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\$4

Near North premium trust accounts under scrutiny CEO quits after fraud arrest

By **RODD ZOLKOS** and **SALLY ROBERTS**

CHICAGO—While a major insurance broker rearranges its top leadership following the arrest of its chief executive on federal fraud charges, the issues behind the charges are raising questions about premium trust accounts and the matter of agents being "out of trust."

Chicago-based Near North National Group, the parent company of broker Near North Insurance Brokerage Inc., late last week was forming a new outside board of directors and assembling a new management team as Michael Segal, the company's former chairman and chief executive officer, faced federal insurance fraud and mail

fraud charges.

Mr. Segal resigned as Chicago-based Near North's CEO last Thursday, following his Jan. 26 arrest in Chicago. The charges, set out in a criminal complaint made public Jan. 28, stem from an alleged deficiency last fall of as much as \$20 million in a Near North Insurance Brokerage premium fund trust account.

Chicago-based Near North was the 13th-largest broker of U.S. business in *Business Insurance's* 2001 rankings, based on the com-



Mr. Segal

pany's U.S. brokerage revenues of nearly \$100 million in 2000. The alleged deficiency in the Near North's PFTA represents roughly 2% of the broker's 2000 gross premium volume of \$943 million.

Mr. Segal, who was arrested by FBI agents at a hotel near his company's Chicago offices, was released later the same day on a \$750,000 unsecured signature bond after appearing in U.S. District Court. A preliminary hearing is scheduled for Feb. 15.

See **FRAUD**/page 34

Surety bond market reels Big losses mean tighter market for buyers

By **ROBERTO CENICEROS**

The bankruptcy filings of Enron Corp. and Kmart Corp. in recent weeks will exacerbate the pricing and capacity problems that are already plaguing companies that rely on surety bonds to back their self-insurance arrangements, several brokers say.

Ironically, Kmart's own petition for Chapter 11 protection listed "the evaporation of the surety bond market" as one reason for the "rapid decline in liquidity" that led to its Jan. 22 bankruptcy filing.

Additionally, some risk managers will find trouble in-house when their renewal difficulties expose the amount of "off balance sheet" credit accumulated in the form of surety bonds, predicted Geoff Heekin, managing director of commercial surety services for Aon Corp. in Chicago.

Mr. Heekin said that corporate financial officers, in some cases, have not yet become aware of the extent of those debts because risk management departments typically have arranged the bond deals directly with property/casualty insurers. "When this issue becomes known in companies, risk managers will find themselves in a very precarious position," he said.

See **SURETY**/page 33

Winter Olympics organizers insured for terrorism risks Insurance is in place; let the Games begin

By **JOANNE WOJCIK**

SALT LAKE CITY—While businesses around the world are finding it increasingly difficult to obtain coverage against terrorist acts, the 2002 Olympic Winter Games crossed that finish line long ago.

Much of the property/casualty coverage for the Games, which take place Feb. 8 through Feb. 24 in Salt Lake City, was placed two or three years ago, so there are no terrorism exclusions in the policies, said Bill Moreton, president of Salt Lake City-based Fred A. Moreton & Co., broker for the Salt Lake Organizing Committee.

Since the Sept. 11 terrorist attacks, many insurers have sought to exclude terrorism coverage from commercial property/casualty policies, whereas prior to the attacks it was usually included at little or no extra cost.

In addition to standard property/casualty coverages—including coverage of the Games' athletic venues and workers compensation—organizers of the Olympics have event cancellation coverage, which includes coverage for terrorist attacks, Mr. Moreton said.

But even though SLOC's coverage is secure, "some of the carriers had reinsurance problems," he said.

And at least one other entity that most Olympic athletes and attendants are likely to visit is not covered for terrorism: The Salt Lake City International

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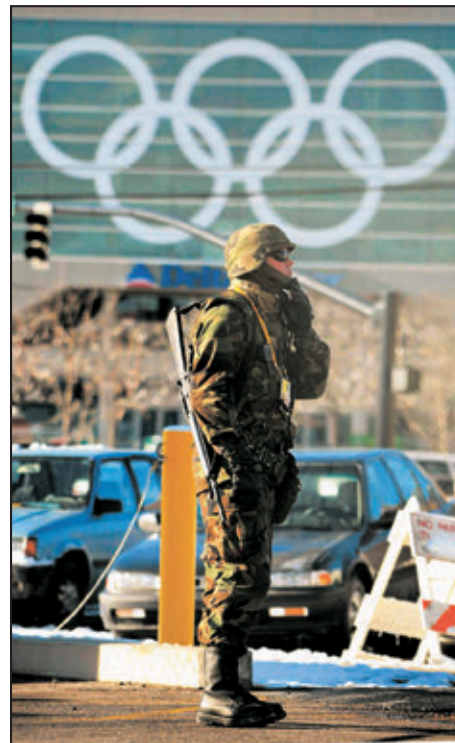


PHOTO: AFP

Fears of terrorism at the 2002 Winter Games in Salt Lake City have prompted tight security at Olympic venues.

Late News

Bush proposes 401(k) changes

Responding swiftly to the Enron Corp. pension debacle, the Bush administration last week proposed a series of reforms to 401(k) plan regulations. Under the Bush proposal, employees could sell company-contributed stock after three years of participation in the company's 401(k) plan. That recommendation is a direct response to Enron's plan design, which barred employees from selling stock that Enron had contributed until the employees were at least 50 years of age. In addition, an employer could not permit its top executives to sell stock during periods when other employees were not permitted to do so, and an employer would have to give its employees at least 30 days' notice before imposing a lockdown.

Information solicited on lack of terror cover

Lawmakers need specific information about the impact of a lack of terrorism insurance on the economy before they can push ahead with legislation to provide a federal backstop for terrorism losses, according to congressional staffers. Businesses don't want to go public with the fact that they lack such coverage, said Alex Sternhall, staff director for the Senate Committee on Banking, Housing and Urban Affairs' Securities and Investment Subcommittee, speaking at an American Insurance Assn. conference in Washington. But "we need specific information." Wayne Abernathy, minority staff director for the Senate Committee on Banking, Housing and Urban Affairs, recommended that businesses let legislators know how the lack of coverage has had a direct effect on the local economy.

California comp reform compromise reached

Gov. Gray Davis and two key legislators reached an agreement last week on a "reform" bill opposed by employers that would increase workers compensation benefits. Assembly Bill 749 is expected to reach the state Senate this week and quickly pass on to the Assembly. With the governor's support, the legislation could soon become law. The bill's backers say

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Self-insurance**

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Inside

911 services liable for dispatcher errors

Government agencies can be held liable for the actions of their 911 emergency medical dispatchers and are not entitled to the limited immunity granted emergency rescue personnel such as firefighters, a California state appellate court has ruled. **Page 4**

What's a rodent to do?

Punxsutawney Phil finds himself chilled not by the prospect of six more weeks of winter but by rising terrorism coverage rates. **Page 6**

Lawmakers need facts, not just anecdotes

Just as an insurer needs proof of a loss before it will pay a claim, Congress needs to be seen and hear specific evidence of business deals not being made and buildings not being built due to a lack of terrorism coverage before it will push legislation to have the federal government guarantee such coverage, one of this week's editorials says. **Page 8**

U.K. businesses hit for asbestos stalling efforts

Manufacturers and insurers fighting in court over payment of asbestos claims "are engaged in corporate gamesmanship on a massive scale to avoid their liabilities," a British member of Parliament has charged following several setbacks in the United Kingdom for payment of asbestos claims. **Page 29**

Incomplete job of housecleaning?

Insurers may not be coming clean with investors about true impact of reserving, says Myron Picoult. **Page 35**

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

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CONTINUED FROM PAGE ONE

it would increase costs by \$2.4 billion annually, which would be offset by system changes that would produce \$1.5 billion in savings. Some of those changes are expected to be ones supported by employers.

Kansas regulator's task force wary of BC/BS sale

The proposed sale of Blue Cross & Blue Shield of Kansas to Anthem Inc. would be "hazardous" to consumers, according to a legal advisory team hired by the Kansas Insurance Department to examine the deal. A brief issued by the advisory team said that the proposed transaction is "likely to result in significant premium rate increases that would not occur in the absence of the demutualization and acquisition." Policyholders of BC/BS of Kansas approved the \$321 million sale to Indianapolis-based Anthem on Jan. 14.

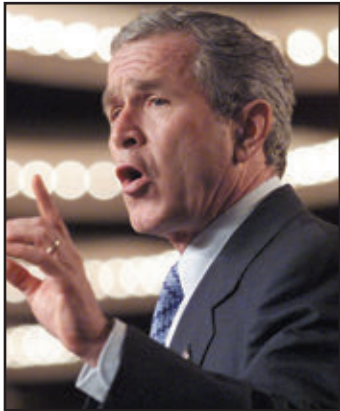


PHOTO: AFP

President Bush has asked Congress to provide uninsured workers with credits to purchase health care coverage.

Bush call for patient rights bill draws critics

President Bush's call on Congress to "enact a patients' bill of rights to give uninsured workers credits to help buy health coverage," made during last Tuesday's State of the Union address, is drawing mixed reviews from employer and insurer groups. Paul Dennett, vp-health policy for the employer-backed American Benefits Council in Washington, welcomed the president's "call for addressing the

Late News

uninsured" and said that Congress should focus on that issue rather than on patient protection. In written statements about the address, both the Health Leadership Council and the Health Insurance Assn. of America also hailed the president's emphasis on insuring the uninsured. HIAA President Dr. Donald Young, however, said passage of a so-called patients' bill of rights is "exactly the wrong approach" and would result in higher health care costs and greater number of uninsured people.

Enron litigants seek to freeze policy payouts

A group of Enron Corp. employees suing over losses in the company's 401(k) plan has asked a bankruptcy judge to forbid Enron from drawing on its fiduciary liability policy until courts resolve other issues, including whether the employees can proceed with their suit against Enron. Litigation against Enron was stayed following its bankruptcy filing, but Enron lawyers last month asked a bankruptcy court judge to approve an initial payment of \$10 million from Enron's fiduciary liability policy to cover some defense costs. The fiduciary liability program provides \$85 million in limits for indemnity and defense, with an additional \$10 million for defense costs only; the coverage is led by Bermuda-based Associated Electric & Gas Insurance Services Ltd.

Conviction handed down over Ponzi scheme

A federal jury has convicted a California man of selling nearly \$8

million in bogus promissory notes that he falsely claimed were guaranteed by Lloyd's of London reinsurance. R. David Bowman, principal of the defunct Santa Cruz, Calif.-based Kentfield Group, has been convicted of 15 counts of mail fraud stemming from his sale of the notes and the diversion of more than \$1.6 million of the proceeds for his own use. Prosecutors charged that Mr. Bowman sold the notes claiming that they would pay up to 12% annual interest and that they were backed by "performance guarantee bonds" reinsured at Lloyd's. Kentfield, in fact, was a Ponzi scheme, in which new investors' money was used to pay some earlier investors while large sums were diverted to Mr. Bowman and others, prosecutors charged.

U.K. court OKs litigation over DVT

The United Kingdom's High Court has cleared the way for group litigation against airlines over deep vein thrombosis, or so-called "economy-class syndrome." The court said last week that Watford, England-based law firm Collins Solicitors could bring a suit against airlines on behalf of about 300 DVT victims and their families. DVT is a circulatory condition in which blood clots develop in the legs and travel to the heart or brain. The condition is thought to be related to sitting for long periods of time in cramped conditions, such as long-distance flights. Collins Solicitors said it hoped to file a suit naming as many as 24 airlines within the next 12 to 18 months.

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All the material in the Late News column, as well as other content in this week's issue, is generated from Daily News postings that appeared on the Web site in the previous week.

California court says employer may be liable for 'affirmative contribution' to injury

Court opens workers comp loophole

By ROBERTO CENICEROS

SAN FRANCISCO—Two rulings issued late last week by California's Supreme Court may create new uncertainty over whether employers can be sued for work-related injuries sustained by a contractor's employees.

The high court, in the two companion cases, introduced the concept of "affirmative contribution," in which an employer might be liable if its actions contributed to an injury, said Fred J. Hiestand, general counsel for the Sacramento-based Civil Justice Assn. of California. But just what circumstances would constitute an "affirmative contribution" is still to be determined in

California, he said.

What is certain, though, is that more employers will be sued now as plaintiffs attempt to claim affirmative contribution to win court awards outside the workers compensation arena, Mr. Hiestand warned.

The concept of affirmative contribution has been addressed by courts in a handful of other states, though it may carry different labels.

In one of the cases, *Roseanne Hooker vs. Department of Transportation*, the high court held that an employer that hires an independent contractor is not liable for injuries to a contractor's employee merely because the employer retains control over worksite safety conditions.

But there are circumstances, the court determined, where it can be sued.

The case began after Paul Hooker, a crane operator, died when the crane he operated overturned. His widow received death benefits from the contractor's insurer, according to court records. She also sued the Department of Transportation, which hired the contractor, arguing it negligently exercised the control it retained over safety. The trial court ruled for the defendant, but the appeals court reversed that decision.

"Because the liability of the contractor, the person primarily responsible for the worker's on-the-job injuries, is limited to providing

Wellness program cuts medical costs: Study

Johnson & Johnson's corporate wellness program saves the company money and improves the health of its employees, according to a recent study. The study, conducted by the MEDSTAT Group Inc. on behalf of Johnson & Johnson, shows that the medical costs of employees participating in the program were, on average, \$225 a year lower than their costs before they joined the program. Overall, the program saved the New Brunswick, N.J.-based health care products manufacturer \$8.5 million a year in reduced payments for hospital admissions, mental health visits and outpatient services.

Briefly noted

PHICO Insurance Co. has been placed in liquidation. The Pennsylvania Insurance Department took control of the medical malpractice liability insurer shortly after it revealed that it had a surplus of only \$6.8 million last August....Debra McClenahan has been appointed chief executive officer of Chicago-based **CNA Re**. Ms. McClenahan, who joined the CNA Financial Corp. unit in 1993, most recently served as chief operating officer. She replaces William J. Adamson, who left "to pursue other opportunities," a CNA spokeswoman said....President Bush has nominated **Kathleen P. Utgoff** to be the commissioner of the Bureau of Labor Statistics. Ms. Utgoff was executive director of the Pension Benefit Guaranty Corp. during the Reagan administration. The position requires Senate confirmation....Benefits consulting firm **The Segal Co.** has purchased Sibson & Co., a human capital consulting firm, from Nextera Enterprises for an undisclosed sum. New York-based Segal said the move is designed to expand its human resources and compensation consulting practice areas....The Pennsylvania House of Representatives Tuesday passed a bill that would cap noneconomic damages in **medical malpractice suits** at \$250,000. H.B. 1802 also would reduce the amount of medical malpractice coverage that physicians are required to carry.

workers compensation coverage, it would be unfair to impose tort liability on the hirer of the contractor merely because the hirer retained the ability to exercise control over safety at the worksite," wrote Justice Janice R. Brown.

However, the court also found that a hirer can be liable when its "exercise of retained control affirmatively contributed to the employee's injuries." In the *Hooker* case, though, the court said the plaintiff failed to prove that the defendant's control over safety procedures "affirmatively contributed" to the accident.

Affirmative contribution, Justice Brown wrote, does not always re-

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PHOTO: PICTURE DESK

Employees of Arthur Andersen L.L.P. testified last week before a congressional committee panel investigating the collapse of Enron Corp.

Enron claims are latest factor to tighten E&O market

Auditors' E&O costs add up

By CAROLYN ALDRED

Professional liability insurance costs for accountants are set to soar in the wake of allegations that negligence by Arthur Andersen L.L.P. may have contributed to the collapse of Enron Corp.

Claims against the auditor following the Houston-based energy company's bankruptcy filing may eclipse previous payments made by insurers to settle accountants' errors and omissions claims, underwriters say.

The fallout from Enron, huge accountants E&O claims paid in recent years, and a likely increase in additional bankruptcy filings as a result of the recession, are leading "underwriters to reassess how they underwrite and price" E&O insurance, said Mark Lescault, head of the divisional underwriting office of

Swiss Re Americas in New York.

"People are looking very critically at...E&O markets and asking 'do we really have a good handle on the magnitude of risk, and are we pricing adequately?'" he said.

As a result, large accounting firms with U.S. exposures may face rate increases of more than 100% on their E&O programs, as well as reduced capacity, brokers and underwriters warn.

"Prices for the Big Five auditors will have increased significantly and capacity reduced dramatically in the wake of the Enron scandal and the hardening reinsurance market," said Neil Nimmo, managing director of FINPRO, the professional liability division of Marsh Inc. in London.

The Big Five includes Arthur Andersen, Deloitte & Touche, Ernst & Young, KPMG

and PricewaterhouseCoopers.

Midsized international accounting firms also will face rate increases, Mr. Nimmo said. Even a firm with a good loss record could see a 20% to 25% reduction in limits and rate increases of 10% to 20%, he said.

Midsized accounting firms will be affected by the general conditions in the insurance marketplace, agreed Lloyd's of London underwriter Nick Ward, professional indemnity underwriter for syndicate 33, managed by Hiscox P.L.C. Firms with a U.S. exposure will suffer a "backlash" from the Enron affair, he added.

Mr. Ward noted that recent accountants' E&O renewals have had at least 50% increases in rates.

The tight market will "affect all profes-

See E&O/page 32

Employers seek modifications in 401(k) catch-up rules

By JERRY GEISEL

WASHINGTON—Business groups are pressing the Internal Revenue Service for additional modifications to its proposed 401(k) plan catch-up contribution rules to ensure that employers are able to offer the feature to most of their employees.

In particular, employers are urging the IRS to ease its "universal availability" requirement. Originally, the IRS said that if employers didn't provide to all eligible employees in their 401(k) plans the opportunity to make catch-up contributions, then no employees would be permitted to make the contributions.

Under tax and pension legislation that Congress passed last year, employees age 50 and older can each make, starting this year, an additional \$1,000 contribution to his or her 401(k) plan,

with that amount increasing in \$1,000 increments annually until the maximum catch-up amount reaches \$5,000 in 2006.

The IRS, under employer pressure, later slightly eased its universal availability requirement. Employers, the IRS said, could gradually phase in catch-up contributions provided that all their 401(k) plans were amended by Oct. 1 to offer catch-up contributions. Employers with multiple 401(k) plans said such a phase-in was necessary because, in many cases, plan administrators needed more time to make systems changes to accommodate catch-up contributions.

While that concession was welcome and necessary, it does not go far enough, business groups said last week in comments they filed with the IRS.

One of those groups—the ERISA Industry Committee, or ERIC—urged the IRS in a letter to modify its universal

availability requirement so that an employer would not be violating the requirement if catch-up contributions were not offered to a "de minimis" number of eligible employees. ERIC suggested that any percentage less than 0.5% of the total number of employees eligible to make catch-up contributions be considered de minimis.

Benefits experts urge such a relaxation of the universal availability requirement, noting that, in the real world, employers may offer numerous 401(k) plans—including some at very small company units—whose recordkeepers might not want to administer such features if they were to affect only a few employees.

"This can be difficult to implement on a universal basis," said Susan Alford, senior vp, defined contribution plan consulting in the Winston-Salem, N.C., office of Aon Consulting.

"There is a real possibility that one or

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IRS

Limits on disability benefits and attorneys fees at issue

Workers comp payers, lawyers battling over Florida reforms

By MICHAEL BRADFORD

TALLAHASSEE, Fla.—Insurers and employers are squaring off against trial lawyers over proposed Florida workers compensation reforms that would limit the payment of disability benefits and attorneys fees.

A coalition of insurance trade groups and employers last month presented a package of reforms to the Florida Legislature that would, among other things, make fewer workers eligible for permanent total disability benefits and prohibit hourly attorneys fees in most cases.

The Alliance of American Insurers, the National Assn. of Independent In-

surers, the American Insurance Assn., Associated Industries of Florida, the Florida Chamber of Commerce and other business groups back the proposed reforms.

"Dealing with the high incidence of permanent total disability" in the state is one of the coalition's main goals, according to William Stander, the Tallahassee-based government affairs representative for the Alliance's Southeast Region.

Proponents of the reforms want to tighten the criteria for those payments so that it would be clear that they are made only when a worker is unable to perform any work, not just his or her

previous work. And they want to change a provision in Florida's law that says that if an injury is severe enough to qualify for Social Security disability benefits, it is presumed that the worker also qualifies to receive permanent total benefits.

"The problem is not the amount" of permanent total disability benefits that is paid, "it's the definition," said Nancy Schroeder, assistant vp-workers compensation for the Des Plaines, Ill.-based NAIL. The current law has been badly interpreted, she explained, as the "original idea was that if an injury is not serious enough to qualify for Social Security,

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PBGC chief eyes strengths, threats

No premium hikes planned

By JERRY GEISEL

WASHINGTON—The Pension Benefit Guaranty Corp. is financially strong enough to absorb rising losses—including what could be its biggest ever—without raising premiums, according to the agency's new head.

Over the last year, the terminations of pension plans sponsored by just three bankrupt employers—Trans World Airlines, Northwestern Steel & Wire Co. and Outboard Marine Corp.—cost the PBGC nearly \$1 billion.

And in the coming months, the agency could see its largest-ever claim—about \$2 billion—from a single employer if bankrupt steelmaker LTV Corp. terminates its pension plans, said PBGC Executive Director Steven Kandarian, who describes that termination as highly probable.

But even if LTV terminates its plans, the recent losses "do not jeopardize the financial position of the PBGC," he said.

Still, while the agency's financial health continues to be robust—it had a \$10 billion surplus at the close of fiscal 2000, the most recent year it has publicly reported its results—Mr. Kandarian says now isn't the time to cut PBGC premium rates. Mr. Kandarian's predecessor, Clinton administration appointee David Strauss, and some business groups have advocated such cuts.

