

**Employer interest surges  
in benefit captives / 3**

**Bankruptcy judge calls  
asbestos pact unfair / 3**

# Business Insurance

www.businessinsurance.com

February 2, 2004

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\$4

Funding relief measure draws veto warning

## Pension bill moves to committee

By JERRY GEISEL

**WASHINGTON**—Despite a veto warning, stop-gap pension funding reform legislation that could cut employers' pension contributions by tens of billions of dollars over the next two years is headed to a congressional conference committee.

The Senate last week amended and then overwhelmingly passed a bill—earlier cleared by the House—that would allow employers in 2004 and 2005 to use more liberal interest rate assumptions in valuing pension plan liabilities.

Additionally, employers in the steel and airline industries with underfunded plans automatically would be eligible for a partial waiver from legal requirements that force companies to accelerate contributions when their plans slip below a 90% funding level. Other employers with underfunded plans could apply to the Treasury Department to obtain the same funding relief.

The Senate action brings Congress one step closer

er to providing employers—at least for the next two years—with long-awaited funding reforms. The passage of the bill was immediately hailed by benefit lobbying groups.

"It is clearly a step in the right direction. It should have happened last year, but better late than never," said James Klein, president of the American Benefits Council in Washington.

Given the lofty margin—86-to-9—by which the Senate bill passed, along with nearly unanimous House approval last year on a somewhat different bill, the odds are high that a final agreement can be reached soon.

"Given the size of the vote in the Senate, we are confident that something can be worked out," said Mark Ugoretz, president of the ERISA Industry Committee in Washington.

Still, the road to enactment is by no means obstacle free. Just before the Senate acted, three Cabinet secretaries, who serve on the board of the Pen-

See **FUNDING**/page 28

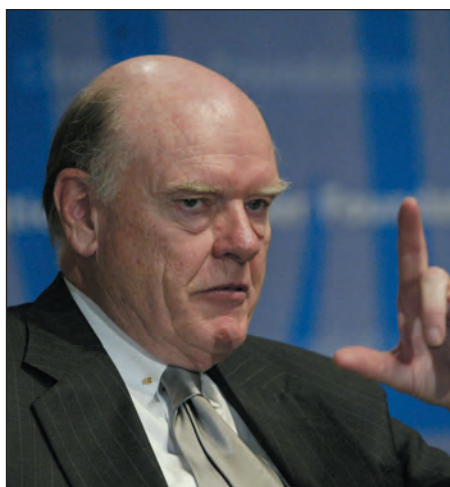


PHOTO: ZUMA PRESS

**Treasury Secretary John Snow is one of three Bush administration officials who have recommended the president veto this bill rather than relax deficit funding rules.**

## Late News



PHOTO: AFP

### ExxonMobil to appeal revised punitive award

ExxonMobil Corp. will appeal a federal judge's decision to increase punitive damages levied against the oil company in connection with the 1989 Exxon Valdez oil spill off Alaska. U.S. District Court Judge H. Russel Holland increased a punitive damage award imposed on ExxonMobil to \$4.5 billion plus interest from a \$4.0 billion award levied by the U.S. District Court for Alaska in Anchorage in 2003. An appeals court had vacated the \$4 billion punitive damage award, remanding it to the district court in light of the U.S. Supreme Court's decision in *State Farm vs. Campbell*, which said that punitive damages awards could be so disproportionate to compensatory damages that they violate due process.

### Moody's says insurers' reserves improving

The property/casualty insurance industry had a core reserve deficiency of \$30 billion as of Sept. 30, but that is likely to shrink as of year-end 2003, according to a report by rating agency Moody's Investors Service. Both reserve increases recorded in the fourth quarter and apparent redundancies being built into 2003 accident-year reserves will likely improve the industry's reserve position, the report says.

### Bush signs freeze on cash balance rules

President Bush has signed budget legislation containing a provision that bars the Treasury Department, through Sept. 30, See **LATE NEWS**/page 31

## Brokers adapt to new attitudes on corporate governance

By SALLY ROBERTS

With a new emphasis on corporate governance and new standards set by the New York Stock Exchange, large publicly held insurance brokers, like most of Corporate America, are moving toward more independent boards of directors.

Such high-profile corporate collapses as those of Enron Corp. and WorldCom Inc. have thrust corporate governance and the role directors should play at public companies into the limelight.

It is thought that by having a board composed of a majority of independent directors lacking business or family ties to the corporation and having only independent directors

See **BOARDS**/page 29

More buyers seeking policies for Iraq risks

## Despite security concerns, coverage available for Iraq

By CAROLYN ALDRED and MICHAEL BRADFORD

Iraq may appear to be one of the riskiest places on earth to do business today, but brokers and underwriters say they are helping many organizations to protect employees, equipment and other assets there.

With the bidding for \$18.6 billion in reconstruction projects in postwar Iraq underway, underwriters and brokers in London and the United States are seeing an increase in companies purchasing insurance, including personal accident and political risk coverages. A key to obtaining coverage for risks in Iraq, though, is good security arrangements, they say.

"We are seeing a big pickup in companies looking for cover for Iraq," said Mark Drummond Brady, partner at brokerage JLT Risk Solutions Ltd. in London.

"London is the main market for political risk and personal accident insurance," noted Jamie Newall, senior development executive of London broker Berry Palmer & Lyle Ltd.

"Companies can get personal accident insurance for Iraq, if they are prepared to pay for it," said Lloyd's of London underwriter David Bruce, personal accident underwriter for syndicate 33, managed by Hiscox Syndicates Ltd.

Organizations currently seeking coverage in London for Iraq risks include U.S. and U.K. multinational companies, particularly construction companies, aid agencies, media companies and government agencies responsible for peacekeeping troops posted to Iraq, said Mr. Bruce.

From the United States, "We're seeing two types of companies going in," said Elizabeth Demaret, managing director at Arthur J. Gallagher & Co.'s Worldwide Risk Services Group in Itasca, Ill. One type provides goods and services needed by the military or in the rebuilding efforts, she said, and the other is "brain trusts," such as universities, that are consulting on aspects of the reconstruction.

Steven Sadler, managing director and chairman New York-based Marsh Inc.'s industry practices, said a number of large companies already

See **IRAQ**/page 30

### Spotlight report

## CLAIMS MANAGEMENT



## LARGEST THIRD-PARTY ADMINISTRATORS

Ranking on page 14

# Benefits programs aim to keep more moms in the (work) family

## Employees hope to retain trained, talented employees

By JUDY GREENWALD

IBM Corp. executive Janet Fischer is a big fan of her company's maternity leave program.

Ms. Fischer has used the program three times, including taking nine months off after the birth of twins six years ago. And when she returned from that leave, IBM let her decide when and where she worked, including whether she would work from home, said Ms. Fischer, who is vp of operations for IBM's Americas sales and distribution division in New York.

"It's the flexibility provided and, frankly, enlightened management, and that, at the end of the day, you're judged on your results" that



exemplifies IBM for her, said Ms. Fischer, who has risen through the ranks during her 20 years with the company.

A growing number of companies are considering programs to encourage women to return to work

after they take maternity leave. But some observers assert that even more should do so, in part because, with an expected labor shortage of 10 million workers by 2010, companies can ill afford to lose experienced, talented staff.

Retaining talented workers is IBM's main motivation in offering its maternity program. Maria Ferris, the company's manager of work/life and women's initiatives, said IBM's priority "is to attract and retain and motivate talent, and women are 30% of our population. They are a critical part of the talent pool.

"We simply can't afford to have women in our workplace, to train

See **MOTHERS**/page 28

# Judge rejects reorganization, citing unfair asbestos deal

By DOUGLAS McLEOD

**WILMINGTON, Del.**—Bankrupt asbestos defendant ACandS Inc. says it will fight a judge's decision to reject its reorganization plan on the grounds that the plan was unduly influenced by asbestos plaintiffs' lawyers and would discriminate against some claimants.

U.S. Bankruptcy Judge Randall J. Newsome last week refused ACandS' Chapter 11 plan after finding that the plan's terms were virtually dictated by a committee of plaintiffs' lawyers who unfairly secured recoveries for their own clients at the expense of future asbestos claimants and other creditors.

"It is...impossible to conclude that this plan is imbued with fundamental fairness," Judge Newsome wrote. "The court is informed that other judges have confirmed plans

(in other asbestos bankruptcies) with such discriminatory classifications. This judge cannot do so in good conscience."

ACandS said that it will ask a federal district court in Delaware to disregard Judge Newsome's conclusions and confirm the plan.

"Judge Newsome's opinion is just completely contrary to decisions of every other judge that has had occasion to consider these issues," said Scott D. Gilbert, a lawyer representing ACandS with Gilbert, Heintz & Randolph in Washington.

James E. Hipolet, ACandS' president, said the company "vigorously disputes" the judge's conclusion that the plan was unfairly influenced by plaintiffs' lawyers, asserting that "the settlement was negotiated at arm's length."

"If you have a bankruptcy, your principal creditors are who you

have to negotiate with," Mr. Hipolet said. "From that perspective, I think we did the right thing and the appropriate thing."

Asbestos claimant groups may be the largest creditors in such bankruptcies, but "the question is whether lawyers for the creditors can engage in self-dealing, conflicts of interest and discrimination against disfavored claimants and disfavored lawyers who are not part of the club," countered Barry R. Ostrager, a lawyer with Simpson, Thacher & Bartlett in New York, representing Travelers Property Casualty Corp.

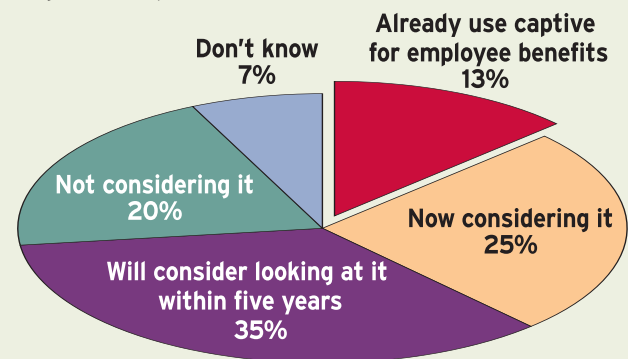
Travelers, ACandS' principal liability insurer, was the only party to object to the Chapter 11 plan.

ACandS, an insulation contracting unit of Lancaster, Pa.-based Irex Corp., filed for Chapter 11 protection

See **ASBESTOS**/page 31

## CAPTIVES FOR BENEFITS

Measuring employer interest in funding benefits through their captives



Source: Towers Perrin

# Use of captives for benefit funding to surge: Survey

By JERRY GEISEL

Spurred on by significant cost savings, more employers are planning to fund employee benefit risks through their captive insurance companies, according to a new survey.

Right now, only a handful of employers around the world—perhaps as few as 25—fund benefit plans through their captives.

But that number should rise steadily in the years to come, the survey indicates. Among 60 large employers based in the United States, Continental Europe and the United Kingdom, 25% are in the process of looking into the feasibility of funding benefits through captives and 35% said they intend to examine the approach within the next five years, according to consultant Towers Perrin. Eight of the surveyed employers already are funding benefits through their captives, with annual premium flows in 2002 ranging from \$700,000 to \$22.8 million.

Cost savings are a major driver

of employer interest in captive benefits arrangements. When asked to rank the most important reasons for funding benefits through captives, respondents—which included those already using their captives to fund benefit risks—overwhelmingly selected cost savings. Other reasons included improved cash flow, more underwriting flexibility and tax advantages.

"The interest is going to build and will develop in the same way as was the case with property/casualty captives. The largest companies will do it first, and then more and more companies will move into it as they see how other employers are saving money," said Mitchell Cole, a principal with Towers Perrin in New York.

The cost savings are not theoretical. Seven of the eight employers funding benefits in their captives reported cost savings, with four saying they had realized cost savings of up to 10%, one achieving savings of between 10% and 19%, and two

See **CAPTIVES**/page 6

## Inside Business Insurance

### Cities vow to continue Canadian Rx programs

Two U.S. cities have vowed to continue to reimport drugs from Canada, despite FDA efforts to stop the practice. **Page 4**

### D&O premium increases moderate in 2003

According to a study by Tillinghast, the D&O liability market is showing signs of stabilization. **Page 4**

### Guest commentator says 'gopher it!'

Punxsutawney Phil reveals the secrets behind the softening in the groundhog professional liability market. **Page 6**

### Pension reform bill better than none at all

Don't let perfect be the enemy of the good, says one of this week's editorials on pension reform. **Page 8**



### U.K. firms look at ways to ease pension funding

British Airways is seeking ways to trim its pension costs, as it and other U.K. employers respond to new accounting rules. **Page 25**

## Online

• The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.

• Searchable **directories** of all the listings of industry vendors found in *BI's* Market Sourcebook.

• New **Opinion Poll** for readers: Would your organization consider funding its employee benefit plans through a captive?

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### REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

## Undaunted by FDA threats against reimportation companies

# Cities vow to maintain Canadian Rx reimports

By GLORIA GONZALEZ

**WASHINGTON**—Officials for two U.S. cities that are currently reimporting prescription drugs from Canada have vowed to continue despite the U.S. Food and Drug Administration's latest efforts to curb the practice.

In the past six months, the FDA has taken action against at least five companies the agency believes are violating federal law by facilitating the reimportation of prescription drugs on behalf of local municipalities. For example, the FDA recently sent a letter to the companies that manage the reimportation program of Montgomery, Ala., accusing them of facilitating illegal imports

of prescription drugs and misleading the public about the safety of these drugs.

Under the U.S. Food, Drug and Cosmetic Act, it is illegal for anyone other than the original manufacturer to reimport prescription drugs into the United States. Several U.S. state and local governments have been pushing to change the law, and Congress recently passed a measure allowing the Secretary of Health and Human Services to issue waivers to individuals for drug reimportation, but only if safety standards are met.

The FDA is aggressively pursuing enforcement actions against several companies for alleged violations of the act and is promising more ac-

tions to follow, said William Hubbard, associate commissioner with the office of the commissioner of the U.S. Food and Drug Administration in Washington.

"We've got a number of investigations underway," he said. "We're not stopping."

The FDA has been focusing on companies that violate the law but has not ruled out taking action against the municipalities themselves, he said. "It's certainly possible it will come to that," Mr. Hubbard said. "We have no current actions underway, but we have told cities and states that they could be vulnerable."

The cities of Montgomery, Ala., and Springfield, Mass., both have

reimportation programs for municipal employees and retirees. The FDA has advised city officials that their programs violate federal law, but officials for both cities said they have no intention of shutting down the programs.

"Our program is going to stay exactly the way it is," said Michele Webber, an aide to Springfield, Mass., Mayor Charlie Ryan. "We have no plans to change anything."

Jeffrey Downes, executive assistant to Montgomery, Ala., Mayor Bobby Bright, said between 200 and 300 employees and retirees participate in the Montgomery program, which will save the city between \$400,000 and \$500,000 in its first

See FDA/page 29



Springfield, Mass., Mayor Charlie Ryan continues to support his city's drug importation program.

PHOTO: AP/WIDE WORLD



Hoffman Estates, Ill.-based Sears Roebuck & Co. is believed to be the largest U.S. employer ever to shut its defined benefit plan to new participants.

## Sears scales back defined benefit, retiree med access

By JOANNE WOJCIK

**HOFFMAN ESTATES, Ill.**—Sears Roebuck & Co., once a symbol of corporate benefits generosity, is phasing out its defined benefit plan and is cutting back its retiree medical benefits.

The Hoffman Estates, Ill.-based retailer made the announcement in its fourth-quarter earnings statement released Thursday, saying it is making the changes, effective Jan. 1, 2005, both to enhance its attractiveness as an employer and to become more competitive in the retail industry. Sears is believed to be the largest U.S. employer ever to shut its defined benefits plan to new participants.

"It's part of the company's strategy to provide benefits that our customers are willing to pay for, that our employees want, and we are in a very competitive business. Our mission is to grow," said a company spokesman.

Under the pension change, current employees over age 40 have the choice of remaining in Sears' defined benefit pension plan or participating in the company's new, enhanced 401(k)

plan. They also could remain in the defined benefit plan and participate in the company's former 401(k) plan. New employees and current employees who are under 40 can participate only in the enhanced 401(k) plan, under which the company's matching contribution will be increased.

"We are going to actually match \$1.50 for each dollar they put in up to 1% and then \$1 for each dollar after that contributed up to 4% of pay," the spokesman explained.

Vesting requirements are also increasing to three years from one year for 401(k) plan participants.

Sears is also cutting back on its historically generous retiree health care benefits. Employees currently under age 40 will no longer be eligible for subsidized retiree health benefits. However, they will be able to purchase post-retirement health benefits on their own at Sears' group rates, the spokesman said.

Employees over age 40 will continue to be eligible for subsidized retiree health benefits, but Sears' contribution will be capped at 2004 levels, he said.

See SEARS/page 30

## Equitas reaches Halliburton asbestos deal for \$575 million

By SARAH VEYSEY

**LONDON**—Equitas Ltd. has reached a \$575 million settlement with Halliburton Co. over the energy company's asbestos claims against certain Lloyd's of London syndicates.

The deal will resolve the largest remaining asbestos-related liability faced by Equitas, which was set up to reinsure and run off the pre-1993 long-tail liabilities of Lloyd's syndicates, according to Simon Wright, head of asbestos pollution and health hazard claims at Equitas in

London.

Under the terms of the deal, Equitas will pay \$575 million to the energy company in two installments, provided that the bankruptcy reorganization plan for certain Halliburton units is approved and that no federal asbestos reform is passed in the current Congress.

As part of an effort to resolve the company's asbestos and silica liabilities, several subsidiaries of Houston-based Halliburton—including DII Industries L.L.C. and Kellogg, Brown & Root Inc.—filed for Chapter 11 bankruptcy protection in

Pittsburgh late last year.

