ave., New York, N.Y. 10017-5806, Fax: 212-210-0704; 71121 Minkler St., Abita Springs, La. 70420; Fax: 985-871-4006; Suite 814, National Press Building, Washington, D.C. 20045-1801, Fax: 202-638-3155; 6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif. 90048- 4947, Fax: 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750, Fax: 408-774-1155; 34 Southwark Bridge Road, London SE1 9EU, Fax: +44-(0)20-7457-1440; 8157 N. Torrey Place, Tucson, Ariz. 85743, Fax: 520-579-3476; 1746 Cole Blvd., Suite 150, Golden, Colo. 80401, Fax: 303-733-9941; 11133 W. 108th St., Overland Park, Kan. 66210, Fax: 312 280-3174. 77 Franklin St., Suite 809, Boston, Mass. 02110-1510; Fax: 212-210-0704. 4 Executive Circle, Suite 185, Irvine, CA 92614-6791. $5 a copy and $97 a year in the U.S., $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Rudolf Von Bartesch, circulation manager. Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, *Business Insurance*, 711 Third Avenue, New York, N.Y. 10017-5806. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48013. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For reprints or reprint permission: Karen Brown Tucker, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806, 312-649-5319, Fax: 312-280-3174.

BPA
To subscribe, call 888-446-1422, or 313-446-0450 outside the United States.
www.businessinsurance.com
ABM

Editorial

Mail order drugs fight will backfire

WE THINK THE MOVES of retail pharmacy chains to retaliate against employers with mandatory mail order prescription drug programs are shortsighted and ultimately will backfire.

The most recent move, as we reported earlier this month, is by CVS/pharmacy, a unit of CVS Corp. CVS said it was dropping out of prescription drug plans offered by Toyota Motor Manufacturing and the state of Ohio.

The Toyota plan requires its employees to use mail-order service for maintenance medications used to treat chronic conditions. The state of Ohio plan requires an employee to use mail order service after a maintenance prescription has been filled two times at a retail pharmacy.

CVS says it is taking action to prevent employers from denying to employees the ability to decide where their prescriptions will be filled and the access to community pharmacists "whom they value and trust."

That may be the case, but we, and other observers, are more inclined to believe the real reason is fears that CVS and other retailers who have taken similar actions have about their loss of income since a greater proportion of prescription drugs are filled through mail order.

Indeed, filling out a prescription drug order is highly profitable for retailers for two reasons. They make money not only on the prescription, but they earn additional revenue, in many cases, because customers often buy other products when they initially come in to place an order and when they later pick up the order if it hasn't been filled right away.

We understand, of course, that retailers see the threat that mail order poses to their revenue stream. But employers aren't in the business of propping up retail pharmacies. They are trying to deliver services to employees in the most cost-effective way. If mail order is the most cost-effective way to fill prescriptions, employers, who are footing most of the bill, have the right to make such programs mandatory.

And we have heard few complaints from employees, who like the conveniences mail order offers, such as the automatic refill of orders by phone.

We doubt if CVS' action will intimidate Toyota, the state of Ohio or other employers with mandatory mail order programs. They will simply find other retailers to fill their employees' prescriptions.

We believe there is a role for both retail and mail order, with retail the best way to fill a prescription needed at once and mail order best suited for maintenance drugs. CVS would be wise to recognize that.

Forum shopping under fire

SOMETIMES A PROBLEM requires more than one solution.

That's why we welcome two pieces of legislation—one in the House, the other in the Senate—that tackle, from different directions, the problem of so-called forum shopping.

Forum shopping is decried by businesses, and understandably so. It is the practice of plaintiffs' attorneys seeking out the least defendant-friendly judicial jurisdictions in which to file lawsuits. It doesn't matter that, in many cases, the plaintiffs' and defendants' ties to the jurisdiction are tenuous at best. The result can be something considerably less than justice for the defendants.

The Lawsuit Abuse Reduction Act, introduced in the House last week by Rep. Lamar Smith, R-Texas, attempts to minimize the chances for such injustice by requiring that civil tort actions be brought only in the jurisdiction in which the plaintiff resides or suffered an injury, or where the defendant maintains its principal place of business. That's simply common-sense legal reform, something recognized by the House last year when it passed an early version of this bill. We hope it follows the same course with all due dispatch.

On the other side of Capitol Hill, Sen. Charles Grassley, R-Iowa, formally introduced the Class Action Fairness Act. Among other things, the act aims to reduce the impact of forum shopping by allowing either party in certain class actions that involve plaintiffs and defendants from different states to have the case moved to federal from state court. Backers of the bill have long argued, and we agree, that defendants and plaintiffs alike in such cases could be more likely to receive impartial justice in a court that is not subject to local prejudice, particularly prejudice against out-of-state corporations.

The two bills represent a dual-pronged attack on a real problem. Swift enactment of both measures should go a considerable way toward restoring some balance to a civil justice system that is too often out of whack.

Schillerstrom

Letters to the Editor

Reach students to help risk management grow

To the editor: In response to the Jan. 24 article "Schools Tout Incentives to Help Grow Programs," those of us in the risk management community also must continue to provide students the opportunities to see the greatness of our vocation.

The Spencer Educational Foundation, for example, provides university students the chance to get a glimpse into the real world of risk management through the "Risk Manager in Residence" program.

Additionally, we in the risk management world must get the support of our corporations to bring students into our workplaces, whether through internships or, as we do at my company, through visits for a few days to meet the risk management department and to hear presentations. We also give them tours of our facilities and provide them with real-life risk management situations.

If our profession is to grow and prosper, we need to reach out to our young students.

Lance J. Ewing, ARM, CRM
Vp, Risk Management
Caesars Entertainment Inc.
Las Vegas

Online opinion polls

Each week, Business Insurance posts a poll question about industry events on www.businessinsurance.com.

Visit the BI Web site to cast your vote in the weekly online polls and to view the results of previous questions.

Business Insurance* welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to: Letters to the Editor, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: *rcoccia@businessinsurance.com

Claims Management

Spotlight Editor: Meg Fletcher

TPAs make quality gains but more improvement needed

By DAVE LENCKUS

Five years after a national survey highlighted risk managers' dissatisfaction with independent third-party claims administrators, experts are giving TPAs much higher grades, even though they say the industry has improved only marginally in one critical area.

On the 1998 and 1999 industry scorecards produced jointly by the Risk & Insurance Management Society Inc. and the now-dissolved Quality Insurance Congress, TPA scores for satisfaction, performance and loyalty lagged behind those for insurers and brokers (*BI*, Feb. 21, 2000).

Since then, "I think it's changed for the better, especially in the national and larger regional TPAs," said Mark J. Noonan, managing director and chief operating officer of the workers compensation practice at Marsh Inc. in Boston.

TPAs that manage workers compensation and general liability claims have improved the quality of their products and services by, among other things, investing in technology, developing partnerships with service providers, assisting clients in developing back-to-work and other claims cost control programs and helping clients understand new laws that affect their claims, observers noted.

"The industry has really invested in making those programs state of the art" and emulating the quality of services provided by insurance company claims handling operations, said former TPA management consultant Glenn McLellan. In December, Mr. McLellan was appointed senior vp of business development for CenBen USA Inc. of Columbus, Ohio.

"Overall, the quality of service coming out of TPAs has improved a lot over the years," agreed Frank D. Armstrong, vp-claims management at Willis of Florida, a Tampa, Fla.-based unit of Willis Holdings Group Ltd.

But perhaps most importantly, risk managers have learned how to manage their claims management vendors better, experts say.

See TPAS/page 19

PHOTO: STACEY PARDINI/U.S. COAST GUARD /GETTY IMAGES

Property owners learn planning is key when storms hit

Series of hurricanes leaves a legacy of claims lessons

By MICHAEL BRADFORD

Along with the devastation from the spate of hurricanes that lashed Florida last summer came some lessons that property owners can use to prepare for this year's storm season.

Near the top of the list of those lessons would be lining up help ahead of time.

The Martin County School District in Stuart, Fla., barely avoided learning that lesson the hard way. Hurricane Charley, the first of the storms to hit the state, missed the district. After being advised by another school district to find a company that could help with cleanup if another storm were to hit, Martin County signed on with a remediation firm just two days before Hurricane Frances roared into the Sunshine State, said Julie Sessa, the district's risk manager.

Hurricane Ivan then dumped several inches of rain on the district's battered property, and Hurricane Jeanne followed with even more damage.

When the winds finally died down after the last storm, prearrangements with a remediation contractor proved to have been a good move. With $30 million in damage, the school district needed help to get back on its feet.

Ms. Sessa said that even though the contract was inked just a couple of days before Frances arrived, signing up with a remediation company was a case of better late than never. It is important, she said, to have a "contract with a company ahead of time, so that you have priority to get work done on your buildings. And you've got a prestorm negotiated rate, not one that was negotiated after the storm hit."

Without a remediation company and its backup electrical power, recovering from the damage such as that which was left across Florida last summer when the hurricanes knocked out electricity across a wide area would have been extremely difficult, Ms. Sessa said.

It was, in fact, the threat of a power loss that many Florida businesses learned they should address more closely, according to

See DISASTER/next page

Courses offer expertise in integrated management of absences

By JOANNE WOJCIK

As interest piques in "total absence management" and addressing all types of disability claims regardless of whether or not they result from occupational injuries, many disability claims managers are finding it necessary to go back to school.

In the past, many disability claims managers relied on training programs sponsored by the insurance industry or on internal programs developed by insurers. But courses leading to professional designations specific to this area of disability management have recently started to emerge.

Individuals seeking out such programs generally are those who already have some workers compensation experience and are finding themselves increasingly responsible for managing nonoccupational disability claims.

In fact, many benefit managers are enrolling in these programs to acquire the skills necessary to develop their own return-to-work and integrated disability management programs in-house.

Barbara Marshall, manager-health and absence management at First Energy Corp. in Akron, Ohio, received the Certified Professional in Disability Management designation in 2001. She pursued the designation after she found she was becoming increasingly responsible for managing nonoccupational disability claims, including sick leave, long-term disability and medical case management.

"I found myself at a point where I needed to learn more about these programs and to learn how to manage those programs in an integrated environment," Ms. Marshall said. Moreover, she said, "if I was going to seek this education, I also wanted the accreditation that went with it."

The CPDM designation was developed in 1996 by the Disability Management Employers Coalition in collaboration with the Insurance Educational Assn. to provide education, resources and tools concerning absence, disability and health management, according to Sharon Kaleta, chief executive officer

See ABSENCES/page 14

Ranking of largest third-party administrators page 12

NAIC proposes plan to speed claims payments from insolvent insurers page 19

Hurricanes: Storms leave legacy of claims lessons learned

Continued from previous page

Wayne Klocko, manager of commercial property claims with Boston-based Liberty Mutual Group Inc.

"The challenge was, how do you operate your business without local power?" Mr. Klocko said. With such a broad area damaged from four storms, the effect on businesses was widespread across Florida, he said.

"The people with generators did far better in minimizing the damage and were back up and running" much more quickly than those who hadn't prepared with backup power, Mr. Klocko said. "That had traditionally been an industrial concept," he noted, "where factories had large diesel generators. Now we're seeing more need for different businesses to have backup electricity."

Florida's hospitality industry was particularly hard hit by power loss, Mr. Klocko noted. "Florida deals with humidity," he explained, and when the power is out for several weeks, mold can become a problem. "Facilities that had the ability to keep air conditioners running fared far better in minimizing the damage," he said.

"Hurricanes have been around for a long time, and we're pretty used to the challenge of roofs blown off and mitigating damage" from that kind of loss, Mr. Klocko said. "That stuff is pretty well known. The bigger challenge was dealing with power that was out, in some cases, for weeks at a time."

Others say the devil can be in the details when it comes to disaster recovery.

Burt Fried, president of LVI Services Inc., an environmental services and remediation firm based in New York, said property owners should let the companies they contract with for repair work know what they can do to help with the administrative end of the recovery.

Determine in advance and advise the contractor "what kind of detail is required for your internal purposes," Mr. Fried suggested. "That's huge," he said, because documentation prepared by the contractor is used by the property owner to recover payments from insurers and the Federal Emergency Manage-

Continued on next page

PHOTO: ZUMA

Cleanup continued for months in West Palm Beach, Fla., following the 2004 hurricane season.

A

B

C

D

E

F

Continued from previous page
ment Agency.

Mr. Fried, whose company provided services to the Martin County School District, said property owners need documentation of such details as payroll, time spent on the job and materials used by contractors. Property owners should also specify the level of detail that is required, he suggested, such as whether the information should be provided "per building" or even more specifically "per floor."

Property owners working with contractors on remediation projects should ensure that all parties involved have agreed to the project details, said Mr. Klocko of Liberty Mutual.

Before a contract is signed, "I would certainly want a broker and an insurer to sign off on who that company is and how they would proceed in a couple of different scenarios," he said.

The Martin County School District's insurers solved that problem by agreeing on an adjuster to help handle the arrangements with LVI Services, according to Ms. Sessa.

While some preparations proved their worthiness during the Florida storms, in some cases the disaster revealed areas in which more needs to be done, property owners say.

Ms. Sessa said the school district housed some of its "mission-critical" employees—such as risk management, maintenance, custodial and technology staffers and others—in schools built to hurricane-proof standards. That plan worked well, as those staffers were on hand to help take care of problems as they arose. It's a procedure that will be made use of again if storms threaten this year, she said.

On another front, the district plans to make arrangements to keep sufficient fuel supplies for vehicles if a storm were to hit this year, Ms. Sessa said. While no shortages developed during last summer's cleanup, gasoline supplies were restricted because storage tanks cannot be left completely filled during a hurricane. "Pressure can cause them to burst," she explained.

Because fuel supplies could become stretched, Martin County is working on a plan to share fuel among other school districts should the need arise during recovery from a hurricane, Ms. Sessa said.

For some hurricane exposures, though, there are few preparations that can help.

Beach erosion was severe in Volusia County, Fla., during the storms, and "there's no way to stop that," said Frank Catapano, the municipality's risk manager. "I don't think there's anything you can do about it."

The erosion was so bad that some buildings had their foundations undermined and a portion of a restaurant collapsed, Mr. Catapano explained. "A lot of small hotels took a beating, and some of them do not want to rebuild," he noted.