Mr. Strauss, for example, had said that PBGC premiums should be reduced or even temporarily eliminated for employers with fully funded plans. The annual premium rate for fully funded plans is \$19 per plan participant.

But Mr. Kandarian, who has broad investment experience, says a changed economic climate has made proposals to cut premiums unwise for the time being.

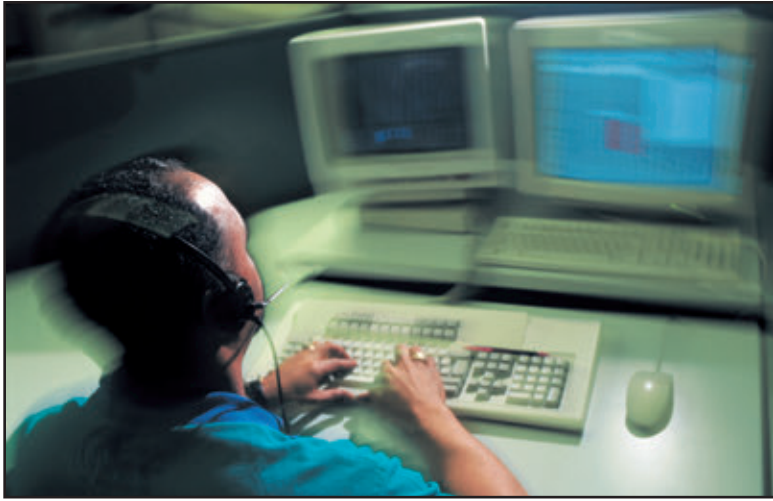
"We will look at the issue of premium levels at some point, but I don't think this is the point in time to do that," he said. "We'll see what the (agency's) surplus is when the economy turns around in earnest, and then we can revisit the issue of premium levels," he said.

Mr. Kandarian, 49, became head of the PBGC in December. Previously, he was managing director and founder of Wellesley, Mass.-based Orion Partners L.P., where he managed a private equity fund specializing in acquisitions of established companies and venture capi-

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Mr. Kandarian



911 dispatchers do not have the same immunity to lawsuits granted to emergency rescue personnel, a California appeals court ruled recently.

911 dispatchers not immune to lawsuits: California court

By JUDY GREENWALD

SAN FRANCISCO—Government agencies can be held liable for the actions of their 911 emergency medical dispatchers and are not entitled to the limited immunity granted emergency rescue personnel such as firefighters, a California state appellate court has ruled.

The unanimous decision by the 1st Appellate District of the California Court of Appeals in *Yong Shao*

Ma et al. vs. City and County of San Francisco overturned a lower court's dismissal of the case. The case was remanded to the trial court.

Angelique Chan was suffering a severe asthmatic attack in 1998 when her husband brought her to a Kaiser Permanente facility in San Francisco that did not handle medical emergencies. The 911 dispatcher who was then called had not yet been trained in procedures that require dispatchers to respond to a

complaint of difficulty breathing with a Code 3. That code means that an ambulance with lights and sirens is rushed to the scene.

Instead, the call was given a Code 2, which means the ambulance travels within the regular traffic flow. After hearing screaming in the background, the dispatcher sent police to the scene first and made an entry into the computer-assisted dispatch system that described Ms. Chan as "20 (year old) female (overdose) bizarre, aggressive, violent."

As a result, paramedics did not arrive until about 20 minutes later, when the normal response time for a Code 3 alert is 10 minutes or less, the court noted. By then, Ms. Chan had died. A paramedic later testified that his "save rate" on Code 3 calls over his 30-year career was 100%.

The record "contains sufficient direct and indirect evidence to support the conclusion that the connection between the response to the 911 call from Kaiser's French Campus (facility) and (Ms. Chan's) death is temporal and strong," says the decision.

"The totality of these circumstances suggest more than negligence. At a minimum, they exhibit an indifference that is intolerable in the important life-and-death context in which this critical public service is rendered," the court ruled.

A spokesman for the San Francisco city attorney's office said the city is likely to appeal. The decision would "make it more difficult for cities to provide emergency response, because it requires that operators, who already function under a tremendous amount of stress and need to make split-second decisions...second-guess everything they do and say."

David E. Russo, an attorney with San Francisco-based Baughman & Wang, who represents Ms. Chan's father and husband, said, "The court applied, for the most part, well-established principles that have to be flexibly applied to a specific set of facts." As a result, said Mr. Russo, "I don't think you can predict the outcome of the next case based on this one."

Yong Shao Ma et al. vs. City and County of San Francisco, Court of Appeals of the State of California, 1st Appellate District; AD092105. Jan. 23, 2002.

Errors & omissions

- The Dublin domicile profile on page 21 mistakenly refers to the Industrial Development Agency of Ireland. The IDA recently changed its name to the Investment and Development Agency.

- A Jan. 28 chart illustrating the performance of the *Business Insurance* Index, Dow Jones Industrial Average and Standard & Poor's 500 Index listed an incorrect source. CNET Investor supplied the data.

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Former health plan operator faces federal fraud indictment

By DOUGLAS McLEOD

SAN FRANCISCO—A former health plan operator with a history of regulatory troubles has been indicted by a federal grand jury on charges of pocketing more than \$1.2 million in premiums while running a bogus self-funded health insurance program for small employers.

John B. Hyde, former principal of now-defunct administrator Interstate Services Inc. of Novato, Calif., faces 64 fraud and money-laundering counts related to his management of The ERISA Advantage, a group health plan that left several hundred thousand dollars in claims unpaid after it was shut down by the Department of Labor in 1998.

Arrested at his Stinson Beach, Calif., home last week, Mr. Hyde is scheduled to appear in court today. He could not be reached for comment.

"Discovering the coverage you paid for does not exist due to a scheme such as is alleged here can be devastating," said Dwight Sparlin, a special agent with the Internal Revenue Service, which helped investigate the case. "Health care fraud investigations have been and will remain a priority for the IRS."

Mr. Hyde first ran afoul of insurance regulators in 1984, when the California Insurance Department fined him for making false statements to beneficiaries of a health

plan he then administered. In 1988, he declared personal bankruptcy but was hit by the bankruptcy court with a \$1.8 million judgment for defrauding an Arizona life insurer, court records show.

By 1994, Mr. Hyde had formed a new administrator, Thorndyke International Inc., and began offering The ERISA Advantage, a "single em-

'Discovering the coverage you paid for does not exist due to a scheme such as is alleged here can be devastating.'

*Dwight Sparlin
Internal Revenue Service*

ployer trust" program in which a portion of each employer's health premiums would go into a separate trust account to fund self-insured losses. Thorndyke would use remaining premiums to buy stop-loss coverage from a licensed insurer.

Mounting complaints about unpaid claims led to widening state regulatory scrutiny of Thorndyke, though, and Mr. Hyde moved several hundred Thorndyke clients into a purported New York-based union welfare fund. The Labor Department shut down the union plan in 1997 after finding that it was insolvent by \$1.2 million. Mr.

Hyde then activated ISI, a shell company, which acquired Thorndyke and revived the ERISA Advantage program.

The indictment unsealed last week charges that Mr. Hyde defrauded employers by promising that their premiums would be used to self-fund losses and buy stop-loss coverage from an admitted insurer.

Instead, he siphoned much of the money off to cover personal expenses, pay salaries to family members, lease cars and buy football tickets, prosecutors charge. Mr. Hyde placed stop-loss coverage for the ISI plan with Colonnade Insurance Co. AVV, an Aruba-based insurer that failed to pay any claims, court records indicate.

James Charge, who ran Colonnade, pleaded guilty in Miami federal court in 1999 to charges stemming from his operation of another defunct offshore insurer, West Point Insurance Co. of Antigua. He was sentenced in 2000 to 40 months in prison.

Mr. Hyde's indictment charges him with mail fraud, health care fraud and money laundering, and it seeks forfeiture of \$1.2 million in allegedly diverted premiums and Mr. Hyde's Stinson Beach house. The charges carry maximum sentences ranging from five to 20 years each, though any actual sentence, if Mr. Hyde is convicted, would be governed by federal sentencing guidelines.

**Carvill
3 column x 6"**

Commentary A groundhog at Ground Zero

As a burrowing rodent, I thought I would be immune from the conflicts and strife afflicting the wider world—the world above ground.

I, Punxsutawney Phil, knew that I had various natural enemies in the animal kingdom, and I knew that a few people I have bitten over the years may still hold a slight grudge (get over it). But I don't really think that I'm a likely target of terrorists.

And yet, my broker tells me, my insurance premiums are going up tenfold because of the heightened risk of terrorism. Apparently, I may be at risk of harm from fanatics who believe that my powers and prognostications are an affront to divine will and that this year's date, 02-02-02, has satanic implications. I may also be the quarry of catastrophe modeling companies that believe my style is an affront to actuarial science.

Puh-leezee! I hate to admit it, but who in their right mind really believes that I predict global weather trends just by seeing my shadow? If you do, I have some Enron

weather hedges to sell that might interest you.

Nevertheless, my handlers inform me that I have become a possible target. It is no coincidence, they say, that the director of homeland security also is from Pennsylvania.

I have been urged to take precautions, such as not opening any suspicious packages or powdery envelopes. That sounds sensible, assuming you believe that the Postal Service makes deliveries to marmots who cannot read.

In recent weeks, my handlers also have cut off my supply of pretzels, claiming they are now the low-fat bioterrorism weapon of choice.

I figured that most of the anti-terrorism attention this weekend would not be focused on my little burrow in Gobbler's Knob, but instead on the Super Bowl in New Orleans, or the World Economic Forum in New York. Or even the Kiwanis Pancake Breakfast at the Punxsutawney Outlet Mall.

Not so. Fearing for my hide and the safety of the tens of thousands of people who gather here to watch me shake my stuff, a huge security force is being amassed. The National Guard will be on hand, as will state police and bomb-sniffing dogs. No kidding! You think the premium increases are bad, wait until the tax hikes come through to pay for all this misguided attention.

Because of this unlikely threat, my insurance coverage costs are

soaring to unaffordable levels.

I have approached the town fathers of Punxsutawney in search of a little financial relief from these shocking premiums but, so far, they have turned a deaf ear on my pleas. They get nervous every time I peek my head out of the burrow before Feb. 2 anyway, but now they are refusing to take my calls and answer e-mails. I think this is unreasonable, because this terrorism thing is really society's problem, not mine. If the government can't protect me from these lunatics, and won't help me out with the cost of coverage, how am I supposed to run a business here?

If I could afford it, I would

relocate to Bermuda and self-insure my alleged exposure. But, for a subterranean creature like myself, digging into the limestone of Bermuda poses a challenge. And the relatively low water table could be a problem, too.

So, unless and until someone steps in to alleviate my predicament, I will pay the exorbitant

premium. Going bare is no more an option for me than would be shedding my pelt.

Although I have a spotless loss history, I must admit there were a few close calls, and insurance coverage for the costs of my defense has proved invaluable. There was the time, for example, that I refused to come out of my hole and the television networks tried to sue for nonperformance of a contractual obligation. Then there was the time the mayor's kid tried to sue me for biting him, claiming that I had ruined his chances of a career as a pop tuba musician. And you remember the bitter legal battle I had with the National Football League, which tried to force me to reschedule my big day, because they were afraid I'd draw attention away from Super Bowl Sunday.

None of those frivolous legal efforts stuck, and my good name remains unsullied.

So there's my predicament. Because of a minor exposure to terrorism, I am paying through the snout. It's enough to make a groundhog stay in its hole and never come out. But the show must go on.

*Occasional commentator
Punxsutawney Phil can be reached through Editor Paul D. Winston by e-mail at pwinston@crain.com. Mr. Winston's commentary will return in a fortnight.*



Punxsutawney Phil



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Editorial

Captive market flourishing

CAPTIVE INSURANCE is alive and well—and thriving.

In fact, as this week's special report shows, interest in creating new captives and expanding the amount of coverage funded through captives is accelerating worldwide, fueled by hardening rates in the traditional insurance marketplace and shrinking capacity in certain lines.

This is hardly surprising, as interest in alternative risk financing saw a similar surge during the last broad market firming, more than 15 years ago. Today, thanks in part to the foundations laid in the last hard market, buyers now have more alternatives in more places than ever before. The number of domiciles that allow captives has expanded throughout the United States and the world, to a total of 42 true domiciles today, up from about half that number in 1987. And there are far more varieties of captives to choose among, from single parent and group captives, to risk retention groups, rent-a-cap-

tives and protected cell captives, among others.

According to a recent analysis by A.M. Best Co., self-insurance, including captives, will account for 49% of the commercial property/casualty marketplace by the end of the year, up from 33% in 1999 (*BI*, Jan. 21). In addition, the rate of growth for annual premiums in the alternative risk transfer market worldwide has outstripped premium growth in the U.S. commercial insurance market by ever-wider margins in each of the past five years, Best reports.

Not only does the growth of these domiciles and alternative risk financing tools provide the buyers of corporate insurance with more options but it also serves to provide some checks and balances against excesses by the traditional market. After their experience in the 1980s, when unwillingness to meet the needs of corporate buyers drove many into captives forever, some insurers now are aware that if they price coverage wildly out of propor-

tion to the exposure, they risk driving even more buyers to the alternative market. That not only diminishes their future business prospects but also could result in a form of adverse selection. This could occur as better risks that regard insurance pricing as unfair abandon the traditional market, leaving insurers with poorer risks.

It is inevitable that if too many buyers should abandon the traditional market, some insurers will begin slashing rates and expanding coverage again to win back business. To be candid, the long soft market lured many buyers away from their captives with deals that often were too absurdly low to pass up. With the market again hardening now, some will dust off their captives and put some or all of their risks back into them.

But captives should never be a short-term solution, with buyers jumping in and out of the market. They can be costly to set up, and, to be truly effective, they require a long-term commitment in terms of

funding and loss control. For buyers that can resist the lure of jumping back into the market when rates soften, alternatives may offer them the best long-term shot at achieving stability in their risk financing costs and avoiding the volatility of insurance pricing cycles.

Some insurers today recognize this and know that even if they cannot get a premium for assuming a buyer's risks, they still can make a profit by providing needed services to captive owners. They are marketing their claims handling and actuarial expertise, as well as providing management and fronting services and underwriting excess and reinsurance coverage.

The key to making a captive work is a disciplined approach to underwriting, proper funding of risks and an emphasis on loss prevention. Ironically, those are the same qualities that insurers must embrace if they are to keep their business from migrating to alternatives.

Congress seeks proof from insurers

SOME FOLKS ON CAPITOL HILL must have learned something from the insurance industry.

Just as an insurer demands proof of a loss before it pays a claim, lawmakers appear to be taking that practice a step further. They want specific evidence of business deals not being made and buildings not being built due to a lack of terrorism coverage before they push legislation that would have the federal government guarantee such coverage.

As we report in this issue, a panel of senior congressional staffers told attendees of an American Insurance Assn. conference last week that law-

makers need facts, not anecdotes. The legislative engine that helped drive a terrorism insurance bill through the House has sputtered in the Senate, despite the ongoing efforts of lawmakers such as Sens. Chris Dodd, D-Conn., and Phil Gramm, R-Texas, to get it started again. While we're disappointed that President Bush didn't mention the issue in his State of the Union Address, we don't see that as an excuse to let the matter fade.

We realize nobody wants to stand up and say, "I don't have any terrorism coverage." That could send the shareholders running for the exits—or worse. People on Capitol Hill understand that reticence, too. But the staffers suggested ways to make lawmakers aware of the real cost of inaction on the economy. These include meeting with lawmakers—preferably while the lawmakers are visiting their home districts—and talking with

regional Federal Reserve Banks to explain exactly how a lack of coverage results in a weakened economy.

Businesses have to give evidence—in spite of the difficulties it could create for them—to policymakers that the economy is already suffering because they can't get insurance. That may be the only way to ensure that claims will be covered if the nation ever suffers a catastrophic terrorist attack again.

Schillerstrom



February 12, 2002**New York Marriott – Financial Center Hotel**
85 West Street, New York, NY 10006**Agenda:**

Continental breakfast	8:00 a.m.
Keynote address	9:00 a.m.
Interactive panel discussion	9:30 a.m.
Adjournment	Noon

Registration Fee*:

Risk managers, CEOs, CFOs
and other corporate executives \$100

Brokers, consultants, insurers,
reinsurers and other service
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***A portion of registration fees will be donated to
an organization serving victims of 9/11.**

Business Interruption Insurance at Ground Zero

An Independent Examination of Legal and Measurement Issues Arising in the Aftermath of September 11th

Join the business interruption insurance practice leaders of the nation's leading professional services firms and the editors of *Business Insurance* for a detailed examination of the most pressing business interruption insurance issues facing risk managers and other insurance professionals today.

Presented in a uniquely interactive format designed to make complex principles simple and to share real world experiences, the conference will highlight the unprecedented legal and loss measurement issues created by the events of September 11.

The Hon. Gregory Serio, Superintendent of Insurance, New York State, will deliver the keynote address.

Our panelists will include:

Dempsey, Myers, and Company LLP
Fried & Epstein, LLP
Heller, Ehrman, White & McAuliffe
PricewaterhouseCoopers LLP
Deloitte & Touche LLP

Among the topics to be addressed are:

- Variations in policy language influencing recoverable business interruption losses.
- Recoverability in the era of global all-risk policies.
- Unique issues presented by business interruption losses at banks, brokerages, insurance companies, and other financial and service institutions.
- Claim preparation and settlement in the wake of September 11.

- Coverage nuances, including interruption by civil authority, ingress/egress, extended period of indemnity, contingent business interruption, service interruption, leasehold improvements.
- Determination of the applicable period of interruption or indemnity and the effects on loss recovery
- Temporary facilities and permanent replacement: how property and business interruption coverage could respond.

The New York Marriott — Financial Center Hotel, two blocks from Ground Zero and five blocks from the federal courthouse in which September 11 insurance litigation will be heard, is the perfect venue for this important event.

W E A R E S O R E A D Y F O R T H I S .

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Captive growth continues as market hardens in 2001



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As the property/casualty insurance market hardened in 2001, captive industry observers expected the world's domiciles to continue to attract captives, and they were right.

At the end of 2001, the 42 domiciles that *Business Insurance* tracks had an estimated 4,002 captives, up 5% from the prior-year total.

The latest growth follows a string of increases in the number of captives worldwide. In 2000, domiciles' total increased more than 5%, to an estimated 3,812 captives. At year-end 1999, the number of captives stood at 3,624, up nearly 6% from 1998.

Business Insurance counts as domiciles only those jurisdictions that have laws specifically enabling captive insurance formations, as opposed to locations that permit captives to be formed under existing laws governing insurers and reinsurers. For 2001, *BI* added to its list three new captive domiciles, all of them in the United States: Arizona, Arkansas and Montana.

Twenty domiciles reported increases in their overall number of captives, while seven posted decreases and 15 had no change.

Captive domiciles with the largest increases were also among the largest domiciles. Bermuda, with net growth of 58 captives, led the list of top gainers; the Cayman Islands, with net growth of 28 captives, was second; and Vermont, with a net increase of 26 captives, was third.

In percentage terms, South Carolina experienced the sharpest growth. Its total of active captives

grew more than 500%, to 13 from two in 2000, the year South Carolina became a captive domicile. Labuan, off the coast of Malaysia, saw its captive total grow by 100%, to 18.

Domiciles losing captives were relatively few. The Isle of Man lost three, giving it 159; Dublin lost two, leaving it with 181; and Singapore lost two captives, taking it to 49. Illinois also lost two captives, leaving it with a total of three captives in 2001.

The world's largest captive domicile is again Bermuda, with an estimated 1,136 captives at the end of 2001, an increase of more than 5% from the year before. In 2000, Bermuda had an estimated 1,078 captives, more than double that of the runner-up.

Second place again went to the Cayman Islands, with 542 captives. Cayman also experienced growth of more than 5%, from a total of 514 captives in 2000.

Vermont, which posted a gain of more than 7%, remained the largest U.S. domicile. The state reported 387 captives at the end of 2001.

In-depth reports on the largest captive domiciles follow. A directory of all the captive domiciles tracked by *Business Insurance*, including information on taxes, laws and regulators, begins on page 24.

A list of the largest captive insurance management companies appears on page 14. *Business Insurance's* complete directory of captive management companies will soon be available online at www.businessinsurance.com.

Captive managers directory available online at Businessinsurance.com

The 2002 Directory of Captive Management Companies will be the first *Business Insurance* directory to appear online in its entirety.

Full directory listings for captive managers will be available in the Directories area of www.businessinsurance.com. The directory will be searchable by company name, par-

ent company, domicile, services provided, total captives managed and premium volume of captives managed.

Soon, all *BI* directories will be online, providing information from their 2001 listings. As the directories are updated throughout the year in conjunction with *BI* special

issues, the 2002 editions of the directories will be posted online.

For a limited time, access to the online directories will be available to all visitors to the *BI* Web site. Soon, though, access to this and other advanced features of businessinsurance.com will be restricted to paid subscribers.