When those bankruptcy proceedings are officially confirmed, Equitas will get a court order that will protect it from current and future asbestos claims from the Halliburton operations.

If asbestos litigation reform legislation is passed in the current Congress, Equitas will have the option of reviewing the Halliburton deal, explained Glenn Brace, claims director at Equitas.

The settlement marks the resolution of five of Equitas' 10 largest asbestos exposures, noted Mr. Brace.

## Tillinghast survey finds decrease in capacity

# D&O liability rate increases showing signs of moderation

By MARK A. HOFMANN

The directors and officers liability insurance market, though still hard, is showing some signs of stabilization, according to a report released last week.

The percentage of respondents who faced premium increases on renewal fell between late 2002 and late 2003, according to the "2003 Directors and Officers Liability Survey," released by the Tillinghast unit of Towers Perrin. Total capacity, though lower than that of a year earlier, appears likely to increase as new entrants begin underwriting. And, say the survey's authors, the trends appear likely to continue this year, as capacity grows.

The survey found that 76% of U.S. participants with renewals in the third quarter of 2002 reported an increase in premium, but only 62% of participants with renewals in the third quarter of 2003 report-

ed an increase. Overall, the survey found that D&O coverage costs increased about 33%, on average, during the period 2002/03 covered by

the study. Among U.S. participants, 70% reported a premium increase, while 19% reported a decrease.

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### CAPACITY DECLINES

2003 had the lowest capacity level since 1997



Source: Tillinghast survey

## Captives: Benefits funding grows

Continued from page 3

reporting cost savings above 20%.

Those savings are possible because the benefit plan premiums that employers now using captives had been paying to commercial insurers included a margin or profit for the insurers, said Sofia Tesfazion, a Towers Perrin consultant in New York and a co-author of the survey. Ms. Tesfazion is a former benefit manager at Svenska Cellulosa A.B., a Stockholm, Sweden-based paper, packaging and consumer products company that for several years has funded the benefit risks of European employees through its Ireland-based captive. SCA now wants to do the same—through a U.S. Virgin Islands branch of the captive—for its U.S. employees (*BI*, Jan. 12).

Towers Perrin, based on the experience of its clients, pegs cost savings compared to commercial insurance at between 15% and 25% for long-term disability coverage, 10% and 15% for group-term life insurance and 10% and 12% for medical stop loss coverage.

Ms. Tesfazion notes that group term life insurance and LTD coverage are risks especially well suited for captives because—due to a typically low number of claims—not a lot of administration is required and because relatively high margins are enjoyed by the commercial insurers that write the coverage.

Still, there are obstacles to funding benefits through captives. The biggest impediment cited by employers is lack of experience, with risk management departments not used to dealing with employee benefit issues and benefit managers unfamiliar with captive strategy.

To deal with this potential problem at SCA, Ms. Tesfazion recalled, the employee benefits and risk management departments worked closely together on the captive benefits funding project.

In recent years, federal regulators have eased a key roadblock to captive benefit funding arrangements. Prior to 1999, regulators required that at least 50% of a captive's business be unrelated to its parent, a huge obstacle because few employ-

ers wanted their captives to take on that much outside risk.

But in 1999, the Labor Department, while not ending the 50% premium test, gave employers an alternative: it would look favorably on arrangements in which top-rated fronting insurers were used to issue policies and benefits were sweetened for affected participants. Since that liberalization, three employers—Columbia Energy Group, Archer Daniels Midland Co. and International Paper Co.—have received Labor Department approval for their captive benefit funding arrangements, with SCA seeking to become the fourth.

This changed Labor Department attitude will be a "critical component" of captive benefit funding growth, Mr. Cole predicted.

*Copies of the full Towers Perrin survey "Use of Captives for Benefits," are available only to survey participants. However, a summary of the survey's findings will be posted in mid-February at [www.towersperrin.com](http://www.towersperrin.com).*

## Paul Winston

### With market thaw, I say, 'Gopher it!'

Given the weather situation in the Northeast this past week, air traffic delays and road hazards almost prevented me from getting back in time for the Big Show.

You're probably surprised to learn that Punxsutawney Phil does not spend the other 364 days of the year burrowing in his stump in the Keystone State while sleet and snow fall down around him.

Normally I don't get out much, but in anticipation of a miserably cold winter, and in reward for some hard work in the past year, I decided to take a vacation. After New Year's, I migrated to St. Barts.

In the Caribbean, I didn't have to worry about such trivial matters as whether it's cloudy or sunny, or whether winter would continue for six more weeks. Instead, I just had to contend with such choices as: SPF 4 or 15? Another rum punch, or should I switch to beer? And, does this Speedo make me look fat?

But back north I have a job to do, and my stock in trade is my reliability. In a day and age when people have so many weather resources they don't know where to turn, they trust me to do my thing on Feb. 2 and tell them whether they need to buy one more gallon of windshield fluid and one more bag of rock salt to make it through the winter.

While I wish I could cavort on the beach year-round, until now, I haven't been able to afford a vacation. In fact, owing to the soaring cost of insurance for a small-business rodent like me, in recent years I haven't had much cash to spare for anything but the essentials, like food and dental floss.

This year I finally was able to pocket some savings in my groundhog professional liability premiums. I even managed to switch underwriters and get tail coverage thrown in for no additional charge.

Quite a different scenario from a year ago. As you may recall, last year on Feb. 1, inspired by the doctors in my community, I staged a walkout in protest over the unreasonable cost of groundhog E&O cover. I made it as far as a donut shop on Route 36 and was halfway through a bag of crullers before the town fathers caught up with me and made me perform bare-figuratively speaking, mind you. Luckily, I saw my shadow, winter wrapped up on time and I was not hit with any uninsured claims.

A few months later, the market began to show signs of thawing as

sure as the disappearance of icicles from my burrow. The Commonwealth of Pennsylvania had a big hand in this, as state lawmakers voted to fund the creation of a risk retention group to respond to distressed market conditions for me and my ilk. As sure as spring follows winter, once an alternative was available, underwriters began to realize that not only had they shot a hole in their feet but they also would have a hole in their balance sheet if they drove all their clients away.

Of course, they asked for a lot more data in my coverage submission. Stuff like how accurate have my predictions been (100%), how many years have I been

prognosticating (126), and have I had any relations with potentially rabid rodents that might cause me to bite people (none of their business). But I can't complain, as it's really common sense. Just because I can predict the weather with mystical skill doesn't mean they can assess risks in the same way.

But I like to think I also had a paw in turning around my cost of risk, and that it's not just due to competition creep. That's because, after my failed walkout, I looked at whether I could better manage my exposures. I have been hearing about this enterprise risk management thing and decided that maybe I could benefit from sniffing around for other Punxsutawney risks.

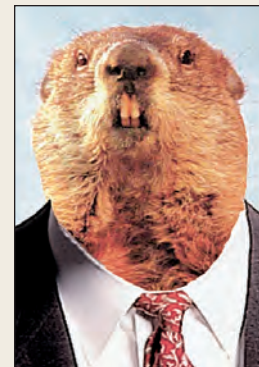
First, I analyzed risks covered by insurance: inaccurate predictions; failing eyesight; biting people.

Next, I cast a wider net and considered less likely risks: mad cow, rabies and avian flu fears cause people to shun forecasting rodents; the town fathers strike oil in Gobbler's Knob and no longer need my services; and the Iowa caucuses are rescheduled to Feb. 2, stealing my media thunder.

Finally, I considered the truly weird, long-shot risks that make life so rich: local TV meteorologists make an accurate forecast; groundhog meat is found to lower cholesterol and burn calories; and our poking around wakes the Martian race from hibernation, they are cranky and incinerate our entire planet.

Now that I have all that and more under control, I expect to be able to afford to winter in the Caribbean for many years to come.

*Editor Paul Winston will return next week and can be reached at [pwinston@crain.com](mailto:pwinston@crain.com).*



**Punxsutawney Phil**

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## Editorial

## Pension bill better than none

GIVEN THE CHOICE between a somewhat flawed pension funding reform bill and no bill at all, we think the best course of action is quick congressional approval and presidential signing of the measure.

As we report on page 1, a congressional conference committee soon will meet to work out differences in pension funding bills passed by the Senate and House of Representatives.

There is unanimity of support for one key element of the legislation—switching the methodology to value pension plan liabilities to one based on a long-term corporate bond index from the current method based on the yield on the 30-year Treasury bond.

What is controversial are provisions that vary somewhat between the House and Senate bills but would partially exempt steel and airline companies—as well as others that could prove their case—from the extra contributions that employers must kick in to their pension plans when the plans become underfunded.

The issue of a deficit reduction contribution waiver is so controversial that the three Cabinet secretaries who serve on the board of the Pension Benefit Guaranty Corp. have said they would recommend to President Bush that he veto any legislation coming to his desk if it

contains such a waiver.

We can well understand the concern of the administration and especially that of the PBGC. They fear, perhaps correctly, that reducing the amount employers contribute to their plans will lead to more underfunding and increase an already-record PBGC deficit.

But there is another side to the debate. Perhaps the DRC waiver might be the difference between the ability of a financially troubled company to survive or not. If it is, then the employer might not have to terminate its plan, sparing the PBGC a big loss.

Frankly, no one knows which scenario is more likely to play out. What is certain is that moving to a corporate bond index is vital to the health of the nation's defined benefit system and the PBGC.

If employers are forced, as they are under the current interest rate methodology, to contribute more than necessary to their plans, many eventually will terminate their plans. That would erode the PBGC's premium base—to say nothing of the loss of benefit security—at a time when the agency will most need the revenue.

Surely, legislators can find an acceptable compromise on the DRC issue and agree on a measure that will win President Bush's signature.

## New chance for asbestos reform

AFTER A NEAR-DEATH experience, asbestos liability reform is about to re-emerge as a legislative issue in the Senate.

We certainly welcome its revival.

As we report on Page 3, an initiative to replace the current litigation-based system for compensating victims of asbestos-related illness with some sort of national no-fault trust fund is likely to come before the Senate this spring. The idea had been pretty much given up for dead last year after the Senate Judiciary Committee passed a reform bill that satisfied few of the interested parties—victims, labor unions, defendant companies and those companies' insurers—while disappointing almost all involved. Despite that initial disappointment, stakeholders and lawmakers refused to give up, and a new and—we hope—vastly improved bill could be brought before the Senate soon.

We under no illusions that whatever legislation

emerges would face an easy going to win approval. To say that the issue is complex is an understatement, and any legislative solution will likely face immediate legal challenges.

Yet the effort to find a balanced solution to the decades-old asbestos mess must be made. Every day that the current system continues as the sole means of compensating victims of asbestos-related ailments increases the likelihood that a legitimate claimant will be denied compensation. Delay increases the likelihood that an employer with only the most tangential connection to asbestos will find itself in court as a deep-pocketed stand-in for a company that's already been driven into bankruptcy by asbestos liabilities.

Asbestos reform legislation has been on life-support for far too long. It has a second chance now, and every reasonable effort should be made to take advantage of that chance.

## Schillerstrom



## Letters to the Editor

## Effective modernization requires consensus

To the editor: As immediate past president of the National Assn. of Insurance Commissioners, I was interested to read the Dec. 15 letter by Gary Hughes, general counsel of the American Council of Life Insurance.

Fair, effective regulatory modernization requires consensus, a measure of patience and hands-on work in our state capitols by all parties, including the ACLI. The only regulatory reform agenda in the nation that enjoys adequate consensus is the NAIC's 2003 Regulatory Modernization Action Plan. There is no proposal—certainly not at the congressional level—that boasts a consensus backing from the necessary spectrum of legislators and constituent groups.

I understand the frustration of the proponents of the so-called optional federal charter scheme, which is seen by state and local law and policymakers—and apparently by most of our representatives in Congress—to be unworkable, both practically and politically. The complex scheme is seen by state government officials to be dangerous for our fellow consumers, state governments and even the insurance industry. This is why in 2003, the National Conference of State Legislatures, the National Conference of Insurance Legislators and the Council of State Governments all signed joint resolutions with the NAIC supporting state regulation and our regulatory modernization efforts, and stating their committed opposition to a federal regulator. That's formidable opposition to a bad idea.

The ACLI seems to not appreciate the significance of the NAIC member states' unanimous adoption of our comprehensive Regulatory Modernization Action Plan. This document not only sets out our specific plan for a coordinated, seamless 21st-century regulatory system but also resoundingly signifies that all state regulators—including the some 24 new ones who came on board in 2003—are committed to making regulation more effective and more efficient, less costly and less burdensome. We understand regulatory modernization, vibrant, healthy markets and consumer protection go hand in hand.

The ACLI letter seemed to marginalize state regulators and the NAIC, and our substantial regulatory modernization progress since the November 1999 passage of the Gramm-Leach-Bliley Act. We have, in fact, made impressive progress when all parties have worked together. Note the following concrete successes:

- Consumer privacy and producer licensing have been addressed by the states on a national basis. Since 95% of the nation's producers are licensed in five or fewer states, our reforms are truly national in scope.

- We created, and all states are

See **LETTERS**/page 22

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# Spotlight

## Claims Management



### Avoiding interrupted coverage

#### Buyers find business interruption market still tight

By **DAVE LENCKUS**

As the tight property insurance market further constricted after the Sept. 11, 2001, terrorist attacks, a group of energy companies concluded the time had come to form a mutual insurer to cover their significant business interruption risks.

Since May 2002, the policyholders/owners of Bermuda-based mutual sEnergy Insurance Ltd., an Oil Insurance Ltd. affiliate, no longer have had to get by without important business interruption coverage. During renewals this season, they did not have to prioritize demands, as did other risks that bought commercial property coverage. And, as

part of a mutual, the sEnergy policyholders/owners hope claims disputes would be minimized.

For the vast majority of risk managers with property risks, however, the softening property market still does not offer the breadth of business interruption coverage that buyers counted on before 2001, brokers and claims consultants say.

Meanwhile, risk managers and insurers continue to spar over business interruption claims related to the attacks and the massive Northeast power outage last year.

#### Market changes

Before January 2001, buyers

could negotiate broad, manuscripted business interruption coverage, market observers agree.

"The market really changed on a dime at the beginning of 2001," said James H. Costner, senior vp/property resource consultant in Nashville with Willis Risk Solutions, a division of Willis Group Holdings Ltd. For example, insurers reduced coverage for business interruption caused by wide-area electrical service disruptions, computer hacker attacks and mold.

In addition, underwriters limited their coverage generally for restoration periods and extended periods of indemnity, brokers and claims

See **INTERRUPTION**/page 16

### Asbestos reform bid renewed

#### amid debate over plan's terms

By **DOUGLAS McLEOD**

Congress is gearing up for another run at the mother of all mass tort claims.

After falling short last year in efforts to create a national asbestos compensation fund, the U.S. Senate is expected by this spring to revive legislation aimed at ending the flood of litigation and corporate bankruptcies triggered by asbestos injury claims.

Whether the legislation garners enough support to succeed where

last year's bill failed remains uncertain, though.

Insurance industry, policyholder and labor groups are debating the proposal's terms, and many issues remain to be settled, including some that helped doom last year's Fairness in Asbestos Injury Resolution Act, insurance and legal sources agree.

Among these are the level of funding for a national claims trust, the values allowed for certain types of claims and provisions that would ensure that the trust is the final and

exclusive remedy for all asbestos-related disease claims.

For insurers, other key unresolved issues are how the insurance industry's share of the funding burden will be allocated to individual companies and how the participation of non-U.S. insurers and reinsurers can be ensured.

And even if many of these questions are settled, the bill's backers face the added challenge of pushing it through Congress quickly during an election year.

See **ASBESTOS**/page 18

## Tech vendors focused on enhancing existing tools

By **MICHAEL BRADFORD**

What is old is new again in claims management technology for self-insured employers.

Complex and expensive systems developed in recent years to help self-insureds or their third-party administrators manage property/casualty and health care claims are being enhanced and upgraded as vendors seek to make their current offerings better, rather than rolling out completely new systems.

"I'm not aware of any watershed changes on the claims management side of things," said Ralph Kimich, director of compensation and strategic initiatives at Southwest

Airlines in Dallas. He said the airline recently switched to a different claims administrator for Southwest's self-insured health benefits, in part because the new insurer had made a bigger commitment to invest in and develop its technological capabilities.

Other self-insureds agree that they don't expect to find a new "killer application" that will steer them toward a particular vendor or make claims management a walk in the park; they just want a logical and easy-to-use system.

"A claim is a claim," said Gregory J. Bych, deputy director of risk management for the city of San Diego. And managing claims means going

through a certain "consistent process. I haven't seen anything that's new or late and great" and that will radically change the way claims are handled, he said.

San Diego in April completed an overhaul of its claims administration system for its self-insured workers compensation program, choosing a tool from Valley Oak Systems because it had up-to-date user capabilities "that we really wanted in a system," Mr. Bych said. In evaluating proposals from vendors, "my observation was that they all could do claims management; the problem was, some of them were very dated," he said.

The user capabilities included an

interface with a bill review vendor and one with a 24-hour employee call center that allows automated injury reports to be promptly entered into the system.

Mr. Bych pointed out that the city's claims adjusters really liked the VOS Portal system because of the way it "functioned logically," in much the same way adjusters think. "We took a big note of that."

When shopping for a system, risk and benefit managers are finding few new service providers. The complexity and expense of bringing systems to market, along with some consolidation among vendors, has helped hold steady the number of vendors and new products, ob-

servers say.

"I haven't seen any significant new entrants," said Richard Denning, president of Shelter Island Risk Services in Shelter Island, N.Y. "It's likely that we may be seeing some dropouts."