Adjuster database ready for future use

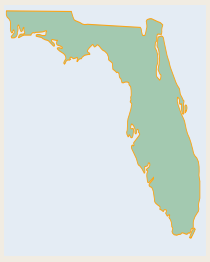
By MICHAEL BRADFORD

TALLAHASSEE, Fla.–If Florida experiences a repeat of last year's active hurricane season, a new technology may speed up the processing of insurance claims from the storms.

As of Dec. 14, a claims adjuster database located on the Web site of the Florida Office of Insurance Regulation allows independent adjusters to list their service capabilities across the state so that insurers can find them when catastrophe strikes.

"This is a catastrophe tool, not a day-to-day tool," said William Stander, Tallahassee, Fla.-based regional manager with the Property Casualty Insurers Assn. of America.

Mr. Stander, who worked with the insurance department to develop the database, noted that it is "stunningly simple in its orientation" and grew from a conversation he had with Insurance Commissioner Kevin McCarty. Mr. McCarty asked whether there is a way "to get more adjusters in the field" after catastrophic events such as the four hurricanes that lashed Florida last summer.



The database, which is not accessible to the public, allows adjusters to enter their contact information and list the number of adjusters they have available by county. Insurers can log in and review the list by county or company, then contact adjusters in the areas where they are needed.

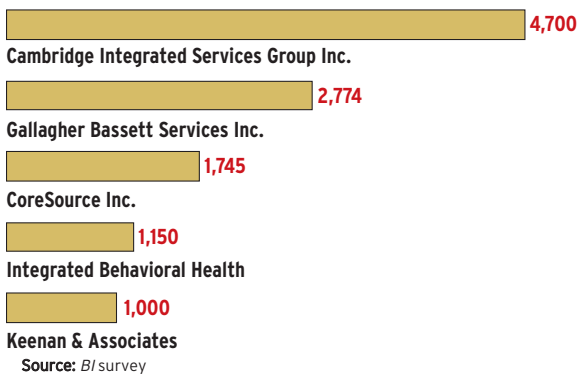
Insurers handled a "tremendous number of claims pretty admirably," during the hurricanes, Mr. Stander said. The database is a way to make the adjusting process a little easier, he added.

"We wanted to create some sort of central market to allow a matchmaking capability," he said, "just to make it more efficient."

The Florida storms spawned more than 1.5 million claims and caused more than $21.6 billion in insured losses. Nearly 90% of the claims had been settled by early January, according to the Office of Insurance Regulation.

LARGEST TPAS

Claims administrators ranked by number of self-insured clients



Source: *BI* survey

LARGEST MULTILINE TPAS

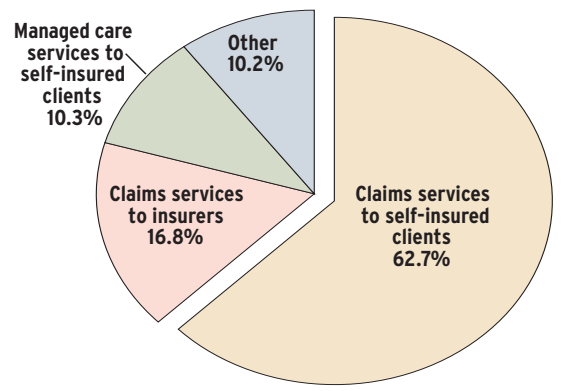
TPAs that offer both employee benefits and property/casualty claims administration*

Company	2004 revenues from self-insured clients
Gallagher Bassett Services Inc.	$339,000,000 [1]
Sedgwick Claims Management Services Inc.	$290,520,000
Broadspire Services Inc.	$166,000,000
CompManagement Inc.	$76,000,000
Acordia Inc.	$71,365,409
Cannon Cochran Management Services Inc. dba CCMSI	$43,299,000
GatesMcDonald	$26,900,000
The Loomis Co.	$25,461,000
Keenan & Associates	$23,100,000
RMSCO Inc.	$20,600,000

*Ranked by 2004 revenues from self-insured clients. 1 Estimated

Source: *BI* survey

BREAKDOWN OF TPA REVENUES



Source: *BI* survey

Largest claims administrators

Ranked by 2004 revenues from claims handled for self-insured clients

Rank	Company/Address	Phone/Fax/Web site	Parent company	2004 revenues from self-insured clients	2004 claims paid to self-insurers	Total clients	Claims staff	Principal officer
1	Gallagher Bassett Services Inc. The Gallagher Centre, 2 Pierce Place Itasca, Ill. 60143-3141	630-773-3800 Fax: 630-285-4000 *www.gallagherbassett.com*	Arthur J. Gallagher & Co.	$339,000,000 [1]	$4,041,000,000	2,774	NA	Richard McKenna, president
2	Sedgwick Claims Management Services Inc. 1100 Ridgeway Loop Memphis, Tenn. 38120	901-415-7400 Fax: 901-415-7406 *www.sedgwickcms.com*	Sedgwick CMS Holdings Inc.	$290,520,000	$3,380,208,113	399	2,858	David A. North, president/CEO
3	Fiserv Health Inc. [2] 6160 Summit Drive, Suite 500 Minneapolis, Minn. 55430	763-549-3350 Fax: 763-549-3368 *www.fiservhealth.com*	Fiserv Inc.	$282,000,000	$7,000,000,000	998	1,335	James Cox, president/CEO
4	ESIS Inc. 1601 Chestnut St. Philadelphia, Pa. 19103	215-640-1056 Fax: 215-640-5556 *www.esis.com*	ACE Ltd.	$198,300,000	$2,300,000,000	685	1,399	Ed Troy, president
5	Specialty Risk Services L.L.C. Goodwin Square, 225 Asylum St., 16th Floor Hartford, Conn. 06103	888-236-4684 Fax: 860-520-2503 *www.specialtyriskservices.com*	The Hartford Financial Services Group Inc.	$194,800,000	$2,300,000,000	880	1,450	Joe Boures, president
6	Cambridge Integrated Services Group Inc. 31500 Solon Road Solon, Ohio 44139	877-785-3750 Fax: 440-914-2591 *www.cambridgeintegrated.com*	Scandent Group	$176,200,000	$2,827,000,000	4,700	1,840	Tracey Carragher, CEO
7	The Principal Financial Group/National Accounts 1275 N.W. 128th St., Suite 100 Clive, Iowa 50325	877-273-0900 Fax: 515-235-9280 *www.principal.com*	–	$171,000,000	$3,072,735,999	673	881	Jim Charling, Dave Blanford, vps
8	Broadspire Services Inc. 1601 S.W. 80 Terrace Plantation, Fla. 33324	800-726-8898 Fax: 954-693-4074 *www.choosebroadspire.com*	Platinum Equity L.L.C.	$166,000,000	$1,386,000,000	211	1,200	Dennis Replogle, president/CEO
9	CoreSource Inc. 400 Field Drive Lake Forest, Ill. 60045	847-604-9200 Fax: 847-615-3900 *www.coresource.com*	Trustmark Insurance Co. Inc.	$157,600,000 [1]	$3,385,704,527	1,745	1,357	Mark Schmidt, president
10	Crawford & Co. 5620 Glenridge Drive Atlanta, Ga. 30342	800-241-2541 Fax: 404-845-3142 *www.crawfordandcompany.com*	–	$93,300,000	$1,874,000,000	625	1,815	Thomas W. Crawford, CEO

1 Estimate. 2 Includes Benefit Planners Ltd. L.L.P., Benesight Inc., Fiserv Health-Kansas & Tennessee, Harrington Benefit Services Inc. and Wausau Benefits Inc.
Source: BI survey

Visit *www.businessinsurance.com* for more information and access to the full searchable directory of third party administrators.

Absences: Courses teach integrated management

Continued from page 9

of the DMEC in San Diego. The DMEC includes approximately 12,000 members, about 60% of which are employers.

The program is an offshoot of IEA's Workers Compensation Claims Professional certification program, which started in 1972 mostly focusing on the state of California, explained Richard A. Coskren, president and CEO of the IEA in San Francisco.

"This was our effort to create a professional credential around the topic of disability management to ensure both the injured worker received proper care and the right steps were taken to get them actively engaged in the operation of the business as soon as possible," Mr. Coskren said. "The program includes courses that cover all elements of managing a disability, so it can be used to deal with both occupational and nonoccupational disability claims management."

Based on current enrollment, more than 1,000 individuals involved in all aspects of disability claims management—from vocational rehabilitation to human resource and risk and safety professionals to insurance claims adjusters—will receive the designation this fall, Ms. Kaleta said.

The CPDM program has two primary types of candidates, she noted.

One type of candidate, such as Ms. Marshall, "is the person who recognizes the opportunity to put some discipline around the process of disability management, whether it's occupational or nonoccupational, recognizing its chaos. Those individuals take it upon themselves. They may be in benefits, risk management or in the claims department," Ms. Kaleta explained.

The other type of candidate is an individual who works in an organization that already has an integrated disability management program in place and who has been sent for additional training because he or she displays certain characteristics. Those who have these characteristics are "good at keeping a lot of balls in the air at one time, who are sensitive and have leadership capabilities," Ms. Marshall said. "Strong analytical skills are also necessary," she said.

Individuals with such characteristics are sought out by insurance company claims departments to handle nonoccupational disability because so many more variables are involved in managing these claims than in managing those in the workers compensation system, where benefits are usually defined by statute, insurance industry claims experts say.

The best disability claims management specialists are part psychologist, part doctor, part lawyer, part technology expert and part investigator, according to Paul Dubé, head of claims risk management at Aetna Inc. in Hartford, Conn.

"So they really have to wear all of these multiple hats—investigator, doctor, lawyer, contract interpreter, systems techie—all of these go into their day-to-day decision making. And that's why the ability to analyze data and to critically think and

See ABSENCES /page 16

Absences: Courses teach integrated management

Continued from page 14

question and analyze is so important," he said.

"They also have to be able to handle large volumes of work. They can handle anywhere from 80 to 1,000 claims, depending on what stage they're in," Mr. Dubé added.

Once insurance companies identify individuals who have these characteristics and at least a four-year college degree, they usually are sent for in-house training before embarking on managing claims, according to Greg VanDam, senior vp in charge of group disability claims at Liberty Mutual Group in Boston.

While professional designations are desirable, though, they are not required at most insurers.

For example, a recently published advertisement for a claims adjuster at UnumProvident said: "Minimum of one insurance industry designation is preferred." Among the accepted designations listed were: Associate, Life and Health Claims; Fellow, Life Management Institute; Certified Employee Benefits Specialists; Chartered Life Underwriter; Chartered Financial Consultant; and Associate in Customer Service.

Liberty doesn't make designations mandatory because "the industry has grown up without these designations," Mr. VanDam said. "They're nice to have in the overall development of a career claims professional, and certain designations are more appropriate to different kinds of case management," he said.

"Instead, we look for different qualities in the initial selection of case managers. We use a framework called 'characteristics, capabilities and capacity,' " Mr. VanDam said.

The characteristics include the ability to demonstrate customer sensitivity toward both employers and claimants; the capabilities include investigative fact-finding skills, coordination skills and the ability to recognize gaps or inconsistencies; and capacity translates into "resilience."

'When we look for claims people, we look for people who have very good analytical and conceptual thinking skills and, at the same time, have good people skills.

Sheryle Ohme
Assurant Employee Benefits

"It's a high-volume, fast-paced job," Mr. VanDam explained.

"When we look for claims people, we look for people who have very good analytical and conceptual thinking skills and, at the same time, have good people skills," concurred Sheryle Ohme, vp-life and disability claims at Assurant Employee Benefits in Minneapolis.

Ms. Ohme is also chancellor at Assurant's internal College of Claims, where students work toward the company's Disability Claims Professional designation. To earn DCP Level 1, a student must complete 11 courses such as "Common Diagnoses," "Duties and Occupations," "Accommodations and Transitional Work," "Social Security Benefits," "Conducting a Thorough Change in Definition Investigation" and "Legal Topics and ERISA," among others.

Although psychological disabilities are now the fastest-growing type of nonoccupational disability claim, no professional education programs have yet been developed specifically to address them.

Instead, most of those who specialize in psychological disability claims are usually licensed master's-level behavioral health professionals, according to Stephen Dannenbaum, director of clinical programming at MHN in Mesa, Ariz.

MHN, which is based in Point Richmond, Calif., is a unit of Health Net Inc. that specializes in managed behavioral health care and employee assistance programs.

Psychological disability claims specialists also need about five years' experience as providers "because, unless they have that, they don't know how to speak to providers," Dr. Dannenbaum said.

And, he added, as with all other types of claims management professionals, good organizational skills are a must.

NAIC aims to speed payments by insolvent insurers

By MEG FLETCHER

Regulatory guidance designed to improve communication and coordination between the overseers of insolvent insurers and the state guaranty associations that pay outstanding claims could be in place by mid-March.

If implemented, the recommendations in the proposal, which was drafted by the National Assn. of Insurance Commissioner's Receivership and Insolvency Task Force, may also help corporate policyholders and claimants by speeding up claims processing and reducing costs, supporters say.

Many regulators—and the receivers they appoint to help oversee insolvent insurers—as well as guaranty association executives and nearly all major industry trade groups support the NAIC's white paper, which is on track for members to formally adopt during the organization's quarterly meeting scheduled for March 12-15 in Salt Lake City.

But a corporate risk manager who has experienced many claims-related problems due to an insurer's insolvency expressed only cautious optimism that such a proposal can fix the current system, which she considers "broken."

The white paper—"Communication and Coordination Among Regulators, Receivers and Guaranty Associations: An Approach to a National State Based System"—provides "a road map" for an insolvent insurer's policyholders and creditors to obtain the money due them as promptly and efficiently as possible, said task force chair Holly Bakke. Ms. Bakke is also New Jersey's insurance commissioner.

The 14-page paper spells out how new industry trends and practices—such as more frequent use of large-deductible programs as well as third-party administrators with more than 1,000 physical locations—require new approaches.

The paper outlines a proposal that urges guaranty associations and receivers to get together earlier in the process than they currently do, in an effort to create a more seamless transition and prevent delays in paying claims, especially to needy workers compensation recipients.

The white paper provides "a road map" for an insolvent insurer's policyholders and creditors to obtain the money due them as promptly and efficiently as possible.

Holly Bakke
National Assn. of Insurance Commissioners

Involving guaranty funds at a preliquidation stage presents challenges, the proposal acknowledges. There are issues of confidentiality and legality, among others.