COUNTING CAPTIVES

DOMICILE	2001	2000
Bermuda	1,136 *	1,078 *
Cayman Islands	542	514
Vermont	387	361
Guernsey	369	358 **
British Virgin Islands	262	238 **
Luxembourg	233	231
Barbados	232 *	228 *
Dublin	181	183
Isle of Man	159	162
Turks & Caicos Islands	134 ¹	120 ¹
Hawaii	87	74
Singapore	49	51
Bahamas	31	31
Switzerland	30	22
Jersey	19	18
Labuan	18	9
Netherlands Antilles	18	18
Georgia	16	14
British Columbia	15	15
South Carolina	13	2
Mauritius	12	11
Colorado	10	11
Gibraltar	10	10
U.S. Virgin Islands	10	9
Tennessee	5	6
Delaware	3	3
Illinois	3	5
Nevada	3	2
District of Columbia	2	0
Guam	2	1
Hong Kong	2	2
New York	2	2
Panama	2	2
Rhode Island	2	2
Maine	1	1
Malta	1	1
Montana	1	0
Lloyd's of London	0	1
Arizona	0	0
Arkansas	0	0
South Dakota	0	0
Virginia	0	0

* *BI* estimate ** Restated ¹ Excludes credit life insurers

Hard market fuels growth at largest captive domicile

By MICHAEL BRADFORD

HAMILTON, Bermuda—A busy year became much busier last fall for Bermuda's captive managers.

Captive inquiries have poured into the domicile since Sept. 11 as insurance buyers search for alternatives to high rates in the commercial market. And captive managers expect the pace to remain hectic for a while. "We've never been busier," said David Ezekiel, president and managing director of International Advisory Services Ltd.

In the last quarter of 2001, "the market hardening was worsened" by the terrorist attacks, he said, and "we saw a huge amount of activity."

The scramble to contain insurance costs "can only be positive for captives," as long as there is affordable reinsurance capacity for the facilities, said Colin C. James, president of Atlantic Security Ltd.

The level of reinsurance capacity is a concern for captive owners, other managers agreed. Reinsurers are restricting capacity and are charging significantly higher rates for coverage.

And, on the other side of the transaction, the number of fronting insurers is also shrinking, as more insurers scale back noncore lines of business.

But despite those obstacles, 2001 was a boom year for captive formations in Bermuda. The number of new incorporations more than doubled, with 108 captives established. That compares with 50 licensed in 2000. *Business Insurance* estimates that the domicile lost 50 captives in 2001, leaving 1,136—an increase of 58 captives over 2000.

In terms of incorporations, "it was a very good year for us," said Shelby Weldon, assistant director of insurance in the Registrar of Companies' office. "Most of the activity took place in the last quarter." And, he said, regulators expect to see "a lot of formations" in coming months as insurance buyers continue to look for ways to curb higher insurance costs.

Captive managers are reporting broad interest from potential captive owners that are looking at covering a variety of property/casualty risks. And interest in rent-a-captives continues to be strong.

Meanwhile, the ranking of Bermuda's top managers has changed somewhat.

Aon Insurance Managers (Bermuda) Ltd. recorded \$3.34 billion in gross premiums under management in 2001, up from \$2.26 billion in 2000 and enough to move ahead of last year's top manager, Marsh Management Services (Bermuda) Ltd., which in 2001 recorded \$3.30 billion in premiums under management.

Aon added 25 captives in 2001, and it lost nine. Nine of the new captives came from SINSEER Management Services (Bermuda) Ltd. as part of the deal that saw parent Aon Corp. purchase Sweden's SINSEER Holding A.B. from Skandia Group (*BI*, Aug. 13, 2001). Although Aon did not exercise its right to purchase the Bermuda unit of SINSEER, it did take control of nine captives that are Bermuda-based but have some of their management services provided by European offices.

SINSEER's Bermuda unit subsequently was purchased by its management and is now called Quest Management Services Ltd.

Aon ended the year with 275 captives, compared with 259 in 2000.

"We've certainly seen a big upsurge in inquiries about captives and where they fit in," said Alan Cossar, executive director of Aon's Bermuda operation. Many of the callers are owners of existing captives that have not used their companies much during the soft market and are now determining whether to jump-start those facilities, he noted.

Marsh, meanwhile, ended the year with 315 captives under management, up from 297 in 2000. Its \$3.30 billion in premiums under management in 2001 is up from \$3.00 billion in 2000.

"The general market hardening would have pushed a lot of people to consider a captive," said Rory Gorman, managing director-client services for Marsh in Bermuda. "The Sept. 11 events have made it more urgent."

"Virtually all areas were affected," he said, and the hardening market is causing business owners to consider using captives "in nearly all lines of business."

Marsh added seven new captives to its captive management roster



during the first three weeks of this year.

Mutual Risk Captive Group Ltd. maintained its position as the island's third-largest manager, recording \$1.99 billion in premiums under management. Mutual Risk's 2001 figures, which include captives managed by its International Advisory Services unit, compared with 2000 premiums under management of \$1.74 billion.

Mutual Risk ended 2001 with 164 captives, up from 157 at year-end 2000. Of the captives under management last year, 118 were handled by IAS.

Mr. Ezekiel, who also serves as chairman and chief executive officer of Mutual Risk Management Ltd.'s MRM Global Captive Group, said interest in captive formations is "very much across the board" in terms of the types of coverages potential owners want to fund through the companies. And the range of companies interested in forming captives is diverse, he noted. "Hospital groups, engineers—it's all over the place."

And owners are becoming increasingly frantic as they strive to get captives up and running in time for renewals, he said. In one case, Mr. Ezekiel said, a captive owner was seeking to have captive formed in time for an Oct. 1 renewal. "As time got closer, they sat here for one week until we put the captive together."

J. Oliver Heyliger, managing director at Willis Management (Bermuda) Ltd., said he has "a pretty significant" number of companies in the pipeline for formation. "We think it will be a good year," he said, and for the domicile as a whole, "we expect it will be one of the best years ever for us as far as formations."

Willis' 28 captives under manage-

ment at the end of 2001 were two fewer than in 2000. "This office was pretty neutral last year," Mr. Heyliger said. "Management consists of getting the business and running the business; we focused on running the business last year."

Gross premiums under management last year at Willis climbed to \$190 million, up from \$156 million in 2000.

Interest in protected cell companies in Bermuda is spurring new formations and is prompting some existing captives to consider reclassifying as protected cells, Mr. Ezekiel said. Some participants in association captives, for example, may find themselves "uncomfortable bedfellows" with others in the group and look to reform as protected cells, he said. In a PCC, the individual cells operate independently, and their assets are shielded from the debts of the other cells.

JLT Risk Solutions Management (Bermuda) Ltd. ended 2001 with 31 captives that generated \$645 million in gross premiums. That compares with 25 captives and \$370 million in premiums in 2000.

JLT has grown quickly since its formation two years ago, partly by attracting captives from other management companies. After its formation, JLT lured captives away from International Risk Management Group Ltd., which sold its captive management business to Aon in 2000. JLT also took over management of captives handled by Triangle Insurance Management Ltd., which it previously owned.

"The activity level since Sept. 11 has been quite amazing," said Paul Bailie, a partner at JLT.

"We formed two last week," Mr. Bailie said in mid-January, and "we'll probably have another handful by the end of" February. He said he expects "the first six months of this year to be quite productive."

Like several other captive managers, Mr. Bailie said he has run into some difficulties finding fronting services. But, although "fronting is now becoming fairly difficult, there is more talk about how tough it is than is the case," he said.

Captives likely will find those services harder to come by this year

and in 2003, according to Mr. Ezekiel. IAS had its fronting arrangements in place or lined up before Sept. 11 and has not incurred major cost increases, he said. MRM's Legion Insurance Group provides some fronting services to IAS clients.

Legion, however, has run into problems over the past year. A.M. Best Co. in December placed its A-financial strength rating for the group under review, citing concerns over reinsurance recoverables. Legion last year added \$30 million on an aftertax basis to net loss reserves because program losses from prior years are expected to exceed limits of reinsurance purchased for the business.

It's not so much that there's a critical shortage of fronting companies, but that there are few experienced fronting companies available, said David J. McManus, president of Arthur J. Gallagher Management (Bermuda) Ltd. "There are not enough knowledgeable fronts around to handle the business."

He pointed out that fronting insurers were easier to find when the market was soft and insurers were looking to add revenue. When pricing firmed, some of the fronting companies began concentrating more on retaining premiums. "So those guys aren't interested," Mr. McManus said.

As for Gallagher, much of the activity it saw in Bermuda was related to rent-a-captive business, according to Mr. McManus. Often, he said, clients come to Gallagher with the idea of forming a single-parent captive, but find they are better suited to becoming a member of one of the management company's two rent-a-captives.

Gallagher managed 16 captives at the end of 2001, the same number as the previous year, but its premium volume under management dropped to \$123 million from \$156 million. The fall in premium was attributable to one captive owner moving business out of the captive, Mr. McManus said.

Quest Management, known last year as SINSEER, added seven rent-a-captive members to its facility,

See **BERMUDA**/page 15

Directory of captive managers available on *BI*'s Web site

The directory of captive management companies will be the first to appear entirely online. The full directory listings for captive managers will be available in the directories area of www.businessinsurance.com. The directory will be searchable by company name, parent company, domicile, services provided, total captives managed and premium volume of captives managed.

All of *BI*'s directories will soon be online, with information

from 2001 listings. As the *BI* directories are updated throughout the year, in conjunction with special issues of the news-magazine, new 2002 directories also will be posted online. Captive managers is the first of these.

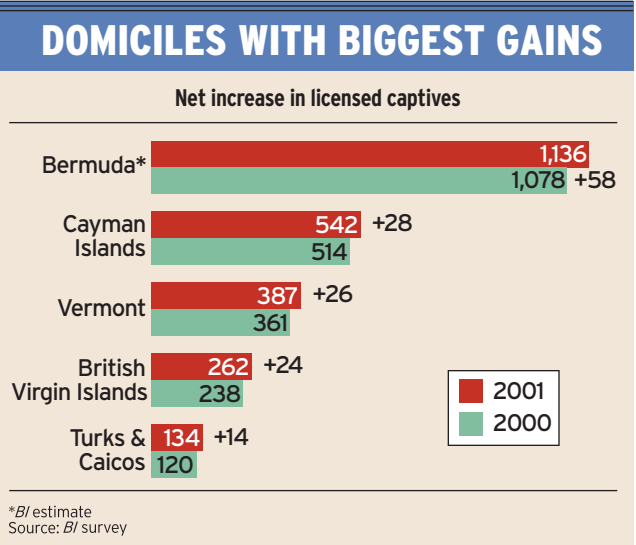
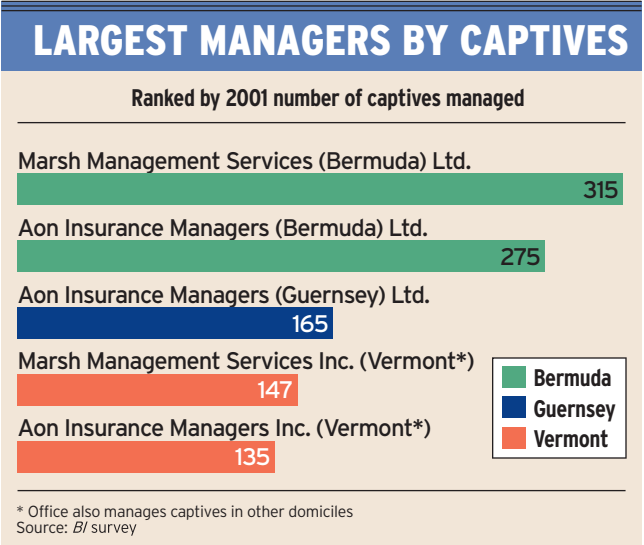
For a limited time, all visitors to the Web site will have access to the online directories. Soon, however, free access to this and other advanced features of businessinsurance.com will be restricted to paid subscribers.

LARGEST MANAGERS OF BERMUDA CAPTIVES

Ranked by gross premium volume in millions of dollars

Manager	Premium volume		Captives	
	2001	2000	2001	2000
Aon Insurance Managers (Bermuda) Ltd.	\$3,336.0	\$2,263.0	275	259¹
Marsh Management Services (Bermuda) Ltd.	3,300.0	3,007.5	315	297
Mutual Risk Captive Group Ltd.²	1,992.0	1,736.0	164	157
JLT Risk Solutions Management (Bermuda) Ltd.	645.0	370.0	31	25
Quest Management Services Ltd.³	410.0	400.0	68	80
BF&M Management Ltd.	272.0	437.0	28	28
Atlantic Security Ltd.	270.0	250.0	52	50
Becher + Carlson Management Ltd.	229.7	210.0	22	21
Willis Management (Bermuda) Ltd.	190.0	156.0	28	30
AIG Insurance Management Services (Bermuda) Ltd.	155.0	144.0	23	19

1 Restated 2 Includes International Advisory Services Ltd. 3 Formerly SINSEER Management Services (Bermuda) Ltd.
Source: *BI* survey



Largest captive managers worldwide

Ranked by captives managed worldwide in 2001

Manager Address	Phone/Fax/Web site	Parent	Captives	Domiciles	Captives in formation	Total staff	Professional staff
Aon Insurance Managers ¹ Jubilee Buildings, Victoria Street, Third Floor Douglas, Isle of Man IM1 2LR	44-1624-670-133, Fax: 44-1624-670-132 <i>www.airmg.com</i>	Aon Corp.	959	33	40	384.5	223
Marsh Management Services P.O. Box HM 1826 Hamilton, HM HX Bermuda	441-298-6617 , Fax: 441-294-1690 <i>www.marsh.com</i>	Marsh & McLennan Cos. Inc.	865	16	17	353	129
MRM Global Captive Group 44 Church St., P.O. Box HM 2064 Hamilton, HM HX Bermuda	441-295-5688, Fax: 441-295-3038 <i>www.accessmrm.com</i>	Mutual Risk Management Ltd.	269	8	9	106	52
Willis Management Ltd. 112 Lake St. Burlington, Vt. 05401	802-658-9466, Fax: 802-658-5520 <i>www.willis.com</i>	Willis Group Holdings Ltd.	210	11	13	92.5	60
HSBC Insurance Management Bishops Court, 27-33 Artillery Lane, First Floor London, E1 7LP England	44-207-661-2450, Fax: 44-207-861-2330 <i>www.hsbc.com</i>	HSBC Holdings P.L.C.	104	5	9	32	23
AIG Insurance Management Services 70 Pine St., 10th Floor New York, N.Y. 10270	212-770-5499, Fax: 212-425-7858 <i>www.aig.com</i>	American International Group Inc.	88	8	1	55	28
Quest Management Services Ltd. ² Skandia International House, 16 Church St., P.O. Box HM 2062 Hamilton, HM HX Bermuda	441-295-2185, Fax: 441-292-1143	NA	68	1	0	14	7
Atlantic Security Ltd. Windsor Place, 18 Queen St. Hamilton, Bermuda	441-295-5425, Fax: 441-295-5444 <i>www.asl.bm</i>	ASL Holdings Ltd.	52	3	1	14	7
JLT Risk Solutions 6 Crutched Friars London, EC3N 2PH England	44-207-528-4557, Fax: 44-207-528-4008 <i>www.jltgroup.com</i>	Jardine Lloyd Thompson Group P.L.C.	45	4	9	25	17
Becher + Carlson Cos. 555 College Road E. Princeton, N.J. 08543	609-243-4425, Fax: 609-243-4884 <i>www.amre.com</i>	American Re-Insurance Co.	44	3	3	15	13
USA Risk Group P.O. Box 306 Montpelier, Vt. 05601	800-872-7475 Fax: 802-229-6280 <i>www.usarisk.com</i>	NA	44	5	0	19	15

1 Pro forma to reflect the merger of Aon Insurance Managers and SINER Holdings A.B. 2 Formerly SINER Management Services (Bermuda) Ltd.
Source: *BI* Survey

Bermuda: Hard market fuels captive activity

Continued from page 11

Quest Insurance Ltd., increasing the membership to 48.

"We were already seeing increased interest in captives and rent-a-captives" before Sept. 11, said Nicholas S. Dove, Quest's president. But with the effects of the terrorist attacks on the insurance market, the pace has quickened, he noted.

After liquidations, the transfer of companies to other managers and the addition of new clients, Quest ended 2001 with 68 captives under management. That compares with 80 at the end of 2000.

Mr. Dove said some captives are facing large increases in reinsurance costs. "We've seen some significant increases in reinsurance rates across the board." In lines such as health care, those price increases are continuing "as renewals come up," he noted.

"A lot of reinsurance companies are reluctant to provide aggregate stop-loss," said Tony Bibbings, senior vp at Becher + Carlson Management Ltd. And where it is available, "rates are going up for all the coverages," he added.

It's too soon to tell, Mr. Bibbings

said, how much of the influx of new capital that has poured into Bermuda since Sept. 11 might be used to write reinsurance for captives. Much of the more than \$9 billion in new capacity appears to be heading for other types of coverage, he said.

Becher + Carlson ended 2001 with 22 captives under management, up from 21 at the end of the previous year.

Mr. James of Atlantic Security pointed out that some captives are able to mitigate reinsurance costs by retaining more risk. "On a cou-

ple of property renewals that we did, retentions went from \$1 million per occurrence to \$2 million per occurrence," which helped hold down reinsurance costs, he said.

Atlantic Security had a net gain of two captives in 2001, ending the year with 52 under management. "I sincerely hope we can gain five to 10 captives this year based on what the marketplace is experiencing," Mr. James said. "That would be a pretty hefty increase."

Atlantic Security's captives generated \$270 million in gross premiums in 2001, up from \$250 million

the year before.

Marsh's Green Island reinsurance pool for captives saw an increase in 2001 premiums to \$330 million, up from \$325 million in 2000. The pool had 19 members at the end of the year, the same as the previous year. It reinsures primary liability risks up to \$100,000.

On July 1, Marsh expects to begin operating Symmetry Reinsurance Pool, a similar entity for smaller policyholders that will reinsure workers comp risks to limits of \$100,000 per occurrence. The pool will open with seven members.



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BUSINESS NEEDS CHAMPIONS

Market, regulatory changes likely to boost demand

Cayman captive managers poised for growth, particularly from buyers of medical malpractice insurance

By SALLY ROBERTS

GRAND CAYMAN, B.W.I.—Buoyed by hardening property/casualty rates, the captive insurance market in the Cayman Islands was already experiencing impressive growth in 2001 prior to the events of Sept. 11.

But as rate firming continued through year-end renewals, leading captive managers on the island say business really began to take off.

Keeping up with increased demand for captive services now is the priority for managers in the world's second-largest captive domicile.

But even as prospect lists are growing, tough market conditions—especially in the reinsurance and fronting markets—are posing challenges to managers and prospective captive owners, they say.

While the captive market focused on growth during 2001, regulators on the island spent much of the year taking the necessary steps to remove Cayman from a list of countries that the Financial Action Task Force—a Paris-based policy-making body—in 2000 deemed “non-cooperative” in its efforts to combat money laundering. Cayman was officially de-listed by the FATF in June 2001.

Overall, Cayman added 47 new captives to its roster in 2001. Including the 20 captives that surrendered licenses, Cayman was home to 542 captive insurers at the end of the year, compared with 514 at the end of 2000.

Gordon Rowell, head of insurance supervision on the island, pointed out that if the additional 20 captives that were approved in principle at the end of the year had been licensed by Dec. 31, Cayman would have licensed almost 70 new captives in 2001. “It was a fantastic year,” he said.

“There was a constant feeling in the industry (during 2001) that the market was hardening and that captives were a vehicle people needed as an alternative,” said Stephen Gray, vp of Willis Management (Cayman) Ltd. Toward the end of

the year, however, there was a rush of inquiries into captive formations as renewal options dried up in the standard market. “Over the last few months, our prospect list has gone nuts,” he said.

Seamus Tivnan, a senior vp and branch manager of Marsh Management Services (Cayman) Ltd., is optimistic that increased captive demand is just beginning. “My feeling is a lot of people realized it was too late for Jan. 1 renewals. I think we'll

‘There was a constant feeling in the industry (during 2001) that the market was hardening and that captives were a vehicle people needed as an alternative.’

*Stephen Gray
Willis Management (Cayman) Ltd.*

see a flurry of activity for July 1 renewals and it will pick up even more for Jan. 1, 2003,” he said.

Captive managers say new growth on the island continues to come from many lines of business, including workers compensation, general liability, property and professional liability risks. Cayman's bread and butter line of business, however, continues to be health care. One-third of Cayman captives—or 178—fund health care-related risks.

“We're still seeing increased interest from the health care industry and many of the active inquires at the moment are from that segment of the market,” said Anthony B. Stelling, regional director for the Caribbean at Aon Insurance Managers (Cayman) Ltd. “Those not in captives at the moment are looking at forming one or looking to participate in a (segregated portfolio company),” he said, referring to the domicile's form of rent-a-captives.

Mr. Stelling noted that health care-related companies looking at rent-a-captive-type arrangements



rather than a single parent captive is a new development.

Captive managers point out that their health care expertise will come in handy in light of The St. Paul Cos. Inc.'s decision to exit the medical malpractice liability insurance market and the financial problems of PHICO Insurance Co. last year. The St. Paul was the largest commercial medical malpractice insurer in the United States and PHICO was No. 10.

Mr. Tivnan said that Marsh, for one, has set up three medical malpractice captives within the last six months as a result of the deteriorating medical malpractice market. “I think the St. Paul's effect will be a lot bigger,” he said. “We haven't felt the full repercussion yet.”

“There's no question that The St. Paul has generated interest in captives,” according to Tom Clark, director of HSBC Financial Services (Cayman) Ltd. “It's 1976 all over again,” he said, referring to when a number of captives began coming to Cayman to fund medical malpractice risks as the traditional market dried up.

Although a vast majority—316—of the captives in Cayman are single-parent companies, managers also are seeing increased growth in other types of programs as well.

“We've formed four group captives in the last four months,” said John M. Pitcairn, president and chief operating officer of Mutual Risk Management (Cayman) Ltd. “People are realizing that rates are going to go higher so they're trying to get together with like-minded companies to do a group captive.”