To distinguish themselves, vendors tout their particular strengths and emphasize enhancements that improve their offerings.

GAB Robins North America Inc., for example, looks to help companies that face data conversion challenges when accumulating claims information from different sources in different formats.

"We see it as a core competency,"

See **TOOLS**/page 12

Ranking of largest  
third-party administrators  
page 14

Commission aims to resolve  
Holocaust-era claims  
page 21

# Tools: Emphasis on updates

Continued from page 10

said Mike Mullen, Parsippany, N.J.-based vp and chief information officer for GAB Robins. "We decided to embrace that. Five years ago, no one wanted to do it."

GAB's Clientelligent system uses an integration model to aggregate the data and arrange it so that users can see in one location the different types of information pertaining to a claim, Mr. Mullen explained.

Many employers look for systems that can consolidate data into a common and readily accessible format.

At Verizon Communications Inc., Marsh Inc.'s STARS system pulls to-

gether claims information from around seven third-party administrators and insurers that the communications company uses to manage its claims. Verizon needs the information to spot claims trends, said Rachel Kitchen, specialist-risk management at Verizon in New York.

STARS is enhanced about "once a year," according to Ms. Kitchen, with the biggest change for Verizon being the system's move to a Web-based environment about two years ago.

Indeed, the Internet is playing a big role in claims management. Among the major changes to claims systems, "one, obviously, is Web-

based applications," said James Kwak, vp of marketing at GuideWire, a systems provider in San Mateo, Calif. "Risk managers can access information using Web-based browsers, and it now becomes easier to report losses from wherever they happen."

Simultaneous access to information through the Web allows "anyone in the risk management department to look at a claim," Mr. Kwak pointed out, and the claims information can provide clues on how to improve loss control.

Liberty Mutual Insurance Co. recognized the importance of multi-

user access by adding a new alert capability to its RISKTRAC system.

"Organizations want to know more quickly what important things are happening," said Alicia Rawnsley, Portsmouth, N.H.-based director of marketing-risk management information systems at Liberty Mutual. Newly reported claims, changes in reserves and other information can be sent to various personnel throughout an organization with the alert function, she explained.

The alert capability can be set up to allow a self-insured employer to direct specific claims-related information to certain departments rather than to all users, Ms. Rawnsley said. Management, for example, can be alerted that thresholds have

been reached in terms of dollar amounts or numbers of claims.

Document management is a feature that has made strides in claims management systems and continues to be popular, according to Mr. Kwak. Converting paper documents to electronic files makes it easier for people to share information, he explained, speeding up the administration process.

Dakota Imaging Inc. continually develops new imaging services and enhances existing ones, said Brant Stevens, senior vp of sales at the Columbia, Md., company. Its latest versions have made big strides in reducing to a "very small number" the number of data fields that have to be keyed in after a document is scanned into an electronic format, he said.

The Dakota systems have gotten better at recognizing anomalies in information on manually prepared forms and correcting them automatically as documents are converted to an electronic version, Mr. Stevens explained.

Mr. Bych of San Diego said more technology options are appearing, with vendors giving employers the choice of going to application service providers, Internet systems and, to an extent, wireless applications. "Vendors are giving more flexibility on what you can access, where and how," he noted.

"A lot of companies are looking at mobile technology" said John Sarich, Omaha, Neb.-based insurance industry marketing manager at software maker FileNet Corp. That means going out into the field with a laptop computer and digital camera and sending it, in some cases through wireless methods, to a home office. "That takes a lot of time and steps out of the process," he said.

Such methods, though, have not yet caught hold, as companies and insurers are still trying to determine the best ways to apply them, Mr. Sarich remarked.

Despite the enhancements made to claims administration systems, there remain areas some employers would like their vendors to address.

Mr. Kimmich of Southwest Airlines said he is "still waiting for better data to come out of the workers comp side of things." The "state-by-state" nature of the coverage makes it difficult for employers and outside claims administrators to respond to filing requirements and efficiently produce useful claims management data, he noted.

Southwest carries a "very high retention" on its workers comp exposure and uses outside administrators to handle claims, Mr. Kimmich said.

Ms. Kitchen of Verizon said interpreting claims information would be easier if insurers and TPAs used a common data format. "Every system is limited by the type of data it can capture," she said, and while some systems can be customized to interpret varied formats, that requires additional programming.

Mr. Denning of Shelter Island pointed out that employers shopping for systems should be aware that the features that are touted are often "the tip of the iceberg...It's easy to show beautiful screens," but he cautioned that buyers should look closely at the technology's functionality before deciding on a system.



## Claims Management.

### Performance depends on having the right partner.

Mastering the inharmonious world of claims isn't easy. Rising medical costs, new legal and regulatory requirements, expanding indemnity entitlements, the drumbeat of litigation, the shifting economics of risk funding – all potentially sour notes for performance-minded employers. Will it be noise or music? It depends on the players.

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stability. Blending experience, resources and an aggressive approach to problem solving, we strike just the right notes.

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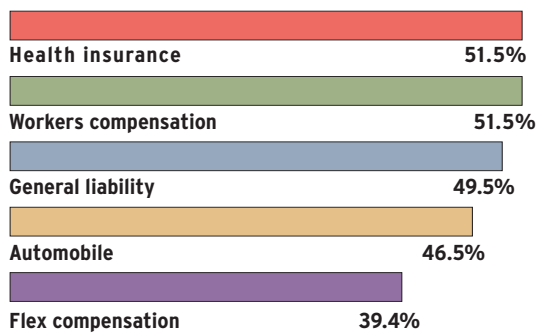
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www.sedgwickcms.com

### MOST PREVALENT CLAIMS

Percentage of all companies that provide the following types of claims administration



Source: BI survey

### LARGEST BY CLIENTS

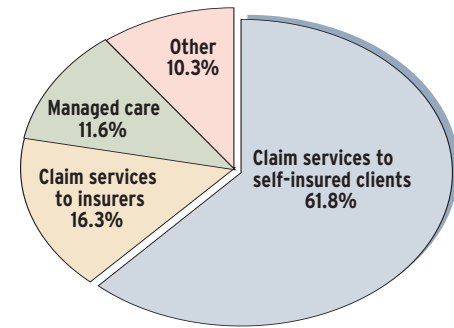
Claim administrators ranked by number of self-insured clients

Company	Number of clients
Cambridge Integrated Services Group Inc.	4,795
Gallagher Bassett Services Inc.	2,616
CoreSource Inc.	1,742
York Insurance Services Group Inc.	1,330
Fiserv Health	1,149

Source: BI survey

### BREAKDOWN OF REVENUES

Top 10 companies' revenues by services provided



Source: BI survey

# Largest claims administrators

Ranked by 2003 revenues from claims handled for self-insured clients

Rank	Company/Address	Phone/Fax/Web site	Parent company	2003 revenues from self-insured clients	2003 claims paid for self-insurers	Total clients	Claims staff	Type of claims administered	Principal officer
1	Gallagher Bassett Services Inc. The Gallagher Centre, 2 Pierce Place Itasca, Ill. 60143-3141	630-773-3800 Fax: 630-285-4000 <a href="http://www.gallagherbassett.com">www.gallagherbassett.com</a>	Arthur J. Gallagher & Co.	\$307,100,000	\$3,736,000,000	2,616	NA	Employee Benefits & Property/Casualty	Richard McKenna, president
2	Fiserv Health <sup>1</sup> 6160 Summit Drive, Suite 500 Minneapolis, Minn. 55430	763-549-3350 Fax: 763-549-3368 <a href="http://www.fiservhealth.com">www.fiservhealth.com</a>	Fiserv Inc.	\$287,200,000	\$6,125,000,000	1,149	1,100	Employee Benefits	Jim Cox, president
3	Sedgwick Claims Management Services Inc. 1100 Ridgeway Loop Road Memphis, Tenn. 38120	901-415-7400 Fax: 901-415-7406 <a href="http://www.sedgwickcms.com">www.sedgwickcms.com</a>	Marsh & McLennan Cos. Inc.	\$244,350,000	\$3,729,764,542	380	2,563	Employee Benefits & Property/Casualty	David A. North, president/CEO
4	Cambridge Integrated Services Group Inc. 31500 Solon Road Solon, Ohio 44139	877-785-3750 Fax: 847-953-0562 <a href="http://www.cambridgeintegrated.com">www.cambridgeintegrated.com</a>	Aon Corp.	\$194,000,000 <sup>2</sup>	\$2,786,000,000	4,795	2,000 <sup>2</sup>	Property/Casualty	Tracey A. Carragher, chairman/CEO
5	Specialty Risk Services Inc. Goodwin Square, 225 Asylum St., 16th Floor Hartford, Conn. 06103	888-236-4684 Fax: 860-520-2560 <a href="http://www.specialtyriskservices.com">www.specialtyriskservices.com</a>	The Hartford Financial Services Group Inc.	\$167,000,000	\$1,600,000,000	600	1,350	Property/Casualty	A. Joseph Boures, president
6	CoreSource Inc. 400 Field Drive Lake Forest, Ill. 60045	847-604-9200 Fax: 847-615-3900 <a href="http://www.coresource.com">www.coresource.com</a>	Trustmark Insurance Co. Inc.	\$158,263,000	\$3,378,830,000	1,742	1,595	Employee Benefits	Mark W. Schmidt, president
7	Broadspire <sup>3</sup> 1601 S.W. 80th Terrace Plantation, Fla. 33324	954-693-1147 Fax: 954-693-4074 <a href="http://www.choosebroadspire.com">www.choosebroadspire.com</a>	Platinum Equity L.L.C.	\$145,000,000	\$351,000,000	660	831	Employee Benefits & Property/Casualty	Dennis Replogle, president/CEO
8	ESIS Inc. 1601 Chestnut St. Philadelphia, Pa. 19103	215-640-1056 Fax: 215-640-5556 <a href="http://www.esis.com">www.esis.com</a>	ACE USA	\$139,000,000	\$2,300,000,000	639	1,311	Property/Casualty	Ed Troy, president
9	The Principal Financial Group-National Accounts 1275 N.W. 128th St., Suite 100 Clive, Iowa 50325-7422	515-273-0900 Fax: 515-235-9280 <a href="http://www.principal.com">www.principal.com</a>	--	\$133,106,201	\$2,195,058,840	280	774	Employee Benefits	Jim Charling, vp
10	Crawford & Co. 5620 Glenridge Drive Atlanta, Ga. 30342	404-256-0830 Fax: 404-847-4028 <a href="http://www.crawfordandcompany.com">www.crawfordandcompany.com</a>	--	\$99,700,000	\$1,740,320,609	811	1,923	Property/Casualty	Grover L. Davis, chairman/president/CEO

1. Includes Benefit Planners Ltd. L.L.P., Benesight Inc., Fiserv Health-Kansas & Tennessee, Harrington Benefit Services Inc. and Wausau Benefits Inc. 2. BI estimate 3. Formerly NATLSCO Inc.-TPA Services  
Source: BI survey

The full directory of Third-Party Administrators is available online in the directories area of [www.BusinessInsurance.com](http://www.BusinessInsurance.com). The searchable directory allows users to locate claims administrators by company name, type of claims administered, and type of clients, among other information. PDF copies of the directory can be purchased by calling the Crain Information Center at 312-649-5476.

# Interruption: Market still tight

Continued from page 10

The period of restoration covers the policyholder's loss of income or revenue from the date of a loss until the date the policyholder should have repaired, replaced or rebuilt its damaged property.

During the soft market, insurers typically did not specify the period in which policyholders had to rebuild or find an alternative site, noted Jill Dalton, a managing director and the North American property practice leader for Marsh USA Inc. in New York. Now, insurers typically impose a one- or two-year limit, she said.

Coverage for an extended period of indemnity begins when destroyed or damaged property has been rebuilt or replaced and ends at a specified date or when a policyholder's income or revenue stream has returned to preloss levels, whichever is earlier.

During the soft market, policyholders often had one to two years of extended-indemnity coverage, Ms. Dalton noted.

Since the terrorist attacks, insurers have pared that coverage to between 30 and 365 days, market observers said.

Insurers also have been tightening the language in other business interruption provisions.

For example, in the soft market, some buyers would have been covered for business interruption losses if ingress to or egress from their property were "impaired" due to a covered loss at a third-party site, noted policyholder attorney Ed Joyce, a partner with Heller Ehrman White & McAuliffe L.L.P. in New York. Coverage disputes have ensued over whether "impaired" means prohibited, as insurers contend, or that access was only more difficult than normal, as policyholders argue.

In addition, some policyholders had civil authority provisions that would have provided coverage if officials' actions had "impaired" access to the policyholders' property.

Policyholders no longer will find the "impaired" language in their policies, though insurers insist the change is only a clarification, not a reduction, of coverage, Mr. Joyce said.

In addition, "it's impossible to get contagious or infectious disease coverage for certain countries, especially countries in Asia," and securing it elsewhere is difficult and expensive since the outbreak of severe acute respiratory syndrome, said Glenn Pomerantz, a partner and the national director of insurance claims services at BDO Seidman L.L.P. in New York. But some entertainment and tourism risks in Asia and Canada had such coverage and have filed SARS-related business interruption claims, many of which remain open, he said.

Risk managers have, however, seen some coverage improvements recently.

For example, contingent business interruption coverage is more readily available to protect a policyholder's income or revenue when an indirect supplier or customer shuts

down due to a covered loss. But, insurers will want to underwrite each specific risk, Mr. Costner noted.

In addition, more than a dozen insurers write terrorism coverage that is much broader than the coverage the federal government requires them to offer, he said.

But for some policyholders the traditional business interruption market is still inadequate for their needs, forcing them to look elsewhere for coverage.

The sEnergy facility provides \$200 million of business interruption limits over the greater of a \$50 million retention or 30-day de

ductible. The coverage is broad, according to sEnergy officials and Sandy Vietor, deputy chairman of Willis Risk Solutions North America in New York. It covers losses stemming from actions by civil authorities and a lack of ingress to or egress from covered property. There are no sublimits for extra expense or contingent business interruption coverages, and contingent business interruption coverage responds to supplier or buyer losses more than one link down the chain. And, the facility does not exclude terrorism-related losses.

Continued on next page

## LARGEST PROPERTY/CASUALTY TPAs

TPAs that specialize in property/casualty claims administration

Company	2003 revenues from self-insured clients
Cambridge Integrated Services Group Inc.	\$194,000,000*
Specialty Risk Services Inc.	167,000,000
ESIS Inc.	139,000,000
Crawford & Co.	99,700,000
RSKCo Services Inc./Cunningham Lindsey U.S.	80,000,000
Risk Enterprise Management Ltd.	69,575,000
Helmsman Management Services L.L.C.	60,440,000
Constitution State Services L.L.C.	59,230,000
GAB Robins North America Inc.	50,168,000
Hertz Claim Management	30,000,000

\* B/E estimate  
Source: BI survey

Continued from previous page

The capacity that the facility offers without sublimits was most important to Mark F. Wilson, assistant treasurer for insurance and risk management for sEnergy policyholder/owner Lyondell Chemical Co. of Houston.

In addition, Mr. Wilson, who is sEnergy's chairman, said he likes the mutual insurer's five-year loss payback commitment and the promise that, unlike the commercial market, it will not try to exclude risks after a loss.

Mr. Vietor said mutual insurers would work best for groups of policyholders that have either exemplary loss records—because they pay too much for the significant limits they buy but never tap—or

those with poor loss histories—because the commercial insurance market "punishes them with steep rates."

Policyholders that do not need significant capacity and that have average loss records likely could more efficiently finance risk in the commercial market, he said.

### Claims disputes

While the market is less restrictive, insurers are not softening their positions in recent business interruption claims disputes that stem largely from the terrorist attacks.

"Property coverage is black and white in every area except business interruption," said Rick Broderick, vp-risk management for Arlington,

Va.-based Interstate Hotels & Resorts Inc.

For example, disputes over extended-period-of-indemnity coverage have developed as the economy weakened after the attacks.

Insurers are paying most claims filed by policyholders in Manhattan, said Willis' Mr. Costner.

But many policyholders seeking coverage until they reach their pre-loss income or revenue levels face insurer arguments that the claims should reflect business expectations in a weaker economy, market observers say.

"It's one of the most troublesome areas" for policyholders, BDO Seidman's Mr. Pomerantz observed.

In some cases, insurers are seeking business interruption claim dis-

counts of more than 50%, Mr. Pomerantz said.

Mr. Joyce asserted that some insurers have argued that only 25% to 50% of the value of business interruption claims arising from the attacks should be covered.

Insurers do not dispute that they are factoring in the weaker economy, but they disagree that the industry is attempting to halve all claims.

"To my knowledge, that has never happened with FM Global claims" or elsewhere in the industry, said Dino Grande, operations vp of the business risk consulting group at Factory Mutual Insurance Co. of Johnston, R.I.

Joseph E. Smith, vp of property and marine claims in Wilmington,

Del., for the ACE Global Property unit of US International, a division of ACE USA, defended insurers' evaluation of economic conditions even though the attacks worsened those conditions. Mr. Smith said that insurers are factoring in the weakening of the economy before the attacks.

"Courts have gone in various directions" in those kinds of cases, and more litigation is expected, said policyholder attorney Lee Epstein, a Philadelphia-based partner with Fried Epstein & Rettig L.L.P.

Most courts have looked for the cause that "set the loss in motion," regardless of whether it was the first or last link in a chain of events, Mr. Epstein explained. Other courts have pinpointed the event that was the closest in time or place to the loss.

Meanwhile, federal aviation authorities' grounding of air traffic after the attacks has sparked coverage disputes over hotels' claims that invoke civil authority provisions, which typically apply when authorities bar access to a policyholder's facility for safety reasons after a catastrophic event.