The proposal also recommends several ways that a regulator can help guaranty associations become involved, including allowing them to attend regular briefings, notifying them of preliquidation activities such as the gathering of policy information and providing a Web site with restricted access where pertinent information is posted.

There already is "limited use" of a restricted Web site for information

See INSOLVENT/next page

Insolvent: NAIC white paper provides 'road map'

Continued from previous page

about troubled property/casualty companies, "but I expect that to grow," said Dale Stephenson, president and chief executive officer of the Indianapolis-based National Conference of Insurance Guaranty Funds.

In addition, the proposal identifies a need to establish processes to transfer standardized claims information, work with task forces, coordinate the transfer of policies, return unearned premium promptly to policyholders and recover assets.

Overall, the proposal identifies two "crucial" issues—improving the timeliness and effectiveness of consumer protection and minimizing the ultimate costs of the insolvencies, which are borne by guaranty associations but ultimately passed on to policyholders or taxpayers. Depending upon a state's law, that is done by allowing insurers to offset premium taxes owed by the amount of their guaranty fund assessments or to apply policyholder surcharges or higher rates.

The proposal concludes by urging the NAIC to continue its oversight of the proposed system improvements and that the process of enhanced communication and collaboration begin with the next impaired insurer.

"The real test of the paper's worth will come as regulators, liquidators, guaranty funds and (the) industry move forward through future insolvencies," said Michael Koziol, assistant vp and counsel for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America.

"If the white paper's suggestions are fully developed and implemented, it may result in less disruption for corporate policyholders at the time of an insurance company insolvency," said Kevin McCarty, Florida's director of insurance regulation. "Also, the more certainty that a corporate policyholder can have about how it would fare in the event of an insurer's insolvency, the better the corporate policyholder can plan and protect itself."

The development of the white paper is "a tremendous step forward toward the common goal of protecting consumers from the adverse impact of an insurer's insolvency," said Peter Gallanis, president of the Herndon, Va.-based National Organization of Life & Health Insurance Guaranty Assns.

Obtaining claims payments for injured maritime workers can be difficult because those claims are covered by a federal law that does not require state guaranty association participation

Ellen Vinck
United States Marine Repair Inc.

Its recommendations could especially help the property/casualty guaranty system, which paid more than $2.5 billion in claims last year, Mr. Stephenson recently reported to the NAIC task force. The recent large insolvencies of primarily workers compensation insurers have created some stresses to the system, because those claims are not subject to the typical $300,000 cap on guaranty fund payments to individual claimants, he said.

And the situation can be worse for an employer of injured maritime workers, who are not covered by state guaranty funds, according to Ellen Vinck, vp-risk management for Norfolk, Va.-based United States Marine Repair Inc. Those workers are protected by the federal Longshore & Harbor Workers' Compensation Act, which does not require state guaranty association participation.

Her negative experience with an insolvent insurer's estate that failed to pay the ship repair company's claims caused Ms. Vinck to conclude "the relationship between the policyholder and the receiver is broken, because there isn't one."

She said the risk management lesson she learned from the claims dispute was to give an insurer "the minimum amount possible and keep the money as close as possible in our company," so it will be available to pay claims. "You can't count on an insurer to be there. It's frustrating, but true."

One of the greatest areas of friction between corporate policyholders, receivers and guaranty funds concerns the handling of funds that policyholders deposit with an insurer to serve as collateral for large deductible-type insurance plans, several sources agree.

"If the liquidation statutes require an account to be treated as a general asset, the receiver may not be able to reserve that account for the payment of claims of a particular insured unless the law is changed in advance of an insolvency or order of liquidation," Mr. McCarty said.

To deal with this issue, state legislatures in Pennsylvania and Illinois have enacted bills to update insurance laws so they reflect current business practices, which should help resolve the collateral allocation issue in future insolvencies. The laws emphasize that a company's collateral should be given to the appropriate guaranty fund for its payment of that company's specific claims.

Several insurance trade associations joined risk managers in supporting such legislation. This year, California, Florida and Massachusetts are expected to consider similar bills, said Steven Bennett, assistant general counsel of the Washington-based American Insurance Assn.

TPAs: Quality improves but staff turnover still causes problems

Continued from page 9

"The major differentiation with service has to do with service plan design," said Wayne Johnson, an executive vp and claims consultant with Willis North America in Charlotte, N.C.

But despite the many improvements, TPA employee turnover, especially among claims adjusters, remains too high and the source of quality problems for the vendors, experts say.

Better technology

TPAs' investments in technology have led to improvements in two areas in which TPAs were rated poorly five years ago, experts said.

Communication between TPAs and employers is quicker now, so TPAs are beginning the claims handling process sooner. "The quicker you can get a claim, the better the chance the claim will resolve itself in a better manner," Mr. Noonan said.

Some observers say the biggest factor in the quality improvement of third-party administrators has been the performance parameters imposed by risk managers.

Improved technology also has resulted in better reports to clients, experts said.

In many cases, though, risk managers' own improved information systems are largely responsible for better data feeds and customized reports, Mr. Noonan said.

Experts also noted improvements in many areas that help TPAs manage claims better.

For example, to aid clients in holding down their workers compensation costs, TPAs are working with employers to help injured workers return to their jobs as soon as possible, Mr. Noonan said.

In addition, TPAs generally are calculating reserves better, which has resulted in far less "stair-stepping," or reserving adjustments, Mr. Noonan said.

TPAs also have caught up to their insurance company counterparts in providing client education on changes in state law and what employers need to do to comply, Mr. Noonan said

The list of improvements in TPAs' products and services are evident among firms handling third-party liability as well as workers comp claims, experts said.

With liability claims, though, TPAs' improvements have not been as extensive because of their limited access to medical information in those cases, Mr. Noonan noted.

Risk managers are more content with TPAs that handle professional liability claims, even though those claims handlers command higher fees, said Richard S. Betterley, president of Betterley Risk Consultants Inc. of Sterling, Mass.

Others agree, noting that those claims handlers, which largely are specialty firms, have lower employee turnover and are better able to demonstrate claims cost savings.

But some observers say the biggest factor in TPAs' quality improvement has been the performance parameters imposed by risk managers.

"It's invaluable to ensuring the quality" of the service, said Anita Schoenfeld, a Dallas-based senior consultant in the strategic risk financing practice and the practice leader of risk management information system consulting at Tillinghast, a business of Towers Perrin Group Holdings Ltd.

Risk managers also are requir-

See TPAS/next page

LARGEST PROPERTY/CASUALTY TPAs

TPAs that specialize in property/casualty claims administration*

Company	2004 revenues from self-insured clients
ESIS Inc.	$198,300,000
Specialty Risk Services L.L.C.	$194,800,000
Cambridge Integrated Services Group Inc.	$176,200,000[1]
Crawford & Co.	$93,300,000
Helmsman Management Services L.L.C.	$66,000,000
GAB Robins North America Inc.	$56,508,000
The Frank Gates Cos. Inc.	$53,000,000
Constitution State Services Limited Liability Co.	$50,000,000
Risk Enterprise Management Ltd.	$38,815,000
TRISTAR Risk Management	$23,000,000

*Ranked by 2004 revenues from self-insured clients. 1 Estimated.
Source: *BI* survey

TPAs: Quality improves but more changes needed

Continued from previous page

ing a specified level of expertise among adjusters and other claims handlers and even are identifying the TPA personnel who can work on the account, risk management experts say.

"Every TPA has good adjusters" in their stable of claims handlers, Willis' Mr. Armstrong said. "The trick is to find them and have them assigned to your program. The adjuster is the key to program."

LARGEST EMPLOYEE BENEFIT TPAs

TPAs that specialize in employee benefit claims administration*

Company	2004 revenues from self-insured clients
Fiserv Health Inc. [1]	$282,000,000
The Principal Financial Group/ National Accounts	$171,000,000
CoreSource Inc.	$157,600,000
Acordia Inc.	$71,365,409
Brokerage Concepts Inc.	$55,164,787
Alicare Inc.	$48,310,000
Zenith Administrators Inc.	$45,000,000
Central Benefits Group	$39,125,098
HealthPlan Holdings Inc.	$35,000,000
CBCA Administrators	$32,000,000

*Ranked by 2004 revenues from self-insured clients. 1 Includes Benefit Planners Ltd. L.L.P., Benesight Inc., Fiserv Health-Kansas & Tennessee, Harrington Benefit Services Inc. and Wausau Benefits Inc.
Source: *BI* Survey

In addition, some risk managers are attempting to improve TPA performance through financial incentives. Snap-on Inc., for example, compensates its TPA under a pay-for-performance arrangement that includes bonuses for the claims staff if they meet all of their performance criteria, said Daniel H. Kugler, assistant treasurer-risk management at the Pleasant Prairie, Wis., tool manufacturer. Mr. Kugler estimated that the staff met their performance requirements in four of the past five years.

Part of that analysis involves producing a scorecard on how the claims staff ranks on various subjective quality measures, such as how well they assist in developing the strategy to close claims, said Mr. Kugler, who is also the vp of membership and chapter services for RIMS.

Onsite teams

Quality problems drop markedly when risk managers insist that their TPAs provide them a dedicated, onsite team of adjusters and claims handlers. Provided the risk managers have a level of business that justifies the assignment and can supply office space and equipment, onsite teams can be provided for little extra cost.

"Those units tend to generate better quality," said Thomas W. Crawford, who was hired out of the insurer side of the market in September 2004 to take over the chief executive officer duties at Atlanta-based TPA Crawford & Co.

If an organization's loss volume is large enough, it does benefit from having a dedicated, onsite TPA staff who are subject to predetermined performance parameters, said Mr. Kugler. Snap-on has had a dedicated workers comp claims management team from GAB Robins North America Inc. at its headquarters since 2000.

Risk managers have a much better opportunity to impart their claims philosophy on a dedicated staff, he said.

Risk management experts say that a dedicated claims handling team helps control the most glaring problem among third-party administrators that handle workers compensation and general liability claims: an employee turnover rate that is still too high.

Even a risk manager whose claim volume does not warrant an onsite team can demand a designated group of adjusters and claims handlers at his or her TPA's branch office, observers noted. While those individuals also would work on other accounts, their familiarity with the risk manager's account would result in higher-quality service, observers said.

Risk management experts say that a dedicated claims handling team also helps control the most glaring problem among TPAs that handle workers comp and general liability claims: an employee turnover rate that is still too high. Turnover leads to dropped claims or lower-quality claims handling, experts note.

Staff turnover

"Change is bad" in a claims management staff, said Mr. Kugler.

But experts disagree on the extent of the problem.

Mr. Betterley said he has seen no improvement in this area over the past five years. "It's still a business where an awful lot of people are there because it's a job and there's nothing else to do."

Mr. Armstrong of Willis noted that many top adjusters are retiring.

Other experts say that turnover has slowed, though it remains too high.

The turnover problem is far smaller among claims professionals assigned to dedicated teams at a risk manager's site, experts say. That's because claims handlers in those offices develop a sense of ownership in their work, experts agree.

In addition, their workload at onsite assignments generally is lower, Tillinghast's Ms. Schoenfeld noted.

Experts agree that workloads for claims adjusters have improved industrywide but often are still too heavy.

"Nothing will take a high-performing adjuster down to a mediocre level as a case load that's too heavy," Willis' Mr. Johnson said.

For adjusters handling workers compensation claims, the typical pending caseload ranges between 150 and 175, he said. That is an improvement from 180 to 200 cases, on average, five years ago. But today's caseload level is still too high, he said, noting that workloads of pending cases should shrink to between 125 and 140.

Business Insurance
www.businessinsurance.com

SINGLE-COPY SALES
To order any current or back issue of *Business Insurance*, call the single-copy sales division of *BI's* Circulation Department:
1-888-446-1422

LIST RENTAL
Portions of *BI's* subscriber database are available to qualified companies for list rental. For available titles and a price quote, call our list broker:
313-446-1625

CHANGE OF ADDRESS?
If you have moved recently and would like to change your subscription address, or if you would like to report a delivery problem, please call us at 888-446-1422 toll-free or e-mail us at *subs@crain.com*.

Maryland HMO tax to hit some consumers

BALTIMORE—At least two health maintenance organizations operating in Maryland will be passing on to members a 2% tax imposed by the state Legislature to help doctors in the state pay malpractice insurance premiums.

Hartford, Conn.-based Aetna Inc. will raise premiums "sometime in March" for midsize and large groups and on April 1 for small groups, a spokesman said. Oakland, Calif.-based Kaiser Permanente also plans to raise rates April 1, a spokeswoman said.

Owings Mill, Md.-based CareFirst Blue Cross & Blue Shield—the state's largest insurer, with 337,000 members—said it was "continuing to explore various options on how to best handle this additional tax burden."

"As we have said previously, imposing a 2% premium tax on HMOs will ultimately and inevitably result in higher costs for our members. The estimated 2005 impact is about $20 million," a spokesman for CareFirst said in a statement.

The tax was enacted last month as part of medical malpractice reform legislation. Gov. Robert L. Ehrlich Jr. vetoed the bill, but a Democratic-controlled state Legislature overrode the veto Jan. 11, enabling the measure to take effect immediately.

The tax is expected to raise an estimated $65 million, which will be used to cap increases in this year's malpractice premiums for doctors at 5% and to increase reimbursements to doctors who treat Medicaid patients. Doctors had lobbied on behalf of the measure, saying they faced an average 33% increase in malpractice rates for 2005, which would have put many out of business.

Approximately 1.2 million individuals are enrolled in HMOs in the state, according to the Maryland Health Care Commission. It estimates a 2% increase in premiums could mean monthly increases ranging from $10 to $15 per plan member.

—By Joanne Wojcik

ImClone to settle shareholder lawsuits

NEW YORK—Embattled biotechnology company ImClone Systems Inc. last week said it will pay more than $80 million to settle two shareholder lawsuits brought against the firm in 2002 amid an insider trading scandal.

Filed in a U.S. district court in New York, the suits stem from allegations that top ImClone executives misled shareholders about the likelihood of cancer-fighting drug Erbitux gaining federal approval, and thereby caused investors to suffer losses once ImClone shares tumbled.

The U.S. Food and Drug Administration rejected Erbitux in early 2002, but in 2004 authorized the drug for sale.

Under the terms of the settlements, which are pending court approval, New York-based ImClone admits no wrongdoing.

The company has agreed to pay class members $75 million to settle a class action shareholder lawsuit that accuses ImClone of violating federal securities law. The settlement will result in ImClone booking a one-time charge of $55.4 million in the fourth quarter of 2004, the company said in a statement. The balance of $19.6 million will be paid by ImClone's insurers. The company declined to identify its insurers.