Growth also continues to come from SPCs, which are intended to be more secure than plain rent-a-captives. At the end of 2001, Cayman had 38 SPCs with 170 cells,

compared to 27 SPC with 70 cells at the end of 2000.

And after a couple years of little activity, the island once again is seeing interest in special purpose vehicles—independent reinsurance companies that issue catastrophe bonds and reinsurance contracts.

HSBC's Mr. Clark noted that when extra capacity came into the traditional market a few years ago, the interest in cat bond deals, which at the time provided needed capacity, waned. Within the last 12 months, however, “especially since 9-11, the world's changed,” Mr. Clark said. “We expect to see additional interest and have already seen increased interest in them.”

Cayman was home to 24 SPVs at the end of 2001.

Although captive demand is high at the moment, tough market conditions in the reinsurance and fronting areas are presenting challenges for managers and prospective captive owners.

“Reinsurance is a big issue right now,” said Peter R.L. MacKay, chairman and chief executive officer of MRM (Cayman). “It's very difficult to find reinsurance. It's difficult to get reinsurers to return phone calls,” he said. Captive owners are taking larger and larger retentions into their captives as a result.

Despite the difficulties, managers say captives continue to be formed.

Captive owners “might not sleep as easy as they did in the past, but they have coverage, albeit at lower limits,” Mr. Clark said.

At least one manager, however, has had a different experience.

“There were a couple of programs that we were looking at that did not come to fruition because of problems they had with getting reinsurance,” said Michael W.B. Gibbs, president of Kensington Management Group Ltd.

A shrinking fronting market also is posing challenges to managers and captive owners.

“We're finding it more and more difficult to find companies to front,” said Wayne A. Cowan, a partner with JLT Risk Solutions (Cayman) Ltd. “Whereas there used to be 10 companies that fronted, now there are less than one handful showing any interest at all.”

“A tremendous chunk of the fronting market has been taken out in the last couple of years,” noted Mr. Rowell, the insurance supervisor, referring to The St. Paul exiting the medical malpractice business, PHICO going into rehabilitation, the demise of Reliance Group Holdings Inc. and the financial problems of Frontier Insurance Group Inc.

As a result, he said that within the last four months, one-third of the captive applications that have come through are structured as deductible reimbursement programs.

Under DRP programs, captive owners use their captives to insure large deductibles on commercial insurance policies. This enables the captive owner to gain some, but not all, of the benefits of an offshore insurance policy and avoid the difficult fronting market, Mr. Rowell explained.

In addition to keeping up with demand during 2001, Cayman regulators issued new money laundering regulations in its effort to be de-listed by the FATF.

As part of the new regulations, new anti-money laundering guidance notes were issued to financial service providers replacing the old code of practice contained in Cayman's 1996 Proceeds of Criminal Conduct Law.

Captive managers and regulators say the new guidance notes, which outline client identification and recordkeeping procedures among other things, put into law many existing practices and are therefore not burdensome for managers.

“The insurance industry here was the least affected by (the new guidelines) because we were already doing a vast majority of the procedures,” said Steven R. Butler, financial director of Chandler Insurance Management Ltd. Among the new changes, Mr. Butler said that managers now have to get an extra set of identification from clients and formalize procedures into a manual.

To help identify issues and offer assistance with the new money laundering guidelines, the insurance division is in the process of conducting on-site inspections of the island's 25 captive managers and captive companies, Mr. Rowell said.

On the captive side, the insurance division is focusing on the island's life captives first because they “represent the greatest risk to money laundering,” Mr. Rowell said. “We think it's necessary to examine those in close detail to make sure any premiums flowing in are from identified sources,” he said.

Although the potential for money laundering through variable life and annuity products is there, “hopefully our comprehensive and rigorous licensing process as well as the constant reviews of the anti-money laundering processes by the insurance manager and ourselves have eliminated that possibility,” he said.

In 2001, Cayman was home to 20 credit life and 15 deferred variable annuity captives.

In addition to updating the Proceeds of Criminal Conduct Law, Mr. Rowell implemented changes to the insurance Law to give the insurance division of the Cayman Islands Monetary Authority more broad range enforcement power.

He said that the new power is especially critical in light of the explosive growth of SPCs on the island.

“It's very difficult to take action against an individual cell in a SPC without taking action against the company as a whole,” he said. “I need a way to shut down aspects of the company without shutting down the whole company.”

He noted that while he has not had to use the power, “there is going to be a time that we will have to call upon and take action against a particular cell,” he said.

The amendments were expected to be effective at the end of January.

LARGEST MANAGERS OF CAYMAN CAPTIVES

Ranked by gross premium volume in millions of dollars

Manager	2001	2000	2001	2000
Premium volume Captives				
Willis Management (Cayman) Ltd.	\$1,064.0	\$989.0	31	30
Marsh Management Services (Cayman) Ltd.	763.0	700.0	133	134
Aon Insurance Managers (Cayman) Ltd.	669.8	658.8	94	66
Mutual Risk Management (Cayman) Ltd. ¹	564.2	430.0	91	82
HSBC Financial Services (Cayman) Ltd.	240.0	240.0	83	81
Caledonian Insurance Services Ltd.	84.6	66.6	16	18
Chandler Insurance Management Ltd.	58.0	57.8	11	12
JLT Risk Solutions (Cayman) Ltd.	43.0	NA	5	NA
Crusader International Management (Cayman) Ltd.	32.0	33.0	4	4
Monkton Insurance Services Ltd.	17.4	17.8	6	6

¹ Includes Kensington Management Group Ltd.

Source: BI survey

Strong 2001 growth seen, with more in the pipeline

By **RODD ZOLKOS**

MONTPELIER, Vt.—As insurance buyers respond to a hardening market, Vermont posted its third-best year in terms of new captive formations in 2001 and may well be poised for a record year in 2002.

The state licensed 38 new captives last year. "Thirty-seven of those 38 were pure captives and one a sponsored captive put together by a title company," said Leonard D. Crouse, director of captive insurance in the Vermont Department of Banking, Insurance, Securities and Health Care Administration in Montpelier. "They're writing good, strong, traditional lines of insurance."

"And those pures, it's amazing, we didn't think the market was tapped out, but all those companies were big and leaders in their industries," said Derick A. White, Vermont's assistant director of captive insurance.

Among those forming captives in Vermont last year were Goldman Sachs Group Inc., Rotary International, The Kroger Co., Wendy's International Inc., the Pepsi Bottling Group Inc., Gannett Co. Inc. and Tishman Construction Corp.

With 12 captives dissolved in 2001, Vermont had a net gain of 26 captives last year, bringing the state's total to 387 active captives on Dec. 31. Together, those captives generated approximately \$5 billion in gross written premium in 2001, up from \$4.6 billion in 2000.

Both the premium volume and the number of captives are likely to increase significantly this year. By mid-January, the captive division already was reviewing five applications. "And these will all be licensed," Mr. White said. "They're good, strong companies." In contrast, "in each of the past two years, we've only licensed one in the first quarter," he said.

"First quarter of the year is usually pretty quiet, but we're doing proposals on four this month," said Jeffrey S. Kenneson, director of captive operations at SB&T Captive Management Co. in Burlington.

"I would see Vermont picking up 50 captives this year, because our pipeline list is longer than our current client list right now," said James R. Girardin, vp at Willis Management (Vermont) Ltd. in Burlington.

"The biggest challenge is sorting out the ones that don't make sense," said Guy Ragosta, managing director at Willis Management.

For now, the need to use captives to solve basic insurance program problems is pushing aside some other possible captive uses, such as funding employee benefits risks in captives.

"I don't think employee benefits will be at the forefront, because (parent companies are) focused on the other needs," said Julie Boucher, managing director at Marsh Management Services Inc. in Burlington. "But it's still out there and we still have companies who are interested."

In addition to traditional casualty coverages, parent companies are in-

creasingly looking to place property coverage in their captives.

"Property is probably going into every feasibility study we do right now," Mr. Girardin said. "We're not looking to create capacity with these deals; we're just looking to deal with higher retentions."

Peter A. Joy, managing director at Aon Insurance Managers (USA) Inc. in Burlington, said captive parents' interest in placing property coverage in captive programs is prompting Aon to work with Vermont regulators to develop a "fast-track" approach for doing so.



"We've sort of told (the department) of our intentions in this area and they've kind of worked with us to fast-track the approval process, as long as we maintain certain capital and retention ratios," he said.

The captive that was issued Ver-

mont's 500th captive license last year—Peter Turner Insurance Co., formed by the Roman Catholic Diocese of Brooklyn, N.Y., and managed by Willis—is typical of the trend toward using captives for basic property/casualty risks.

The diocese will use the captive for "basically all lines except workers comp," said Francis W. Galligan, chief financial officer for the diocese.

In choosing Vermont, "We wanted to stay within the United States, and we had a consultant that we involved in the study that said Ver-

mont had the best support structure in the United States," Mr. Galligan said.

Vermont's captive infrastructure and its regulatory environment remain two of the most-often cited reasons for choosing the state as a captive's home.

"New domiciles are great, they have their niches, but if you look at where's the talent and infrastructure and expertise, you're looking at Vermont and Bermuda and Cayman," said Gary Osborne, senior vp at USA Risk Group in Montpelier.

See **VERMONT**/page 18

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Vermont: Regulatory environment attracts captives

Continued from previous page

Vermont's "dedicated department is a huge plus," Mr. Osborne said. "Even the offshore domiciles don't have quite so identifiable a department."

"I think companies that are concerned with the perception of being in a well-regulated, tested domicile will come to Vermont, because they don't want to go somewhere else," said Roger D. Teese, president and chief executive officer at SB&T.

"It is the flexible regulatory environment, the perception that there is good value for money here. You don't have the more expensive cost loadings that some of the offshore domiciles face," said Aon's Mr. Joy. And, with Vermont's concentration of talent and Vermont's reputation for sound regulation, "it might be difficult to justify going to Cayman or Bermuda right now in some of the corporate boardrooms," he said.

The support the industry enjoys from the governor and the Legislature is another plus. Last year, the Vermont captive industry saw a remarkable demonstration of that support, when the Legislature passed and Gov. Howard Dean signed an unsolicited measure thanking the industry for its 20 years in Vermont. The measure provides a \$5,000 tax credit for all captives formed during 2001, 2002 and 2003 in the first year they are licensed.

"This is a legislature with revenue shortfalls on the horizon and they wanted to do something to thank an industry that's been good for them," said Daniel D. Towle, director of financial services in the Vermont Department of Economic Development's Agency of Commerce

& Community Development.

As a difficult medical malpractice liability market becomes even more so with The St. Paul Cos. Inc.'s announcement late last year that it would exit that line of business, many of this year's new formations in Vermont could be health care captives.

Health care groups are "going to be really big this year since St. Paul pulled out of the market," predicted Andrew Sargeant, president of Vermont Insurance Management Inc. in Montpelier. "There should be some real growth there."

"I would like to think they would come into Vermont provided they could find adequate capital and get reinsurance," Mr. Sargeant said. "I think people always said, once you mentioned health care, 'Let's go to Cayman.' Well, that's not the case now."

On another front, Banknorth Investment Management Group N.A., sees its plan for a sponsored captive in Vermont as a way to expand the company's relationships with existing money management clients and attract new clients. It also gives the company, which manages assets for 87 Vermont captives through its Burlington-based captive insurance division, a way to deepen its relationship with the Vermont domicile.

Banknorth expects clients to place workers compensation, medical malpractice liability and professional liability coverages in the sponsored captive's cells. "We expect that we should be able to grow the sponsored captive by three to five cells per year," said Tina M. Truax McCuin, vp and captive insurance adviser at Banknorth in Burlington.

Although captive use continues to grow, reinsurance and fronting issues are posing challenges in Vermont as they are elsewhere. "The availability of the aggregate stop loss is limited, fronting is difficult, reinsurance is becoming a problem," USA Risk Group's Mr. Osborne said.

The problems in the reinsurance market have driven some captives to change business plans, the captive division's Mr. Crouse said. "We've had a number of plan changes for our existing captives, looking for some gap coverage and what not," he said. "I think we have to be a little more on our toes looking at these plan changes."

With the condition of the traditional markets just one of the crucial issues facing the captive industry and Vermont, a key goal for the Vermont Captive Insurance Assn. is convening a critical issues forum in April.

The forum, aimed at identifying opportunities for the domicile and how to capitalize on them, will bring together 40 key industry stakeholders for a day and a half, said Lisa Ventriss, president of the Burlington-based VCIA. Most will be VCIA members, "but if we need a certain expertise we'll go out and get him or her," she said.

The first such gathering, in 1998, produced eight recommendations. "Out of those eight, seven were actually implemented," Ms. Ventriss said.

Another issue confronting Vermont in the year ahead is the impending departure of Gov. Dean, who, after 10 years in office, will not seek re-election this year. The Democratic governor has been a staunch supporter of his state's captive industry, and more than 300 of the state's 527 captive licenses have been issued during his tenure.

Gov. Dean is quick to acknowl-

edge that government support for the industry in Vermont cuts across party lines. The front-runners for the office all have voiced support for the industry, and the change in the governor's office shouldn't hurt the domicile.

"I don't think that my departure's going to have a negative effect," Gov. Dean said. "We have a terrific department, and in this area the Legislature gets it. They really get why the industry's important and what it is."

"The industry has had a great run with Gov. Dean," said Mr. Crouse. "Regardless of who takes his spot, it should be business as usual here in Vermont."

"The whole key is flexibility, and we're going to be able to do that whether I'm here or not," Gov. Dean said. "We don't consider our competition to be any other state. We consider our competition to be Bermuda, and we're catching up."

LARGEST MANAGERS OF VERMONT CAPTIVES

Ranked by gross premium volume in millions of dollars

Manager	Premium volume		Captives	
	2001	2000	2001	2000
Marsh Management Services Inc.	\$1,750.0	\$1,555.9	136	126
Aon Insurance Managers (USA) Inc. ¹	1,500.0	1,378.0	124	100
Willis Management (Vermont) Ltd.	350.0	205.3	27	20
Vermont Insurance Management Inc.	320.5	290.5	29	31
Yankee Captive Management Inc.	273.3	81.1	9	10
AIG Insurance Management Services Inc.	261.6	725.2	26	24
SB&T Captive Management Co.	130.0	148.5	15	13
Strategic Risk Solutions	45.0	29.0	13	10
Becher + Carlson Cos.	12.2	11.2	7	7

¹ Pro forma numbers for 2001 to reflect the merger of Aon Insurance Managers(USA) Inc. and SINER Management Services (Vermont) Inc.
Source: BI survey

Guernsey count increases, despite housecleaning

By EDWIN UNSWORTH

ST. PETER PORT, Guernsey—After losing five captives in the first quarter of 2001, Europe's largest captive domicile became uncharacteristically pessimistic about its prospects for the year.

A combination of circumstances led to a turnaround of this situation, though, enabling Guernsey to finish 2001 with a return to the steady growth it had seen during the 1990s. These developments contributed to the offshore domicile achieving a net gain of 11 captives for last year, bringing its total to 369.

Guernsey's Financial Services Commission decided early last year to drop 17 captives from the 2000 year-end total because they had been inactive for a number of years. That move led the commission to restate the domicile's 2000 total at 358, down from 375.

Key to the increase in captive activity was the revived interest in captives stemming from the hardening global insurance market and, in particular, the effects of the Sept. 11 terrorist attacks in the United States, according to Steve Butter-



worth, Guernsey's director of insurance.

Mr. Butterworth and the island's captive managers say they expect this pricing trend to continue and to spur even more interest in captives this year.

"Definitely, the pace of applications of the traditional captives heated up over January," Mr. Butterworth said. He said he was reluctant to provide a possible year-end total but was confident the end result would represent an increase.

Some of the interest stems from the reduction of capacity in the global reinsurance market following the events of Sept. 11. That reduction is prompting some companies to explore setting up captives to provide reinsurance capacity, he said.

Clive James, managing director of Aon Insurance Managers

(Guernsey) Ltd., the island's largest captive manager, also said he expects further growth this year.

"I think it will just be continued steady growth....We're seeing a general move toward captives taking on greater exposures and greater risks," as companies become increasingly concerned about capacity and terms in the traditional markets, he said.

In addition, Mr. James predicted that many captives that went dor-

mant during the soft market would be reactivated.

Last year, Aon added 38 captives to its roster in Guernsey. Those additions take its total to 165, although about a dozen of the added entities came from Aon's takeover of SINER (Guernsey) Ltd. in August (BI, Aug. 13, 2001).

Similarly, Marsh Management Services (Guernsey) Ltd., expects its growth to continue into 2002. John Copeland, the company's general

manager, said, "We've probably got more inquiries now than I can recall." Mr. Copeland said he attributes the increased interest entirely to the hardening insurance market and to the aftermath of Sept. 11.

Last year, Marsh increased its number of captives under management in Guernsey by four, to 67.

Among the key developments for Marsh in 2001 was the decision by

Continued on next page

LARGEST MANAGERS OF GUERNSEY CAPTIVES

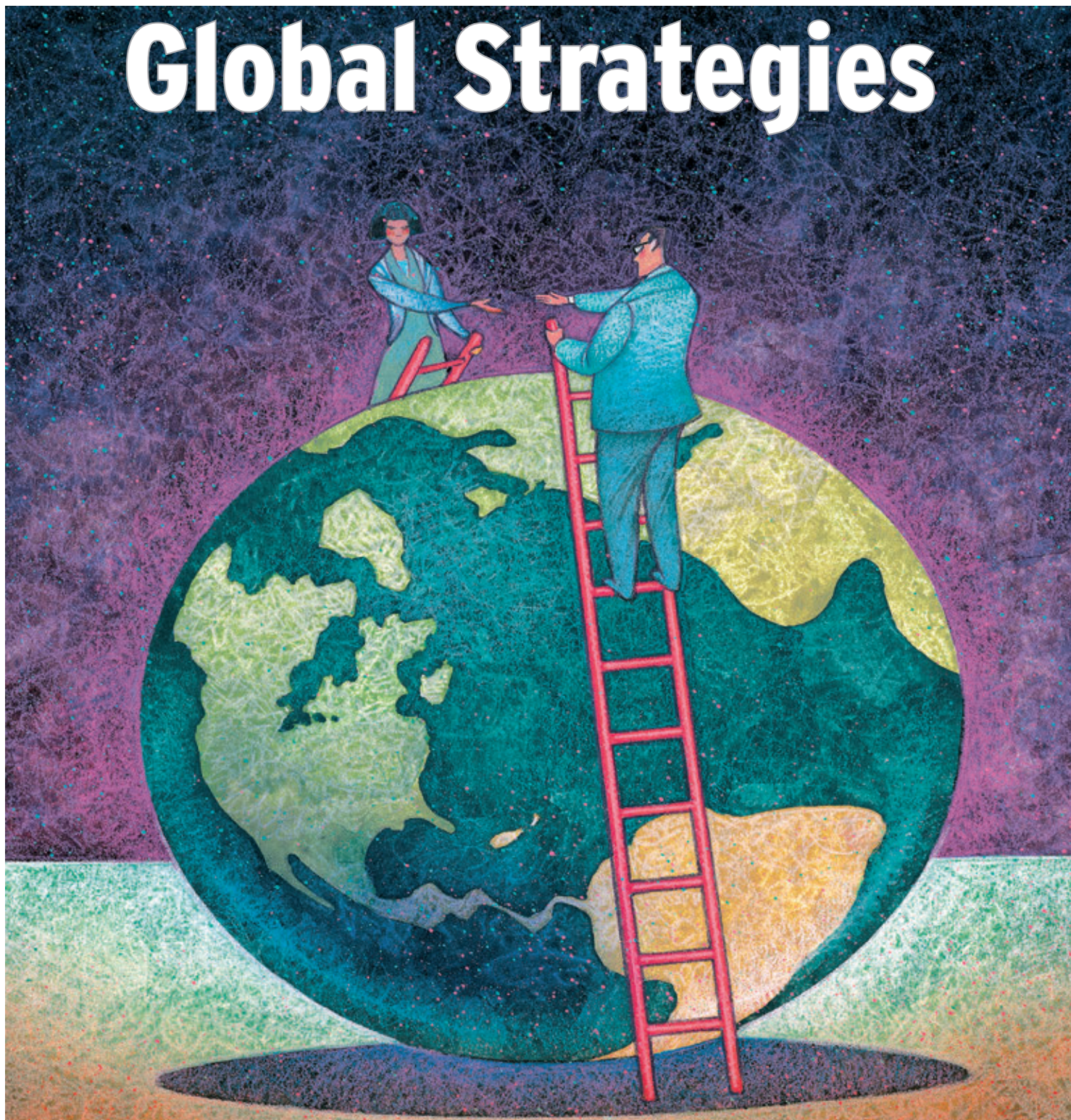
Ranked by gross premium volume in millions of dollars

Manager	Premium volume		Captives	
	2001	2000	2001	2000
Aon Insurance Managers (Guernsey) Ltd.	\$2,500.00	\$1,059.5	165	127
Willis Management (Guernsey) Ltd.	550.0	500.0	51	45
Heath Lambert Insurance Management (Guernsey) Ltd.	370.0	350.0	22	21
Marsh Management Services (Guernsey) Ltd.	300.0	271.0	67	63
JLT Risk Solutions (Guernsey) Ltd.	77.0	NA	7	NA
Mutual Risk Management (Guernsey) Ltd.	15.0	NA	12	NA

Source: BI survey

AGENT/BROKER TOPICS

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



Greeting the new Chinese opportunities

WTO membership means greater accessibility, predictability

By MEG FLETCHER

China's accession to the World Trade Organization is a landmark development for brokers, giving them greater access to a potentially enormous market and eliminating uncertainty about how they will be allowed to operate in the country.