But, insurers routinely have denied such claims, and some courts have sided with them. For example, a federal district court judge in Louisiana in September 2002 ruled that the Federal Aviation Administration's airport closures and grounding of aircraft "hardly prohibited" access to a group of hotels in New Orleans.

Even so, for hotels with policies in which civil authority coverage hinges on authorities "impairing" access to the insured property, "I would give some serious thought on what to do," said John Dempsey, a partner with loss accounting firm Dempsey, Myers & Co. L.L.P. of Wilton, Conn. "It's not a claim that's asserted unreasonably."

Recovering losses caused by the massive power outage last fall will be problematic, market observers agree.

A business interruption loss resulting from the power outage might be covered if a policy responds when physical damage at a power utility causes an outage, Mr. Dempsey said.

But the outage last summer was triggered when overgrown tree limbs brushed against some electrical wires and caused a short circuit. "None of the insurers I'm aware of have said, 'Aha! There's the damage,'" Mr. Dempsey said.

ACE's Mr. Smith said that, of the "handful" of related business interruption claims he has seen, ACE denied a portion because a short circuit caused by poor tree maintenance was "not considered physical damage." The remaining claims did not exceed policyholders' deductibles, he said.

Because of the amount of negotiation usually involved, resolving a business interruption claim is more like settling a casualty loss than a property loss, Interstate's Mr. Broderick observed. Mr. Broderick plans to eliminate such uncertainty in Interstate's coverage by seeking either prescribed payment methodologies or fixed payment requirements during his upcoming property insurance renewals.



A



B



C



D



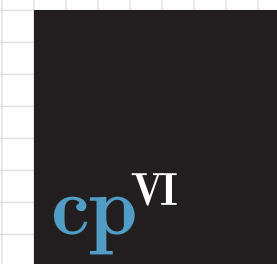
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TPAs that offer both employee benefits and property/casualty claims administration.

Company	2003 revenues from self-insured clients
Gallagher Bassett Services Inc.	\$307,100,000
Sedgwick Claims Management Services Inc.	244,350,000
Broadspire <sup>1</sup>	145,000,000
Acordia Inc.	64,584,000
The Frank Gates Cos.	48,000,000
CompManagement Inc.	46,500,000
Cannon Cochran Management Services Inc. dba CCMSI	40,500,000
GatesMcDonald	38,500,000
The Loomis Co.	24,600,000
RMSCO Inc.	20,000,000

<sup>1</sup> Formerly NATLSCO Inc.-TPA Services  
Source: BI survey

# Asbestos: Debate over reform

Continued from page 10

Senate Majority Leader Bill Frist, R-Tenn., has said he wants to reintroduce the legislation by the end of March. While this deadline may slip a little, it can't slip by much, sources familiar with the bill agree.

"If it goes past June, we're done for the year," one predicted.

Sen. Frist put off consideration of the FAIR Act late last year in hopes of redrafting a bill that would attract broader support than the measure passed by the Senate Judiciary Committee last June. While several observers expect this year's bill to be different in a number of respects,

the shape of the measure is still uncertain.

Insurers expect funding for the asbestos claims trust to be set at the level they agreed to last October after months of negotiating. That agreement called for a trust totaling \$114 billion, with \$46 billion to be contributed by insurers over 27 years, \$57.5 billion by corporate asbestos defendants over 23 years and an additional \$10 billion from the defendants after the 23rd year if the fund proves unable to cover its obligations.

The AFL-CIO, however, has attacked the \$114 billion funding lev-

el as "grossly inadequate." Even in the original Judiciary Committee bill—which called for a \$154 billion trust and triggered intense insurance industry opposition—funding was "far too low," the union has argued.

Insurers and labor groups are also far apart on the amounts the trust should pay for claims in certain scheduled categories of asbestos-related disease, such as lung cancer, insurer sources and others say. While the AFL-CIO called the claim values in last year's bill too low, insurers are concerned about a flood of expensive lung cancer claims that may not be wholly related to asbestos exposure.

For the bill to succeed, labor groups will have to scale back their funding expectations and accept funding that is "adequate under most (claim) scenarios," said David Dwartz, a senior vp with Liberty Mutual Insurance Co. in Boston. The legislation is "not designed to provide a trust fund that would be adequate under any conceivable scenario."

While maintaining that \$114 billion will prove adequate, Liberty Mutual would support transferring claims to a federal court with appropriate medical criteria for payment if the trust ultimately runs out of money, a spokesman for the insurer added.

Another concern of insurers is making sure the federal trust fund becomes the exclusive remedy for all pending and future asbestos-related claims, including direct and extra-contractual lawsuits against insurers, claims against peripheral defendants, workers compensation claims and defaults in which policyholders tender their insurance limits to claimants.

"If there are certain kinds of asbestos claims left outside the fund, trial lawyers will game the system," channeling claimants away from the fund, observed Julie Rochman, senior vp with the American Insurance Assn. in Washington. "The creativity of the trial bar is endless."

Insurers also argue that the bill should include provisions covering silica-related claims. It could, for example, bar claimants from using the same medical evidence to both recover from the federal fund and to sue outside the fund for alleged silica-related injuries.

"Prohibiting double recovery is very important to us," Ms. Rochman said.

There is "very, very heartfelt resistance" among labor groups and Democratic legislators, though, to expanding the bill to include silica claims, said Patrick Hanlon, a lawyer with Shea & Gardner in Washington who represents the Asbestos Alliance, a group affiliated with the National Assn. of Manufacturers. Such an expansion would prove "extremely difficult," Mr. Hanlon predicted.

Two amendments added to the FAIR Act in the Judiciary Committee last year are being targeted by insurers that hope to see them removed from this year's bill.

One, offered by Sen. Joseph

See ASBESTOS/page 20

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# Asbestos: Debate over terms of reform

Continued from page 18

Biden, D-Del., would shut down the trust fund if it fails to pay at least 95% of its claims in any calendar year. This provision would destroy the bill's aim to provide finality to the asbestos morass, the AIA and other insurers argue.

The other, added by Sen. Dianne Feinstein, D-Calif., would keep claims in the tort system until the federal fund is fully functional. Insurers argue that interim funding and claims-handling procedures could get the process started faster.

It is uncertain whether these provisions will survive in this year's as-

bestos reform bill.

Meanwhile, insurers are arguing among themselves about how they should allocate the industry's \$46 billion share of the funding burden among individual companies. The FAIR Act provided for a commission to decide on allocation, but most insurers would rather decide among themselves beforehand, industry sources say.

Allocation methods could include basing insurer contributions on existing asbestos reserve levels or conducting an industrywide ground-up study of asbestos exposures to set contribution levels.

Also up in the air is the nature of the claims-handling mechanism the federal fund would use. Last year's bill would have set up a U.S. Court of Asbestos Claims to rule on claimant eligibility and awards and a separate administrative office to process and pay claims.

Some, including labor unions, have opposed an adversarial legal process for claims resolution and have argued for a more strictly administrative process, perhaps overseen by the U.S. Department of Labor in the same way the department administers black lung claims, observers say.

Whatever procedures are ultimately adopted, they are likely to be more cumbersome and involve more levels of review and appeal than those used by asbestos trusts created in the bankruptcy reorganizations of several asbestos defendants to date, insurance and legal sources agree.

"It unquestionably would be a much slower process, which some people would object to," said David Austern, general counsel for the Manville Personal Injury Settlement Trust and president of its Claims Resolution Management Corp. unit in Fairfax, Va.

Requiring stricter review "doesn't mean the administrative overlay has to be heavy," Mr. Hanlon said. "But it probably has to be more than David Austern has to deal with."

Even if a federal claims system is less efficient than the bankruptcy trusts, "it will be much more efficient than the current tort system," noted Mr. Dwortz.

The tussle over provisions of this year's asbestos reform bill may be only an intermediate round in the fighting: If a reform law is actually enacted, it is virtually certain to face a barrage of legal challenges, including possible constitutional challenges from the existing asbestos bankruptcy trusts, sources agree.

The reform bill, like last year's FAIR Act, would likely require bankruptcy trusts created by large asbestos defendants to turn over their assets to the federal trust fund in exchange for a release from further claim liabilities. Insurers that have already paid into the bankruptcy trusts would receive a credit against their required contributions to the federal trust.

During Judiciary Committee hearings last year, though, two existing trusts—formed by Fuller-Austin Insulation Co. and National Gypsum Co.—argued that the FAIR Act would unlawfully infringe on their rights under court-approved reorganization plans and that the transfer of trusts' assets would be an unconstitutional "taking" of their property.

Bankruptcy trustees also believe that certain categories of claimants would not be treated as well under the federal program as they are by the existing trusts and that the trustees are therefore duty-bound to oppose the transfer, Mr. Austern said.

If the federal law is enacted, Mr. Austern said that existing trusts will likely sue to block its implementation.

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# Holocaust claims program progressing toward goal

## ICHEIC planning to settle majority of disputed decades-old claims by 2005

By MEG FLETCHER

After a long struggle to develop a fair process for resolving Holocaust-era insurance claims, an international program is starting to win some praise for its efforts and hopes to conclude the majority of its work this year.

The task of settling unpaid life, annuity, education and dowry insurance claims required creation of a unprecedented global claims identification and valuation process with relaxed standards of proof so that more Holocaust victims' and survivors' decades-old claims could be identified, settled and paid at no cost to them.

The resulting International Commission on Holocaust Era Insurance Claims, launched in 1998 with offices in London and Washington, has faced several challenges, including criticism that the process has suffered from a slow pace, poor oversight of insurers, low payments and high administrative expenses.

One of the claims facility's biggest challenges has been to devise a new approach to handling claims. Traditional processing procedures, in which a claimant files a claim along with proof of a valid policy, are not applicable to the Holocaust-era policies.

"The Nazi government of Germany engaged not only in genocide and enslavement but theft of Jewish assets, including the value of insurance policies," U.S. Supreme Court Associate Justice David H. Souter wrote in *AIA vs. Garamendi*, citing research submitted to the court. That June 2003 decision involved the ability of state regulators to require U.S. insurers and their European affiliates to disclose the names of all Holocaust-era policyholders.

"After the war, even a policy that had escaped confiscation was likely to be dishonored, whether because the insurers denied its existence or claimed it had lapsed from unpaid premiums during the persecution, or because the government would not provide heirs with documenta-

tion of the policyholder's death," Justice Souter wrote.

Also, in the more than a half-century that has passed since many of the policies were issued in Europe, records have been lost.

Victims of Nazi persecution now living in the United States—who represent only 16% of the world's more than 685,000 Holocaust survivors—brought complaints about claims difficulties to various state insurance regulators in the early 1990s.

At regulatory hearings, elderly claimants testified that insurers had denied their claims because the claimants could not provide death certificates, which was a cruel irony for survivors whose family members were killed in Nazi gas chambers and concentration camps.

Momentum grew among regulators to find a solution before the aging survivors died, explained Gregory V. Serio, New York's current superintendent of insurance. He currently heads the National Assn. of Insurance Commissioners' International Holocaust Commission Task Force.

In addition to regulators, other participants in the ICHEIC are five European insurance companies—Allianz Insurance Co., AXA S.A., Assicurazioni Generali S.p.A., Winterthur Leben and Zurich Financial Services Group Inc.—as well as representatives of international Jewish and survivor organizations and the government of Israel.

Each participant signed a formal "memorandum of understanding" to establish "a just process to collect and facilitate the...processing of insurance claims" following negotiated guidelines, according to Lawrence S. Eagleburger, a former U.S. secretary of state who serves as chairman of the ICHEIC. Establishing such guidelines "was a much more difficult and complicated process than anyone envisioned at the start," said Mara Rudman, ICHEIC's chief operational officer.

Creating the guidelines "took complex, intense and bitter negoti-

ations," noted Mr. Serio.

State insurance regulators' leverage during the process stemmed in part from the perception—and occasional threat—that they would take regulatory action against uncooperative companies or their U.S. subsidiaries (*BI*, Sept. 23, 2002).

The limit of regulators' power, however, was demonstrated in the U.S. Supreme Court's ruling in the *Garamendi* case. That 5-4 decision overturned a California state law that authorized insurance regulators to impose sanctions against insurance companies that failed to publish information about Holocaust-era policies. The majority opinion held the state law interfered with U.S. foreign policy, which favored a more conciliatory approach to resolving Holocaust reparations.

### Search for claimants

To deal with what Mr. Eagleburger described as the "overriding moral responsibility" to pay the claims, ICHEIC launched a global campaign in February 2000 to locate potential claimants.

The ICHEIC's Web site, [www.icheic.org](http://www.icheic.org), offered potential claimants or heirs information about claims procedures in 23 different languages. Visitors to the site can search lists naming thousands of potential policyholders from 1920 to 1945.

Up until the extended Dec. 31, 2003, deadline they also could print out ICHEIC claim forms. Although that date has passed, a person who obtained a form by the deadline can still make a claim through the commission, if they file it promptly, Ms. Rudman said.

Once a claim form is received, the commission relays it to the insurance company the claimant has named. If the claimant is unable to name any company, ICHEIC sends the form to all member companies that could have sold coverage.

Each ICHEIC insurer is responsible for reviewing the claim in accor-

dance with ICHEIC guidelines, which include relaxed standards of proof. That allows a claimant to provide unofficial evidence, such as copies of premium receipts or records held by any governmental body that can verify the existence

of an insurance policy.

If an insurer's research determines that a policy existed and it was not previously paid, a determination is made of the policy's current worth and a settlement offer is

See HOLOCAUST/next page




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## LARGEST EMPLOYEE BENEFIT TPAs

TPAs that specialize in employee benefit claims administration, ranked by 2003 revenues from self-insured clients

Company	2003 revenues from self-insured clients
<b>Fiserv Health *</b>	<b>\$287,200,000</b>
<b>CoreSource Inc.</b>	<b>158,263,000</b>
<b>The Principal Financial Group—National Accounts</b>	<b>133,106,201</b>
<b>Brokerage Concepts Inc.</b>	<b>54,801,000</b>
<b>Zenith Administrators Inc.</b>	<b>45,000,000</b>
<b>Alicare Inc.</b>	<b>43,909,000</b>
<b>Group Resources Inc.</b>	<b>36,600,000</b>
<b>HealthPlan Holdings Inc.</b>	<b>35,000,000</b>
<b>Central Benefits Group</b>	<b>34,090,000</b>
<b>Corporate Benefit Services of America Inc.</b>	<b>28,185,000</b>

\* Includes Benefit Planners Ltd. L.L.P., Benesight Inc., Fiserv Health-Kansas & Tennessee, Harrington Benefit Services Inc. and Wausau Benefits Inc.

Source: BI survey

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# Holocaust: ICHEIC nearing goal on resolving claims

Continued from previous page made.

The ICHEIC, which audits the insurers' decisions, also has appeals procedures for claimants and helps oversee humanitarian funds to compensate others, especially those lacking policy documentation.

As of early January, the ICHEIC had received 67,576 claims eligible for processing. ICHEIC member companies have made 3,019 claims settlement offers totaling \$48.0 million. Thus far, 2,149 offers totaling \$33.2 million have been paid to claimants, according to ICHEIC.

A separate trust fund in Israel, established by Generali, also follows ICHEIC's guidelines. To date, the Generali fund has made payments of about \$50 million, said Chris Carnicelli, president and chief executive officer of Generali U.S. Branch in New York.

Relatively few claimants have chosen to sue insurers in U.S. courts. Bringing such suits is challenging because insurers enjoy limited protection stemming from a diplomatic agreement signed in 2000 between U.S. and German officials. That pact created the German Foundation for Remembrance, Responsibility and the Future, which provided millions of dollars to ICHEIC (*BI*, Aug. 28, 2000).

But some claimants are taking their chances in court. For example, plaintiffs' attorney William Shernoff of Shernoff Bidart Darras L.L.P. of Claremont, Calif., is representing 18 individuals whose claims against Generali are pending before U.S. District Court Judge Michael B. Mukasey in New York. These survivors seek full life insurance benefits and damages due to Generali's alleged bad-faith in handling of the

claims, he said.

In earlier rulings, Judge Mukasey has criticized ICHEIC, which receives its funding from the participating insurers, as being "in a sense the company store."

Mr. Shernoff said that a U.S. State Department official told him that Generali is not protected by the German Foundation agreement, though the Italian insurer may have other protection from liability as a result of its arrangement with ICHEIC.

According to Mr. Carnicelli, Generali has already paid well in excess of \$100 million to resolve all claims—including some paid to Mr. Shernoff's clients—through the ICHEIC. He also pointed out that the commission has been officially endorsed as the exclusive remedy for Holocaust claims.

## Work nearing completion

By the end of 2004, the commission expects to complete the major portion of its mission to resolve claims disputes, though appeals may run into June of 2005, Ms. Rudman said.

At completion, she predicted that ICHEIC will have spent 20%—or \$100 million—of its funding in administrative expenses, with the remaining \$400 million going to claimants through claims and humanitarian payments.

The commission earlier was criticized for its administrative expenses in light of its low volume of claims payouts.

However, since a typical insurer spends 20% to 25% for administration, Mr. Serio said he considers that "a real positive" for ICHEIC.

The commission's overall job in managing claims now is "much, much better" than it had been, Mr. Serio added.

ICHEIC "has performed quite well under the circumstances," said Mr. Carnicelli of Generali.

However, "while ICHEIC has made progress...it still has more work to do," said a spokesman for the U.S. House of Representatives' Committee on Government Reform, which has held hearings on ICHEIC's operations.

"For a lot of Holocaust survivors, time is running out for justice," he said.

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# Pennsylvania seeks to limit surplus of four Blues plans

By LAURA B. BENKO

Addressing a long-running controversy, Pennsylvania insurance regulators have moved to cap the amount of cash the state's four nonprofit Blue Cross & Blue Shield plans can stash away for a rainy day.