ImClone has also agreed to settle a shareholder derivative suit, and will receive a payment of $8.75 million from insurers to pay the settlement, the company said.

As part of the settlement terms of the derivative suit, the company retains the right to continue pursuing claims against its founder and former chief executive officer, Samuel D. Waskal, who is currently serving a more than seven year federal prison sentence for insider trading.

Last week, Mr. Waskal and his father, Jack Waskal, agreed to pay more than $5.8 million to resolve a U.S. Securities and Exchange Commission lawsuit accusing both of illegally trying to sell millions of dollars worth of ImClone stock on advance knowledge of the FDA's Erbitux decision.

Martha Stewart, head of Martha Stewart Living Omnimedia Inc., is currently serving five months in a federal prison for lying to prosecutors investigating her sale of nearly 4,000 shares of ImClone stock prior to Erbitux's FDA rejection.

—By Rupal Parekh

Products & Services

AIG introduces, expands liability programs

NEW YORK–American International Group Inc. has introduced a management and professional liability program for private companies and enhanced a technology liability program.

Both coverages are offered through National Union Fire Insurance Co. of Pittsburgh, a New York-based AIG unit.

PrivateRisk Protector, is a portfolio of six different coverages, including directors, officers and private company liability; employment practices liability; pension trust liability; fidelity and crime liability; employed lawyers professional liability; and Internet media liability.

PrivateRisk Protector is a mix-and-match program in which the D&O and private company liability, the EPLI and the pension trust liability are the base coverages and have separate limits of $5 million each. If all three coverages are chosen, the limit is $15 million. The other coverage options—fidelity and crime, employed lawyers professional liability and Internet media liability—must be written in conjunction with one of the three base coverages, and the limits vary. Together, all six coverages have a limit up to $23.5 million.

The second product offered by National Union, AIG ProTech Modular Edition, has been enhanced to offer expanded coverage for professional liability and network security risks. It streamlines the application process for the technology services sector.

AIG ProTech Modular Edition includes new coverage for first- and third-party business interruption, crisis management, cyber extortion, information asset, Internet professional and security liability losses incurred amid the delivery of technology products or services to the insured's clients. Another enhancement allows errors and omissions, network security risks and media liability to be combined into one broad policy, which has a limit of $25 million.

For more information on the PrivateRisk Protector program, e-mail National Union at *managementliability@aig.com*. To learn more about the AIG ProTech Modular edition, contact the company at *professionalliability@aig.com*.

Hartford offers excess management liability

HARTFORD, Conn.–The Hartford Financial Services Group Inc. has introduced an excess policy for management liability coverages.

The Hartford's policy, Universal Excess, fits over any of the following products issued by any insurer: directors and officers liability, fiduciary liability, employment practices liability, miscellaneous professional liability and technical errors and omissions liability.

The policy follows the primary policy in areas such as exclusions, definitions and severability clauses; contains no appeals section or subrogation section; and allows the insured to pay the underlying limits if the primary insurer becomes financially insolvent.

The policy limits range from $5 million to $25 million, depending upon a company's size, type and whether it is publicly or privately owned.

More information can be obtained by contacting Patricia Fitzgerald, national marketing director for Hartford Financial Products in New York, at 212-277-0457 or by visiting *www.hfpinsurance.com*.

ISO launches program for cyber risk cover

JERSEY CITY, N.J.–The Insurance Services Office Inc. is offering a commercial cyber risks policy wording package.

The product, the Internet Liability & Network Protection Policy, intends to provide insurers with a program to offer protection against Internet liability and network perils such as viruses and cyber extortion.

The package, which includes policy contract forms, underwriting rules, loss costs and an advisory underwriting guide, has been filed in 54 jurisdictions and has already been cleared for insurers' use in 15 jurisdictions.

It is intended to cover companies that conduct business online or use the Internet to supplement their business. The policy offers Web site publishing liability, computer systems security liability, covers restoration and replacement expenses should electronic data become lost or rendered inaccessible due to an event such as a virus or malicious code and covers expenses incurred and ransom payments made as a result of extortion threats, among other coverages.

The policy wording covers wrongful acts that occur worldwide, and claims must be brought to suit in the United States, including its territories; Puerto Rico; or Canada. Various endorsements are available to allow insurers to cover policyholders worldwide.

For more information, contact Jersey City, N.J.-based ISO by telephone at 800-888-4476 or e-mail the company at *info@iso.com*. More information can also be found by visiting *www.iso.com*.

Companies publish prescription drug report

LINCOLNSHIRE, Ill.–The 2004 edition of "The Prescription Drug Benefit Cost & Plan Design Survey Report" is now available. The report was developed by the Pharmacy Benefit Management Institute and is sponsored by Lincolnshire, Ill.-based Takeda Pharmaceuticals North America Inc.

The annual report is intended to help employers, benefit managers and coalitions better understand the latest trends and issues in pharmaceutical benefit plan design and management.

The report is based on data collected from over 400 employers and presents an overview of prescription drug coverage, costs and utilization.

To obtain a copy of the report, visit the Tempe, Ariz.-based PBMI's Web site at *www.pbmi.com*.

We'd like to report on new risk management and employee benefit products and services offered by your company. Send information to: Carrie A. Peinado, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; telephone: 312-649-5313; fax: 312-649-7801; e-mail: cpeinado@businessinsurance.com.

Commentary

Football, Oscars keeping it covered

With ice floes decorating the Chicago River and a fair amount of last weekend's foot of new snow still covering lawns (and the occasional sidewalk), it's pretty hard to ignore the fact that—in these northern climes at least—it's going to be winter for a while yet.

Desperate as one becomes for escape from the season's monochromatic brutality, it's probably no surprise that whatever serious issues fill the newspapers, so many of us this time of year are easily captivated by those twin annual monuments to escapism, the Super Bowl and the Academy Awards.

I intend no disrespect to those in New England or Philadelphia where the Super Bowl hype can be justified, or any Oscar nominees or their families who might be reading and whose obsessions with the Academy and its selections are perfectly legit.

Rodd Zolkos

It's just that here in Chicago, pro football's been over for a while now (some might say since September), and we're on the cusp of celebrating the XXth anniversary of our last Super Bowl team.

And I, for one, am pretty well removed from the film industry. As in most years, I haven't even seen most of the Oscar nominated films. Of course, that won't stop me from matching wits with the experts to guess this year's winners, although it probably does explain my typically poor performance in pick-the-Oscar-winners contests.

So for me, it would appear that any symptoms of Super Bowl fever can probably be attributed to the fact that the fortnight of hoopla preceding the big game is slightly more engaging than trying to clean the salt stains off my shoes. And a few minutes spent pondering the ways of Oscar (Oscar loves the 13th century costume drama, Oscar loves the prize-fighting nun, Oscar loves the forensic accounting romp, etc.) are probably preferable to contemplating having to dig the car out again.

I suspect I'm not alone in this.

I don't think there's anything really wrong with such seasonal escapism and, in fact, it's probably healthy. So one really doesn't have to look for any justification of time wasted contemplating Brady vs. McNabb or DiCaprio vs. Foxx. But just in case, as with so many things, thinking about the Super Bowl or the Academy Awards from a risk management point of view means never having to say you're sorry.

We've written in these pages over the years about some of the security issues and risk management concerns surrounding the events themselves, but it's other sorts of things that have caught my eye.

Among the Oscar-nominated films I have seen this year, for example, was Martin Scorsese's "The Aviator." Good film, but the real message, I thought, was that it's probably not prudent to have your chief executive also serve as your principal test pilot. While I respect the director's artistic choices, I found it interesting that he chose not to address the issue of key man premiums, which must have been killer.

I've also seen "Sideways," which I liked a lot, though risk management thoughts (or maybe common sense) crept in as I often found myself thinking, "They're really not going to drive after drinking all that wine?"

Regarding the Super Bowl, what's really caught my attention are the efforts to manage certain exposures, if you will, following the flap over Janet Jackson's "wardrobe malfunction" during last year's halftime show.

The National Football League, Fox Television and various advertisers all appear to be looking to address everything from reputational risks to potential Federal Communications Commission enforcement actions. The pre-game extravaganza, the halftime show and even commercials all are supposedly being produced with an eye toward ensuring that the high-speed mayhem on the field takes place in a family-friendly atmosphere.

In one instance, Fox is said to have passed on a commercial for a natural cold remedy starring the legendary Mickey Rooney. The problem, evidently, was a two-second glimpse of the 84-year-old actor's bare backside as he dashes out of a sauna after hearing someone else cough.

At the risk of sounding prudish, I applaud Fox for this essential bit of risk management. I love the Andy Hardy films as much as anyone, I've seen "Boys Town" several times and I'm a staunch defender of freedom of speech and expression. But the risk of Mickey's towel drop catching me by surprise with a mouthful of guacamole is one I'd rather not face. I appreciate Fox's caution.

I think that's the sort of risk management we can all get behind.

Senior Editor Rodd Zolkos can be reached at rzolkos@businessinsurance.com.

Court reinstates portion of McDonald's obesity suit

NEW YORK—A previously dismissed obesity lawsuit against McDonald's Corp. has been revived after a federal appeals court last week reinstated claims that the fast-food chain used deceptive advertising to mask the health risks associated with its products.

Filed in 2002 on behalf of two teenagers, the class action lawsuit alleges that Oak Brook, Ill.-based McDonald's created the false impression that its food products are nutritionally beneficial and, as a result, caused health problems for potentially millions of class members.

A U.S. District Court judge in New York in 2003 threw out the complaint, citing a lack of evidence linking the plaintiffs' obesity and alleged health problems to their consumption of McDonald's food (*BI,* Aug. 8, 2003).

While certain parts of the dismissal have been upheld, judges for the U.S. Court of Appeals for the 2nd Circuit stated in their opinion that "the district court incorrectly dismissed plaintiffs' claims under the New York General Business Law," which protects consumers against deceptive business practices.

McDonald's in a statement said the ruling "simply delays the inevitable conclusion that this case is without merit," and that it is "confident this frivolous suit will once again be dismissed."

In the wake of mounting suits against fast-food chains, some states, including Illinois and Missouri, in recent years have passed laws to protect the restaurant and food manufacturing industry from obesity-related litigation.

—By Rupal Parekh

PHOTO: GETTY

McDonald's Corp. says it is confident that the obesity lawsuit it faces will be dismissed.

Reinsurers may escape liability on Lloyd's Central Fund coverage

By SARAH VEYSEY

LONDON—Lloyd's of London correctly interpreted that the wording of a £500 million ($939.5 million) reinsurance policy for its Central Fund covered its liabilities, but problems with the "presentation of the risk" may entitle the lead reinsurer to void the contract, an arbitration panel has ruled.

The Central Fund, which is financed by levies on syndicates, is intended to meet the liabilities of syndicates if they are unable to do so.

The Jan. 21 partial ruling follows a dispute between Lloyd's and a Swiss Reinsurance Co. unit, SR International Business Insurance Co. Ltd., over the five-year reinsurance program that was purchased in 1999 to meet Central Fund losses in excess of £100 million ($187.9 million) a year. SR International led the coverage with a 32.5% share.

The finding will be subject, though, to the panel's ruling on Lloyd's argument that Swiss Re had affirmed the policy and is therefore bound by its terms, Lloyd's said.

Central Fund reinsurance program

Six reinsurers participated in the Central Fund program, providing up to £500 million in coverage.

Reinsurer	Participation
SR International Business Insurance Co. Ltd.	32.5%
Employers Reinsurance Corp.	20.0%
St. Paul International Insurance Co. Ltd.	20.0%
International Insurance Co. of Hannover Ltd.	15.0%
XL Mid Ocean Reinsurance Ltd.	10.0%
Federal Insurance Co.	2.5%

According to Lloyd's, the tribunal panel will not reach a final conclusion until it has considered evidence in relation to five other reinsurers on the contract. The hearing of that evidence is slated for Feb. 21.

In the event the policy is voided by all of the six reinsurers on the contract, Lloyd's central resources would be reduced to £1.6 billion from £1.9 billion ($3.01 billion and $3.57 billion), according to a Lloyd's statement. The assets of the Central Fund itself would be depleted to £525 million from £801 million ($986.4 million from $1.50 billion).

Neither Lloyd's nor Swiss Re would comment further on the panel's ruling regarding the placement of the risk.

Swiss Re said in a statement that, while the arbitration proceedings are confidential, it could confirm that the panel had issued "a partial decision holding that Lloyd's presentation of the risk to Swiss Re entitled Swiss Re to void the contract."

Following Lloyd's announcement, Standard & Poor's Corp. said that even if the arbitration panel found in favor of the reinsurers and the policy were revoked, S&P's A rating of the Lloyd's market would not be affected.

In addition, Fitch Ratings in London affirmed its A rating of Lloyd's after the partial arbitration panel decision, noting that it had already factored the potential loss of the arbitration case into the rating.

Fitch noted that, although the arbitration proceedings are not complete, it now seems less likely that Lloyd's will recover the full amount it had expected under the policy.

The reinsurance policy expired at the end of 2004. Arbitration proceedings began late last year after Lloyd's said that the reinsurers had been withholding payment on the policy for some time.

In October 2004, Lloyd's announced it would access the capital markets for the first time in an effort to bolster the Central Fund. The Society of Lloyd's issued £500 million of subordinated debt on the London Stock Exchange (*BI*, Oct. 18, 2004).

Court sets stress claims guidelines

Six landmark judgements will reduce the flood of stress cases in U.K.

By CAROLYN ALDRED

LONDON—A set of mixed rulings by the U.K. Court of Appeal on workplace stress claims is expected to reduce the volume of such cases but also require employers to implement more-effective stress management procedures.

The court's decision in six test cases earlier this month will provide greater clarity on employers' liability for stress-related claims and help insurers and employers to settle valid cases outside of court, said the claims manager at a leading U.K. insurer of local authorities.

Moreover, "the judgments provided helpful comments and direction to help employers to have a greater understanding of risk management and use risk management techniques, which will lead to fewer claims," said Alan Hunter, claims manager for Zurich Municipal in Farnborough, England, a unit of Zurich Financial Services Group.