China officially became a member of the WTO on Dec. 11, 2001, after almost 15 years of negotiations, according to the WTO, which had 144 members as of last month.

"As a result of the negotiations, China has agreed to undertake phased-in series of important commitments to open and

liberalize its regime in order to better integrate in the world economy and offer a more predictable environment for trade and foreign investment in accordance with WTO rules," the WTO said in a statement.

For example, those agreements gradually relax requirements relating to brokers' assets, their degree of foreign ownership and their geographic territory that will increase foreign brokers' ability to operate directly in China.

"You now know what the rules of the game are; you are not subject to government whims," said Coletta I. Kemper, vp-industry affairs for the Washington-based Council of Insurance Agents & Brokers. China's accession to the WTO "gives certainty, predictability and, most important—it gives

access on an equal footing," she said.

It is "a milestone" in the recognition of insurance brokerage in China, said Bernie Fung, the Hong Kong-based chairman and chief executive officer of Aon Asia, which handles nearly all Asian brokerage services outside of Japan for its Chicago-based parent company, Aon Corp.

China offers "very exciting" opportunities for business, said David Hokanson, president of Assurex Global Services, a global broker network that is a division of Assurex International in Columbus, Ohio. "China is clearly one of the frontiers of our industry."

Under the new trade agreement, foreign property/casualty brokers generally "will be able to offer their services related to

international marine, aviation and transport insurance and reinsurance and for insurance of large-scale commercial risks," said Nic De Maesschalck, director of the World Federation of Insurance Intermediaries in Brussels, Belgium.

Previously, brokerage activity by most foreign brokers was illegal in China. In an effort to gain a foothold in what they saw as a huge potential market, though, many brokerages had representative offices there and had correspondent relationships with Chinese brokers.

Some of those offices, which typically operated at a deficit, provided communication and research services, while

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■ Agents turn to E&S market / 18H

AGENT/BROKER TOPICS

China: WTO membership leads to broker opportunities

Continued from page 18A
also helping to educate local staff members, Mr. Hokanson said.
A few brokers, such as affiliates of Marsh Inc., did have licenses from Chinese authorities to provide risk management and insurance consulting services as well as reinsurance brokerage, said Yuan-Kee Lee, regional chief executive-North Asia for Marsh Inc.
Before China joined the WTO, a U.S. multinational corporation seeking insurance coverage for a plant in China might bring its

foreign broker into the country as a consultant, but the insurance coverage would have to be placed through a broker or insurer licensed by Chinese regulators. In addition, the foreign broker would have to leave China before it could be paid by the corporation, several sources said. However, that fee arrangement "is being questioned by the Chinese government for tax and other reasons," Ms. Lee said.
Under China's agreement with the WTO, brokers must meet several eligibility requirements to

conduct business in the country.
For example, foreign brokers must have assets of at least \$500 million initially, although the requirement will drop to \$200 million in a few years.
In addition, foreign ownership in a joint venture brokerage cannot exceed 50% initially. The cap will increase over time, reaching 100% after five years.
Finally, geographical restrictions limit foreign brokers to five cities initially—Dalian, Foshan, Guangzhou, Shanghai and

Shenzhen—but the potential service area will expand to a total of 10 cities after two years and becomes countrywide after three years.
The specifics of the requirements foreign brokers must meet are spelled out by the China Insurance Regulatory Commission in administrative regulations that went into effect at the beginning of this year.
Those regulations include, among other things, requirements about brokerage employees'

professional qualifications, operations and management as well as the various penalties for failure to comply with the regulations.
Most broker sources are pleased that Chinese regulatory authorities have issued such guidance. An unofficial 14-page English translation by the U.S.-China Business Council is the most accurate available, several sources say. The agreement should be reviewed carefully, though, because it was originally issued in Chinese and the translation may result in "gray areas," said Mr. Fung of Aon Asia.
China's effort to liberalize trade

China offers many advantages for insurance industry companies, including the growing purchasing power of its more than 1 billion residents.

"is a very exciting prospect of the insurance industry, but it's a long-term project," said Michael Faber, the London-based chairman of Willis China Ltd., part of Willis Group Holdings Ltd.
China offers many advantages as a developing market, including the growing purchasing power of its more than 1 billion residents and its steady growth in manufacturing capacity and private-sector investment.
In addition, China has a huge need for infrastructure development, as well as risk management expertise and consultation services, to help it cope with natural disasters such as earthquakes.
According to the WTO's figures for 2000, China was the seventh leading exporter and eighth-largest importer of merchandise trade, with exports at \$249.2 billion and imports at \$225.1 billion.
With regard to commercial services, China was the 12th leading exporter and the 10th-largest importer, with exports amounting to \$29.7 billion and imports amounting to \$34.8 billion.
To meet the demands of that large and growing market, brokers that are seeking to expand their business in China are now working to position themselves for the future.
"Some of the brokers that have not had much history in China have been conducting market research to see if they need to pursue the market in the medium term," Marsh's Ms. Lee said.
"Among brokers with a longer history in China, most already have representative offices in China and are either currently pursuing a joint venture license with a Chinese partner, looking for a Chinese partner, or assessing if they want to wait for a few years to obtain a fully owned license," she said.



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AGENT/BROKER TOPICS

Willis working to compete on a worldwide scale

Broker has built global operation almost from scratch

By SALLY ROBERTS

Much to the chagrin of the world's third-largest broker, when one thinks of a global insurance broker, Marsh & McLennan Cos. Inc. and Aon Corp. typically come to mind first.

And why wouldn't they? Marsh

and Aon spent much of the 1990s building up their global capabilities through a number of worldwide acquisitions. By accounting for more than 70% of the total brokerage revenue generated by the world's 10 largest brokers, Marsh and Aon rightfully became known as "global megabrokers."

But while the two brokerage behemoths were busy integrating their global operations, London-



'We looked at countries that we wanted to operate in, and we picked one of the top three brokers in that country' to set up the network.

*Claude F. Gallelo
Willis Group Holdings Ltd.*

based Willis Group Holdings Ltd. was quietly building up its own global network to compete with its larger rivals.

Today, Willis is located in 104 countries around the world, with an equity stake in the operations in 74 of those countries. In the other 30 countries, Willis has correspondent relationships with local brokers.

"In my opinion, there are not two global brokers, there are three," said Claude F. Gallelo, managing director-international for Willis in New York. "Our new business wins are a clear demonstration of that," he said. "When a major Fortune 100 pharmaceutical company moves from the No. 1 broker to the No. 3 broker, and it is located in 52 countries around the world, I think that is a degree of confidence it is showing that we are a global broker," Mr. Gallelo said.

A product of the 1990 merger of New York-based Corroon & Black Corp. and London-based Willis Faber Group P.L.C., Willis had to build its global network almost from scratch. Although Willis Faber had developed global reinsurance relationships, it relied on the UNISON brokerage network to help place retail business worldwide. Willis was forced to withdraw from the network, however, after the Corroon & Black merger.

"The important thing is, Willis never had any major consolidation of networks," Mr. Gallelo said. "We looked at countries that we wanted to operate in, and we picked one of the top three brokers in that country" to set up the network, he said.

With the exception of a few operations that it built on its own, Willis has relied on purchasing equity ownership in brokers, with the option of eventually purchasing 100% ownership.

"We really wanted, on the whole, to invest in smaller companies with the management in place as shareholders, so we could grow the business together", said Sarah Turvill, chief executive officer of Willis International Holdings in London.

While granting that the amount

See WILLIS/page 18F

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AGENT/BROKER TOPICS

Willis: Building a global brokerage

Continued from page 18D
of capital needed to make several full acquisitions was a consideration, Ms. Turvill said that Willis did want to be in partnership with the existing management. And, Willis thought that such an approach would differentiate the company, she said.

With offices already established in Australia and New Zealand, Willis first began building its global network through a series of acquisitions in Europe. In the early 1990s, Willis established equity ownership footholds in Spain, Italy, Germany, the Netherlands, Sweden and Denmark, Ms. Turvill said. The broker also set up its own operation in France.

"Now, we have a clear majority in all those countries, except in France," where Willis in 1997 bought a 33.4% stake in France's largest broker, Gras Savoye S.A., she said. Willis has the option to purchase a majority stake in the broker in 2009, she noted.

In 1998, Willis bought a 30% stake in Jaspers Wuppesahl Industrie Assekuranz, the third-largest broker in Germany, and recently increased that ownership stake to 66.6%.

Willis also has increased its ownership in its Italian operation, Willis Italia, to 66.6%, Ms. Turvill

In Latin America 'we might make some small fold-in acquisitions to give us either geographical spread or give us some skills we don't currently have.'

Sarah Turvill
Willis International Holdings

said. As part of that deal, Willis cut ties with Gruppis Ital Brokers S.p.A, which had been combined with its existing Italian brokerage operation set up in 1991. "We had a culture clash," she said, noting that this is the only difficulty Willis has had in its expanding global network. "Everything else has been extremely satisfactory," she said.

Willis began the second phase of its global expansion in the 1990s in the Asia-Pacific region.

Willis Faber had small operations throughout the region that concentrated on reinsurance, Ms. Turvill said, and the broker "extended their reach to cover retail business as well." In addition to expanding into Hong Kong and Singapore, Willis set up new operations in Japan, Taiwan and South Korea, and it bought a 50%

stake in a broker in Indonesia. Then, in the late 1990s, Willis turned its attention to Latin America, Ms. Turvill said. The broker, which already had an office in Brazil, purchased 51% stakes in brokers in Mexico, Venezuela and Columbia. It also purchased a 40% stake in an Argentine broker and started up its own operation in Chile, she said.

Currently, Willis is working on building on its existing operations in Latin America and in continental Europe, Ms. Turvill said. In addition, "we might make some small fold-in acquisitions to give us either geographical spread or give us some skills we don't currently have," she said.

Willis' main focus over next year, however, will be on strengthening its capabilities and developing offices in the Asia-Pacific region, where the broker's investment to date has been fairly limited, Ms. Turvill said.

And in the near future, Ms. Turvill said that she expects Willis will have 100% ownership in all of its global network operations.

In part due to Willis' recent partial initial public offering, "we are much keener that we should have 100%" of the network companies, Ms. Turvill said. "That's what we will be working toward."

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AGENT/BROKER TOPICS

Hard market making agents turn to E&S industry

By SALLY ROBERTS

Although independent agents may have looked forward to the arrival of the hard market, many are not prepared for the difficulties that accompany such a change.

A reduction in available coverage is one of the main challenges independent agents are facing in the current hard market, as many insurers have become much more selective in regard to the business they will underwrite. As a result, many agents are turning to wholesalers to help place business in the excess and surplus lines market.

"Most agents—small all the way up to very large—are really making heavy use of the excess and surplus lines markets," said Chris Burand, president of agency consulting firm Burand & Associates L.L.C. in Pueblo, Colo. "A vast majority of the business going there can't be placed through their own companies."

"We've all seen a large increase in the number of submissions and premium volume," said Milton Johnston of Milton Johnston & Co., a Houston-based managing general agency. "We are signing up more agents, who are sending us a wider variety of risks because domestic carriers are no longer writing those lines of business," he said.

In 2001, "we had a 50% increase in business," said Michael Maharaj, vp and branch manager of the Phoenix office of managing general agency Burns & Wilcox Ltd. For the month of January, "I'm at 30% above last year and will probably

hit 50%," he said.

Although wholesalers say that business is booming, they note that many retail agents, particularly those who have never worked in a hard market, often don't know how to properly access the nonadmitted market.

Wholesalers and consultants say that those retail agents that don't do their homework on the E&S market will find current the conditions especially challenging. In particular, they say agents need to make sure that they provide complete submissions, and they should resist the urge to shop around their risks to too many wholesalers.

"Older agents that have lived through (a hard market) before are having a wonderful time," Mr. Maharaj said. "They are writing three times as much business as the six- to seven-year veteran agent is," because those less experienced agents have never operated in a hard market, he said. "Young agents don't know what to do."

Mr. Burand pointed out, for instance, that "because there are so many new people in the industry who have not experienced a hard market before, they do not understand the need to do due diligence on managing general agents."

Some newer agents "don't understand that MGAs have, in the past, had problems sometimes staying in business, leaving agents high and dry in certain situations," Mr. Burand said. He noted that retail agents also should carefully examine the surplus lines insurers they use.

In addition, wholesalers advise agents to make sure that their submissions are complete, with all

the necessary underwriting information included.

Mr. Maharaj said that about 50% of the submissions he receives lack some important piece of underwriting information, which prevents Burns & Wilcox from being able to get a quote on the risk.

Agencies that submit good business and provide complete information will not end up on the bottom of the pile of underwriting submissions.

*Chris Burand
Burand & Associates L.L.C.*

"If I get a complete submission, I can turn it around in 24 hours," he said. But if the submission is missing such basic information as the prior insurer, the risk's loss history, the policyholder's date of birth or a vehicle's license plate numbers, "we can't even begin to quote it," he said.

He noted that this was not always the case. During the soft market, if agents omitted certain information, wholesalers would make assumptions and get quotes, he said. But in the current market, "we can no longer make assumptions," Mr. Maharaj said.

Wholesalers also say retail agents should limit the number of wholesalers they contact in shopping the business.

"Don't go to seven or eight wholesalers," said Len LoVullo of LoVullo Associates Inc., a Buffalo, N.Y.-based wholesaler. "Instead,

concentrate on two to three wholesalers and develop a relationship with them," he advised.

Mr. Maharaj said that consideration is especially important in light of the number of submissions wholesalers currently are processing.

"We average about 50 to 60 submissions a day," he said. "I can't remember a week where we had less than 100 submissions."

Consequently, any agent that is considered "a notorious shopper" will go to the end of the submission pile, he said.

"We had one agent who sent us 123 applications in the last six months. We quoted 70 of those and bound two," he said, which wasted a lot of time.

"We're more inclined to work with an agent that solely works for us or is at least closer to us," he said.

At least one state agent association is trying to help agents adjust to the hard market.

The Independent Insurance Agent Assn. of New York established a hard market task force to assist its roughly 1,800 members, said Pat Moore, a partner at Antalek & Moore Insurance Agency L.L.C. in Beacon, N.Y.

That task force produced a "hard market tool kit" that the association hopes to distribute to all of its members in February, said Mr. Moore, who serves as president of the Syracuse-based organization.

In addition to providing pointers on how to place business in the excess and surplus lines market, the tool kit also offers such suggestions as:

- Don't ask for favors from underwriters on marginal accounts.

- Determine which accounts are worth the needed time and effort.

- Start the renewal process 120 days in advance.

- Prioritize renewals so that problem renewals are worked on first.

- Pay attention to insurers' quotes and be careful to represent them accurately to customers.

- Educate customers about current market situations and demonstrate to them that the agent is looking for the best price for the best coverage available.

- Be prepared to say that the agent cannot help the client.

- Look at nontraditional approaches, such as higher-deductible programs, self-insurance, captives and other risk financing techniques.

- Build a reputation as a loyal agency.

"An agency that submits good business, asks for minimum underwriting exceptions, provides the complete underwriting information and gets to know" its insurance partners will not end up on the bottom of the pile of underwriting submissions, Mr. Moore said.

And, as Mr. Burand pointed out, those agents that are successful in placing business through a surplus lines insurer may be pleasantly surprised in the commission rate they share with the wholesaler.

"A lot of guys that have been through a hard market before don't realize now that E&S carriers are paying, in some cases, pretty good commissions," he said.

As a result, "the pain is not as bad" for retail agents. "When you figure in price hikes, the net dollar amount is the same or better than last year," he said.

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A/BT briefs

ChoicePoint stops selling 'shopping dates'

ALEXANDRIA, Va.—In a letter sent last month to the Independent Insurance Agents of America Inc., ChoicePoint Inc. said that it would cease selling lists of policyholder "shopping dates."

The Alpharetta, Ga.-based provider of business data was creating "shopping dates" from insurance quotes and underwriting transactions submitted to the firm

by or on behalf of independent agents and brokers.

The IIAA said the practice infringed on agents' proprietary rights. "We believed ChoicePoint's practice was encroaching on the rights of independent agents and brokers to own and control their proprietary data, which includes shopping or expirations dates," Debra L. Perkins, IIAA executive vp and general counsel, said in a statement. "Their actions were tantamount to selling an agency's client database to other agencies and insurance companies."

In the letter, ChoicePoint General Counsel J. Michael de Janes, said that ChoicePoint did not believe that the disclosure of shopping dates infringed on agents' rights, but it would immediately "discontinue the creation of shopping dates" and "purge from its database historical shopping dates associated with underwriting transactions...originating from independent insurance agent product orders."

Partnerships to develop data standards

PEARL RIVER, N.Y.—The Assn. for Cooperative Operations

Research and Development, or ACORD, has formed a partnership with New York-based financial services company The Depository Trust & Clearing Corp.

The partnership aims to allow distributors to market, sell and process insurance products electronically as easily and quickly as they can other financial instruments, such as stocks, bonds and mutual funds.

With the agreement, DTCC and ACORD will develop a set of common data standards that all sectors of the annuity and life insurance industry can use to exchange product and sale information and to provide for monetary settlement of transactions.

Separately, ACORD said it has agreed to work with the National Assn. for Variable Annuities to develop data standards for the annuity industry that use extensible markup language, or XML.

Under the partnership agreement, the National Assn. for Variable Annuities will coordinate and develop requirements and priorities for annuity standards and make the information available to ACORD.

Agent/Broker Topics

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its client, BP P.L.C., an international energy company noted for its self-insurance program, to consolidate its captive business into its Guernsey captive, Jupiter Insurance Ltd. BP has nearly completed the merger of its half-dozen captives from other domiciles into Jupiter, where all new business also is being underwritten, Mr. Copeland said. One reason BP chose Jupiter to serve as the consolidated entity is that Guernsey's amalgamation legislation allows for the merging of the business of related captives without requiring captives to be shut down and restarted, he said.

The third-largest of Guernsey's captive managers, Willis Management (Guernsey) Ltd., last year increased its captive numbers by six, to 51.

Like his colleagues at other captive managers, Malcolm Cutts-Watson, managing director of Willis Management (Guernsey) Ltd., is confident the number of Willis' captives will continue to grow this year.

"We've put on one captive already....We are seeing steady growth of the rent-a-captive, in terms of taking on new business. Within Guernsey, I would think that we will put on at least 10" captives, Mr. Cutts-Watson said.

The combined premium volume of Guernsey's 369 captives won't be known for a few months, but Mr. Butterworth estimates it will rise to around £2.25 billion (\$3.28 billion) from £2.03 billion (\$3.03 billion) at the end of 2000. The captives' combined assets will probably increase to around £11.00 billion (\$16.02 billion) from £9.63 billion (\$14.38 billion), he said.

A continuing trend last year in Guernsey, a self-governing crown dependency of the United Kingdom, was strong interest in protected cell companies. Guernsey pioneered the PCC concept in 1997, and several domiciles have since embraced it, allowing PCCs to form. In principle, a PCC operates like a rent-a-captive, with a core cell around which any number of subsidiary cells operate. Members of a PCC contribute to the capital of the core cell, but the individual cells operate independently of one another, and their assets are protected from any debts incurred by other cells.

Mr. Copeland said Marsh, which at the end of last year managed two PCCs, has added one more so far this year and is close to adding a fourth. He said he is seeing "a huge amount of interest in PCCs."

Of Guernsey's 369 captives at last year's end, 44 were PCCs, with a combined total of 176 cells. This represents an increase of 16 PCCs and 40 cells over the totals at the end of 2000.

Other trends include a further move away from the United Kingdom as a source of business, resulting in a wider geographic spread of captive parents. But United Kingdom parents still dominate, even though their numbers have fallen to around 63% from some 75% a few years ago.

More interest in PCCs is coming from continental Europe, Mr. Butterworth said. He acknowledges that development likely relates to

the tax advantages of maintaining a captive in Guernsey.

While noting that PCC business "was probably our biggest growth area," Mr. James of Aon said that another prevalent trend has been for captives to take on bigger exposures. He attributed this trend to the growing "appetite for risk" of many larger British companies, which has stemmed largely from the hardening insurance market.

Aon operates one of the largest PCCs, WhiteRock Insurance Co. PCC Ltd. Mr. James said the benefit for WhiteRock, which has 35 cells, is that it can conduct a range of completely different types of business for a wide variety of clients in Europe. Currently, this business

comprises traditional captive risks, securitization, reinsurance deals, extended warranty, product defect, natural hazards and workers compensation.

Mr. Cutts-Watson said that he has noticed a growing interest in using of PCCs as special-purpose vehicles to transform risk into other formats.

In addition, Mr. Cutts-Watson said he has noted increasing interest in captives among trade associations and affinity groups of similar companies, although he acknowledged that actual startups may be hindered by antitrust and competition concerns. Nevertheless, with insurance terms tightening and some European companies talking

of starting up insurance pools for terrorism risks, Mr. Cutts-Watson predicted that, "within 2002, we will see a number of organizations formed."

Marsh's Mr. Copeland also noted that interest is growing in "industry-specific" PCCs among companies operating in those sectors in which rates are increasing and coverage is difficult to obtain, such as automobile fleet coverage.

Starting on Jan. 1, Guernsey increased its application and annual fees for offshore companies by around 36%, to £3,000 (\$4,368). But Mr. Butterworth sees this as no deterrent to growth.

On the contrary, he said, Guernsey remains very competitive.

Furthermore, Mr. Butterworth said, competing domiciles will almost certainly be increasing their fees, too.

Nor is Mr. Butterworth worried about Guernsey being one of several domiciles being investigated by the Paris-based Organization for Economic Cooperation and Development. At the end of last year, Guernsey was one of eight captive domiciles that remained on the OECD's preliminary list of possible tax havens.