The state Insurance Department in January issued a notice directing Capital Blue Cross, Independence Blue Cross, Highmark and Blue Cross of Northeastern Pennsylvania to submit detailed information about their surplus levels. Companies found to be holding excess amounts will be required to submit a plan to "fairly and equitably" refund the money to members or help subsidize coverage for the uninsured.

While all states have minimum reserve requirements for health plan solvency, before now Minnesota and North Dakota were the only states to set a surplus "ceiling" for nonprofit insurers.

"We are seeking to use our statutory authority...to balance the twin goals of the long-term financial health of the Blues and the Blues' social mission as charitable and benevolent institutions," said a spokeswoman for the Pennsylvania Insurance Department.

The action follows a 3-year-old fracas in which critics have accused the state's Blues plans of stockpiling massive reserves while premiums have climbed at double-digit rates and 1.4 million Pennsylvanians remain uninsured. All four plans—which hold a combined surplus of about \$3.6 billion—face class action

lawsuits accusing them of ignoring their charitable missions and asking them to "disgorge" their surpluses. Late last year, regulators denied the plans' requests to raise rates for individual members by up to 20%, saying the Blues hadn't adequately demonstrated how they were using their surpluses to temper premiums.

The insurers, however, have argued that maintaining substantial surpluses is crucial to assuring providers and members that money will be available to pay claims in the event of catastrophic losses. Together, the four plans cover 7.2 million members, or 58% of the state's population.

A number of states have begun to scrutinize health plans' reserves in recent years as insurers have continued to hike premiums even as their profits have soared.

Combined earnings at the nation's 42 Blues plans—the bulk of which are still nonprofit—climbed 43% in 2002 to \$4 billion, following a 40% jump in profits to \$2.8 billion a year earlier. And health maintenance organization nationwide enjoyed a combined profit of \$2.3 billion in the first quarter of 2003, up 60% from the same period a year earlier, according to a report released recently by Weiss Ratings.

Pennsylvania insurance regulators will examine the Blues' reserves in light of risk-based capital requirements.

The state's Blues plans have until April 15 to disclose their current reserve level and the rationale behind it. The companies also will have to detail how much of their reserves

they spent for charitable purposes over the past two years, and how they plan to use their reserves charitably through 2006.

For Philadelphia-based Independence, which has 3.6 million members, welcomed the risk-based capital examination. Independent recently reported an RBC ratio of 380%, at the low end of regulators' recommended range. Its surplus at year-end 2002 was \$707 million.

Blue Cross of Northeastern Pennsylvania in Wilkes-Barre, however, could face changes because it has an RBC ratio of about 900%, well above regulator's recommended range. Since voluntarily launching a "long-term surplus management plan" in 2001, the 600,000-member insurer has reduced its reserves by about \$100 million, with most of the money used to hold down premium increases, said a company spokesman. It plans to spend \$21 million of its current \$400 million surplus in 2004.

Harrisburg-based Capital Blue Cross has also reduced its reserves by about \$100 million over the past 18 months. Its cash reserves now are about \$500 million, but its risk-based capital ratio is still "somewhat above" 650%, said Capital President and Chief Executive Officer James Mead. He said that, while an RBC range for Blues plans makes sense, 650% seemed too low for a maximum, given the volatility of the insurance industry.

Laura B. Benko is a reporter for Modern Healthcare, a sister publication of Business Insurance.

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## Letters to the Editor

Continued from page 8

now using, uniform filing requirements and electronic processing for company licensing. Since about 60% of the nation's insurers write business in fewer than 10 states, these are the kinds of reforms that work for everyone, not just a select few.

• In the area of market regulation, the states are beginning to coordinate multistate exams, using deference to lead states. The year 2003 saw good, steady progress in the introduction of "market analysis" as the primary tool for market regulation and company examinations.

Speed-to-market reform has been more challenging, given the diverse set of interests and competing priorities. Regulators built the System for Electronic Rate & Form Filing to be a national portal for the review and approval of product filings. Life products can now be filed via SERFF in 48 states. For those that are filed, the average national turnaround is 17 days. This is meaningful reform to chief executive officers with whom my fellow regulators and I have visited. We wonder why more companies do not use SERFF to take advantage of the time and cost savings.

With its description of the interstate compact, the ACLI's letter undermines the substantial effort of regulators, state legislators, industry

leaders and others—including the ACLI—who worked to craft the compact. This is especially surprising since the compact was developed for life industry products. We believe it remains the right solution, but seeing it disparaged by an ACLI lawyer is unwelcome and unproductive, especially since: 1) the ACLI's executive committee endorsed and says it continues to support the compact; and 2) ACLI President Frank Keating spoke highly of it and urged its adoption to a group of influential state legislators during a December 2003 NCSL meeting. The fact is that the compact enjoys the support of a large majority of regulators, state legislators, state attorneys general and consumers. We believe it will be considered for legislative adoption in some 20 states in 2004.

I was most concerned that the

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

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letter from the ACLI might represent its reversal on the so-called dual-track approach, by which they committed to use their substantial resources to pursue an optional federal charter in Washington and to support regulatory modernization efforts in the states. Candidly, we have seen the ACLI spend a great deal of money lobbying Congress but not much effective help in many statehouses. Under the leadership of Mr. Keating, thankfully, the ACLI's state support increased some in 2003. I trust the ACLI will not abandon its commitment to work with us toward regulatory

modernization in the states. I certainly understand the ACLI's frustration at the pace of regulatory reform. The pressing issue for 2004 is how best to accomplish speed-to-market reform, particularly in big states. Again, I trust ACLI members will support states' regulatory modernization efforts and find the least restrictive, and most effective, means to encourage state reform.

We welcome the continuing debate and the ACLI's active support for further progress in 2004.

**Mike Pickens**

Arkansas Insurance Commissioner  
 Little Rock, Ark.

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**BI News flash**

## Commentary

# We've got déjà vu, all over again

Monday is Groundhog Day—a holiday of rather obscure origin that commands national attention for a day or two between the Super Bowl and the NCAA basketball tournament. The event—the modern version of which appears to have been drawn up by a congressman and a journalist—draws people to the small western Pennsylvania town of Punxsutawney to await the emergence of a groundhog named Punxsutawney Phil from a hole. If Phil sees his shadow, we're supposedly in for six more weeks of winter.

"Groundhog Day" is also the name of movie starring Bill Murray. He plays an obnoxious weatherman who has to cover Punxsutawney Phil's appearance every year, a job he hates. He's condemned to repeat the day over and over again until he recognizes the error of his ways.

Groundhog Day—the movie rather than the quasi-holiday involving oversized rodents—provides an apt comparison to the situation the Senate is facing in regard to some issues of interest to risk managers.

The particular issues are class action reform, reform of the system for compensating victims of asbestos-related illnesses and medical malpractice liability reform. If these issues sound familiar, it's because the Senate took up each of those issues in some form last year—and left each one to be resolved this year, if they are to be resolved at all.

Senate Majority Leader Bill Frist, R-Tenn., wants to get them all squared away and has promised to move quickly on class action and asbestos, with the fate of medical malpractice reform left open. That's understandable. The majority leader, who happens to be a surgeon as well as politician, couldn't get all of the members of his own party's Senate majority to line up behind a malpractice reform bill that both he and the White House supported last year.

So in the true spirit of the movie "Groundhog Day," expect the Senate to relive those wondrous days of yesteryear—literally yesteryear since we're talking 2003—throughout the next six or so weeks. Class action reform, which could have gone to the Senate floor had its supporters managed to pick up one more vote to limit debate, looks like it will be first on the list.

That's because three erstwhile

opponents have said they'll support the bill thanks to some changes worked out late last year, but that's no guarantee it will pass. There's always the threat of "killer" amendments being offered. Even if the measure should win Senate approval, differences between the Senate bill and House version passed last summer will still have to be ironed out and approved by both houses before this Congress adjourns for the last time.

Asbestos compensation reform faces an even tougher time. While there's agreement that the current litigation-based system for dealing with asbestos-related illness isn't working, there's no consensus on

how to make it work or who should pay how much to do so. Nevertheless, Sen. Frist has indicated that he wants action on this by the end of next month.

Medical malpractice reform is an even longer shot. There's worse than no consensus—there's outright opposition among a few GOP members. But like

class action reform, medical malpractice reform won House support months ago and could be resurrected in the Senate as well, albeit perhaps only for appearances' sake.

Those with long memories—stretching back to, say, the first Bush administration—may feel a sense of queasy déjà vu here. The issues a decade or more ago that seemed to pop up every congressional session included the likes of federal product liability reform legislation and Superfund liability reform. Both ultimately fell by the legislative wayside.

All of the current issues deserve better fates. Each enjoys the support of at least one powerful constituency—and in the case of class action reform, numerous powerful constituencies. But each also faces the opposition of at least one powerful constituency. The trial bar doesn't like any of these initiatives and given that this is an election year—how could you forget it?—expect the battles to be hard fought in the next few weeks.

So don't be surprised, if just like Bill Murray, the lawmakers end up seeming to live the same thing over and over again. But we can hope, just like the Bill Murray character again, they don't stop reliving their experience until they get it right.

Senior Editor Mark A. Hofmann can be reached at [hofmann@crain.com](mailto:hofmann@crain.com).



Mark A. Hofmann

## Comings & Goings



Mr. Watson



Mr. Youngs

### Insurers

New York-based American International Group Inc. has named **Kevin Hogan** as the senior executive responsible for the cooperative business relationship with China's PICC Property & Casualty Co. Ltd. Mr. Hogan, who will be based in Beijing, previously was president of the worldwide accident and health division at AIG.

Trustmark Mutual Holding Co., based in Lake Forest, Ill., has made two senior-level appointments:

- **J. Brinke Marcuccilli** has been named executive vp and chief financial officer. Before his promotion, Mr. Marcuccilli was senior vp.

- **Nancy M. Eckrich** has been promoted to senior vp-corporate compliance, individual medical and disability income/long-term care. Previously, Ms. Eckrich was vp.

Fireman's Fund Insurance Co. has made two senior-level appointments:

- **Tom Geissler** has been appointed chief executive officer of discontinued operations. Previously, Mr. Geissler was president of commercial business at the Novato, Calif.-based company.

- **Frederick Matteson** has been named senior vp and chief information officer. Before joining Fireman's Fund, Mr. Matteson was ex-

ecutive vp at Charles Schwab & Co. Inc.

Greenwich, Conn.-based Berkley Insurance Co. has named **Carol J. LaPunzina** as senior vp, general counsel and secretary. Before her promotion, Ms. LaPunzina

was vp and assistant general counsel.

**Bob Taylor** has been named senior vp of group specialty products at Mutual of Omaha Insurance Co. Before joining Mutual of Omaha, Mr. Taylor was president of E.B. Marketing Strategies, a company he founded.

Faraday Group has appointed **Mark Rayner** and **Paul Ceurvorst** as joint chief underwriting officers. They will be responsible for the underwriting strategy of Faraday Underwriting Ltd. and Faraday Reinsurance Co. Ltd. Previously, Mr. Rayner was underwriting director and property treaty team leader for the London-based company. Mr. Ceurvorst was underwriting director for the U.K./international team.

**Clive Watson** has been named managing director at Canopus Managing Agents Ltd., a managing agency for syndicates at Lloyd's of London. Before joining Canopus, Mr. Watson held a senior management position with Aviva P.L.C.

### Agents/brokers

**Kevin Youngs** has joined the Detroit office of Savannah, Ga.-based brokerage Palmer & Cay Inc. as an executive vp. Before joining

Palmer & Cay, Mr. Youngs was a managing director with Marsh USA.

Aon Risk Services Inc. of Arizona has named **Brian DeBruin** as resident managing director. He will be responsible for directing the sales and client service activities of Aon's mid-market and complex accounts. Before joining Aon Risk Services, Mr. DeBruin was sales manager for Marsh & McLennan Cos. Inc.

### Reinsurance

Guy Carpenter & Co. Inc., a New York-based unit of Marsh & McLennan Cos. Inc., has named **David Lightfoot** as manager of Instrat Non-Americas. Mr. Lightfoot, who will be based in London with oversight of all Instrat resources in the United Kingdom, continental Europe and Asia, previously was a managing director.

**John Beckman** has been appointed senior vp for Carvill America Inc.'s ReAdvisory unit, responsible for providing actuarial, modeling and financial analysis for the Norwalk, Conn.-based company. Before joining Carvill, Mr. Beckman was senior vp at Folksamerica Reinsurance Co.

### Other suppliers

**Robert C. Wellman Jr.** has joined risk management consulting firm Crain, Langner & Co. as a partner and will continue his practice in risk and insurance program analysis. Before joining the Richfield, Ohio-based firm, Mr. Wellman was director of risk management for Risk International Services Inc.

*Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news of recently promoted, hired or appointed senior-level executives to: Joe Walker, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; [jwalker@crain.com](mailto:jwalker@crain.com).*

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Airline looking at further pension plan changes

## British Airways among U.K. employers seeking ways to ease pension funding

By SARAH VEYSEY

**LONDON**—British Airways is considering further changes to its pension plans as part of an effort to cut its overall operating costs.

The London-based airline last week said that, as part of an effort to trim £300 million (\$548.1 million) a year in costs, it would hold talks with staff and labor unions over possible changes to the funding of its pension plans. British Airways operates both defined benefit and defined contribution-style plans.

Meanwhile, reports published this month by pension analysts suggest that the United Kingdom's largest companies still face a pension funding deficit under accounting standard Financial Reporting Standard 17 of between £50 billion and £60 billion (\$91 billion and \$110 billion). Under FRS 17, which is being phased in



gradually for full implementation in 2005, publicly traded companies must disclose the assets and liabilities of their defined benefit—or final salary—pension plans.

British Airways closed its defined benefit plan

to new entrants in 2002, citing the FRS 17 requirement as one reason for the move. Other U.K. companies also have pointed to the rule as one factor in their decisions to wind up or close plans to new entrants (*BI*, April 15, 2002).

In accordance with FRS 17, British Airways said that as of March 31, 2003, its three pension plans had total assets of £8.86 billion (\$16.19 billion) and total liabilities of £10.12 billion (\$18.49 billion). The airline operates two defined benefit plans—both closed to new entrants—and a defined contribution-style plan.

London-based labor union GMB, which represents about 4,500 British Airways employees, said it would oppose any attempt to ask British Airways employees to increase their pension contributions to make up the deficit. Often in the United Kingdom, both employees and employers

See PENSIONS/next page

## KWELM creditors agree to close runoff of insurers ahead of schedule

By SARAH VEYSEY

**LONDON**—Creditors of the KWELM group of companies have voted in favor of closing the runoff of the five collapsed London market insurers ahead of schedule.

Under the early closure plan, creditors would receive the bulk of the \$1.3 billion held for distribution in either 2005 or 2006, the runoff's administrators said in a statement.

The original timetable for the runoff extended beyond 2015, according to the administrators.

Ian Bond, one of KWELM's administrators, said that approximately 97% of the KWELM companies' reinsurance recoveries have now been collected.

Under the early closure plan, creditors must submit details of any outstanding claims and supporting evidence for them before a "bar date," likely Sept. 29. After mid-April, creditors will be able to lodge those claims via the KWELM Web site, the administrators said.

Early closure will mean that creditors will receive payments of between 58% and 76% of the sums owed to them, Mr. Bond said.

To date, average payouts have been 46% of sums due, Mr. Bond noted.

Courts in London, Bermuda and New York must approve the early closure plan, said Mr. Bond.

The original 2015 proposed closure date for the plan was a conservative estimate that was used because of uncertainties about the long-tail nature of many of the potential liabilities faced by the KWELM companies, explained Mr. Bond.

The five KWELM companies—Kingscroft Insurance Co. Ltd., Walbrook Insurance Co. Ltd., El Paso Insurance Co. Ltd., Lime Street Insurance Co. Ltd. and Mutual Reinsurance Co. Ltd.—wrote mostly U.S. casualty and liability business between 1972 and 1990.

More than 90% of KWELM's assets and liabilities are in U.S. dollars, and most of the policyholders are based in the United States.

The KWELM runoff plan was created in 1993. Its Web site can be found at [www.kwelm.com](http://www.kwelm.com).

## U.K. legal system blamed for big rate increases in employers liability

By SARAH VEYSEY

**LONDON**—Huge rate increases for employers liability insurance in the United Kingdom in recent years have produced a "critical" situation for British businesses, according to the head of the Confederation of British Industry.

Many members of the London-based employer organization have had difficulty obtaining employers liability coverage—which is compulsory in the United Kingdom—either because it is unaffordable or unavailable due

to the U.K. legal system must be made less adversarial, he said.

Sir John noted that the CBI is involved in discussions with the government's Department of Work and Pensions on ways to improve the current hard market for employers liability coverage. But, Sir John added, businesses can't rely on governmental actions alone to solve the problem.

Employers also must do their part to reduce claims by improving workplace health and safety standards, among other changes, Sir John said.

In addition, adopting a greater focus on the rehabilitation and return to work of injured workers could help to keep down the cost of employers liability claims, he said.

He pointed out that, until now, the United Kingdom had historically had a poor record on providing such rehabilitation services.

One reason for this, pointed out Sir John, is that claimants and their attorneys have not pushed for rehabilitation. That is because doing so would likely reduce the size of an employers liability claim, and the lawyer's fees would be similarly reduced.

Problems in the U.K. National Health Service, which is currently "chaotic and poorly funded," are another reason rehabilitation is underused by U.K. employers, Sir John said.

A 2003 report by the U.K. Department of Work and Pensions pledged to "help establish a new approach to rehabilitation" in the United Kingdom (*BI*, Dec. 8, 2003).

The CBI will continue to lobby government about its concerns, Sir John said, and London-based AIRMIC and the CBI should work closely together to find other answers to the issue, he added.