On Jan. 19, the appeals court found in favor of employers in three cases involving a caregiver, a university professor and a journalist, ruling that their employers could not reasonably have foreseen that job conditions would lead to the workers' illnesses. In three other cases, though, the court found that the employers of a bank worker, an accountant and a prison officer either were aware or should have known about the effects of stress on those workers' health. The Court of Appeal ruled on the merits of the cases; any damages will be determined by the trial-level courts or in settlements.

The rulings followed a 2002 Court of Appeal ruling in *Hatton vs. Sutherland* (*BI*, Feb. 11, 2002), which set down 16 general principles in relation to claims for psychiatric injury arising out of stress at work, and a 2004 House of Lords judgment in *Barber vs. Somerset City Council* (*BI*, April 12, 2004), which suggested that employers step in, investigate and actively manage employment-related stress.

In their assessment of the six test cases (see box), the appeals judges noted it is apparent, despite the decisions in *Hatton* and *Barber* and the guidance laid down in these cases, "that judges are still finding difficulties in applying the appropriate principles in claims from stress at work."

The judges confirmed the 16 principles set down in *Hatton* (see box page 26) that must be applied to determine the validity of a stress injury claim but pointed out that every case is different and that the list may not be exhaustive.

"The (test case) rulings help define the parameters of which stress cases will succeed and which won't," said plaintiff lawyer Linda Millband, an attorney in Nottingham, England, at Thompsons, who represented one of the plaintiffs.

Ms. Millband believes that the appeals court judgment will finally "close the flood gates for stress claims" in England and Wales but should encourage insurers and employers to settle claims that fall within the parameters defined by the courts more quickly.

"Insurers should now be able to start settling stress claims again and should be happy that the ruling has clarified employers' responsibilities," she said.

She also noted that the decisions demonstrate the importance for

See STRESS/page26

Appeals court stress claims decisions split 3-3 in test cases

In the six test cases on workplace stress claims decided Jan. 19 , the Court of Appeal found in favor of the employer in:

Hartman vs. South Essex Mental Health & Community Care NHS Trust. In this case, a nursing auxiliary aide in a center for children with learning difficulties was terminated as a result of her ill health from depression and anxiety. The appeals court overturned the original judgment that had favored the plaintiff, ruling that her work did not impose a higher standard than usual of alertness to psychiatric illness on the employer and that there was nothing to indicate that she could not cope with her work.

Best vs. Staffordshire University. The plaintiff retired as a senior university lecturer following a breakdown. The lower court ruled that the university knew of his excessive workload and had enough information to realize that he was at risk of a breakdown. But the Court of Appeal ruled that there were not sufficient indications of harm to the plaintiff's health and that he had failed to use the university's counseling service.

Green vs. Grimsby & Scunthorpe Newspapers Ltd. The plaintiff, an editor, retired after a breakdown. The appeals court upheld a decision that the newspaper group responded reasonably to a memo from the plaintiff complaining about his workload and could not have foreseen that his inability to cope was more than occupational stress.

The plaintiffs' cases were upheld in;

Moore vs. Welwyn Components Ltd. The plaintiff retired due to ill health caused by a colleague's sustained bullying, for which the lower court held his employer liable. The court rejected arguments that the employee's vulnerable mental state was caused by factors apart from work.

Wheeldon vs. HSBC Bank Ltd. A woman left her part-time job as a bank worker after suffering depression and panic attacks. The Court of Appeal upheld a lower court ruling that the bank had been aware of her problem and had failed to act.

Melville vs. The Home Office. A prison officer retired after a stress-related illness following a prisoner's suicide. The appeals court ruled that the officer's employer had foreseen the risk but had failed to implement a system designed to deal with that risk.

World Updates

Marsh Ltd. still working on compensation model

Marsh Ltd., the U.K. arm of Marsh Inc., said that consultation on its new business model is still taking place. Some market sources said they had expected Marsh to unveil a new model for U.K. business last week, but the revised compensation structure is now not expected until next month. "Work on our new business model is progressing. It is clearly of the utmost importance that our clients are comfortable with any model that is in development," a Marsh spokesman said. In October, Marsh Inc. announced it would cease to accept contingent commission payments.

PartnerRe estimates windstorm Erwin losses

PartnerRe Ltd. said its exposure to windstorm Erwin, which hit parts of northern Europe earlier this month, would be between $50 million and $60 million. Hamilton, Bermuda-based PartnerRe said total industry insured losses resulting from the storm were expected to be between $1.3 billion and $1.7 billion.

Energy producer cuts U.K. pension deficit

German energy producer E.ON A.G. has added £420 million ($785.4 million) to the defined benefit pension plan of its U.K. subsidiary. Coventry, England-based E.ON U.K. said in a statement that the contribution from its Düsseldorf, Germany-based parent would "produce an immediate improvement in funding level," for the plan. The plan currently has a combined estimated deficit of £728 million ($1.36 billion). E.ON U.K. also announced it would merge the four sections of its Electricity Supply Pension Scheme in an effort to reduce costs.

AXA P/C revenues grow 3% in 2004

AXA S.A. said its revenues grew 1% to 72.2 billion euros ($98.13 billion) in 2004. Paris-based AXA said its property and casualty revenues increased 3% to 17.9 billion euros ($24.32 billion), while life and savings revenues grew 1% to 47.1 billion euros ($64.01 billion). AXA's full-year earnings figures will be released in late February, a spokesman said.

Briefly noted

The Hague, Netherlands-based **Aegon N.V.** subsidiary Transamerica Occidental Life Insurance Co. has received a life insurance license in Singapore.

Stress: Appeals decisions set standards

Continued from page 25

employers to set up stress management systems. "These cases should encourage employers to set up or strengthen their procedures and risk assessments," she said.

Ms. Millband also pointed out that every stress case ruling in the aftermath of *Hatton* and *Barber* sets a precedent, because relatively few such cases have come to court.

Defense lawyer David Knapp, a partner with the London law firm of Barlow Lyde & Gilbert, agreed that the test cases have reinforced the principles laid down in *Hatton* and *Barber*, pointing out that some County Court judges had been failing to adhere to those principles.

The January ruling means that the number of stress claims filed will be reduced and that "poor-quality claims will be weeded out by plaintiff lawyers," said Mr. Knapp.

"There has been a lot of talk about a flood of stress claims coming, but the courts have a justified skepticism about these cases, and the balance remains in the defendants' favor," he said.

Mr. Knapp noted, though, that the Court of Appeal's judgment demonstrates the benefits of putting in place stress management procedures and guidelines and adopting risk management techniques such as counseling.

General principals of stress at work claims

The Jan. 19 rulings by the U.K. Court of Appeal in six test cases confirmed 16 general principles in relation to claims for psychiatric injury arising out of stress at work, as established in a 2002 Court of Appeal ruling in *Hatton vs. Sutherland*:

1. The ordinary principles of employers' liability apply.
2. The threshold question is whether this kind of harm to this particular employee was reasonably foreseeable.
3. An employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless it knows of some particular problem or vulnerability.
4. The test is the same whatever the employment; there are no occupations that should be regarded as intrinsically dangerous to mental health.
5. Factors likely to be relevant in answering the threshold question include the nature and extent of the work done by the employee and signs from the employee of impending harm to health.
6. The employer is generally entitled to take what it is told by its employee at face value, unless it has good reason to think to the contrary.
7. To trigger a duty to take steps, the indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realize that it should do something about it.
8. The employer is in breach of duty only if it has failed to take the steps that are reasonable in the circumstances.
9. The size and scope of the employer's operation, its resources and the demands it faces are relevant in deciding what is reasonable.
10. An employer can reasonably be expected to take only steps that are likely to do some good.
11. An employer that offers a confidential advice service, with referral to appropriate counseling or treatment services, is unlikely to be found in breach of duty.
12. If the only reasonable and effective step would have been to dismiss automatically the employee, the employer will not be in breach of duty in allowing a willing employee to continue in the job.
13. In all cases, it is necessary to identify the steps that the employer could and should have taken before finding it in breach of its duty of care.
14. The claimant must show that the breach of duty caused or materially contributed to the harm suffered.
15. Where the harm suffered has more than one cause, the employer should pay only for that proportion of the harm suffered attributable to its wrongdoing.
16. The assessment of damage will take account of any pre-existing disorder or vulnerability.

Zurich Municipal's Mr. Hunter agreed that the rulings "helpfully point out the action prudent employers should take."

As a result of the recent decisions, "employers should be more aware of risk management techniques in relation to an employee's workload," said Mr. Hunter. He added that "a more-open dialogue with employees will give a good understanding of how they are coping with the work and identify if there is anything the employers can do to relieve stress."

Ship yard not held liable in asbestos death

By SARAH VEYSEY

LONDON—A ship repair yard could not have reasonably foreseen that the wife of one of its employees would have contracted mesothelioma after being exposed to asbestos dust on her husband's clothes and should not be held liable for damages, the Court of Appeal in London has ruled.

The appeals court decision in favor of the employer—Belfast, Northern Ireland-based Harland & Wolff P.L.C.—overturns a lower court ruling last year that awarded £82,000 ($154,078) to Teresa Maguire.

Ms. Maguire—whose husband James worked as a boilermaker in a Harland & Wolff yard in Liverpool, England, between 1961 and 1965—died shortly after the original damages award.

In its 2-to1 majority ruling, the appeals court held that, given the level of knowledge at the time, Harland & Wolff could not have reasonably foreseen that Ms. Maguire was at risk from pulmonary injury from exposure to asbestos dust on her husband's clothing.

Canada: Provinces controlling workers comp costs

Continued from page 4

mainly due to escalating health care costs, which have encouraged Canadian employers to promote safety in the workplace and manage return-to-work outcomes for injured workers, observers say.

Waiward Steel Fabricators Ltd., for example, has spent the past 10 years developing a safety program that mandates the use of safety glasses, hard hats and ear plugs and prohibits smoking in the workplace to cut down on potential distractions, said Donald Oborowsky, president and chief executive officer of the Edmonton, Alberta-based company.

"We put together a real safety program," he said. "We quit talking about it. We're actually doing it."

Wetaskiwin, Alberta-based Supreme International Ltd., a manufacturer of farm equipment, decided to institute a comprehensive safety program after experiencing an unusually high number of injuries in 2002, said Jeannette Guertin, the company's president. "We had a reality check and knew we needed to do something to improve our safety record," Ms. Guertin said.

The goals of the company's new program included ensuring employees understand the importance of safety in the workplace and creating a "no-blame environment," in which employees could anonymously report safety concerns that the company would immediately address, she said.

Supreme International created a health and safety committee with representatives from a variety of departments that meets once a month to discuss safety issues. In addition, the company holds a general safety meeting once a month for all staff members and brings in speakers to discuss topics such as preventing back injuries. Employees also participate in a regular safety quiz, with the company giving gifts of up to $300 Canadian ($245.67) per month for participants.

'We put together a real safety program. ... We quit talking about it. We're actually doing it.'

Donald Oborowsky
Waiward Steel Fabricators Ltd.

The company's efforts have resulted in a decrease from 20 claims in 2002 to one claim in 2004, Ms. Guertin said.

Supreme International also developed a modified work program that allows injured workers to return to work more quickly by putting them in positions tailored to their physical abilities. The program helps both the company and the employees by reducing the amount of time they are out of the office and making the transition back to work easier, Ms. Guertin said.

The increased employer emphasis on safety has led to positive trends in accident prevention and costs control, observers say.

In Alberta, the injury rate dropped to 2.5 incidents per 100 workers in 2004, down from 2.8 in 2003, while the duration of claims decreased 15%, contributing to an 11% decrease in claims costs. "Safer workplaces and positive return-to-work outcomes are key factors contributing to lower premium rates," said Guy Kerr, president and CEO of the Workers Compensation Board of Alberta. In Saskatchewan, a decrease in the province's workplace injury rate from 4.8% to 4.5% in 2004 contributed to a 3.9% reduction in employer premiums for 2005.

Employers say focusing on workplace safety is a plus from a financial standpoint; several provinces offer financial rebates to employers that implement effective health and safety and disability management programs.

Waiward Steel received a rebate of $119,000 Canadian ($98,889) last year, in addition to realizing savings from a discounted premium that is about 40% lower than that of its counterparts in the manufacturing industry, Mr. Oborowsky said. "We qualify for the maximum rebate you can get, and we just put that back into our safety program," he said.

The costs of developing a safety program pale in comparison to the costs of a high number of workplace accidents, Supreme International's Ms. Guertin noted. "I strongly encourage companies not to feel it's a cost to them to invest in their safety programs," she said. "It's a huge benefit down the road."

Not all good news

Not all provinces, though, are reporting positive developments about workers comp premiums. In Nova Scotia, for example, employer premiums—already the second-highest in Canada—have increased 8 cents to $2.65 Canadian ($2.19) in 2005, as board officials struggle to control the program's growing deficit. One cause of the increase is the costs of complying with a Supreme Court of Canada ruling that struck down limitations on workers comp benefits for claims for chronic pain (*BI*, May 24, 2004). In mid-August 2004, the Workers Compensation Board of Nova Scotia estimated that providing benefits for chronic pain could increase its benefits liability by $220 million Canadian ($168.0 million). The board's 2003 annual report pegged its unfunded liability at $410 million ($317.3 million).

"Further rate increases can be expected after 2005 unless cost pressures on the workers compensation system can be abated," said Nancy MacCready-Williams, the board's CEO. "There can only be significant reductions in assessment rates or increases in the benefits provided to injured workers when the unfunded liability is eliminated."

Meanwhile, premiums in the Yukon Territory will increase 23 cents to $1.74 Canadian ($1.44) in 2005 because the province is phasing out its employer subsidy program. The subsidies began in 1999, when the workers comp program featured a substantial surplus. But rising claims costs and lower investment income in recent years have reduced the surplus and forced the board to phase out the subsidies, officials said.

GAO keeps PBGC on its 'high risk' watch list

By JERRY GEISEL

WASHINGTON—The Government Accountability Office is keeping the federal government's pension insurance program on its "high risk" watch list of agencies and programs that need congressional action.

The Pension Benefit Guaranty Corp.'s single employer insurance program now has a deficit of $23.3 billion. It is, according to the GAO, "threatened by structural weaknesses in pension funding rules, the program's premium structure and the potential for large bankruptcies among sponsors in weak industries that have underfunded plans."

Among other things legislators should consider is strengthening funding rules and restricting the ability of employees in underfunded plans sponsored by financially weak companies to take lump-sum distributions when they terminate employment, the GAO says.