Mr. Butterworth called the issue "more political than regulatory." He said he is confident that when the OECD eventually publishes its list of tax havens, Guernsey will not be included.



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BVI revamps its regulatory structures, reviews laws

By DOUGLAS McLEOD

TORTOLA, British Virgin Islands—The British Virgin Islands again saw steady growth in captives in 2001, and the government has taken steps to make the domicile even more attractive to captive parents.

The BVI government last month completed a reorganization of its regulatory structure, creating an independent authority to oversee insurance and other financial services.

The new Financial Services Commission will operate independently of the islands' offshore financial services marketing arm. The two had formerly been combined in a single unit, and their separation follows one of the recommendations made by accountant KPMG L.L.P. in a review of financial services regulation in Caribbean domiciles.

Meanwhile, the BVI government

is reviewing other changes in its laws, including provisions that would permit the formation of protected cell companies, said William McCullough, the domicile's insurance supervisor. A PCC operates like a rent-a-captive, with a core cell around which any number of subsidiary cells operate. Because the individual cells operate independently of one another, their assets are protected from any debts incurred by other cells.

A legislative revision may also create a new classification system for BVI insurers, separating domestic insurance companies from captive insurers and imposing different audit, financial reporting and other regulatory requirements on each, Mr. McCullough said.

Captives may be further divided under the system into single-parent, multiple-owner and protected cell insurers, he said.



The revisions to BVI statutes could be adopted during the first quarter of this year, he said.

BVI continued to see steady growth in its captive insurance business last year, with 33 new licenses issued and nine canceled, bringing the total of registered insurers to 262 at year end, according to Mr. McCullough. The domicile had finished 2000 with 238 licensees. The totals include about 60 credit life insurers, which must meet the same regulatory requirements as captives.

A large part—though not the ma-

jority—of new captive development continues to come from small U.S. companies forming insurers under section 501(c)(15) of the Internal Revenue Code.

This section exempts qualifying insurers from U.S. tax on premium income and passive investment income on reserves and surplus, including short-term and long-term capital gains. The IRS imposes tax either at ordinary income tax rates if the captive distributes funds to its owner or at long-term capital gains rates if the captive is shut down or sold.

To qualify, captives must earn less than \$350,000 a year in premiums, must be formed for insurance rather than investment purposes and must be capitalized and maintain reserves at actuarially reasonable levels.

Between 30% and 40% of BVI's new business last year consisted of

501(c)(15) companies, a smaller percentage of new formations than in recent years, according to Mr. McCullough. Last year's mix of new business, which included larger single parent insurers, was "much better balanced," he said.

Like other domiciles, BVI expects to benefit from the rapidly hardening property/casualty market as more companies look for alternatives to commercial insurance or ways to fill gaps in their insurance programs.

Captives formed for workers compensation programs show particular promise, especially where employers want to use captives to fund the rising deductibles insurers are insisting on as the workers comp market tightens, he said.

"There should be a greater movement to captives this year...for reinsurance of larger deductibles," Mr. McCullough observed.

Duchy's reforms attract new interest from Europe

By CAROLYN ALDRED

LUXEMBOURG—Although the total number of captives in Luxembourg increased by just two last year, to 233, managers now are seeing an increase in the number of inquiries from European companies.

Interest in captive formation increased during the last few months of 2001 and continues to grow, said Tony Nordblad, managing director of Aon Insurance Managers (Luxembourg) S.A.

The hardening market will encourage additional captive formations by European companies, predicted Mr. Nordblad, who formerly worked for SINSE (Europe) S.A. before Aon Corp. acquired it last year.

"We are seeing a lot of interest from all over Europe because of the hard market," he said, predicting that smaller companies than in the past also likely will turn to captives as a way of helping to get through the hard market.

"The change in the market makes it much more attractive for corporations to set up captives. Premium

rates are going up, and insurers are demanding substantial retentions," agreed captive manager Claude Weber, senior vp of Marsh Management Services (Luxembourg) S.A. "We are seeing a lot of interest from all over Europe," he said, predicting that Marsh expects "five to 10 new captives" during 2002.

Meanwhile, existing captives already are writing more business due to the hardening rates in the commercial market, managers note.

"Property, in particular, is much more attractive to write in the captives, and that is where we're seeing substantially more activity," said Mr. Weber.

Inquiries are coming from parent companies located throughout the European Union, particularly Belgium, France, Spain and Portugal, he said.

Mr. Weber said he also is seeing more interest from German companies. German companies traditionally have been more reluctant to establish captives, partly because of concerns about the position the German tax authorities would take.



Changes introduced last year to Luxembourg's captive regulations have made the domicile's methods of calculating and taxing captives' catastrophe reserves more transparent and technically sophisticated, easing its relationship with regulators elsewhere.

Most Luxembourg captives are reinsurance captives, because direct captives must comply with more stringent regulations.

The domicile's 1991 Insurance Law regulations were amended in December and the changes took effect Jan. 1, 2002, said Luxembourg Insurance Commissioner Victor Rod.

The new regulations, which apply more transparent and more sophisticated technical procedures to

the tax treatment of captives' catastrophe reserves, were developed in close cooperation with the market and in view of concerns expressed in the past by European Union and French tax authorities, said Mr. Rod.

As a result of the changes, Luxembourg already has been removed from an E.U. list of "tax havens," and "we hope it will ease the situation with the French authorities," Mr. Rod said.

The French tax authorities have in the past taken several companies with Luxembourg captives to court, which has stifled growth in the domicile from France (*BI*, April 30, 2001). However, that is now changing and captive managers are reporting renewed interest from the French market.

"We had a new captive with a French parent licensed last year—one of the first French captives for some time," said Mr. Nordblad, who said he expects to see more French companies establish captives in Luxembourg.

The new regulations are "more

transparent and provide more technical support to the way that reserves are computed," said Marsh's Mr. Weber. He noted that the new method of calculating the "equalization reserve" is similar to that adopted in Germany, giving the domicile more credibility with European tax authorities.

Although the changes for assessing catastrophe reserves will mean additional work initially for captive managers, it will be "good for the market in the long run," said Mr. Nordblad. He added that Luxembourg likely will remain one of the most popular captive domiciles for European companies, particularly those captives writing long-term risks.

Another change that likely will be "important for developing additional business" in the domicile is the reduction in the commercial taxation rate to 30.38% from 37.7%, said Mr. Weber.

Since the beginning of this year, the Minister of Finance reduced all corporate and business tax rates, Mr. Rod confirmed.

Barbados tax issues holding back expansion

By DOUGLAS McLEOD

BRIDGETOWN, Barbados—Two tax-related issues continued to hold back captive growth in Barbados last year, though captive managers are hopeful both will be resolved this year.

Barbados added only seven new exempt insurance companies in 2001, bringing the total registered to 387, according to figures provided by the island's supervisor of insurance. Of these, only 180 were actively underwriting last year, compared with 199 at year-end 2000 and continuing a downward trend in recent years in the number of active exempt insurers.

In addition, *Business Insurance* es-



timates that roughly 40% of the exempt companies are commercial insurers and reinsurers formed to write third-party business. This would leave 232 captive insurers at year-end, up four from 228 at the end of 2000.

Only a handful of the new insurers formed last year were set up by parent companies in the United

See **BARBADOS**/page 21

LARGEST MANAGERS OF BARBADOS CAPTIVES

Ranked by gross premium volume in millions of dollars

Manager	Premium volume		Captives	
	2001	2000	2001	2000
MIMS International (Barbados) Ltd.	\$573.3	\$559.0	22	21
Towner Risk Management Ltd.	290.0	256.0	19	18
Marsh Management Services (Barbados) Ltd.	285.0	271.4	23	27
American International Management Co. (Barbados) Ltd.	239.0	120.0	4	4
Mutual Risk Management (Barbados) Ltd. ¹	208.6	207.3	12	13
Aon Insurance Managers (Barbados) Ltd.	169.0	160.2	34	33

¹Includes IAS (Barbados) Ltd.
Source: BI survey

Barbados: Tax concerns holding back expansion

Continued from page 20

States and Canada, traditionally Barbados' main sources of business. Of the seven new companies, two had U.S. parents and only one Canadian, while the remaining four came from other countries.

The twin tax issues that have hovered over the domicile for the last few years are largely responsible for the slowdown in U.S. and Canadian business, managers say.

One issue is uncertainty over the tax treatment of Canadian-owned captives under the Canada-Barbados tax treaty.

Because Canada requires captives to be Barbados "residents" to qualify for certain tax benefits, Barbados allows companies to opt to be licensed as domestic Barbados insurers rather than exempt insurers. While domestic insurers are subject to a 40% income tax rate, Canadian-owned insurers could use foreign currency tax credits that would reduce this rate to the low single digits.

It is unclear whether Canadian

tax authorities will approve of this option, though, and the uncertainty has hampered Canadian captive growth.

On another front, Barbados is one of eight captive domiciles still on the Organization for Economic Cooperation and Development's list of tax havens, and ongoing discussions with the OECD about the domicile's status have also held back expansion, managers say.

The OECD has recently whittled its demands on domiciles down to requiring financial transparency and information sharing, though, and captive managers are hopeful that Barbados will take steps to get itself removed from the list this year.

While talks with Canada are said to be progressing, resolution of the Canadian tax issue remains up in the air. Managers have heard about a possible resolution "for so long—but it remains unsettled—that you have to be a little skeptical," said Winston Hampden, managing director of Aon Insurance Managers (Bar-

bados) Ltd.

"If we're lucky, both of these issues could go away this year," he said.

Rising demand for captives in a hardening commercial insurance market should bring new business to Barbados this year but the growth will depend on the resolution of the Canadian tax and OECD problems, some say.

"I think we will get a piece of the pie irrespective of those two issues, but resolution of the issues will increase our piece of the pie," Mr. Hampden observed.

Meanwhile, the Barbados government has laid the groundwork for possible new sources of insurance-sector business. Last August, the government enacted legislation allowing for the formation of protected cell companies, entities that have been used in risk securitization deals.

A PCC acts like a rent-a-captive, with a core cell around which subsidiary cells operate. Members of a PCC contribute to the capital of the

core cell, but the individual cells operate independently of one another, and their assets are protected from debts incurred by other cells.

In addition, the government revised its Exempt Insurance Act of 1983 to allow insurers licensed in other jurisdictions to form licensed

branch offices in Barbados without actually forming new Barbados corporations to conduct business. Thus, an insurer domiciled in Bermuda or the Cayman Islands could obtain a license to open a Barbados branch without forming and licensing a Barbados company.

Strong direct writing model attracts European captives

By SARAH VEYSEY

DUBLIN, Ireland—Despite a slight dip in the number of captives registered there, Dublin's ability to provide direct-writing captives and fronting facilities, coupled with hardening insurance rates and Ireland's membership of the European Union, is prompting increased interest in the domicile, captive experts say.

At the end of 2001, Dublin had 181 registered captives, said nonlife insurance regulator Frank Brosnan, compared with 183 at year-end 2000. Of the 181 captives registered, 48 are direct-writing captives and 133 are reinsurance captives, Mr. Brosnan said.

Captive experts in Dublin are confident that the domicile can take advantage of rising rates in the traditional insurance market and attract more captives this year.

"We are already seeing a huge surge in the level of inquiries, in particular from U.S. companies seeking to establish direct-writing captives in Europe," said Catherine



Graham, international insurance representative for the Industrial Development Agency of Ireland.

Insurers' reluctance to front policies internationally and Dublin's well-developed direct-writing model are helping draw interest in the domicile, she said.

Captive managers agree that the domicile's ability and willingness to host direct-writing companies is making it attractive to captive sponsors.

Companies "are very much looking for fronting facilities, direct-writing captives," said Tim Hennessy, senior vp at Marsh Management Services (Dublin) Ltd. "I think that some of the traditional markets have moved away from fronting for captives or are looking to increase

their pricing for it. The Dublin direct-writing captive now, for a lot of companies, is a lot more feasible," he said.

Dublin's position within the Eurozone—the group of 11 countries now using the euro—is another reason it is seeing increasing interest from captive parents, managers say.

"I think one of the major advantages is that companies that are established here can write directly, using a passport facility, to any of the other European Union countries, thereby avoiding fronting charges," said Tim Byrne, managing director at Willis Management (Dublin) Ltd.

Regulation of captives is much more flexible in Dublin than in Luxembourg, the only other captive domicile to fall within the Eurozone, claimed Alain Dufraisie, director of client services at Aon Insurance Managers (Dublin) Ltd. "And also, unlike Luxembourg, we have direct-writing captives. It really is a distinct advantage and Dublin really benefits from that."

The ability to write risks directly

See DUBLIN/next page

LARGEST MANAGERS OF DUBLIN CAPTIVES

Ranked by gross premiums volume in millions of dollars

Manager	Premium volume		Captives	
	2001	2000	2001	2000
Aon Insurance Managers (Dublin) Ltd.	\$700.0	\$618.0	65	39
Marsh Management Services (Dublin) Ltd.	353.0	308.1	63	51
FBD International Captive Management Ltd.	253.0	254.0	4	4
Eurco Ltd.	226.9	119.9	4	6
Willis Management (Dublin) Ltd.	90.0	NA	16	15

1 Pro forma numbers for 2001 to reflect the merger of Aon Insurance Managers (Dublin) Ltd. and SINER (Ireland) Ltd.
Source: BI survey

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Dublin: Direct-writing captives key to Irish growth

Continued from previous page

through Dublin-based captives may be even more attractive to companies now that rates have hardened in the commercial market, observers note.

Captive managers say they have been talking both to U.S. and European clients. Mr. Dufraisse said some U.S.-based captive sponsors were expressing interest in using their Dublin captives as a base for American and European programs.

"Traditionally, (U.S. parents) used their Dublin-based captives to cover their European exposures,

and, generally, they also had a captive in Vermont or Bermuda for their North American risks," Mr. Dufraisse said. "But it seems that there is a new trend now for U.S. companies having one captive used to write both European and North American exposures."

Continental European companies are also showing increased interest in Dublin, Mr. Hennessy said. "There is a lot of interest from France and Germany, which historically have been very difficult countries to target from the captive perspective in Ireland," he said. "Typi-

cally, the Germans were reluctant to set up captives. And, typically, the French went to Luxembourg, whereas now they seem to be getting over the tax issues and are happy with Dublin as a domicile for their captives."

Perhaps the most interest is coming from companies seeking to extend use of their existing captives, Willis' Mr. Byrne said. Existing clients were "looking to step up a gear with their captive programs" in the post-Sept. 11 marketplace.

Most captive parents are looking to write traditional lines of business

through their captives, managers said. "They want to address their immediate needs, and of course that is property, liability—traditional insurance," said Mr. Dufraisse.

Ms. Graham noted that parents also are showing increased interest in Dublin as a base for reinsurance captives.

Mr. Brosnan, the nonlife insurance supervisor, noted that the domicile has introduced new notification procedures for reinsurance captives whereby regulators must be informed of directors of proposed companies.

The minimum capitalization for reinsurance captives also has risen to 126,973 euros (\$113,222) from 100,000 punts, said Ms. Graham.

For direct-writing captives, the Department of Enterprise Trade and Employment has introduced a new regulation requiring all captives to have a compliance officer, said Mr. Brosnan.

The transfer of regulatory responsibility from the DETE to the newly established Irish Financial Services Regulatory Authority, originally slated for Jan. 1, will take place later in the year, he said.

Manx captive industry upbeat about its prospects

By CAROLYN ALDRED

DOUGLAS, Isle of Man—Although the Isle of Man may be better known for its annual motorcycle racing championships than its insurance facilities, captive managers are revving up for an acceleration in captive growth on the island.

Having persuaded the island's regulators to explore legislation permitting the creation of protected cell captives and with insurance prices hardening, captive managers today are more optimistic about growth prospects than they have been for years.

"We had a really good year last year and have seen some tremendous growth in the last few months," said Jim Boyd, executive chairman of Aon Insurance Managers (Isle of Man) Ltd., referring both to interest in formations and to existing captives writing more business.

"This is a real change from the past few years of soft market conditions," said Mr. Boyd, who oversees Aon's captive managers throughout Europe.

Corporations are facing a "new environment of higher insurance premiums, higher retentions, lower limits and less choice," he said.

Mr. Boyd expects all of Aon's captive managers in European domiciles, including the Isle of Man, to achieve "double-digit percentage growth" during 2002 because of the hard market conditions.

In recent years, the island domi-

cile, which lies in the middle of the Irish Sea, has seen its captive numbers decline. From a high of 169 in 1999, the number of captives dropped to 162 at year-end 2000 and to 159 for year-end 2001.

However, Glyn Gilbert, assistant supervisor of the island's Insurance and Pensions Authority, predicted that premium volume for 2001 would be higher than 2000 when it is tallied.

"I am anticipating an increase in premium volume, although one of the captives which closed was a large one," he said.

Like the captive managers, Mr. Gilbert expects more activity this year.

"We are seeing a lot more inquiries, and a lot of captives which were dormant now are being reactivated by their parents," he said.

Mr. Gilbert cited the hardening of the market in the wake of the Sept. 11 terrorist attacks and last year's insolvency of U.K. insurer Independent Insurance Co. Ltd. as likely catalysts for the growth of captive insurance.

In particular, captives are being used to write terrorism coverage for their parents and are writing more property business, he noted.

"Since Sept. 11, we have seen captives that were in runoff being reactivated and new programs being put into captives," said Graham King, senior vp and branch manager of Marsh Management Services (Isle of Man) Ltd.

Companies will be looking close-



ly at their use of captives and exploring strategies to cope with the hard market, said Mr. King.

However, "formulating and implementing a strategy and starting a new captive requires a considerable turnaround" time, he said, playing down expectations of considerable growth in captive numbers this year.

Most of the island's captives have U.K. parents, and Manx managers predict that the Isle of Man will continue to attract most of its new captives from the United Kingdom.

The Isle of Man, which is a self-governing crown dependency of

the United Kingdom, is not part of the European Union. As such, Guernsey—another U.K. dependency—is the Isle of Man's main rival for business.

Isle of Man captive managers, therefore, are delighted that the island's insurance regulator plans to introduce legislation this year that would allow the formation of protected cell captives. Managers believe that they have lost business to other domiciles—Guernsey, in particular—over the past few years because of the Manx authority's refusal to allow PCCs.

The PCC structure permits the creation of an umbrella company, or core cell, around which any number of independent subsidiary cells operate. Guernsey, which in 1997 became the first domicile to permit PCCs, has seen considerable growth in captives. Other domiciles, notably Bermuda, Cayman and Vermont, now also allow PCCs.

In the past, the Manx IPA has refused to introduce PCC legislation because the structures had not been tested in court. But pressure from the island's captive managers led to a review of that stance last year, and the IPA hopes to publish a consultative document on PCCs in March with the intention of introducing legislation in June, Mr. Gilbert said.

The measure likely will draw upon legislation already adopted in other captive domiciles, he noted.

The lack of PCC options in the Isle of Man was seen as a disadvantage when potential clients were comparing the Isle of Man with other domiciles, said Aon Insurance Managers' Mr. Boyd, who said he is "very encouraged" that legislation will be introduced this year.

Once PCCs are allowed, the "Isle of Man, hopefully, will be in a position to do some catching up," said Mr. King of Marsh Management Services.

Turks & Caicos Islands adding captives, managers

By DOUGLAS McLEOD

PROVIDENCIALES, Turks & Caicos Islands—The Turks & Caicos Islands are betting that the addition of new captive managers in the domicile will boost captive growth after a slow 2001.

KPMG Insurance Managers Ltd., an affiliate of international accounting firm KPMG L.L.P., and Global Insurance Managers & Actuaries Ltd. have opened offices in the Turks & Caicos, bringing the number of management companies operating there to five, reports Superintendent of Insurance Harold Wong.

Although the hardening commercial property/casualty market will increase interest in captive formations, the quicker way to expand is to attract new management companies with existing clientele and worldwide contacts, Mr. Wong suggested.

"This is an area we are actively pursuing," he said. "We anticipate in this coming year we



should have many more formations than we had last year."

In 2001, the Turks & Caicos grew by 14 captives, bringing its total to 134, compared with 120 at year-end 2000. The totals do not include more than 2,000 credit life insurers licensed in the domicile.

The Turks & Caicos Legislature last year adopted a bill making the islands' Financial Services Commission an independent regulatory authority. The new law separates insurance and banking regulation from the Ministry of Finance, which had previously overseen the functions.

The revision was among the recommendations offered by

KPMG in a review of financial regulation in several Caribbean domiciles.

Meanwhile, the Turks & Caicos government is in the process of enacting additional revisions to its laws to bring them more into line with other KPMG recommendations and with international standards, said Mr. Wong. He declined to offer specifics on the proposed changes, noting that they are still being debated in the Legislature.

Revisions to the statutes should be enacted by the end of March, he said.

Turks & Caicos is one of eight domiciles included by the Organization for Economic Cooperation and Development on a list of potentially uncooperative tax havens. OECD has set a Feb. 28 deadline for the domiciles to commit to mandates for greater financial transparency and freer exchange of information, though penalties for noncompliance are unclear.

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Hawaii sees premiums rise as property risks added

By ROBERTO CENICEROS

HONOLULU—Hawaii's captive industry continues to enjoy steady growth.

Last year, Hawaii's captive roster increased by 13, bringing the number of licensed captives to 87. And captive premium volume soared, climbing to an estimated \$430 million at year-end 2001, up about 72% from year-end 2000, according to Craig Watanabe, Hawaii's Captive Insurance Administrator.

The growth in the number of facilities and premium volume reflects an overall hardening insur-

ance market, increasing difficulty placing property risks, and an interest in Hawaii among Japanese companies, according to Mr. Watanabe and captive managers.