PHOTO: JUSTIN WILLIAMS / NEWSCAST

**The 'no win, no fee' system for attorneys is fueling a 'have a go' attitude among claimants, leading to a huge rise in speculative claims against U.K. employers.**

Sir John Egan  
Confederation of British Industry

to a lack of capacity for some risks, CBI President Sir John Egan told attendees at the Assn. of Insurance & Risk Managers' annual lecture last Monday.

Sir John said he believed that the growth of conditional fee legal arrangements—the "no win, no fee" system for attorneys—is fueling a "have a go" attitude among claimants, leading to a huge rise in speculative claims against U.K. employers.

This growth in claims has helped push up liability insurance rates for all employers, meaning that "good businesses, many with excellent health and safety records, end up having to shoulder the cost," he said.

One solution to this problem, Sir John said, would be for the government to adopt mechanisms, such as pretrial arbitration, to minimize speculative claims. The United King-

## World Updates

### U.K. premium volume nears \$260 billion

The U.K. insurance industry generated total life and nonlife premium volume of £161.2 billion (\$257.92 billion) in 2002, up 2.3% over the previous year, according to a study by International Financial Services London. Gross premiums written in the London market—including both the company market and Lloyd's of London—grew by 25% in 2002, to £24.6 billion (\$39.36 billion). Lloyd's accounted for 52% of this total, while company market participants contributed 45% and protection and indemnity clubs made up the remainder, according to the report.

### GE Frankona Re realigns business units

GE Frankona Re has reorganized its global marine and energy and aviation units. The Munich, Germany-based company said its marine and energy insurance and reinsurance business would be combined into one unit, to be headed by Peter Sydenham, who will be based in London. GE Frankona also has combined its aviation business into one unit, headed by Florian Karner, previously manager of the aviation direct unit, who will be based in Munich.

### IRM appoints permanent head

Steve Fowler has been appointed as the permanent executive director of the London-based Institute of Risk Management. Mr. Fowler previously served a 15-month term as executive director. He replaces David King, who returned to his role as customer relationship manager at Royal & SunAlliance Insurance Group P.L.C. in London.

### Briefly noted

**Watson Wyatt Worldwide** is setting up an insurance and financial services consulting team in Munich, Germany. Matthias Bonikowski, formerly a consultant at German consulting firm COR, will head the group....**Andrew Moss** has been appointed group finance director of London-based multiline insurer **Aviva P.L.C.** He is director of finance, risk management and operations at Lloyd's of London. Mr. Moss, who will join Aviva at a date yet to be decided, will also become an executive director. He succeeds Mike Biggs, who resigned as Aviva's finance director in July 2003....**Goshawk Re** Chief Financial Officer Jon Beck has been named group finance director of the Bermuda-based reinsurance company. He succeeds Andrew Castell, who is leaving the company in April.

# Pensions: U.K. employers face funding challenges

Continued from previous page

contribute to defined benefit plans.

"The GMB does not accept that higher employee contributions are the way forward for the pension schemes. Already, new employees are more vulnerable as the final salary scheme is closed to them," said Allan Black, GMB national officer for airports.

Meanwhile, several studies show that the pension funds of the U.K.'s largest companies still have an estimated deficit of between £50 billion and £60 billion, despite recent improvements in equity returns.

In January, London-based consulting firm Hewitt, Bacon & Woodrow said the estimated aggregate

pension deficit of FTSE100 companies—the 100 largest publicly traded U.K. companies—was about £50 billion under FRS17. That was down from an estimated £100 billion in March of last year—when the deficit was at its largest—with the improvement stemming from more favorable investment markets, said Raj Mody, principal consultant with the firm in Leeds, England.

But Mr. Mody noted that this improvement does not mean that companies are "out of the woods yet" and said that any changes in investment markets would affect that deficit.

Watson Wyatt Worldwide also

published an estimate of the FRS 17 liabilities of FTSE100 companies in January. The London-based con-

**'The position is not so rosy for pension schemes with largely inflation-linked pension promises.'**

Francis Fernandes  
Lane, Clark & Peacock L.L.P.

sulting firm said that it estimated the current FRS17 deficit of FTSE100 companies to be about £60 billion—about the same level as it

was a year ago.

Robert Hails, a partner at Watson Wyatt in London, said that while the asset position of many pension funds had improved in 2003 because of the recovering equity markets, the liabilities of those plans also increased because of higher inflation expectations and lower corporate bond yields.

Under FRS 17, corporate bond yields are used to calculate pension plan liabilities.

London-based actuarial consulting firm Lane, Clark & Peacock L.L.P. in its own study said that bond yields fell by about 0.5% in 2003 relative to market expectations about long-term price infla-

tion, inflating pension plan liabilities.

Francis Fernandes, a partner at London-based LCP, said that many companies "will be hoping that returns on U.K. shares of around 20% in 2003 will have brought their FRS 17 deficits back under control." But, he noted, "the position is not so rosy for pension schemes with largely inflation-linked pension promises, because the reduction in real bond yields could easily have added 10% to the FRS 17 liabilities of a year ago."

LCP said that it estimated that in July 2003, the pension fund deficits of FTSE100 companies totalled £55

See PENSIONS/next page

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**LAKEWOOD INSURANCE COMPANY LIMITED (FORMERLY SAMPO INSURANCE COMPANY (U.K.) LIMITED)**

AND IN THE MATTER OF THE COMPANIES ACT 1985

Notice is hereby given that the above named company ("the Company") intends to apply to the High Court of Justice (in England and Wales), Chancery Division, Companies Court on Friday 19 March 2004, for an Order to convene a meeting of creditors ("the Meeting"). The purpose of the Meeting will be to consider, and if thought fit, to approve (with or without modification) a solvent scheme of arrangement proposed by the Company to be made pursuant to Section 425 of the Companies Act 1985 ("Scheme").

The creditors under the proposed Scheme will be any claimant in respect of any contract or policy of insurance, reinsurance or retrocession (other than in respect of protected classes of business), entered into by or on behalf of the Company between 1 January 1983 to 31 December 1993 ("Scheme Creditors").

The Company is of the opinion that the proposed Scheme will enable the Company to discharge its obligations in full to Scheme Creditors over a shorter period of time than would otherwise be the case.

The Company is of the opinion that the rights of Scheme Creditors are so similar as to make it possible for them to consult together with a view to their common interests. Accordingly, the Company has concluded that there should be only one class of Scheme Creditor and it is proposed that only one meeting of Scheme Creditors be convened for the purposes of considering and, if the Scheme Creditors think fit, approving the Scheme. Further information may be obtained by contacting Simon Hawkins or Jackie Denny at PricewaterhouseCoopers LLP at 31 Great George Street, Bristol BS1 5QD United Kingdom (telephone +44 (0) 117 929 1500; facsimile: +44 (0) 117 929 0519) or Tobey Butcher at Charles Russell solicitors, 8-10 New Fetter Lane, London EC4A 1RS United Kingdom (telephone +44 (0) 207 203 5000; facsimile: +44 (0) 207 203 0200).

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### A NEW WORKERS' COMPENSATION INSURER FOR BUSINESSES SITUATED IN NEW YORK STATE

On December 9th, 2003 First Pavilion Insurance Company published its intention to form a stock insurance corporation under the provisions of the Insurance Law of the State of New York. The Company plans to write excess insurance policies with a primary concentration in the worker compensation market. Its business plan is directed at qualified self insured companies, group trusts and the development of captive insurers with excess coverage and fronting needs.

First Pavilion anticipates filing for flexible retro, retention and uniquely collateralized large deductible plans in NY and anticipates finalization of its licensing and capitalization requirements in early Spring 2004. Preunderwriting, applications and Program Administrator inquiries will be accepted beginning December 22, 2003.

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

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

## MATTER OF RECORD

December 2003

This announcement appears as a matter of record only.



Purchased the Assets of



The undersigned served as the originating and exclusive agent for The Covenant Group and assisted in the sale of its assets, including renewal rights.



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In re:

**MUNICIPAL GENERAL INSURANCE LIMITED**  
(Petition of Gareth Howard Hughes, Nigel James Hamilton and Jacqueline Barbara Stephenson)

Case No.: 94-41329 (CB)

PLEASE TAKE NOTICE that on January 21, 2004, the United States Bankruptcy Court for the Southern District of New York entered an order (the "Order") pursuant to 11 U.S.C. §§ 105 and 304(b) granting the Petition in this case and permanent injunctive relief that, among other things, gives full force and effect in the United States to the Scheme of Arrangement, dated September 18, 2003, between Municipal General Insurance Limited and its Scheme Creditors (the "Scheme") and enjoins all persons and entities from taking any action inconsistent with the Scheme. Any person wishing to obtain a copy of the Order should contact Theresa D'Agostino at (212) 610-6300 or at dagostit@newyork.allenoverly.com.

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February 2, 2004

## D&O: Market becoming stable

Continued from page 4

Canadian participants were slightly more likely to report increases.

"The most significant finding that we had was that the market continues to be hard, but there are definitely signs of stabilization,"

said Elissa Sirovatka, the Chicago-based survey leader. The market began to harden in 2001, she said.

James Swanke, Tillinghast's Minneapolis-based risk financing practice leader, underscored that point by saying, "Sept. 11 didn't really

bring on the D&O crisis; the D&O crisis was already underway."

Ms. Sirovatka said there are signs that capacity is picking up because of entrants in the marketplace.

"These new entrants don't have the liability tails that other carriers have, so that gives them some kind of advantage in terms of pricing," added Mr. Swanke, who declined to name any of the entrants.

The median total premium for all U.S. classes of business—including nonprofits and governmental agencies—was \$50,000. That figure, though, masks the broad range of medians for various classes of business that extended from a low of \$4,478 for governments and nonprofits to \$515,566 for utilities. The study notes, though, that utilities purchase the highest policy limits of any class in the study.

Total capacity shrunk to the lowest level since 1997, with \$1.35 billion in full limits available for for-profit U.S. entities in 2003, down from \$1.50 billion in 2002, and far less than the all-time high of \$1.58 billion in total capacity in 2000.

"In addition to signs of softening shown in premium changes, the deductibles/retention information provided indicates some softening as well," according to the report. The changes in deductibles/retentions by quarter show a generally

declining trend in the number of increases for U.S. participants. In the third quarter of 2002, 55% of U.S. participants reported "deductibles/retentions increased. This fell to 27% in third-quarter 2003.

Looking ahead, "essentially, we're seeing continued stabilization of the hard market with continued premium increases, on average, but of a smaller magnitude," said Ms. Sirovatka. "We also think we'll see fewer coverage cutbacks, and we're going to see capacity increasing with new entrants continuing to emerge. We'll see upward pressure on frequency and severity of loss."

Increasing capacity rather than rate adequacy is driving premium stabilization, Ms. Sirovatka said. "Actuarially speaking, we haven't had enough rate increases to catch up with the loss trend," she said.

"We've got a lot of securities claims out there that still need to be resolved," said Mr. Swanke. He said that although loss data hasn't indicated that the 2002 Sarbanes-Oxley Act, which instituted more stringent corporate governance and accounting standards, has had any impact on D&O claims frequency yet, "common sense dictates that there will be an impact."

He added, "With all of the concern being raised over D&O liability in terms of scope of coverage, all firms should be looking at their indemnification agreements to make sure that they're adequately protecting their directors and officers."

The survey also found that:

- American International Group Inc. and Chubb Corp. remained the largest primary D&O underwriters. AIG led in terms of premium volume, Chubb in policy count.

- Chubb and the Hartford Financial Services Group Inc. were the largest excess underwriters, with Chubb leading in policy count while Hartford led in premium volume, said Ms. Sirovatka.

- Shareholder claims were the largest class for companies with more than 500 shareholders. But the average indemnity paid in such actions fell to \$14.2 million from a record \$23.35 million in 2002. She cautioned, though, "there's a lot pending out there that hasn't settled—we looked just at paid losses."

The survey also contains a first time "expert roundtable" that provides an overview of the D&O marketplace and its likely direction.

The survey was based on the responses of 2,068 U.S. participants, 11% of which were nonprofits, including governmental entities. Seventy-one Canadian participants are also represented in the survey.

Single copies of the "2003 U.S. and Canadian D&O Liability Survey" cost \$650—\$350 for survey participants—and may be ordered from: Tillinghast, D&O Services, Attn. Mary Maze, 200 W. Madison, Suite 3100, Chicago, Ill. 60606; phone: 312-609-9347; or e-mail at [mary.maze@towersperrin.com](mailto:mary.maze@towersperrin.com).

## Pensions: Funding remains a challenge

Continued from previous page

billion (\$100.5 billion).

Paul McGlone, principal and actuary at Aon Consulting in London, said, "The things that actually change the FRS 17 numbers are not what companies do, but what the markets that they are exposed to do." He noted changing a plan's investment strategy may have only a short-term effect.

Consequently, FRS17 has sparked a trend of companies shifting to defined contribution plans from defined benefit pension plans. And of those that still operate a defined benefit plan, many are raising employee contribution rates, he said.

"In those final salary schemes that are staying in place, there are a

number of things going on where companies are saying, 'We will adjust the scheme rather than close it,' he said. "And probably the two most common (adjustments) are early retirement being cut back...and members being asked to pay more contributions."

Employers seeking higher employee contributions "typically are increasing rates by about 2% to 3% of salaries," he noted, though some are imposing even steeper hikes.

Most companies will be able to correct their pension funding shortfalls over time, noted Hewitt, Bacon & Woodrow's Mr. Mody. He pointed out that the FRS17 gives only a "snapshot" of pension fund assets and liabilities at a given date.

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**Business Insurance**

Tuesday, Jan. 13, 2004

**Canadian insurer cracking down on Rx co-signing**

OTTAWA—The Canadian Medical Protective Assn. will soon announce that Canadian doctors who co-sign prescriptions for U.S. patients will not be covered under its liability insurance policies if the doctor is sued for malpractice over the prescription.

The Ottawa-based CMPA, which provides Canadian ...

**Tobacco company to appeal award**

BROOKLYN, N.Y.—Brown & Williamson Tobacco Corp. plans to appeal a \$20 million jury award to the widow of a man who died from smoking-related illness.

The state court jury in Brooklyn, N.Y., assessed \$8 million of the award against the Louisville, Ky.-based tobacco company and \$6 million each ...

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Mr. Cox, 72, was ...

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Issue: Jan. 12, 2004

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# Mothers: Employers helping women return to work

Continued from page 3

them, and have them walk out the door. The reality is that they're going to have babies. We want them to come back," Ms. Ferris said.

The benefit programs are particularly popular in customer service-oriented professions, such as financial services, and relatively less so in some other industry sectors, such as manufacturing.

Many fall under companies' work/life programs and include features such as telecommuting, flexible hours, job sharing, day care centers and lactation rooms. These programs may not necessarily be aimed exclusively at women returning to work, but new mothers are a major focus of many of them.

Other companies are also beginning to introduce less traditional programs that are specifically aimed at returning women to the workforce. In technical fields, these can include courses designed to keep employees who are on leave up to date on developments in their fields and the appointment of company mentors to ease their transition back into the workplace. They may also include extended, job-protected leaves, in some cases of up to five years.

The programs can be targeted to women who left the workforce years ago as well as at those about to take maternity leave.

One firm that plans to introduce such a program is Deloitte & Touche L.L.P., which will launch a pilot program for 12 to 20 women within the next two to three months, said Sue Molina, a Pittsburgh-based partner and national director for the advancement of women.

The program will assign a mentor

to each woman and provide access to Deloitte's national and local educational training programs. Employees will be able to take leaves of up to five years. While it will be open to both male and female employees, the program was designed with returning women in mind, said Ms. Molina.

"The program is really to let them manage their personal priorities at different points in their lives but keeping them connected with Deloitte," so when they do return to the workforce, they will come back to the firm, said Ms. Molina.

"The business case around this is: Highly talented people are difficult to find in the workplace, and we are constantly looking for qualified people. And if we had a core of people that we knew were highly skilled in the professional areas that we need people in, it would cost us a lot less," she said.

Ms. Molina said Deloitte estimates that while providing continuing education would cost about \$5,000 per employee, recruiting a new senior manager, who may earn about \$80,000 a year, would cost the company 150% of her salary, or about \$120,000.

KPMG L.L.P. is considering whether to launch a program aimed at returning women, said John Ellsworth, a Montvale, N.J.-based partner who is in charge of the firm's Center for Learning and Development.

The program, which would be aimed at women ranging from those who are about to take maternity leave to former employees who may have been out of the workforce more than 10 years, would feature education as well as mentoring and may include extended leaves, said

Mr. Ellsworth.

The program would be designed to address each woman's particular needs. For women who would want to spend time with their young children, for instance, the program would be designed to help them "keep their options open" but make no demand that they take a particular educational course, said Mr. Ellsworth.

"We think there's something here that is going to be viable, but we're at a very early stage of trying to conceive it and work through the right research," he said.

## Other programs

Among those companies offering more-traditional work/life programs, lactation rooms are particularly appealing to returning mothers, observers say. Six states now mandate that employers accommodate breastfeeding mothers, but lactation rooms are voluntarily offered elsewhere.

Jennifer Allyn, director of the Center for an Inclusive Workplace at Secaucus, N.J.-based PricewaterhouseCoopers, which offers lactation rooms as part of its work/life program, said, "We recently conducted some interviews to get a sense from women at the firm on how the firm can ease the transition back to work.

"By far, the most overwhelming positive response was for this lactation program. People said it made a huge difference," said Ms. Allyn, who is based in New York.

The lactation program at Columbus, Ohio-based Nationwide Mutual Insurance Co. "made me feel less guilty about going back to work," said Christine How, a senior busi-

ness analyst with the company who returned from her maternity leave eight months ago.