If Congress fails to act soon to reform the agency's insurance program, and the PBGC's financial condition continues to deteriorate, legislators may one day either have to cut the benefits the PBGC has promised to participants in plans it has taken over or provide direct federal financial assistance to the PBGC, the GAO said.

The Bush administration has outlined a PBGC reform package and is expected to provide more details when the administration releases its proposed federal budget for fiscal 2006.

The GAO first placed the PBGC on its watch list in 1990 and removed it in 1994. The PBGC was placed back on the watch list in 2003 as the agency's financial condition began to deteriorate.

NAIC rolls out online reporting system to protect consumers

By MEG FLETCHER

KANSAS CITY, Mo.—The National Assn. of Insurance Commissioners now offers an online insurance fraud reporting system on the association's Web site, *www.naic.org*.

The system—which allows consumers to provide detailed information anonymously—is part of the NAIC Executive Task Force on Broker Activities' three-part plan to enhance consumer protections. The group was established last fall in the aftermath of lawsuits and inquiries into bid rigging and self-dealing.

"State insurance regulators continue to move forward on a coordinated mission to deal with the issue of broker compensation aggressively," according to a statement by Diane Koken, NAIC president and Pennsylvania insurance commissioner. "The addition of online fraud reporting capabilities to the NAIC's Web site is another step toward our goal of addressing alleged misconduct and violation of existing insurance laws involving insurance companies and insurance brokers."

The insurance fraud reporting system is available directly at *https://external-apps.naic.org/fraud/ofrs_entry.jsp*. On the Web site, it is accessible from two links on the association's home page: under the "New and Noteworthy" section and through the Consumer Information Source.

No personal identifying information is required to submit an allegation of suspected fraud. A consumer wishing to receive verification of the NAIC's receipt of the report is required to provide a name and e-mail address, however. Consumers also may choose to provide additional contact information to facilitate additional communication from the state insurance department that investigates the report.

To file a report of suspected insurance fraud, consumers are required to indicate the state where the suspected fraud occurred, and the name of the business or individual involved along with a complete mailing address. Optional fields include a phone number and individual's date of birth, as well as the date of suspected fraud and the amount of loss. The report also includes a text box allowing the consumer to provide additional details of the suspected fraud.

The task force's two other plan components are the development of model legislation to require better disclosure of broker compensation arrangements and coordination of state insurance department efforts to collect more information about brokers' and insurers' market practices.

Analysts: Decision focuses on loss causation issue

Continued from page 3

that the opinions were false or that Merrill concealed any risk that could plausibly (let alone foreseeably) have caused plaintiffs' loss.

"In fact, as the district court recognized, plaintiffs fail to grapple in any meaningful way with the complexity of the reports that form the basis of their claims, or, for that matter, to account for the price-volatility risk inherent in the stocks they chose to buy," says the decision.

The decision is a "pretty powerful statement by the 2nd Circuit that you need to come forward with a good, logical nexus between the alleged statement and the loss," said Todd David, an attorney with Alston & Bird in Atlanta, who said this is an important issue "that's been making its way to the forefront over the last several years."

Steve Thel, a professor at Fordham Law School in New York, said, "It really does seem there's a lot of evidence" that analysts were recommending stocks they did not believe had value. But the decision presents plaintiffs with the "almost impossible" task of proving that discovery of the analysts' false reports led to the stocks' collapse, said Mr. Thel.

Russel N. Jacobson, an attorney with Pomerantz, Haudek, Block Groomsman & Gross L.L.P. in New York, who is representing plaintiffs in a comparable case, said the technical loss-causation restrictions imposed by the decision mean investors who lose money on stocks they have bought on the basis of fraudulent analysts' recommendations will not have the ability to recover. "It's going to have profound practical consequences for many investors, pension funds" and others, Mr. Jacobson said.

The case may also signal the U.S. Supreme Court's opinion in the *Dura* case, say observers. "I think the case is an indicator of how the Supreme Court is likely to rule on the very same questions now before it" in *Dura*, said Marc B. Dorfman, an attorney with Foley & Lardner in Washington who represented co-defendant Mr. Blodget in the Lentil decision.

"It could also end up influencing what the Supreme Court does," said Mr. Frederick.

In *Dura*, the The Supreme Court will consider whether a plaintiff must prove there is a causal connection between the alleged fraud and the investment's subsequent decline in price.

Meanwhile, litigation over the issue of security analysts' reports continues.

On Jan. 19, U.S. District Judge Gerard E. Lynch in New York granted class action status to plaintiffs in a securities fraud lawsuit brought against investment bank Robertson Stephens Inc. and analyst Paul Johnson, in a case that focuses on the firm's recommendation of Corvis Corp. stock.

Investors are charging the defendants with a "pump and dump scheme" to keep the stock's price artificially inflated until they could sell their own shares.

Mr. Jacobson, who represents plaintiffs in *Anthony V. DeMarco vs. Robertson Stephens Inc. and Paul Johnson*, said the complaint was prepared in anticipation of the 2nd Circuit's expected decision.

John Kilgour Lentell, Brett Raynes and Juliet Raynes vs. Merrill Lunch & Co. Inc. and Henry M. Blodget; 2nd U.S. Circuit Court of Appeals, Docket No. 03-7948.

Subsidy: Most employers will be entitled to collect

Continued from page 4

titling them to the federal subsidy.

"That would be the case with the vast majority of employers," said Joe Altman, a principal with Towers Perrin in Stamford, Conn.

The major reason is the design of the prescription drug benefit under Part D. Under law, Medicare Part D will not cover beneficiaries' prescription drug expenses between $2,250 and $3,600, a hole in coverage that is rarely found in employer-provided plans, experts say.

To be sure, nothing in the law requires employers to retain prescription drug coverage. Indeed, some members of Congress worried that adding a prescription drug benefit to Medicare would accelerate the termination or phasing out of employer-sponsored plans.

Those members reasoned that, with the expansion of Medicare, employers would have less need to offer health care coverage to their retired workers.

While many employers are several months away from making their final decisions, early indications are that most employers—unless they are in financial difficulty—will retain coverage and collect the federal subsidy.

Majority will retain cover

Towers Perrin's Mr. Altman estimated, for example, that two-thirds to three-quarters of the clients he has spoken to intend to retain their plans and receive the subsidy, a percentage that he said he believes will increase as more employers make their decisions in the weeks and months ahead.

Retaining coverage ensures the least disruption to retirees and the continuity of benefits, said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

"Taking the subsidy is the easiest approach. You don't have to make any design changes," said Jonathan Nemeth, a senior vp with Aon Consulting in Somerset, N.J.

It also will result in some hefty payments to employers. BellSouth Corp. in Atlanta, for example, says the subsidies will reduce its accumulated retiree health care obligations by well over a half-billion dollars.

Some employers intend to share the federal subsidy with their retirees. For example, one Aon Consulting client intends to use a portion of the subsidy to reduce the amount of premiums pre-Medicare eligible retirees pay for employer-provided health care coverage, Mr. Nemeth said.

"It is a way of redistributing the subsidy," he said.

Surplus: Growth slows

Continued from page 4

according to Texas' stamping office data. In Nevada premiums shot up 56.1% in 2004 compared with 2003. By contrast, premiums increased 27.1% in 2003 compared with 2002.

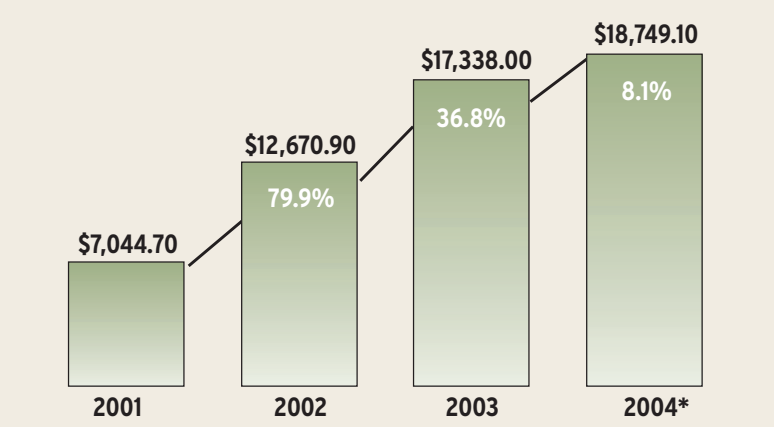
A residential building boom in Nevada, coupled with a limited number of markets for contractor liability, account for the state's surplus lines growth, said Louis Mastos, president and CEO for Louis T. Mastos & Associates, a managing general agency in Reno, Nev.

Observers say property insurance pricing accounts for more of the premium decrease than does a drop in price for casualty coverages.

Victor O. Schinnerer & Co. Inc. is seeing no "wholesale drop" in premium volume, said Marie P. Solomon, a managing director for the Chevy Chase, Md.-based underwriting manager that writes professional liability and specialty lines.

Ms. Solomon noted that while competition for professional lines business is putting downward pressure on pricing, the underlying exposure base for professional liability lines is growing. As rates are calculated on the exposure base the overall premium volume is not falling.

SURPLUS LINES PREMIUM GROWTH SLOWS



† 15 states tracked are Arizona, California, Colorado, Florida, Idaho, Illinois, Mississippi, Montana, Nevada, New York, Oregon, Pennsylvania, Texas, Utah and Washington.
*2004 missing premiums from Colorado, Mississippi and Montana.
Source: Surplus Lines Stamping Office of Texas

Iraq: Coverage demand slowed prior to elections

Continued from page 1

dum Oct. 15, according to the U.S. Embassy in Baghdad. Two months after that, another election is slated to elect a permanent government.

The chaos in Iraq and the availability of coverage "is worse now than six months ago for a company with staff in Iraq," said David Bruce, divisional head in the specialty division of Lloyd's of London syndicate 33, managed by Hiscox P.L.C.

"The last couple of months saw a significant slowdown in insurance activity as contractors have kept a low profile," added Nigel Guillaume-Smith, underwriting director of accident and health at Lloyd's syndicate 2020, managed by Wellington Underwriting P.L.C.

The lull started in late October during the runup to the U.S. presidential election, after contractors were told by their employers, in an effort to minimize casualties, not to take unnecessary risks, he added.

And now "the contractors themselves appear to be waiting for the perceived calm after the (Iraqi) elections are done," he continued.

"We have not seen a request for cover for six weeks or so," said David Lush, accident and health underwriter for the ACE European Group Ltd. in London.

Insuring an employee of a U.S. contractor in Baghdad for 12 months might cost 6% of value insured per year up front, for a policy covering accidental death and loss of limbs, permanent total disability and maybe medical expenses, Mr. Bruce said.

The value depends on the person insured and the type of employment, but it ranges between £25,000 ($46,975) and £1 million ($1.88 million) per person, he added. This is subject to a maximum loss for any one person, for any one accident and an aggregate limit, he said.

Six months ago, underwriters would have charged around 5% of the value insured, Mr. Bruce said.

Mr. Lush declined to give specific rates but said they have, in general, hardened since six months ago.

Mr. Guillaume-Smith said Wellington has seen no change in rates, though the lack of purchasing activity makes it difficult to comment. "We are prepared to offer capacity at similar rates to what we were asking for six months ago," he added.

Annual rates for Iraqi coverage have not changed from about 6% of value in the middle of last year, but they could decrease later in 2005, said Tony Ratliff, a partner at JLT Risk Solutions Ltd. in London.

"Given the fact you have got general softening in the personal accident market in general, our expectation is there would be commensurate gradual softening of rates within Iraq," he said.

Some buyers, however, are more interested in medical expense coverage, Mr. Guillaume-Smith said. "It is a gray area because the need to administer it falls on the U.S. military, and their priority is to treat troops first," he said.

In the past six months, the largest contractors in Iraq have begun looking to set up their own treatment and repatriation facilities, he said.

Medical expenses are also not always covered because of the difficulty in getting people out of Iraq, added Mr. Lush.

David Partner, senior broker at Miller Insurance Services Ltd. in London, said the coverage has not changed, but that buyers must provide good financial justification to get a value of $1 million for each employee.

From the market's point of view, "underwriters tend to prefer volume of risks and a low sum insured" and are trying to steer toward writing lower limits, he said.

Mr. Bruce said Hiscox will not write 100% of any personal accident risk in Iraq.

PHOTO: GAITH ABDUL-AHAD/GETTY IMAGES

A car bomb explodes near a school south of Baghdad. Violence escalated in Iraq as the country prepared for this week's elections.

"Some people will be worried they have written too much in Iraq and may be cutting back," he said.

But JLT's Mr. Ratliff said one or two insurers may want to enter the market for contractor coverage to share in the high rates.

"The market is unsure how much of a group discount prevails. It is struggling to differentiate" between the high-key risks, which should be getting one rate, and the low-key risks, such as a caterer in the green zone, which should get another, added Mr. Guillaume-Smith.

When the market began writing personal accident coverage for Iraqi risks, it was using blanket rating methods, but in the past six months, some underwriters have started to differentiate and this has

LARA: Mandatory sanctions key

Continued from page 3

never took up the issue before adjournment.

Tort reform advocates point to LARA's re-imposition of mandatory sanctions against attorneys who bring frivolous lawsuits as a particularly critical component of the measure. Such mandatory sanctions had been the standard under Rule 11 of the Federal Rules of Civil Procedure until 1993, when the rule was amended to allow judges greater discretion in dealing with such conduct.

"Most of the problems that exist in the civil justice system can be dealt with at the ground floor, which is judges taking action in situations where lawsuits have no merit," said Glenn Lammi, chief counsel of the legal studies division of the Washington Legal Foundation. "The fact that it makes this mandatory where they used to be discretionary is critical because judges are very reluctant to use Rule 11."

"We think that this is a very significant piece of legislation because it directly addresses the problem of frivolous lawsuits," said Sherman Joyce, president of the American Tort Reform Assn. "Insuring that all claims and defenses have a basis in law and fact will help to ensure that all parties to litigation aren't subject to lawsuit abuse."

"It's an important signal that there's more to civil justice reform than just class actions, and I think it strikes at the heart of some of the problems that we have," said the WLF's Mr. Lammi.

"The significance is that it's one more piece of the lawsuit abuse puzzle," said Lawrence Fineran, vp-regulatory and competition policy at the National Assn. of Manufacturers in Washington. "Hopefully, it will get into the Senate in time for the Senate to give it serious consideration."

Ernie Csiszar, the president of the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America, also praised the bill in a statement, saying it "will prevent lawyers from using the system for their own profit."