Captive parents typically have placed only their long-tail liabilities in their facilities. But now, several companies are finding it beneficial, or even necessary, to use their existing captives to fund property risks, said Alison Mortlock, branch manager in Honolulu for Marsh Management Services Inc. One Marsh client opened a Hawaiian facility in 2001 specifically to insure property risks in California, where earth-



quake coverage is "virtually impossible to get," she said.

"It's very unusual to open a captive just for that reason," Ms. Mortlock said. But she expects a couple more clients could soon follow suit.

Another client included property coverage in its captive when its in-

surer raised the company's deductible to \$1 million from \$100,000 and increased the premium.

Yet another customer used its captive to provide reinsurance for a layered property program, Ms. Mortlock said. Several reinsurers had agreed to participate in that layer, they would not bind coverage until the company secured arrangements for the entire layer. Marsh's client, however, couldn't find coverage to fill a small portion.

"The captive became the final piece of the jigsaw, so that everyone else would bind that layer," Ms. Mortlock said.

In 2001, Hawaii added three captives owned by Japan-based companies that are non-U.S. taxpayers and that use their new captives to insure risks in Japan. One company, Heiwa Corp., a manufacturer of pachinko game machines popular in Japan, formed Heiwa Insurance Inc. in March to cover property/casualty risks.

Citizen Watch Co. of Japan Ltd. in August formed Aquablue Insurance Co. Inc. for property, casualty and marine risks. Kinki Nippon Tourist Co. Ltd., one of Japan's largest wholesale tour operators, in December formed H&M Insurance Hawaii Inc. for casualty exposures.

Hawaii's relative proximity and investment opportunities help draw Japanese captives. Self-insurers in Japan have fewer investment

options for their capital than do companies in the United States, Mr. Watanabe said. Licensing a captive in Hawaii allows the companies to invest in the United States.

That "provides stable and better returns than they can get in Japan," Mr. Watanabe said.

Hawaii's captive industry also hopes to further benefit from Singapore's move in 2001 to lower its corporate tax rate to 24.5% from 25.5% (see related story). Singapore has been a favored domicile for Japanese captives, but Japanese law considers countries with tax rates below 25% to be "tax havens." Companies with units in tax havens face additional taxes in Japan.

Meanwhile, captive managers in Hawaii support legislation that they say would make the domicile more attractive. The Hawaii Captive Insurance Council supports legislation calling for a declining captive premium tax rate, said Gerald Yoshida, the association's chairman and a partner at Char Hamilton Campbell & Thom in Honolulu. Under S.B. 2528, the greater a captive's premium volume, the lower its tax rate. Sen. Ron Menor, a Democrat representing central Oahu, introduced the bill in January.

By contrast, under current law, premiums for single-parent captives are taxed at a flat 0.25% rate, while the rate for group captives is 1%.

LARGEST MANAGERS OF HAWAII CAPTIVES

Ranked by gross premium volume in millions of dollars

Manager	Premium volume		Captives	
	2001	2000	2001	2000
Marsh Management Services Inc.	\$210.0	\$130.0	38	35
Becher + Carlson Risk Management Inc.	81.0	48.8	15	11
Aon Insurance Managers (USA) Inc.	62.3	38.6	12	8
Willis Management Ltd.	49.6 ¹	4.5 ¹	5	2
50th State Risk Management Services Inc.	8.8 ¹	6.1 ¹	8	7
Risk Services (Hawaii) Ltd.	4.0	10.9	4	2
Hawaii Captive Insurance Management Inc.	3.0 ¹	2.3 ¹	4	6

¹ Provided by the Hawaii Insurance Division
Source: BI survey

HIH collapse may draw Australian applicants

By DAMIEN TOMLINSON

SINGAPORE—The Singaporean government body responsible for regulating captives expects increased applications from Australian companies hoping to minimize the impact of the insurance fallout from the Sept. 11 terrorist attacks and the collapse of Australian insurer HIH Insurance Ltd.

The Monetary Authority of Singapore, which governs the country's 49 captives, expects those two factors, coupled with increasing rates and shrinking coverage, will prompt more Australian parents to use captives and other alternatives, said Ong Pek Wan, the manager of reinsurers and captives for the financial supervision group of MAS's insurance department.

Vic Pannuzzo, general manager of Marsh Management Services Pte. Ltd., which manages 30 captives, said Marsh had won the management of two new Australian captives since November. An Indonesian-owned captive will be incorporated this month. Marsh lost one captive last year.

Mr. Pannuzzo said several Australian companies are interested in Singapore captives and are conducting feasibility studies, although he could not give an exact figure.

"With the market this way, it is very good for our business, as we are seeing a lot more interest in the idea of captives, both from Australia" and, to a lesser extent, Asia,



Mr. Pannuzzo said. "Australian corporates are more sophisticated and more open to new ideas of risk retention and alternative risk transfer. Asia has been slow to grasp the idea, but we are seeing more interest from there as well."

Mr. Pannuzzo said that although the Singaporean government had reduced the corporate tax rate to 24.5% from 25.5% effective Jan. 1, tax incentives are a secondary consideration. "Establishing a captive is more likely to be a strategic decision, influenced by international market conditions," he said.

The MAS's Ms. Ong said the government might soon introduce legislation to allow protected cell captives. While proposals had been considered for several years, she said, progress could be made this year.

"MAS is actively pursuing legislation, and we are hopeful that this year the legislation in its final form will be passed by Parliament," Ms. Ong said.

Singapore started 2001 with 51 captives. Four were deregistered and two formed, bringing the Dec. 31 total to 49. Most have Australian or

Japanese parents, and one is Singaporean.

Nick Solley, group insurance manager of the Brisbane, Queensland-based mining company MIM Ltd., said the company's decision to substantially increase its captive's risk retention last year paid off.

Because of that move, Mr. Solley said, the company was able to avoid the steep rate increases associated with the hardening Australian market and the collapse of Sydney-based HIH (BI, March 19, 2001). He would not reveal how much MIM had invested in its Singapore captive, MIMSure Insurance Pte. Ltd.

"The primary driver behind the increased investment was confidence in the direction we took in the 2000/01 financial year, which was to absorb more risk in our captive rather than absorb market premium increases," Mr. Solley said. "It was part of a long-term strategy, but the events of 2001 hurried the process."

"Retaining risk has promoted risk management throughout the organization, focusing the risk management view of the business," he said.

Kevin Mutch, head of group risk management with Melbourne-based Rio Tinto Ltd., an international mining company, said the company has captives in Singapore and Bermuda. Both are managed by Marsh in Singapore.

Mr. Mutch said Rio Tinto decided several years ago to retain the majority of its risks.

"We control our own premiums; we're not influenced by market trends," Mr. Mutch said.

"The past years have seen considerable risk intensity, with less em-

ployees, higher output and more at stake. Business interruption cover is more important than ever, and there will be more significant claims," he said.

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Directory of world captive domiciles

The charts that follow were developed by *Business Insurance* to help risk managers track developments and regulatory requirements in captive insurance domiciles worldwide.

The information is provided only for domiciles with specific legislation or regulations pertaining to captives; domiciles that merely allow the formation of captives under existing insurance legislation are

not included.

The charts provide information on captive domiciles—listed in alphabetical order—beginning with the number of licensed captives at year-end 2001 and 2000. Those figures include the number of inactive captives registered in the domicile.

Listed next are the minimum capital and surplus for captives and premium-to-surplus requirements

for each domicile, followed by application fees and annual license fees pertaining to captive insurers. Also listed are the applicable local taxes as well as the name of the law that governs captives in the domicile and the year it was passed.

Each listing concludes with information on the domicile's regulator, including contact information for those seeking additional information.

DOMICILE	2001	2000	CAPITAL & SURPLUS	PREMIUM TO SURPLUS	FEES	TAXES	LAWS	REGULATOR
Arizona	0	0	Single-parent: \$250,000; association: \$500,000	None	To be determined	None	Chapter 327, Captive Insurers, 2001 (takes effect July 1, 2002)	Arizona Department of Insurance, Captive Administrator, 2910 N. 44th St., Suite 210, Phoenix, Ariz. 85018-7269; 602-912-8456; fax: 602-912-8421
Arkansas	0	0	Pure captive: \$250,000; industrial insured: \$500,000; association: \$750,000; sponsored: \$1 million	None	\$200 application fee; \$300 annual license	\$5,000 minimum annual premium tax. Direct written premiums: 0.4% on first \$20 million, 0.3% on next \$20 million, 0.2% on next \$20 million and 0.075% thereafter. Reinsurance premiums: 0.225% on the first \$20 million, 0.15% on next \$20 million, 0.05% on next \$20 million and 0.025% thereafter	Licensing and Regulation of Captive Insurers, 2001	Mike Pickens, State Insurance Commissioner, Arkansas Insurance Department, 1200 W. Third St., Little Rock, Ark. 72201-1904; 501-371-2600; fax: 501-371-2629
Bahamas	31	31	\$200,000 capital or at discretion of regulator	5-to-1	\$25 application fee; \$2,500 annual registration fee; \$1,000 company registration fee	None	The External Insurance Act, 1983. Chapter 318 as amended Dec. 24, 1996. The Subsidiary Legislation/Chapter 318 External Insurance, 1987	Roger G. Brown, Registrar of Insurance Companies/Insurance Section, Ministry of Economic Development, P.O. Box N-4849, Nassau N.P., Bahamas; 242-328-1068; fax: 242-328-1070
Barbados	232 (B/est.)	228 (B/est.)	\$125,000 cash	5-to-1 net premium to surplus. Less than \$5 million in premiums: net assets of \$125,000 or 20% of premium written. More than \$5 million: net assets of \$1 million plus 10% of premiums written	\$250 application fee; \$2,500 annual license	None	Exempt Insurance Act of 1983	Carlos Belgrave, Supervisor of Insurance, Ministry of Finance and Economic Affairs, Bridgetown, Barbados; 246-426-3815; fax: 246-436-2699; sofi@caribsurf.com
Bermuda	1,136 (B/est.)	1,078 (B/est.)	\$120,000 for Class 1 (single-parent insuring only risks of parent and affiliates); \$250,000 for Class 2 (group/association deriving no more than 20% of net premiums from unrelated companies); \$1 million for Class 3 (more than 20% from unrelated companies)	20% below \$6 million and 10% above for Class 1 and 2; 15% for Class 3	Registration fees: Class 1 and 2, \$1,575; Class 3, \$2,625. Annual fee: Class 1 and 2, \$840; Class 3, \$2,625	Company tax: minimum for Class 1 is \$3,635; minimum for Classes 2 and 3 is \$5,610	Amendments to Insurance Act 1978	Jeremy E. Cox, Registrar of Companies, Government Administration Building, 30 Parliament St., Hamilton HM 12, Bermuda; 441-297-7578; fax: 441-292-6640
British Columbia	15	15	\$200,000 Canadian (\$125,640)	None	\$500 Canadian (\$314) application fee; \$2,500 Canadian (\$1,571) registration fee; \$2,500 Canadian annual renewal fee	30% federal income tax; 16% provincial income tax	The British Columbia Insurance (Captive Company) Act of 1987	Doug McLean, Manager of Insurance, Financial Institutions Commission, 1050 W. Pender St., Suite 1000, Vancouver, B.C. V6E 3S7, Canada; 604-660-2947
British Virgin Islands	262	238*	\$200,000 for P/C captives writing up to \$1 million in net premiums; \$250,000 for life/health captives	5-to-1 for P/C insurers writing up to \$5 million in net premiums	\$500 application fee; \$2,000 annual renewal fee	None	The Insurance Act, 1994. Insurance regulations, 1995	William McCullough, Supervisor of Insurance, Financial Services Department, The Haycroft Building, Pasea Estate, Road Town, Tortola, British Virgin Islands; 284-494-4190; finsvs@caribsurf.com
Cayman Islands	542	514	\$120,000 for Class B license (most single-parent, P/C captives); \$240,000 if writing long-term coverages; \$360,000 if writing both long-term and general business	At discretion of regulator	\$8,333 annual licensing fee; special-purpose vehicles pay \$300 per cell up to \$1,500 per year	None	The Insurance Law (1999 revision)	Gordon Rowell, Monetary Authority, Elizabethan Square, George Town, Grand Cayman, B.W.I.; 345-949-7089; fax: 345-949-2532; insurance@cimoney.com.ky
Colorado	10	11	\$500,000 capital and surplus for single-parent and group captives	Pure captives: none; group captives: 3-to-1	\$500 application fee; \$620 annual fee	Direct: greater of \$5,000 or 0.5% of first \$25 million of direct premiums written, 0.25% of next \$50 million and 0.1% thereafter. Reinsurance: 0.25% of first \$20 million in premiums and 0.1% thereafter.	The Colorado Captive Insurance Act of 1972	William J. Kirven, Insurance Commissioner, Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colo. 80202; 303-894-7499
Delaware	3	3	Single-parent: \$250,000; industrial insured: \$500,000; association: \$750,000	None	\$100 annual statement fee, and \$50 for continuation of certificate	Premium tax: 0.7% for first \$20 million, 0.5% for next \$20 million, 0.3% for next \$20 million and 0.1% for each dollar thereafter	Chapter 69 (Captive Insurance Companies) of the Insurance Code, 1984	Darryl Reese, Director-Bureau of Company Examination, Delaware Department of Insurance, Rehabilitation and Guaranty Division, 841 Silver Lake Blvd., Dover, Del. 19904; 302-739-5774; fax: 302-739-2709; dreese@deins.state.de.us

* Restated

DOMICILE	2001	2000	CAPITAL & SURPLUS	PREMIUM TO SURPLUS	FEES	TAXES	LAWS	REGULATOR
District of Columbia	2	0	\$100,000 for pure captive; \$200,000 for association captive (stock); \$300,000 for agency, rental or sponsored captive	Surplus: \$150,000 for pure captive; \$300,000 for association (stock), agency, rental or sponsored captive; \$500,000 for mutual or reciprocal insurer association captive	\$500 application fee; \$300 certification fee; \$300 annual renewal fee	Direct: 0.4% on first \$20 million of net premiums, 0.2% on the next \$20 million of premiums and 0.075% thereafter. Reinsurance: 0.225% on the first \$20 million of premiums, 0.15% on the next \$20 million and 0.025% thereafter	The Captive Insurance Company Act of 2000, D.C. Official Code 31-3901	Margaret Schruender, Director of Insurance, Department of Insurance and Securities Regulation, 810 First St. N.E., Suite 701, Washington, D.C. 20002; 202-442-7766; fax: 202-535-1196; <i>margaret.schruender@dc.gov</i>
Dublin	181	183	Reinsurance: subject to review of business plan; direct: minimum share capital of 650,000 euros (\$579,475)	Determined by review of business plan	5,000 euro (\$4,475) application fee. Supervisory fee is based on premium volume	None on premiums; corporate tax at 10% until Dec. 31, 2002, 12.5% after	Insurance Act 2000	Frank Brosnan, Nonlife Insurance Supervisor; or Eamon Henry, Life Insurance Supervisor; Department of Enterprise, Trade and Employment, Earlsfort Centre, Lower Hatch St., Dublin 2, Ireland; 353-1-631-2121
Georgia	16	14	\$500,000	3-to-1	\$600 application fee, \$700 annual fee	Gross premiums written in Georgia: 2.25% state tax, 2.5% county and municipal tax. Workers comp captives must contribute to Subsequent Injury Trust Fund	O.C.G.A. Title 33, Chapter 41, 1989	Christopher Taylor, Property and Casualty Supervisor; 2 Martin Luther King Jr. Drive, Suite 604, West Tower, Atlanta, Ga. 30334; 404-657-7273; fax: 404-657-7743; <i>chris.taylor@mail.oci.ga.us</i>
Gibraltar	10	10	P/C: 200,000 to 400,000 euros (\$178,300 to \$356,600) minimum; 800,000 euros (\$713,200) for life companies	18% of annual premiums or 26% of average claims over prior three years	£500 (\$446) application fee; £2,000 (\$1,783) annual license fee	Tax exempt by paying £225 (\$201) per year for 25 years; qualifying companies are taxed at up to 35%	Insurance Companies Ordinance of 1987 and associated regulations	Commissioner of Insurance Financial Services Commission, P.O. Box 940, Suite 943, Europort, Gibraltar; 350-40-283; fax: 350-40-282; <i>fsc@gibnet.gi</i>
Guam	2	1	Capital: \$50,000 for pure captive; \$100,000 for group captive; \$150,000 for industrial insured captive (stock). Surplus: \$100,000 for pure captive; \$150,000 group captive (stock); \$200,000 for industrial insured or group captive (mutual insurer)	No more than five times paid-in capital/surplus	\$200 filing fee. \$3,500 insurance advisers review fee. \$2,500 annual license fee. \$750 fee for qualifying certificate. \$1,000 qualifying certificate annual surveillance fee	Rebate of all income tax on underwriting income and on dividends to shareholders. No gross receipts or premium tax	Public Law 23-109, 1997.1998 amendments to Public Law 24-266 allowing rebate of income tax on dividends	George V. Cruz, Director, Department of Revenue and Taxation and Insurance Commissioner, Building 13-1 Mariner Ave., P.O. Box 23607 GMF, Barrigada, Guam 96921; 671-475-1817; fax: 671-472-2643; <i>george@mail.gov.gu</i>
Guernsey	369	358*	£100,000 (\$145,600)	18% of net premiums for first £5 million (\$7.3 million); 16% thereafter	£3,000 (\$4,368) application and annual renewal fee. Protected cell companies: £3,000 application fee and £3,000 annual fee plus 0.25% of gross premiums	Four options: no tax but annual fee of £600 (\$874); sliding-scale tax on investment income of shareholders' funds; 20% of net profits; fixed rate of up to 30% for five years	Insurance Business (Guernsey) Law, 1986	Steve Butterworth, Director of Insurance, Guernsey Financial Services Commission, La Plaiderie Chambers, La Plaiderie, St. Peter Port GY1 1WG, Guernsey; 44-148-171-2706; fax: 44-148-171-2010; <i>info@guernseyci.com</i>
Hawaii	87	74	Minimum requirements vary by type of captive; additional requirements determined on a case-by-case basis	Varies by case	Application review fees vary between \$300 and \$1,000, depending on facility type	Premiums taxed at 0.25% for single-parent and 1% for association captives/RRGs	1986 changes to Hawaii insurance law in Chapter 431, Article 19 of Hawaii's Revised Statutes	Wayne Metcalf, Insurance Commissioner, 250 S. King St., P.O. Box 3614, Honolulu, Hawaii 96811-3614; 808-586-2799; <i>captiveins@dcca.state.hi.us</i>
Hong Kong	2	2	\$2 million Hong Kong (\$256,400)	Greater of 5% of net premiums written and net claims outstanding, or \$2 million Hong Kong	\$22,600 Hong Kong (\$2,897) authorization fee	Corporate tax is 16%	The Insurance Companies (Amendment) Ordinance 1997	Insurance Authority, 21st Floor, Queensway Government Offices, 66 Queensway, Hong Kong; 852-2867-2554; fax: 852-2867-2562; <i>iamail@oci.gov.hk</i>
Illinois	3	5	\$2 million	None	\$3,500 application fee	Subject to same taxes as all insurers	Article VIIC of the State Insurance Code, 1987	Contact: Etta Mae Credi, Assistant Deputy Director, Illinois Insurance Department, 320 W. Washington, Springfield, Ill. 62767; 217-782-4515; fax: 217-782-5020; <i>etta_mae_credi@ins.state.il.us</i>