Nationwide's offerings also include prenatal education and a child care referral service, in addition to flextime and telecommuting. "For me, all the programs that we offer, starting from even before I had the baby, just kind of demonstrate Nationwide has a supportive attitude toward women," said Ms. How.

In addition to its work/life program, which includes a heavily subsidized onsite day care center, Advo Inc. sponsors family activities such as Halloween parties and picnics throughout the year, said a spokeswoman for the Windsor, Conn.-based direct-mail marketer.

Such programs encourage mothers to return to work "because it reminds them that Advo is a family-friendly place. We're saying, 'Your family is a part of your work/life.' We try to integrate that as much as possible," said the spokeswoman, who returned from her own maternity leave about a year ago.

Some observers say that while employers are concerned about getting new moms to return to work, too few are launching retention programs.

"What we've seen is that family-friendly benefits over the last few years have gone down a little bit in terms of what companies are offering people," said Jennifer Schramm, manager-workplace trends and forecasting for the Alexandria, Va.-based Society for Human Resource Management.

Few companies are introducing these programs, "and they're really missing the boat," said Joyce L. Gioia, president of the Herman

Group, a Greensboro, N.C.-based consulting firm. If companies don't offer family-friendly programs, "they will not be able to attract the women they need," Ms. Gioia said.

Ms. Schramm agreed. Many labor forecasters predict a labor shortage, "so you would think that employers would be thinking very hard about how to attract and retain women...in order to attract and retain highly qualified professionals," she said.

The issue will gain increasing attention, said Jean Moore, a principal with Towers Perrin in Denver. "The baby boomers are getting older, and there are going to be fewer people flowing into the workforce," she said.

These arrangements may not always work, though, even among the most well-intentioned employers.

Joanne Ferguson went back to work as a marketing manager for Popular Mechanics magazine, a New York-based Hearst Corp. publication, after her daughter's birth; she telecommuted two days a week.

But it didn't work out. "My job was very project-oriented. I found that I really wasn't getting the bigger projects that I wanted to work on," Ms. Ferguson said. After two years, she went back to working in the office full time but resigned after three weeks, in part because her daughter was unhappy with her day care arrangement.

Although Ms. Ferguson decided she could not "do it all," she has high praise for her former employer.

"I really give them credit for taking a chance," she said, "to be so open-minded as to work with my schedule in order to make it work."

# Funding: Senate OKs pension reform bill

Continued from page 1

sion Benefit Guaranty Corp., said they would recommend to President Bush that he veto the bill if it continues to include "additional provisions that would significantly exacerbate systemic pension underfunding."

The warning, made by Secretary of Treasury John Snow, Secretary of Commerce Donald Evans and Secretary of Labor Elaine Chao, was directed at a provision in the Senate bill that would give airline and steel companies automatic relief from what is known as deficit reduction contributions. Such contributions, which can be several times as much as regular pension contributions, are triggered when plans become underfunded, generally below 90% funded.

Under the Senate bill, employers in the steel and airline industries with underfunded plans would have to make 20% of the DRC contribution that otherwise would be required in 2004, and 40% of the DRC contribution in 2005. Other employers with underfunded plans could seek the same relief from the Treasury Department.

This funding relief, which would save affected employers an estimated \$16 billion over the next two years, has triggered concern at the PBGC, which fears it will result in more pension plan underfunding by financially troubled companies. If those plan sponsors later fail, the PBGC—already burdened with a record \$11 billion deficit from absorbing the biggest losses in its 29-year history—could be hit with even greater losses, further eroding the agency's financial base.

Indeed, the DRC issue is a "real cloud hanging over" the legislation's prospects, Mr. Klein said.

Still, Mr. Klein said he is "cautiously optimistic" that a deal can be brokered on the DRC issue. That's because, he said, the consequences of failure—tying up the broader bill and with it, the stopgap funding reform, would be politically damaging to lawmakers and to the pension system.

"Let's face it. If companies start to freeze and terminate their plans because of an inability to pass this legislation, it will be bad news for employers, plan participants and those lawmakers who are responsible for

that failure," he said.

"One would certainly hope that a common ground can be found on the DRC," Mr. Ugoretz said.

**'If companies start to freeze and terminate their plans because of an inability to pass this legislation, it will be bad news' for employers as well as lawmakers.**

James Klein  
American Benefits Council

It's easy to see, benefit experts say, why the DRC relief issue has become a battleground. On the one hand, PBGC officials say the relief could exacerbate the agency's already precarious financial situation if employers that take advantage of the relief to reduce plan contributions fail anyway.

On the other hand, some say that by providing the funding relief, employers that are spared temporarily from making massive contributions to their pension plans could get the

time they need to recover financially as the economy improves. The result, therefore, could be fewer corporate failures and smaller losses for the PBGC.

"It is not a clear cut issue," said Kevin Wagner, a consultant with Watson Wyatt Worldwide in Southfield, Mich.

What is clear is the unanimous support the interest rate change methodology enjoys, as well as its importance.

"The House, the Senate, the administration and employers all agree on the need for action and its urgency," said Chris Bone, chief actuary for Aon Consulting in Somerset, N.J.

Under current law, employers must value their pension liabilities using an interest rate equal to 105% of the four-year weighted average of the yield on the 30-year Treasury bond. A temporary law that expired Dec. 31 allowed employers to use an interest formula of 120% of the four-year weighted average of the 30-year Treasury bond yield.

Benefit experts have long argued that the yield on the 30-year Treasury bond is artificially low, driving

up plan liabilities and forcing employers to contribute far more than is necessary to their plans. This has been a factor, they say, in employers freezing their pension plans.

Indeed, the low interest rate assumptions employers must use can result in a plan slipping below the 90% funded level, triggering the extra DRC contributions, which can be massive.

Under the legislation passed by both the House and Senate, though, the current methodology of using Treasury bond yields to value plan liabilities would be replaced in 2004 and 2005 with yields based on a long-term corporate bond index.

The switch, pension actuaries estimate, would bump up the interest rate assumption by about one percentage point, roughly reducing plan liabilities for contribution purposes by between 12% and 15%.

That could make the difference for a plan sponsor in staying above the DRC zone, and the acceleration of contributions that would require, Mr. Bone said.

In all, the switch to a corporate bond index, when compared to current law, could cut employers' pension contributions by about \$80 billion, according to government estimates.

# Boards: Brokers adapt to changes in governance

Continued from page 1

sit on the audit, compensation and nomination committees, oversight will increase and any potential conflicts of interest will decrease.

In one of the latest examples of this trend, Arthur J. Gallagher & Co. announced last month that it was moving from a 12-member board made up of an equal number of inside and outside directors to a predominantly independent eight-member board.

The Itasca, Ill.-based broker removed four Gallagher executives, leaving just two insiders—Chairman Robert E. Gallagher and President and Chief Executive Officer J. Patrick Gallagher Jr.

"These initiatives reflect our continued commitment to transparency in our management and financial processes," J. Patrick Gallagher said in a statement. "Our corporate governance enhancements reaffirm Gallagher's long-standing commitment to integrity."

A *Business Insurance* analysis of the world's largest publicly held brokers found that the boards of Gallagher's peers also are made up of a majority of independent directors today, though the exact composition varies.

Many of the changes being made at the brokers are in line with new corporate governance standards adopted by the NYSE last November. Those standards require the boards of NYSE-listed companies to consist of a majority of independent directors and the audit, nomination and compensation committees to consist solely of independent directors. The rules also tighten a definition of "independent"; for example, a retired executive of a corporation cannot be considered independent until three years after his or her employment by the company ceases.

All of the brokers analyzed by *BI* trade their stock on the NYSE. The new NYSE standards must be implemented by a listed company's first annual meeting after Jan. 15 or by Oct. 31, whichever is earlier.

Similar rules exist under the federal Sarbanes-Oxley Act.

Experts say that, in addition to

now maintaining a majority of independent directors, many companies are initiating other changes in keeping with today's corporate governance climate.

"There is an increasing feeling that a lot of the abuses that have taken place...were driven, in large part, by imperial executives who weren't sufficiently kept in check," said Mel Cherney, a senior partner with Kaye Scholer L.L.P. in New York who advises companies on corporate governance. "So there's a general feeling, aside from the fact that you're required to do these things, that better corporate governance means things like more independent directors."

The move is clearly toward independence, agreed Gary Stauffer, a partner and corporate governance practice leader for PricewaterhouseCoopers L.L.P. in New York.

"There are those who would argue that somebody who's not independent may bring great knowledge to the board and may be very helpful to the board in making decisions because he or she has such a background and experience relative to the operation. I think the law recognizes that there can be those who aren't independent, but I think companies are moving more and more to getting a feel of independence from a board perspective," Mr. Stauffer said.

"I think it's obvious that if you don't have independent directors making a lot of decisions in respect to things like executive compensation and the like, they will likely run into a lot of problems," said Melvin Weiss, senior partner in New York with plaintiffs law firm Milberg Weiss Bershad Hynes & Lerach L.L.P.

"I don't see any real reason why an insider should be on the board," he said. "They can present information to the board even if they are not on the board, whereas an outsider does not have access to the board unless he or she sits on it."

Indeed, while the new stock exchange rules require only that a majority of the directors be independent, a number of corporations, including brokers, are taking an extra

step by maintaining only one or two insiders on their boards.

"It's happening, and you're going to see more of it," predicted Roger Kenny, co-founder and managing partner of Boardroom Consultants, a New York-based executive and director search firm and board consulting company. "We see a shift toward practically all independent directors with not more than one or two insiders."

An ideal board today "includes the CEO and maybe one other insider," said Beth Young, senior research associate for Corporate Library, a Portland, Maine-based firm that researches boards of directors. "The rest of the people will, ideally, not have an economic relationship with the company and will be completely independent," she said.

According to the *BI* analysis, Gallagher is not alone in its approach.

Chicago-based Aon Corp., for example, has moved toward a more independent board over the past year, replacing two inside directors and one independent director with two new independent directors.

Patrick G. Ryan, Aon's chairman and CEO, and Michael D. O'Halloran, Aon's president and COO, are now the only two insiders on Aon's 13-member board. Leaving the board within the last year were Raymond I. Skilling, Aon's executive vp, chief counsel and Mr. Ryan's brother-in-law, who retired from the company; and Patrick G. Ryan, Jr., chairman and CEO of First Look Dealer Network and Mr. Ryan's son, who was replaced on the board.

"The independence of Aon's board and its compliance with the highest corporate governance standards is borne out of our Institutional Shareholder Services ratings," a spokeswoman said. "Our current ISS rating is 95.2, meaning that Aon outperforms 95% of the (Standard & Poor's) companies on corporate governance issues," she said.

Rockville, Md.-based Institutional Shareholder Services offers proxy voting and corporate governance data services, including a "corporate governance quotient" system to assist institutional investors.

Other brokers have maintained a

predominantly independent structure for years.

Since 1997, Daytona Beach, Fla.-based Brown & Brown Inc.'s eight-member board has had just two inside directors, J. Hyatt Brown, chairman and CEO, and Jim W. Henderson, president and COO.

"I don't personally like having more than two people like the CEO and COO on the board," Mr. Brown said. "I think it's better so that the CEO and COO can be totally candid in all discussions with the board," he said. Having a large number of insiders on the board sometimes can create "potential problems," he said.

Although only two Brown & Brown executives are on the board, John R. Riedman, chairman of Rochester, N.Y.-based Riedman Corp., which is the holding company of the insurance brokerage operations Brown & Brown acquired in 2000, also is a director.

Mr. Brown acknowledged that because of the business ties between Brown & Brown and Riedman, the broker does not consider Mr. Riedman an independent outside director, though it doesn't consider him an insider either. He also noted the broker is searching for two additional outside directors, which would bring its board total to 10.

Hilb, Rogal & Hobbs Co. also has traditionally had a predominantly outside board, said Martin L. Vaughan, chairman and CEO of the Glen Allen, Va.-based broker. Three HRH executives sit on a 12-member board. Under the new rules, Robert H. Hilb, chairman emeritus who resigned from HRH in 1997, is considered an outside director.

Because HRH has had a strong outside independent board for many years, "when all the new rules were issued, we were way ahead of the curve on corporate governance and the functioning of our committees and the independence of our board," Mr. Hilb said. "We've had to do very little to get into compliance."

Although Joseph J. Plumeri, chairman and CEO of Willis Group Holdings Ltd., is the only Willis executive on the London-based bro-

ker's 10-member board, five of the 10 directors are members of Kohlberg Kravis Roberts & Co., which owns 23% of Willis as a result of its 1998 leveraged buyout.

According to the new NYSE rules, "the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding."

Willis declined to comment on KKR's participation on the board, but Mr. Plumeri said, "We strongly endorse the new corporate governance guidelines and will be in full compliance when they become effective later this year and have every intention of living not just by the letter of the standards but the spirit as well."

Marsh & McLennan Cos. Inc. has the largest board among the six brokers, as well as the most insiders on its board. Of its 15 directors, six are executives of various MMC operations and nine are outsiders.

In 2003, two inside directors, John T. Sinnott, former chairman of Marsh Inc., and Lawrence J. Lasser, former president and CEO of Putnam Investments L.L.C., retired and resigned from the company and board, respectively. Marsh has not filled those director spots.

"We feel our board functions very well, and the insiders are the heads of our operating companies and we think that is important," an MMC spokeswoman said. The spokeswoman said she is not aware of any future changes planned for the board.

Although MMC's board is composed of a majority of outsiders, the New York-based company came under fire in December when four large pension fund shareholders announced they wanted more influence over the makeup of the board following the improper trading scandal at Putnam. The shareholders, who claim Marsh's board lacks independence and failed to prevent and effectively respond to Putnam's problems, want access to the company's proxy to nominate and elect more independent directors through rules that the Securities and Exchange Commission has proposed (*BI*, Dec. 15, 2003).

# FDA: Some prescription drug buyers undeterred

Continued from page 4

year. The FDA has contacted Mayor Bright's office three times to request information but has not threatened legal action, Mr. Downes said. Montgomery officials believe their program is consistent with the FDA policy that allows individuals to reimport drugs from Canada and the program will continue despite the FDA letter sent to its service provider, he said.

"We feel pretty strong in our position that we follow the spirit of the law," he said. "They don't like what we're doing, but they've chosen to go after the suppliers rather than us."

A statement issued by the three Temple, Texas-based companies tar-

geted by the FDA—Expedite-Rx, SPC Global Technologies Ltd. and Employer Health Options Inc.—said their program examines the savings potential of importable products and refers members to the most economical pharmacies. The companies argue the FDA is selectively enforcing the law by restricting mail-order prescription drugs while allowing individuals to travel across the border to purchase the drugs.

"Patients in the U.S. interior have the same economic and medical problems as those in U.S. border states and, in most cases, they would be doubly disadvantaged because they do not have the financial resources to make the trip to the borders," the statement said.

The statement also said the FDA letter makes inaccurate allegations about the companies, but company officials still expect a favorable outcome.

The FDA's actions have not deterred other municipalities from starting their own purchasing programs.

All residents of Westchester County, N.Y., will be able to buy lower-priced prescription drugs from Canada through a program being offered by the county government that began Feb. 1 (*BI*, Jan. 26). The FDA is concerned about the Westchester plan because it "puts more people at risk," Mr. Hubbard said.

FDA staff members plan to contact Westchester County officials to

discuss their concerns, he said. A spokeswoman for Westchester County Executive Andrew Spano said he would be willing to discuss the situation with the FDA but will proceed with plans to launch the program. "He feels very strongly that prescription drugs should be cheaper in this country," the spokeswoman said.

Prescription drugs generally cost 30% to 80% less in Canada due to government-imposed price controls, but a recent FDA study concluded that U.S. generic drugs are lower in cost than both Canadian brand-name drugs and generics. Six of seven U.S. generic drugs studied cost less than the brand-name drugs in Canada, while five of the seven were lower in price than the

Canadian generics, the study found.

"For an American citizen to buy a generic drug in Canada is foolish," Mr. Hubbard said. "Generics are a good deal here in the United States."

Meanwhile, late Friday, the state of Minnesota launched a Web site designed to help state residents purchase prescription drugs from Canadian sources.

Minnesota RxConnect Online, located at [www.state.mn.us/cgi-bin/portal/mn/jsp/home.do?agency=Rx](http://www.state.mn.us/cgi-bin/portal/mn/jsp/home.do?agency=Rx), provides information on drug reimbursement—including the state's own program—and drug safety, among other topics, and it assists individuals in ordering medications from Canadian pharmacies.

# Iraq: Coverage available

Continued from page 1

hold contracts in Iraq. Many of those companies looking to now enter the country are seeking subcontracting arrangements with those that already in place, he said.

"Right now, people are asking, 'How do we do business there and what's required?'" Mr. Sadler said.

Halliburton Co., which is already doing work in Iraq, said in a statement that its operations there are adequately covered by insurance and that finding sufficient limits was not a problem. The company declined to elaborate.

## Covering workers

American companies headed to Iraq "typically are buying Defense Base Act coverage," Ms. Demaret said. The U.S. government-mandated coverage, an extension of the U.S. Longshore & Harbor Workers Act, provides workers compensation for employers that contract with U.S. agencies in projects outside the country.

The DBA coverage is "very expensive," she said. "We've seen it as high as \$30 per \$100 of payroll." More typical are prices ranging from \$8 to \$25 per \$100 of payroll, Ms. Demaret noted. Limits for this type of coverage range widely.

American International Group Inc. is one of few companies writing the DBA coverage. Gordon Knight, president of the New York-based insurer's AIG WorldSource unit, said coverage already is in place for thousands of workers in Iraq. He predicted that number will grow over the coming months as more contracts are awarded and workers arrive in the country.