'Most of the problems that exist in the civil justice system can be dealt with at the ground floor, which is judges taking action in situations where lawsuits have no merit.'

Glenn Lammi
Washington Legal Foundation

But a spokesman for the Assn. of Trial Lawyers of America called LARA "hypocritical on many levels." He said that supporters "are saying that they don't trust the chief justice of the United States and judiciary to make rules." He said LARA would place a "huge unfunded mandate on every state and every court system in the country."

On the other side of Capitol Hill, a spokeswoman for Senate Finance Committee Chairman Charles Grassley, R-Iowa, said supporters hope to bring the class action bill to the full Senate during the week of Feb. 7. The measure, of which Sen. Grassley is the chief sponsor, would permit the removal to federal court from state courts of certain class actions that involve defendants and plaintiffs from different states, among other things. The measure also would require that judges subject noncash awards to class members, such as discount coupons for a defendant company's goods or services, to a higher degree of scrutiny than is currently the case.

The bill was formally introduced Jan. 25 and has been named by Senate Majority Leader Bill Frist, R-Tenn., as one of his first legislative priorities. The bipartisan measure is identical to a measure that was withdrawn from consideration last year after Republican and Democratic supporters could not agree on the number and nature of amendments that should be added to it.

Melissa Shelk, vp-federal affairs for the American Insurance Assn. said in statement that "we are going to have to fight off amendments that have the potential to weaken the bill. Our immediate goal is to get this through the Senate Judiciary Committee quickly and cleanly."

NAM's Mr. Fineran noted that LARA and the Class Action Fairness Act serve complimentary purposes. "Obviously LARA has the same prong as class action in terms of forum shopping. Just as the Class Action Fairness Act takes care of attorneys gaming the court systems of states and counties that have set themselves up to be the national arbiters for standards of products and other legal actions, (LARA) does so

Class action status granted in Boeing suit

SEATTLE—A federal judge in Seattle has granted class action status to black employees of Chicago-based Boeing Co. who are charging the company with discrimination in pay and promotions.

The group represents about 15,000 employees, according to plaintiff attorney Steve Berman of Seattle-based Hagens Berman L.L.P.

According to Mr. Berman, a suit charging discrimination, retaliation and a hostile work environment was originally filed in March 1998. A settlement was reached with the original plaintiffs in 1999, but a group of black employees felt the settlement was inadequate and appealed to the 9th U.S. Circuit Court of Appeals in San Francisco.

The appellate court agreed and sent the case back to the district court. U.S. District Court Judge Marsha Pechman granted class action status to the group earlier this month.

A Boeing spokesman said, "We strongly believe that the claims do not reflect any pattern or practice of discrimination." The judge's decision to grant class action status "is only a procedural ruling, and it's not based on the merits of the claims within the complaint," he said.

A trial is scheduled for Dec. 5, 2005.

—By Judy Greenwald

ADVERTISER INDEX

Issue of January 31

ADVERTISER	PAGE #	ADVERTISER	PAGE #
Aetna Corporate	7	Edwards & Angell, LLP	16
AIG	Cover 4	Great-West Healthcare	18
Aon Corporation	2	ISO	17
ARAG Group	20	Liberty Communications Services	19
Broadspire	15	Liberty Mutual	5
Burnham System	24	Monitor Liability Managers	24
Business Insurance	22, 23, 27, Cover 3	Sedgwick CMS	21
Cambridge Integrated Services	10/11	Specialty Risk Services, LLC	13
Carvill America Inc.	31	Valley Oak Systems	6
CCMSI	14	VPA, Inc.	20
Delta Consulting Group, Inc.	16	Zurich North America	Cover 2

Iraq: Coverage demand slowed prior to elections

Continued from page 1

dum Oct. 15, according to the U.S. Embassy in Baghdad. Two months after that, another election is slated to elect a permanent government.

The chaos in Iraq and the availability of coverage "is worse now than six months ago for a company with staff in Iraq," said David Bruce, divisional head in the specialty division of Lloyd's of London syndicate 33, managed by Hiscox P.L.C.

"The last couple of months saw a significant slowdown in insurance activity as contractors have kept a low profile," added Nigel Guillaume-Smith, underwriting director of accident and health at Lloyd's syndicate 2020, managed by Wellington Underwriting P.L.C.

The lull started in late October during the runup to the U.S. presidential election, after contractors were told by their employers, in an effort to minimize casualties, not to take unnecessary risks, he added.

And now "the contractors themselves appear to be waiting for the perceived calm after the (Iraqi) elections are done," he continued.

"We have not seen a request for cover for six weeks or so," said David Lush, accident and health underwriter for the ACE European Group Ltd. in London.

Insuring an employee of a U.S. contractor in Baghdad for 12 months might cost 6% of value insured per year up front, for a policy covering accidental death and loss of limbs, permanent total disability and maybe medical expenses, Mr. Bruce said.

The value depends on the person insured and the type of employment, but it ranges between £25,000 ($46,975) and £1 million ($1.88 million) per person, he added. This is subject to a maximum loss for any one person, for any one accident and an aggregate limit, he said.

Six months ago, underwriters would have charged around 5% of the value insured, Mr. Bruce said.

Mr. Lush declined to give specific rates but said they have, in general, hardened since six months ago.

Mr. Guillaume-Smith said Wellington has seen no change in rates, though the lack of purchasing activity makes it difficult to comment. "We are prepared to offer capacity at similar rates to what we were asking for six months ago," he added.

Annual rates for Iraqi coverage have not changed from about 6% of value in the middle of last year, but they could decrease later in 2005, said Tony Ratliff, a partner at JLT Risk Solutions Ltd. in London.

"Given the fact you have got general softening in the personal accident market in general, our expectation is there would be commensurate gradual softening of rates within Iraq," he said.

Some buyers, however, are more interested in medical expense coverage, Mr. Guillaume-Smith said. "It is a gray area because the need to administer it falls on the U.S. military, and their priority is to treat troops first," he said.

In the past six months, the largest contractors in Iraq have begun looking to set up their own treatment and repatriation facilities, he said.

Medical expenses are also not always covered because of the difficulty in getting people out of Iraq, added Mr. Lush.

David Partner, senior broker at Miller Insurance Services Ltd. in London, said the coverage has not changed, but that buyers must provide good financial justification to get a value of $1 million for each employee.

From the market's point of view, "underwriters tend to prefer volume of risks and a low sum insured" and are trying to steer toward writing lower limits, he said.

Mr. Bruce said Hiscox will not write 100% of any personal accident risk in Iraq.

"Some people will be worried they have written too much in Iraq and may be cutting back," he said.

But JLT's Mr. Ratliff said one or two insurers may want to enter the market for contractor coverage to share in the high rates.

"The market is unsure how much of a group discount prevails. It is struggling to differentiate" between the high-key risks, which should be getting one rate, and the low-key risks, such as a caterer in the green zone, which should get another, added Mr. Guillaume-Smith.

When the market began writing personal accident coverage for Iraqi risks, it was using blanket rating methods, but in the past six months, some underwriters have started to differentiate and this has caused some competition, he said.

PHOTO: GAITH ABDUL-AHAD/GETTY IMAGES

A car bomb explodes near a school south of Baghdad. Violence escalated in Iraq as the country prepared for this week's elections.

LARA: Mandatory sanctions key

Continued from page 3

never took up the issue before adjournment.

Tort reform advocates point to LARA's re-imposition of mandatory sanctions against attorneys who bring frivolous lawsuits as a particularly critical component of the measure. Such mandatory sanctions had been the standard under Rule 11 of the Federal Rules of Civil Procedure until 1993, when the rule was amended to allow judges greater discretion in dealing with such conduct.

"Most of the problems that exist in the civil justice system can be dealt with at the ground floor, which is judges taking action in situations where lawsuits have no merit," said Glenn Lammi, chief counsel of the legal studies division of the Washington Legal Foundation. "The fact that it makes this mandatory where they used to be discretionary is critical because judges are very reluctant to use Rule 11."

"We think that this is a very significant piece of legislation because it directly addresses the problem of frivolous lawsuits," said Sherman Joyce, president of the American Tort Reform Assn. "Insuring that all claims and defenses have a basis in law and fact will help to ensure that all parties to litigation aren't subject to lawsuit abuse."

"It's an important signal that there's more to civil justice reform than just class actions, and I think it strikes at the heart of some of the problems that we have," said the WLF's Mr. Lammi.

"The significance is that it's one more piece of the lawsuit abuse puzzle," said Lawrence Fineran, vp-regulatory and competition policy at the National Assn. of Manufacturers in Washington. "Hopefully, it will get into the Senate in time for the Senate to give it serious consideration."

'Most of the problems that exist in the civil justice system can be dealt with at the ground floor, which is judges taking action in situations where lawsuits have no merit.'

Glenn Lammi
Washington Legal Foundation

Ernie Csiszar, the president of the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America, also praised the bill in a statement, saying it "will prevent lawyers from using the system for their own profit."

But a spokesman for the Assn. of Trial Lawyers of America called LARA "hypocritical on many levels." He said that supporters "are saying that they don't trust the chief justice of the United States and judiciary to make rules." He said LARA would place a "huge unfunded mandate on every state and every court system in the country."

On the other side of Capitol Hill, a spokeswoman for Senate Finance Committee Chairman Charles Grassley, R-Iowa, said supporters hope to bring the class action bill to the full Senate during the week of Feb. 7. The measure, of which Sen. Grassley is the chief sponsor, would permit the removal to federal court from state courts of certain class actions that involve defendants and plaintiffs from different states, among other things. The measure also would require that judges subject noncash awards to class members, such as discount coupons for a defendant company's goods or services, to a higher degree of scrutiny than is currently the case.

The bill was formally introduced Jan. 25 and has been named by Senate Majority Leader Bill Frist, R-Tenn., as one of his first legislative priorities. The bipartisan measure is identical to a measure that was withdrawn from consideration last year after Republican and Democratic supporters could not agree on the number and nature of amendments that should be added to it.

Melissa Shelk, vp-federal affairs for the American Insurance Assn. said in statement that "we are going to have to fight off amendments that have the potential to weaken the bill. Our immediate goal is to get this through the Senate Judiciary Committee quickly and cleanly."

NAM's Mr. Fineran noted that LARA and the Class Action Fairness Act serve complimentary purposes. "Obviously LARA has the same prong as class action in terms of forum shopping. Just as the Class Action Fairness Act takes care of attorneys gaming the court systems of states and counties that have set themselves up to be the national arbiters for standards of products and other legal actions, (LARA) does so for individuals," he said.

Class action status granted in Boeing suit

SEATTLE—A federal judge in Seattle has granted class action status to black employees of Chicago-based Boeing Co. who are charging the company with discrimination in pay and promotions.

The group represents about 15,000 employees, according to plaintiff attorney Steve Berman of Seattle-based Hagens Berman L.L.P.

According to Mr. Berman, a suit charging discrimination, retaliation and a hostile work environment was originally filed in March 1998. A settlement was reached with the original plaintiffs in 1999, but a group of black employees felt the settlement was inadequate and appealed to the 9th U.S. Circuit Court of Appeals in San Francisco.

The appellate court agreed and sent the case back to the district court. U.S. District Court Judge Marsha Pechman granted class action status to the group earlier this month.

A Boeing spokesman said, "We strongly believe that the claims do not reflect any pattern or practice of discrimination." The judge's decision to grant class action status "is only a procedural ruling, and it's not based on the merits of the claims within the complaint," he said.

A trial is scheduled for Dec. 5, 2005.

—By Judy Greenwald

ADVERTISER INDEX

Issue of January 31

ADVERTISER	PAGE #	ADVERTISER	PAGE #
Aetna Corporate	7	Edwards & Angell, LLP	16
AIG	Cover 4	Great-West Healthcare	18
Aon Corporation	2	ISO	17
ARAG Group	20	Liberty Communications Services	19
Broadspire	15	Liberty Mutual	5
Burnham System	24	Monitor Liability Managers	24
Business Insurance	22, 23, 27, Cover 3	Sedgwick CMS	21
Cambridge Integrated Services	10/11	Specialty Risk Services, LLC	13
Carvill America Inc.	31	Valley Oak Systems	6
CCMSI	14	VPA, Inc.	20
Delta Consulting Group, Inc.	16	Zurich North America	Cover 2

Late News

Continued from page 1

San Diego-based Applied Micro "expects" D&O insurance to cover $31 million of the settlement, which is subject to court approval. The Florida State Board of Administration is the lead plaintiff in the litigation, which charged the defendants with failing to warn shareholders about a downturn in business in the wake of the massive failure of dot-com companies five years ago. The defendants deny any wrongdoing.

PHOTO: GETTY

ISO has issued a catastrophe bulletin for the recent snowstorms that hit eight states in the Northeast, resulting in significant insured losses.

Snowstorm losses to exceed $25 million: PCS

The Insurance Services Office Inc.'s Property Claim Services unit has issued a catastrophe bulletin on the recent snowstorms in the Northeast, meaning insured losses are expected to exceed $25 million and affect a significant number of insurers and policyholders. The recent blizzard dropped from 1 to 3 feet of snow in Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont, and several major cities declared snow emergencies.

Halliburton completes asbestos claims funding

Halliburton Co. has completed the funding of about $2.8 billion to settle asbestos and silica claims filed against two of its subsidiaries. The Houston-based engineering and energy company last week paid the final installment of the settlement to fund trusts that will pay current claimants who have suffered damages from asbestos and silica. The settlements were for Halliburton units DII Industries L.L.C. and Kellogg Brown & Root Inc., both of which emerged from bankruptcy earlier this month. Halliburton said it has collected more than $1 billion from various insurers related to the settlements.

Aon promotes execs at captive operations

Aon Captive Services Group has named Scott Frazier as group managing director of Aon Insurance Managers Americas. He previously was executive director. His promotion and several others come as Aon Captive Services has "achieved tremendous growth in the captive arena," according to a company statement. In another move, Dan MacLean has been named managing director of Aon Insurance Managers (Cayman) Ltd. He previously served as a vp of the Cayman Islands operation, where he has been based since 1998.

Oklahoma governor names insurance commissioner

Oklahoma Governor Brad Henry appointed a Tulsa insurance executive as insurance commissioner to replace Carroll Fisher, who resigned as commissioner last year after being impeached on corruption charges. Kim Holland, executive-vp of Team Insurance Group, a multiline insurance agency, will take over the post immediately and serve out Mr. Fisher's remaining term, which expires with the 2006 elections.