Mr. Knight pointed out that AIG can package accident and health coverage as well as life insurance with the DBA insurance. The insurer offers high-limit travel accident coverage that provides up to \$500,000 in AD&D insurance as well as coverage for emergency medical services and repatriation of remains.

Other coverages, such as general

liability, all-risk policies for contractors, war risk and terrorism insurance can be written for risks in Iraq but are not abundant, according to Marsh's Mr. Sadler. "Capacity is limited," he said, "and varies by the project."

Mr. Sadler emphasized that access to "local knowledge" is important for companies buying insurance for operations in Iraq. Marsh uses a correspondent office in Dubai to help assess the risks. "Having local knowledge and local contacts, for companies with projects in Iraq, that is extremely important," he said.

Mr. Knight said AIG has a Dubai office and personnel who can handle claims in Kuwait, Saudi Arabia and other parts of the region.

The London market "has seen a number of inquiries for asset protection due to political violence," said Tim Press, a director of Miller Insurance Services Ltd. in London.

## Political risk coverage

Political risk insurance for equipment, machinery and other mobile assets taken to Iraq typically covers physical loss or damage due to political violence, abandonment, confiscation, expropriation and inability to re-export the equipment on completion of the contract.

This type of cover is available, particularly in the London market, with premiums in the region of 1% to 2% of asset value per annum, said BPL's Mr. Newall.

However, for high-risk assets, such as oil rigs, rates could be as high as 0.7% to 1% per month, noted Mr. Press. For goods in transit, some cargo underwriters are prepared to write coverage for Iraq for 1% or lower per year, he said.

Ms. Demaret said she has yet to work on any property coverages except "equipment floaters" for companies that are using equipment in the war-torn country. "It is definitely pricey," she said of the insurance.

And, while most aviation and

marine hull and war risk policies exclude Iraq, London underwriters are prepared to offer the cover, said Mr. Newall.

Meanwhile, insurance for contract frustration, termination or abandonment due to political force majeure, ranging from political violence to government action, also is available, and rates are about 2% of the contract value but vary depending on contract terms, he said.

Credit risk is a much less clear area, though, because of the continuing uncertainty over which entity will be responsible for the country, said Mr. Press.

There have been no new contracts with the Iraqi government where the payment default risk lies with Iraq, but default coverage for barter-type contracts and structured trade transactions secured on Iraqi oil exports is available for rates of about 1.5% to 2.5% of the value of the contract, said Mr. Newall. These are deals where oil is exchanged for work or other goods.

"Capacity is likely to be cautious and short initially, but we expect capacity will build and terms lengthen immediately once a successful track record is demonstrated," he noted.

However, not all political risk underwriters are prepared to offer cover in Iraq yet.

"We have had inquiries from companies, but we believe it is too early to offer cover as there is no legal government structure, and the security issue is an absolute nightmare," said Steve Capon, head of country and credit risk management for the political risk division of London-based ACE European Group.

Many companies, ranging from financial institutions to construction companies, see Iraq as a huge opportunity but are not prepared to put their employees at risk in the current environment, he said.

Mr. Drummond Brady of JLT noted that Iraq is not a conventional political risk situation because companies are not dealing with a foreign government but with an occu-

pying authority backed by the U.S. government.

However, he has seen an increasing number of companies looking for protection against cancellation of contracts by the U.S. government.

If the United States pulled out of Iraq and canceled all contracts, contractors and subcontractors would be paid only up to the termination of the contract. Insurance will pick up extra costs and resulting business interruption losses, he said.

## 'A very volatile risk'

London's specialist personal accident market, meanwhile, is providing sufficient capacity to meet most companies' requirements, despite the fact that "a lot of people have died in Iraq and it remains a very volatile risk," said Hiscox's Mr. Bruce.

Rates for personal accident insurance vary according to where the organization is operating and the work being done, said Mr. Bruce, noting that rates for southern Iraq were 33% to 50% lower than in northern Iraq and Baghdad. Rates per employee also vary, depending on how many employees are covered and what security arrangements are in place, he said.

"We are looking at an extreme situation and rates for Iraq are the highest in the world," Mr. Bruce said.

Companies can readily find \$20 million of capacity in the personal accident market for Iraq, though one multinational was able to buy \$40 million of protection in December, he said.

Tom Ellis, associate director of London-based specialist personal accident broker THB Clowes, agreed that rates varied widely but confirmed that Lloyd's is offering plenty of capacity "at a price."

Companies can attract better rates with benefits such as no-claims bonuses and group discounts by putting in place thorough security plans and arrangements as well as security training for employees, he noted.

"Iraq is a high-risk country, and companies should take careful security advice before going out there,"

said Tim Prifti, accident and health underwriter for syndicate 510, managed by R.J. Kiln & Co. Ltd.

"We look very closely at the security arrangements companies have made, their research, and where they are going to accommodate employees," said Mr. Prifti.

"Location is important, as some areas of the country are far more hazardous than others," he said.

Ms. Demaret of Gallagher said the broker is encouraging its Iraq-bound clients to purchase travel assistance services. "If something does happen," she said, employees would have medical and evacuation services available.

"In my mind, that's critical," Ms. Demaret emphasized. "We try to remind them that it's not if, but very likely when, something is going to happen."

Meanwhile, all underwriters "will be carefully monitoring their aggregate exposure in Iraq," Mr. Prifti noted.

"Security will be a central issue," said Mr. Newall, noting that the use of recognized security firms and advisers "may well have a favorable impact on the availability and cost of insurance in Iraq."

Companies should plan their security well in advance of visiting Iraq, said Paul Beat, director of International Asset Protection for London-based Control Risks Group.

According to Mr. Beat, companies should:

- Plan security arrangements for all accommodation and travel in Iraq.
- Brief and train staff on security issues.
- Make sure they have an information network to monitor the security situation in all parts of Iraq where they are operating.
- Have response plans for any likely incidents and be aware of nearest medical facilities.

Control Risks has 250 expatriate employees in Iraq, advising companies and government and aid agencies on security, said Mr. Beat.

"There are a growing number of companies going to Iraq, and the risk is manageable. But companies must put aside plenty of time and a sizable budget to address the security issues," he said.

# Sears: Phasing out defined benefit plan

Continued from page 4

adding, "we still have one of the most generous retiree medical programs in our industry."

Sears would not disclose how many employees would be affected by the change, but according to Standard & Poor's Corp.'s Money Market Directory, the company's defined benefits plan had 231,000 members at year-end 2000. And according to Hoover's Inc., Sears had 289,000 employees at year-end 2002.

Sears' move did not come as a surprise to benefits experts, who say that many companies are dropping their defined benefit plans because of recent investment losses that have resulted in many plans becoming underfunded, forcing employers to boost their contributions.

Although over the past 10 years

the average return on defined benefit plans' long-term investments has averaged between 9% and 9.5%, "a number of organizations are rethinking the commitment to the defined benefit promise," said Kevin Wagner, retirement practice director for Watson Wyatt Worldwide in Southfield, Mich.

"The problem has been the volatility. You went from a period of time where a lot of companies, through the application of accounting rules, were generating accounting income," he said. "Companies are now generating substantial accounting expense as a result of the plans being underfunded because of the drop in interest rates and asset values," he noted.

However, Mr. Wagner said that shifting to a defined contribution approach is not likely to signifi-

cantly reduce companies' pension costs.

"Sometimes, when you go into a defined contribution plan for younger people, it's possible in the short-term to actually have higher costs. The reason for that is that your older people may be in a traditional pension plan that allocates greater dollars to older folks. And then you are putting younger people into a plan where they are now getting better benefits than they did before."

While it is Sears' intent to eventually reduce its operating expenses with the change, initially it will cost the company more because of the increased 401(k) plan contribution and the continued operation of the two plans, the company spokesman acknowledged.

"We have a higher match for a

certain segment of our employee population, but we already have two plans," he said.

Furthermore, even though Sears contributed \$1.1 billion on a pretax basis to its domestic pension plan in 2003, it is still underfunded, the company spokesman said. In addition, because of a change in accounting for its pension and postretirement medical benefit plan costs, Sears expects to post a cumulative one-time, noncash aftertax charge of \$840 million in the first quarter of 2004.

"The company will recognize experience gains and losses on a more current basis, while under its previous methods it amortized experience gains and losses over a future service periods," Sears explained in its fourth-quarter earnings statement.

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## Late News

Continued from page 1

from implementing cash balance plan regulations the agency proposed in December 2002. The provision also directs the Treasury Department to produce a legislative proposal within 180 days of enactment—which was Jan. 23—on the transition relief employers must provide to older and longer-service employees when employers convert traditional defined benefit plans to cash balance plans. Treasury now is developing the guidance.

### N.Y. workers comp board resolves most 9/11 claims

The New York State Workers' Compensation Board has settled about 80% of the 9,851 claims filed on behalf of workers injured or killed as a result of the terrorist attack on the World Trade Center, the agency reported. Of the 7,780 claims that have been resolved, 2,145 sought death benefits, 97% of which have been resolved, the board said.

### Aon maps global political risk

Violence and economic instability have significantly increased the risks of investment in Venezuela, Bolivia and Azerbaijan, according to Aon Corp.'s 2004 Political and Economic Risk Map. Aon's map rates the economic, currency and political risks of doing business in more than

200 countries worldwide. The broker's Trade Credit and Political Risk practice group calculates that the uncertainty surrounding political risk cost the world economy more than \$800 billion in reduced corporate spending, investments and growth in 2003.

### Report examines heavy-equipment theft

Five states account for about one-third of all heavy-equipment theft losses in the United States, according to a report by the National Equipment Register. Texas saw the largest number of heavy-equipment



losses, followed by North Carolina, Florida, California and Georgia, according to the organization. The analysis was based on the more than 4,000 thefts reported to the NER in 2003, according to the report. The most common types of equipment stolen in 2003 were tractors, which accounted for 26% of thefts.

### Judge lets tobacco conspiracy charges stand

A federal judge has rejected a motion by tobacco companies

seeking dismissal of portions of a \$289 billion lawsuit filed by the U.S. government. Judge Gladys Kessler of the U.S. District Court for the District of Columbia refused to dismiss conspiracy and other charges contained in the government lawsuit against several tobacco companies. The government is seeking injunctive relief and \$289 billion in damages "for what it alleges as a conspiracy against the American public," court papers state.

### Chubb employee charged in alleged comp fraud

A former workers compensation claims adjuster and all eight of her alleged accomplices are facing felony grand theft charges in connection with an alleged \$318,250 fraud scheme, according to the California Department of Insurance. Department investigators allege that Glendale, Calif., resident Linda Anne Wisner, who worked as an adjuster for Chubb Insurance Co. in Los Angeles, issued 125 fraudulent claim checks to her friends and associates in 2002 and 2003.

### Brokerage revenues push Marsh profits higher

Strong growth at its insurance brokerage unit helped Marsh & McLennan Cos. Inc. report profits of \$1.54 billion for 2003, a 13% increase over 2002. The company reported gross revenues of \$11.59 billion last year, up 11% over 2002. Risk and

insurance revenues increased 16.2%, to \$6.87 billion.

### Briefly noted

The House Judiciary Committee has passed the **Personal Responsibility in Food Consumption Act**. The measure, H.R. 339, would ban "frivolous" lawsuits against the manufacturers, distributors or sellers of food or nonalcoholic beverage products that meet statutory and regulatory requirements. The bill's chief sponsor—Rep. Ric Keller, R-Fla.—said that the measure would prevent business from being held liable for the health problems of people who overeat....Washington state lawmakers are considering a legislative proposal for a **"supplemental malpractice insurance program"** that would provide excess liability coverage for doctors, hospitals and other health care providers. The measure, contained in H.B. 2799 and S.B. 6328, would help ease a "malpractice insurance crisis," according to Washington Insurance Commissioner Mike Kreidler.

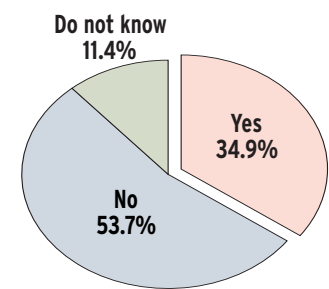
### Check out BusinessInsurance.com

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

## Online Poll

[ 1/26 - 1/30 ]

Do you think Congress ever will pass legislation to put monetary caps on personal injury awards?



## BI Stock Index

[ 1/26 - 1/30 ]

Up-to-the-minute data for all 87 companies that comprise the *BI* Stock Index can be found at [www.businessinsurance.com](http://www.businessinsurance.com).

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

<b>BI Stock Index</b>	2280.29	-0.51
<b>Dow Jones</b>	10488.10	-0.76
<b>S&amp;P 500</b>	1131.13	-0.91

### Largest gains

Gainsco Inc.	12.50%
SCOR	9.24%
American Safety Insurance	9.23%
Seibels Bruce Group Inc.	8.43%
PMA Capital Corp.	4.83%

### Largest losses

Trenwick Group Ltd.	-60.00%
ESG Re Ltd.	-22.22%
Argonaut Group	-5.74%
ING Groep N.V.	-5.14%
NYMagic Inc.	-5.11%

### Weekly change by market segment

Brokers	-0.96%
Insurers/Reinsurers	-1.05%
Managed Care Organizations	0.78%

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

# Asbestos: Judge rejects plan

Continued from page 3

tion in September 2002 after working to settle its asbestos claims outside of bankruptcy court and amid an ongoing battle with Travelers over its insurance coverage.

Potential recoveries from Travelers are the only significant asset ACandS has to fund claims totaling \$3 billion from 300,000 asbestos claimants, according to Judge Newsome's ruling.

The company has exhausted the aggregate limits of its Travelers product liability coverage, though, and has since argued that the claims are covered under nonproducts provisions of its policies, which contain no aggregate limits. Travelers last year won an arbitration ruling that severely limits any nonproducts claims, and ACandS is challenging the ruling in two pending lawsuits.

In September 2001, after Travelers told ACandS that its products coverage was nearly used up, the two sides and a "pre-petition" asbestos plaintiffs' committee started negotiating a prepackaged bankruptcy filing that would create a trust to handle all ACandS asbestos claims.

The pre-petition committee consisted of 11 asbestos plaintiffs' lawyers, including representatives from large asbestos injury firms Baron & Budd P.C. of Dallas; Motley Rice L.L.C. of Mount Pleasant, S.C.; Peter G. Angelos P.C. of Baltimore; and Weitz & Luxenberg of

New York.

The talks with Travelers fell apart, though, and ACandS and the pre-petition committee instead negotiated their own settlement, creating a trust to hold ACandS insurance proceeds and rights to future recoveries. The deal created five categories of asbestos claimants to be secured to varying degrees by rights to the trust's insurance recoveries.

The settlement also called for the appointment of an independent reviewer of claims in one of the five categories, and in May 2002 ACandS hired Kenesis—a company owned by ACandS' insurance counsel, Gilbert, Heintz & Randolph—for a \$3 million fee.

Unbeknownst to ACandS, though, Kenesis subcontracted \$2 million of the work to Clearing House L.L.C., a Mount Pleasant, S.C., firm controlled by a paralegal from Motley Rice predecessor Ness Motley L.L.C., according to Judge Newsome's ruling. Kenesis bought Clearing House in June 2003.

Mr. Hipolet and Mr. Gilbert both denied any conflict in the use of Clearing House. Mr. Hipolet said the firm only processed claim documents and did not negotiate or approve claim settlements.

Between May 2002 and its bankruptcy filing four months later, ACandS settled more than \$2 billion in claims, mostly for security interests in the trust's future insurance recoveries.

The company's Chapter 11 plan

preserved these pre-petition settlements and all but one of the secured categories while creating several other creditor classes, including one class of unsecured asbestos claimants.

Travelers objected to the plan, though, and Judge Newsome last week agreed, finding it both unfair and not negotiated in good faith.

The U.S. Bankruptcy Code requires bankruptcy trusts to treat "present claims and future demands that involve similar claims in substantially the same manner," the judge noted.

The ACandS plan "does nothing of the kind," he found. "Not only does the plan discriminate between present and future claims, it pays similar claims in a totally disparate manner by giving preferential treatment to certain claimants who are secured by insurance proceeds."

As a result, a claimant with no symptoms of asbestos disease could be paid in full under the plan while another claimant with asbestos-related cancer may collect nothing, he wrote.

Although ACandS representatives testified that the secured claimant categories were "required by the tort system," Judge Newsome found that "no cogent explanation or rationale has ever been given for these categories or how claims held in certain law firms' 'inventories' were categorized."

Plaintiffs' firms represented on the pre-petition committee took

some of the largest shares of the recoveries in the secured categories, he noted.

Judge Newsome also found that the plan falls short of the "good faith" requirement "in nearly every respect."

Plaintiffs' lawyers on the pre-petition committee largely dictated the terms of the settlement and trust agreements, decided how many secured classes of claimants would be formed and "decided who was going to get what," he wrote.

"ACandS was there to do their bidding," he said of the plaintiff attorneys. "Given the unbridled dominance of the committee in (ACandS) affairs...and the obvious self-dealing that resulted from control of (ACandS), it is impossible to conclude that the plan was consistent with the objectives and purposes of the Bankruptcy Code."

Steven Kazan, an Oakland, Calif., plaintiffs' lawyer and member of the ACandS committee, conceded that the plan could treat some future claimants unfairly and said, "I appreciate Judge Newsome's concern for the sick people."

He defended the plan's secured claimant categories, though, saying, "I don't think there was anything inappropriate in our saying (to ACandS), 'We don't trust your good faith and we want a mortgage on the house,' so to speak."

Mr. Kazan added that it would be "ironic" if a defeat of the Chapter 11 plan damages potential settlement talks between ACandS and Travelers, leaving the estate with virtually nothing for asbestos claimants.