Hartford returns to profit after 2003 reserve boost

The Hartford Financial Services Group reported $2.1 billion in net income for 2004. This compared with a $91 million net loss for 2003, when the company increased asbestos reserves during the first quarter of that year by $1.7 billion after tax. In its property/casualty segment, net written premiums increased 9.2%, to $9.89 billion in 2004. The company reported a 95.3% combined ratio for the year, vs. a 96.5% combined ratio for the comparable period a year ago. In addition, Hartford said in a Securities and Exchange Commission filing that the SEC's division of enforcement and the New York attorney general's office are investigating aspects of the company's variable annuity and mutual fund operations related to market timing and other practices.

Briefly noted

Arthur J. Gallagher & Co. has merged its reinsurance brokerage operations, Arthur J. Gallagher Intermediaries Inc. and John P. Woods & Co. Inc. The combined company will be called Gallagher RE Inc. It will be headed by Randall S. Jensen, the current president of Arthur J. Gallagher Intermediaries....Peter Coster is retiring as president of **Mercer Inc.**, the benefits consulting unit of Marsh & McLennan Cos. Inc. Going forward, Mercer will be managed as two business units: the human resource consulting unit will be managed by Brian M. Storms and the general management consulting unit will be managed by David J. Morrison....**William Sweetnam**, the Treasury Department's benefits tax counsel since 2001, will leave next month to pursue opportunities in the private sector. Mr. Sweetnam, a former consultant at Towers Perrin, played a key role in staking out Treasury's positions on cash balance pension plans, health reimbursement arrangements and health savings accounts. A successor has not been named....Robert F. Cusumano has been named general counsel at **ACE Ltd.**, succeeding Peter Mear, who is retiring from the Bermuda-based insurer. Mr. Cusumano previously was a New York-based litigation partner and head of the insurance litigation practice at the law firm of Debevoise & Plimpton L.L.P.

Check out BusinessInsurance.com

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

Online Poll

[1/24-1/28]

Will renewed efforts to pass class action reform succeed in the current Congress?

Yes	28.3%
No	59.3%
Maybe	12.4%

BI Stock Index

[1/24 - 1/28]

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

***BI* Stock Index**	
2345.40	-0.07
Dow Jones	
10427.20	0.33
S&P 500	
1171.36	0.30

Largest gains

SCOR	6.28%
Allmerica Financial Corp.	4.55%
Baldwin & Lyons Inc.	3.22%
RLI Corp.	2.37%
Humana Inc.	2.28%

Largest losses

Trenwick Group Ltd.	-37.50%
Gainsco Inc.	-9.09%
Clark Inc.	-8.47%
Harleysville Group	-5.63%
Arthur J. Gallagher & Co.	-5.16%

Weekly change by market segment

Brokers	-2.52%
Insurers/Reinsurers	-1.21%
Managed Care Organizations	-0.56%

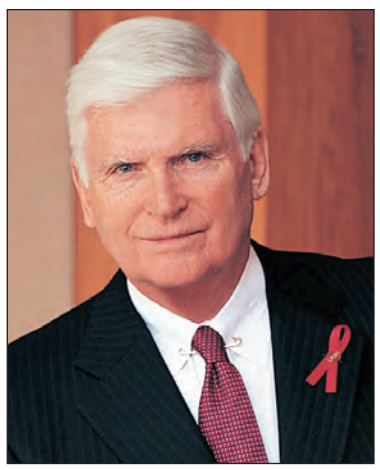
Source: FinancialContent Inc. *(http://financialcontent.com)*

Aon adds buyout-triggered severance benefits

CHICAGO—Aon Corp. has implemented a new severance package plan for its key executives in the event the Chicago-based brokerage giant is acquired.

Aon's board of directors approved the new severance agreements on Jan. 21. They were detailed in filings with the Securities and Exchange Commission late last week.

The company said the plans were adopted in order to secure the continued service, dedication and objectivity of the executives in the event of a change in control at Aon, but it maintained the new plans were not taken in anticipation of any contemplated change in control.



Mr. Ryan

Under the new agreements, 11 senior "Tier 1" executives would receive, among other benefits, three years' pay and three additional years of medical, dental and life insurance if they are terminated or leave the company "for good reason" within two years following a change in control.

Patrick G. Ryan, who last fall announced he would step down as Aon's chief executive officer once a replacement was found, is not included in the new plan, the filings said.

Tier 2 executives, a designation that includes fewer than 100 senior managers, would receive two years' pay and two additional years of health and life benefits.

"We routinely review governance and management priorities, and this was one of the things that was identified as something we ought to do," an Aon spokesman said. "It was evident that we were in the minority of companies that hadn't done it."

Approximately 90% of publicly traded companies provide some form of change in control protection for key executives, Aon said in its SEC filing.

—By Sally Roberts

Blumenthal: Allegations not expected to rattle industry

Continued from page 1

ing whether ACE may have paid additional illegal commissions to Marsh in the deal. He also said that the suit is the first in a series of legal actions he intends to bring as part of his ongoing investigation into insurance industry abuses.

Donald Light, a senior analyst with Celent Communications, said Mr. Blumenthal's suit has the potential to cause significant problems for Marsh and ACE.

"The question the suit raises is: 'Is this an isolated incident of wrongdoing, or has the state attorney general found a pattern of wrongdoing?'" Mr. Light said. Although Mr. Blumenthal has implied that there is a pattern, he has not followed up with any additional charges, "so what we have here is basically one incident of deliberately concealed commission payments, which is unethical, wrong and dumb," Mr. Light said. "If nothing else surfaces, it becomes a ripple on the sea. If this becomes a pattern, it could grow to equal" Mr. Spitzer's suit, he said.

Other observers downplayed the significance of the suit.

"You've got a well-organized and smart attorney general in New York uncovering egregious business practices that get at the heart of the insurance brokerage business, and you have other attorneys general who feel like they've been left behind or that they're not doing their jobs. So you get some collateral fallalong associated with the initial suit," said Mark Lane, a principal and research analyst with William Blair & Co. in Chicago.

"Clearly, the Spitzer suit and the Spitzer settlement remain the key focus, and if other regulators want to pile on, that's not surprising. But the cat's out of the bag," Mr. Lane said.

"This does not rise to the level of the Spitzer suit, because Spitzer was the first one out of the starting block on this and Blumenthal is piling on or extending the reach of the probe," said John Ward, a Cincinnati-based insurance industry analyst and the former chairman of Ward Group. "It's more of the same."

Mr. Blumenthal did not return phone calls seeking comment, but has said that he expects to file five additional suits relating to his investigation soon.

New defendant

One key difference between the suits is the addition of ACE as a named defendant. ACE was one of a handful of insurers cited in Mr. Spitzer's suit as colluding in a bid-rigging scheme hatched by Marsh, but it was not named as a defendant.

Observers, however, say they don't expect a significant impact or fallout for ACE as a result of the Connecticut suit.

'You've got a well-organized and smart attorney general in New York uncovering egregious business practices that get at the heart of the insurance brokerage business.'

Mark Lane
William & Blair Co.

"I do not think this is going to be a major event for ACE," Mr. Ward said.

Not only does ACE have the financial wherewithal to absorb any repercussions from the suit, but the actions alleged also are more of an isolated case than a pattern of pervasive abuse, he said.

Damien Magarelli, an analyst with Standard & Poor's Corp., said that part of putting a "negative outlook" on ACE last October after Mr. Spitzer's suit was filed was the expectation that the investigation would increase in terms of its breadth across the industry and could eventually involve ACE.

"We don't have anything new or anything immediate to comment on specific to Connecticut, but, clearly, this is another obstacle ACE will have to overcome. But at this point, we've already embedded a lot of those negative factors in that negative outlook," he said.

ACE declined to comment about the litigation

Marsh woes may worsen

Unlike ACE, Marsh has a "steeper hill to climb," according to Mr. Ward.

While Mr. Blumenthal may only be the second attorney general to bring suit, "there's going to be a series of attorneys general coming after Marsh," he predicts.

Another concern is the momentum building around all the private lawsuits against the brokerage, Mr. Ward said.

"So Marsh is getting hit and is going to continue to get hit from different fronts," he said. And while MMC may have the financial strength to do battle, "it's going to be a long, drawn-out, nagging process that's going to probably have a meaningful impact on Marsh for the long-term," he said.

Last week, MMC was named in a pair of identical civil suits over alleged bid rigging. The complaints, filed in U.S. district courts in Boston and Chicago, allege that MMC, through its Marsh Inc. unit, engaged in a systematic bid-rigging scheme and conspiracy to steer business to insurers through collusive agreements that provided Marsh with contingent commissions. The suits, which seek class action status, also name ACE, American International Group Inc., The Hartford Financial Services Group Inc. and MetLife Inc.

Neither Marsh nor any of the insurers named would comment on the lawsuits.

Meanwhile, some of Marsh's large clients have left the brokerage since Mr. Spitzer's suit was filed. London-based Prudential P.L.C. has moved at least part of its business to Aon Corp., and Madison, N.J.-based pharmaceutical giant Wyeth; Hartford, Conn.-based United Technologies Corp.; and New York-based Time Warner Inc. have moved at least part of their programs to Willis Group Holdings Ltd.

A spokeswoman for Marsh would not comment on whether any clients had left the brokerage.

Coalition: Seeking to reduce number of uninsured

Continued from page 1

Starting in April, National Health Access will be promoted to about 3 million individuals who work for the participating employers but who are not eligible for company benefits, such as those who work part-time, on a seasonal or contract basis, or who are pre-Medicare retirees. Such workers' dependents will also be eligible to participate.

Pending state regulatory approval, open enrollment is targeted to begin Sept. 1, and coverage will begin upon enrollment, Mr. McGuiness said.

Providing options

The program will include a choice of six coverage options ranging from a health care and prescription discount card costing less than $5 per month to a health maintenance organization option for $400 per month. Participants will also be offered a high-deducible plan with a health savings account option.

Minneapolis-based UnitedHealth Group Inc.'s Uniprise division will be the primary provider of four national health plans, all of which will be written on a group basis, with rates set by age and geography and providing guaranteed issue, meaning that no physical exam or medical history will be required to obtain coverage.

CIGNA Healthcare of Bloomfield, Conn., and Humana Inc. of Nashville, Tenn., will provide more targeted, regional plans, including the HMO, which will be individually underwritten.

Lincolnshire, Ill.-based Hewitt Associates Inc. will administer the program, handling enrollment, providing call center services and decision support tools to plan members, and the administrative interface between the plans and participating employers.

UnitedHealth Allies, a division of UnitedHealth, is providing the discount card.

The coverage options were developed following a series of focus groups conducted throughout the country last summer.

"A person earning $30,000 a year working two part-time jobs who has kids and is barely making ends meet doesn't have a lot of excess income or assets," said Andy Slavitt, managing director of UnitedHealth's Center for Affordable Consumer Health in Minneapolis. "If you try to provide them a policy with a $2,000 deductible, it won't help them."

"They can always go to the (emergency room) for major illnesses. They're more worried about how they will handle a health care need that costs a few hundred or a few thousand dollars," such as paying for medication for a sick child, going to the dentist or having an eye exam, he said.

"So we asked people in focus groups, 'If you had one dollar to spend on health care, how would you spend it?' and we built into every product things that everyone wanted, including preventive care, dental cleanings, a vision exam, access to some office visits or a handful of prescriptions," Mr. Slavitt explained.

And those who cannot afford even basic coverage can obtain a UnitedHealth discount card that provides up to 60% off the cost of medical services and prescription drugs from UnitedHealth-contracted providers.

'To say that you could get insurance, but then it costs $1,000 a month, is like saying you could get to the moon, but you have to buy your own spaceship.'

Donna Marshall
Colorado Business Group on Health

"What we heard (in the focus groups) was that just having access to discounts and having an insurance card with UnitedHealth on it would be of tremendous value," said Tom Beauregard, national practice leader at Hewitt in Norwalk, Conn. "It's ironic that the uninsured are the only ones who pay retail."

Though none of the participating employers have committed to subsidizing the cost of the coverage, some may elect to do so as an incentive, according to Mr. Beauregard. In some cases, the employees may be permitted to pay premiums on a pretax basis through payroll deduction, he said.

Regardless, premiums will be lower than can be obtained in the individual market because of the size of pool that will be created, lower administrative fees due to economies of scale, and the fact that no commissions will be added to premiums, he said.

"I also expect that this system will be more stable. Even if we end up with 10% to 20% enrollment, that's a purchasing pool of 300,000 to 600,000 lives. When you get enrollments like that, you balance the (adverse) selection. So we'll attract both healthy and unhealthy risks," Mr. Beauregard said.

Indeed, UnitedHealth might not have elected to take on this risk if the company wasn't confident that it would be viable, according to Mr. Slavitt.

"It's not sustainable if this doesn't create a stable risk pool with normal operating margins and underwriting profit," he said. "We're taking all of our underwriting intelligence to make a very educated risk assessment."

However, "while we're taking some risk, the potential rewards are great," he said, not only from an economic standpoint, but from social and moral standpoints as well.

"Fundamentally, the purpose behind businesses in a capitalist society is to help solve problems. This is a problem that we need to be willing to try to solve. That's at the heart of this," Mr. Slavitt said.

Reducing the number of uninsured also has a bottom-line impact for employers.

"When individuals do get care in (an emergency room), it's largely a bad debt for the hospitals, and that translates into what the commercial market pays for health care," said Mr. Beauregard of Hewitt.

In addition, employers will be able to offer the program to recruit and retain certain types of workers not typically eligible for employer-sponsored coverage, such as independent contractors, he said.

Though not a member of the employer group spearheading the project, Donna Marshall, executive director of the Colorado Business Group on Health in Denver, said it has greater potential than many other similar initiatives that have been tried and failed because of the guaranteed issuance of coverage, something unavailable in the individual market.

"There's a myth that there's a vigorous individual market for these employees. Underwriting is so stringent that it is a myth. To say that you could get insurance, but then it costs $1,000 a month, is like saying you could get to the moon, but you have to buy your own spaceship," she said.

"I really applaud this initiative. To address the issues of uninsurance, what we have to understand as a society, as a nation, is that everybody has to have some access to health care coverage. That's the real opportunity here—to take that risk pool and spread it," Ms. Marshall said.

She said she was concerned, however, that some of the people who purchase the policies will find they're still seriously underinsured.