* Restated

DOMICILE	2001	2000	CAPITAL & SURPLUS	PREMIUM TO SURPLUS	FEES	TAXES	LAWS	REGULATOR
Isle of Man	159	162	£500,000 (\$728,000) for long-term; £150,000 (\$218,400) for general; £100,000 (\$145,600) for reinsurance; £50,000 (\$72,800) for restricted	None	£1,500 (\$2,184) application fee; £3,000 (\$4,368) annual license renewal fee	Standard tax is 15%. Isle of Man companies operating internationally may elect 1% to 35% taxation under International Business Act. Captives operating under a 1981 act enjoy partial or full exemptions if business is not transacted with Isle of Man residents	Insurance Act 1986; Insurance (Amendment) Acts 1993 and 1995	W.J. Hastings, Chief Executive/ Insurance Supervisor, Isle of Man Government Insurance and Pensions Authority, HSBC House, Ridgeway St., Douglas, Isle of Man IM1 1ER; 44-162-464-6000; fax: 44-162-464-6001; <i>ipa@gov.im</i>
Jersey	19	18	£100,000 (\$145,600) or at regulator's discretion	Property/casualty: 17.5% of net premiums; life: 2.5% of long-term business fund	Category A: £1,750 (\$2,548) for property/casualty, £3,500 (\$5,096) for life. Category B: £3,000 (\$4,368) for property/casualty; £6,000 (\$8,736) for life	Maximum stamp duty is £2,500 (\$3,640). 20% standard rate; exempt captives pay £600 (\$874) per year	Insurance Business (Jersey) Law, 1996, General Provisions and Solvency Margin Orders, 1996	Nigel Woodroffe, Director of Insurance, Jersey Financial Services Commission, P.O. Box 267, Nelson House, David Place, St. Helier, Jersey JE4 8TP; 44-1534-822-000; fax: 44-1534-822-001; <i>info@jerseyfsc.org</i>
Labuan	18	9	300,000 ringgit (\$78,950)	300,000 ringgit	6,000 ringgit (\$1,579) for incorporation; 10,000 ringgit (\$2,631) annual license fee	3% of net income or 20,000 ringgit (\$5,263)	The Offshore Insurance Act 1990, amended in 1997, 2001	Danial Mah Abdullah, Director-Operations Department, Labuan Offshore Financial Services Authority, Level 17, Main Office Tower, Financial Park, Jalan Merdeka, 87000 WP Labuan; 60-87-408-188; fax: 60-87-413-328; <i>lofsa@gov.my</i>
Lloyd's of London	0	1	£500,000 (\$728,000); £1.5 million (\$2.1 million) if captive parent is U.S. based	Surplus must equal greater of 16% of annual premium income or 23% of average claims incurred over a three-year period	£20,000 (\$29,120) for new captive syndicate; £25,000 (\$36,400) + 6.1% VAT for captive corporate member. Annual fees of about 2.1% of captive's overall premium limit	U.K. corporate tax rates (up to 30%) on underwriting business	Captive Corporate Members Bylaw (No. 19 of 1998)	The Council of Lloyd's, Lloyd's of London, 1 Lime St., London EC3M 7HA; 44-207-327-1000; fax: 44-207-626-2389
Luxembourg	233	231	1.2 million euros (\$1.1 million)	None	1,239 euros (\$1,087) for incorporation plus 1% tax on capital. Annual license fee of 2,478 euros (\$2,173)	Varies. Basic rates: 30.37% corporate tax; 4% premium tax on direct insurance, no premium tax on reinsurance	1991 Insurance Law and Grand Ducal Regulations, amended 1994, 2001	Victor Rod, Insurance Commissioner, Commissariat aux Assurances, 7 Blvd. Royal, B.P. 669, Luxembourg L-2449; 352-226-911; fax: 352-226-910; <i>commassu@caa.etat.lu</i>
Maine	1	1	Pure: \$100,000 in capital, \$150,000 in surplus; industrial insured (stock): \$200,000 in capital, \$300,000 in surplus; industrial insured (mutual): \$500,000 in surplus; association stock: \$400,000 in capital, \$350,000 in surplus; association mutual: \$750,000 in surplus	None	\$1,000 initial fee; \$100 for license; \$100 for financial statement; \$500 fee for captives that redomesticate to Maine	0.375% of first \$20 million in direct gross premiums, 0.30% of next \$20 million, 0.20% of next \$20 million and 0.075% thereafter; slightly less for captive reinsurers. Minimum tax is \$4,000 per year; 2% of gross direct premiums if parent is a Maine corporation	Title 24-A, Chapter 83, Sections 6701-6720, 1997	Enya Carter, Director of Financial Analysts, Maine Bureau of Insurance, 34 State House Station, Augusta, Maine 04333-0034; 207-624-8496; fax: 207-624-8599; <i>enya.h.carter@state.me.us</i>
Malta	1	1	100,000 lire (\$222,820)	Solvency margin set in accordance with European Union directives	500 lira (\$1,114) application fee; 500 lira acceptance fee; 1,000 lira (\$2,228) annual renewal fee	Corporate tax is 35%. Companies may operate foreign income accounts and get a tax refund on distributions to non-resident shareholders	Insurance Business Act, 1998	Director of Insurance, Malta Financial Services Centre, (Insurance Unit), Attard, Malta; 356-441-155; fax: 356-441-189; <i>communications@mfsc.com.mt</i>
Mauritius	12	11	Minimum: \$100,000 for captives writing general business; \$250,000 for long-term business; \$300,000 for reinsurance	Solvency margin: higher of 15% of premiums or \$100,000 for captive insurers; 15% of premiums or \$200,000 for captive reinsurers	\$500 processing fee; \$1,500 annual fee	15% corporate income tax; 90% foreign tax credit available	Financial Services Development Act 2001; Companies Act 2001; PCC Act 2000; Guidelines on the Regulation and Supervision of Captive Insurance Business in Mauritius and Financial Services Development Regulations 2001	Financial Services Commission, Fifth Floor, Barkly Wharf, Caudan Waterfront, Port Louis, Mauritius; 230-210-7000; fax: 230-212-9459; <i>fscmauritius@intnet.mu</i>
Montana	1	0	Pure captive: \$250,000; industrial insured: \$500,000; association: \$750,000	None	\$200 application fee; \$300 annual license	\$5,000 minimum annual premium tax. Direct written premiums: 0.4% on first \$20 million, 0.3% on next \$20 million, 0.2% on next \$20 million and 0.075% thereafter. Reinsurance premiums: 0.225% on the first \$20 million, 0.15% on next \$20 million, 0.05% on next \$20 million and 0.025% thereafter	Title 33, Chapter 28, Captive Insurance Companies, 2001	John Huth, Captive Insurance Coordinator, Montana State Auditors Office, 840 Helena Ave., Helena, Mont. 59601-3423, 406-444-5438; fax: 406-444-3497; <i>johuth@state.mt.us</i>
Netherlands Antilles	18	18	Determined by review of business plan	Solvency margin: the higher of 15% of net premiums or 300,000 guilders (\$168,540) for nonlife; higher of 4% of net technical reserves or 400,000 guilders (\$224,720) for life	6,000 guilders (\$3,370) application fee; 3,000 guilder (\$1,685) annual license fee	2,500 guilders (\$1,405) fixed	Special Insurance License Decree, 1992	Nataly Davelaar, Superintendent of Insurance, Bank van de Nederlandse Antilles (Central Bank), Breestraat 1 (P), Curacao, Netherlands Antilles; 599-9-434-5500; fax: 599-9-461-5004

DOMICILE	2001	2000	CAPITAL & SURPLUS	PREMIUM TO SURPLUS	FEES	TAXES	LAWS	REGULATOR
Nevada	3	2	\$250,000 for pure captive; up to \$750,000 for a rent-a-captive	3-to-1 to 5-to-1	\$500 application fee; \$300 annual renewal fee; application review fee of up to \$3,000	0.4% on first \$20 million of net direct premium, 0.2% on next \$20 million and 0.075% thereafter	Chapter 694C of Nevada Revised Statutes and Nevada Administrative Code	Alice Molasky-Arman, Commissioner of Insurance, Division of Insurance, State of Nevada, 788 Fairview Drive, Suite 300, Carson City, Nev. 89701-5453; 775-687-4270, ext. 277; fax: 775-687-3934; <i>lcommish@doi.state.nv.us</i>
New York	2	2	\$250,000 for single-parent captives; \$500,000 for group captives. Parent or group must have total net worth of at least \$100 million	None	None	Premiums related to N.Y. risks: 0.4% to 0.075% (direct) and 0.225% to 0.025% (reinsurance). Captives also pay Insurance Department assessments of 0.02% or 0.03% of N.Y. direct written premiums	Article 70 of the New York Insurance Law	Paul De Robertis, Supervising Examiner, New York Insurance Department, 25 Beaver St., New York, N.Y. 10004; 212-480-5126; <i>nycaptive@ins.state.ny.us</i>
Panama	2	2	\$150,000 for non-life; \$250,000 for life	5-to-1	\$1,000 application fee; \$2,000 annual license fee	None	Law 60, 1996	Ana Lorena Broce, Superintendent of Insurance and Reinsurance, Ave. Ricardo Arias y Calle 51, P.O. Box 832/1683, World Trade Center, Panama City, Republic of Panama; 507-214-7484; fax: 507-214-7482
Rhode Island	2	2	Minimum capital: single-parent, \$100,000; industrial insured, \$200,000; association, \$400,000. Minimum surplus: single-parent, \$150,000; industrial insured, \$300,000 (stock) or \$500,000 (mutual); association, \$750,000	At discretion of regulator	\$1,000 application fee; \$500 annual license fee	\$2,500 minimum tax. Direct premiums: 0.2% on first \$20 million, 0.15% on next \$20 million, 0.10% on next \$20 million and 0.0375% thereafter. Reinsurance premiums: 1.25% on first \$20 million, 0.075% on next \$20 million, 0.025% on next \$20 million and 0.0125% thereafter	Rhode Island Statutes: Title 27 Insurance; Chapter 43, Captive Insurance Companies	Joseph Torti, Chief Examiner, Department of Business Regulation-Insurance Division, 233 Richmond St., Suite 233, Providence, R.I. 02903; 401-222-5446; fax: 401-222-5475; <i>jtorti@doa.state.ri.us</i>
Singapore	49	51	\$400,000 Singapore (\$216,640) capital	\$400,000 Singapore surplus of assets over liabilities	\$5,000 Singapore (\$2,708) annual fee	Corporate tax is 25.5% for 2001; 24.5% for 2002. Captives may apply for a 10% concessionary tax rate on their offshore business	Insurance Act (Chapter 142)	Hauw Soo Hoon, Executive Director, Financial Supervision Group, Monetary Authority of Singapore, 10 Shenton Way, MAS Building, Singapore 079117; 65-229-9440; fax: 65-229-9694
South Carolina	13	2	Pure captive: \$100,000 capital /\$150,000 surplus. Industrial insured: \$200,000 capital/ \$300,000 (stock), \$500,000 (mutual) in surplus. Association: \$400,000 capital/ \$350,000 (stock), \$750,000 (mutual) in surplus. Sponsored: \$500,000 capital/\$500,000 surplus	Varies by company	\$200 application fee; \$300 licensing fee; \$300 annual renewal fee	Direct: 0.4% on first \$20 million of premiums, 0.3% on the next \$20 million, 0.2% on the next \$20 million and 0.075% thereafter. Reinsurance: .225% on first \$20 million of premiums, 0.15% on next \$20 million, 0.05% on next \$20 million and 0.025% thereafter	Acts 238 and 331, SC Code 38-90-140, 2000	Ernst Csiszar, Director-South Carolina Department of Insurance, P.O. Box 100105, Columbia, S.C. 29202; 803-737-6229; <i>ecsiszar@doi.state.sc.us</i>
South Dakota	0	0	\$100,000 capital/\$100,000 surplus	None	\$500 for certificate of authority	0.25% of premiums; minimum tax is \$5,000	Chapter 58-46, 1996	Wendell Malsam, Chief Examiner, South Dakota Division of Insurance, 118 W. Capitol Ave., First Floor, Pierre, S.D. 57501-2000; 605-773-4359; fax: 605-773-5369; <i>wendellm@crpr1.state.sd.us</i>
Switzerland	30	22	Captives writing third-party business: 10 million Swiss francs (\$6.0 million); captive reinsurers: 1 million Swiss francs (\$603,100) and 20% of premium	Same as capital and surplus	Varies annually by market share; minimum of 2,000 Swiss francs (\$1,206)	8.5% federal tax on profits; additional tax rates vary by district. Stamp duty is 1%	1978 Insurance Supervisory Law	Peter Pfund, Swiss Insurance Commissioner, BVP, Friedheimweg 14, CH 3003, Bern, Switzerland; 41-31-322-7906; fax: 41-31-323-7156
Tennessee	5	6	\$750,000 for single-parent, nonprofit, municipality and utility district captives; \$1 million for group captives	None. Minimum premiums: \$500,000 for single-parent; \$1 million for group captives	\$500 application fee. Annual minimum fee: \$5,000 for single-parent; \$10,000 for group captives. Any premium tax paid is counted against minimum	1% of gross direct written premiums (includes out-of-state premiums if not taxed by another state)	The Tennessee Captive Insurance Company Act, Chapter 13, Title 56, 1978	Bill Hosea, Director of Financial Affairs, Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tenn. 37243-1135; 615-741-1692; fax: 615-532-2788; <i>bhosea@state.tn.us</i>

DOMICILE	2001	2000	CAPITAL & SURPLUS	PREMIUM TO SURPLUS	FEES	TAXES	LAWS	REGULATOR
Turks & Caicos Islands	134**	120**	\$100,000 for general insurers; \$180,000 for life insurers. Subject to review of business plan	5-to-1 for captives writing up to \$5 million in net premiums	\$500 license application fee; \$2,000 annual renewal fee	None	Turks & Caicos Insurance Ordinance of 1989 and accompanying 1990 regulations	Harold Wong, Superintendent of Insurance, P.O. Building, Front St., Grand Turk, Turks & Caicos Islands; 649-946-2791; fax: 649-946-2821; fsc@tcway.tc
U.S. Virgin Islands	10	9	Single-parent: \$50,000 capital, \$70,000 surplus; industrial insured: \$75,000 capital, \$125,000 surplus; association captives: \$100,000 capital, \$220,000 surplus	NA	\$1,000 application fee; \$6,000 annual licensing fee	Annual franchise tax of \$1,000	Title 22, Virgin Islands Code, Chapter 55, Sections 1400-1421	Office of the Lieutenant Governor, Division of Banking and Insurance, 18 Kongens Gade, St. Thomas, U.S.V.I. 00802; 340-774-7166; fax: 340-774-9458; vidoi001@aol.com
Vermont	387	361	\$250,000 for single-parent; \$500,000 for industrial insured; \$750,000 for association captives; \$1 million for sponsored captives. Approved letters of credit can be used toward capitalization. Captives set up as reciprocal insurers need minimum free surplus of \$1 million	None	\$200 initial application fee; \$300 annual license fee	\$5,000 minimum annual premium tax. Direct written premiums: 0.4% on first \$20 million, 0.3% on next \$20 million, 0.2% on next \$20 million and 0.075% thereafter. Reinsurance premiums: 0.225% on the first \$20 million, 0.15% on next \$20 million, 0.05% on next \$20 million and 0.025% thereafter	Special Insurer Act of 1981	Leonard D. Crouse, Director of Captive Insurance, Vermont Department of Banking, Insurance, Securities and Health Care Administration, 89 Main St., Drawer 20, Montpelier, Vt. 05620-3101; 802-828-3304; fax: 802-828-3460
Virginia	0	0	Stock captives: \$1 million capital stock, \$3 million surplus. Nonstock: \$4 million surplus	None. Minimum gross written premiums: \$500,000 for single-parent, \$1 million for association captives	\$500 non-refundable application fee	Premium tax of 2.25% for business written in Virginia and out-of-state business not taxed by another state	Chapter 11, Title 38.2, 1980	Jim Ware, State Corporation Commission, Bureau of Insurance, Company Licensing and Regulatory Compliance, Commonwealth of Virginia, P.O. Box 1157, Richmond, Va. 23218; 804-371-9801; fax: 804-371-9511; jware@scc.state.va.us

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February 4, 2002

International

29

Parliament criticizes insurers, manufacturers for delaying payments

U.K. faults asbestos claim fight

By CAROLYN ALDRED

LONDON—Manufacturers and insurers fighting in court over payment of asbestos claims "are engaged in corporate gamesmanship on a massive scale to avoid their liabilities," a British member of Parliament charges.

Speaking during a special parliamentary debate on asbestos litigation in January, John Battle, the Labour member of Parliament for Leeds, an industrial town in the north of England, urged the U.K. government to ensure that victims of asbestos-related diseases receive compensation without having to wait for "10 years of litigation" over coverage issues to be resolved. Other MPs at the debate called for the

insurance industry to pay claimants without delay.

The stinging rebuke of insurers and manufacturers by British lawmakers follows several setbacks in the United Kingdom for payment of asbestos claims.

Among the more recent is a lawsuit filed by a subsidiary of Swiss Reinsurance Co. The suit seeks to void a reinsurance contract for former U.K. asbestos manufacturer Turner & Newall Ltd., which faces nearly \$1 billion of asbestos liabilities.

Tony Lloyd, a Labour member of Parliament for central Manchester, said that the U.K. government should require insurers to "do something very quickly," otherwise "all those people who are around at

the moment will be dead before their claims are settled."

In addition to the Swiss Re litigation, other asbestos-related develop-

If insurers aren't made to do something quickly, victims of asbestos-related diseases 'will be dead before their claims are settled.'

*Tony Lloyd
Labour member of Parliament*

ments raising concern among the MPs include:

- A recent ruling by the U.K. Court of Appeal in *Fairchild vs.*

Dovener, Waddingtons and Leeds City Council, that held if a plaintiff was exposed to asbestos at two or more workplaces, but is unable to prove where he was exposed to the fibers that caused his illness, then no defendant can be held liable (*BI*, Dec. 17, 2001).

- The collapse and liquidation of Chester Street Insurance Holdings Inc. as asbestos liabilities exceeded its assets.

The collapse of the company, formerly called Iron Trades Holdings, raised fears that employees of companies that were insured by Chester Street would not have their asbestos-related claims paid (*BI*, May 14, 2001).

- The October 2001 bankruptcy

See ASBESTOS/page 31

World Updates

ABB doubles asbestos claims charge

Swiss-Swedish engineering company ABB Asea Brown Boveri said that a surge in asbestos-related claims against a U.S. subsidiary has led to it make an additional charge of \$470 million to 2001 earnings, increasing its asbestos claims provisions to about \$940 million. ABB said the charge was prompted by its annual review of asbestos liabilities pending against Connecticut-based ABB Combustion Engineering Inc. The provision for asbestos claims at the end of 2000 was \$590 million. ABB said it expects to recover about \$150 million from its insurers. The number of new claims against the company increased to 55,000 in 2001 from 39,000 in 2000, ABB said. At year-end 2001, 94,000 asbestos-related claims were pending against Combustion Engineering. ABB inherited the asbestos liabilities, which stem from products supplied in the early 1970s, when it bought Combustion Engineering in 1990.

S&P says reform plans would bolster Lloyd's

Standard & Poor's in London says that proposed reforms of the Lloyd's of London insurance market (*BI*, Jan. 28) would address Lloyd's "structural weaknesses." S&P said the proposals, which are now being considered by Lloyd's members, address many of the concerns that, "if left unresolved, would make it increasingly difficult for Lloyd's to sustain its franchise in the global insurance market." The proposals include ending unlimited liability underwriting and switching from Lloyd's three-year accounting system to generally accepted accounting standards. S&P said that, as yet, the proposals would have no impact on its A- rating of Lloyd's.

HSBC predicts higher P&I club rates

Shipowners will pay more for their liability coverage at the Feb. 20 annual renewal of protection and indemnity clubs, according to broker HSBC Insurance Brokers. In its Protection & Indemnity Review 2002, London-based HSBC says that P&I clubs, the mutual insurers that provide liability coverage for most shipowners, will be forced to raise rates, in large part because reduced investment income has eroded some clubs' reserves. In addition, while P&I rates currently are rising generally by between 20% and 30%, the cost of reinsurance is also increasing. As a result, most of the major P&I

See WORLD NEWS/page 31

Ecuadoran airline insured in London for crash



PHOTO: AP/WIDE WORLD

Rescue workers search the Andes Mountains at the site of a fatal crash of a jetliner near the border of Ecuador and Colombia.

By DAVE LENCKUS

TULCAN, Ecuador—The Ecuador-based airline TAME has \$300 million of liability insurance to cover losses from the crash last week of a Boeing 727-100 jet with 92 people on board near an extinct volcano on the Ecuador-Colombia border, according to sources.

London-based Global Aerospace Underwriting Managers Ltd. led the coverage, which was placed by Heath Lambert Group, the retail brokerage division of HLF Insurance Holdings Ltd. of London, sources said.

None of the 83 passengers or nine crew survived the crash. The hull loss has been valued at \$1.5 million, sources said.

The jet took off from Quito, Ecuador, last Monday morning. It was nearing the end of its flight to Tulcan, near Ecuador's border with Colombia, when ground control lost contact with the jet as it flew in foggy conditions over the Andes Mountains near the extinct Chiles Volcano.

The volcano rises more than 15,500 feet above sea level and usually is shrouded in clouds.

Increases in litigation, insurance costs prompt calls for Australian tort reform

By KATE TILLEY
and DAMIEN TOMLINSON

SYDNEY, Australia—Risk managers, insurers and a government minister are calling for action to halt rising public liability insurance premiums and court awards in Australia.

Risk managers and small-business owners are facing rocketing premiums and insurers are facing soaring claims in the increasingly litigious environment in Australia, they say.

Recommendations for solving the alleged problem range from the introduction of a liability cap to a no-fault compensation program.

The Assn. of Risk & Insurance Managers of Australasia and the Insurance Council of Australia have called for a top-level working party to examine premiums and compensation payouts. Alan Mason, executive director of the Sydney-based ICA, has written to all state and territory governments proposing such

a task force.

ARIMA President Bruce Ferguson, who is risk and insurance manager at Sydney Water Corp., said ARIMA members, who pay premiums total-

ARIMA members face 'additional premiums to replace policies that had been placed with failed liability insurers.'

*Bruce Ferguson
ARIMA*

ing \$4 billion Australian (\$2.04 billion) a year for all lines of coverage, were concerned about escalating premiums and an increase in the level of claims.

"Our members are hurting badly. Many already have been slugged with additional premiums to replace policies that had been placed with failed liability insurers....These

increased costs will have to be reflected in product pricing, so it's a vicious circle," he said. Failed insurers HIH Insurance Ltd. in Sydney and the Independent Insurance Co. Ltd. in London both wrote public liability coverage in Australia.

Rate hikes for some have more than tripled. For example, the Deakin-based Australian Parachute Federation's public liability premiums rose 550%, to \$660,000 Australian (\$336,400), with a \$350,000 Australian (\$178,400) deductible last October, from \$120,000 Australian (\$61,200) in 1999.

APF Executive Director David Smith said the APF's public liability coverage was placed at Lloyd's of London after quotes from U.S. insurers, including its former insurer, ranged from \$1 million Australian to \$1.5 million Australian (\$509,700 to \$764,600).

More than half the APF's income was spent on insurance premiums, Mr. Smith said.

Joe Hockey, the federal minister of small business and tourism, recently suggested in a radio interview that Australia implement a national compensation program like New Zealand's Accident Compensation Corp. The Wellington-based ACC, formed by the New Zealand government in the 1970s, is a no-fault system that pays statutorily-set compensation to injured people. But Mr. Hockey later backed away from that proposal.

Assistant Treasurer Helen Coonan, the elected government minister who is responsible for revenue, was expected to propose a national forum to discuss the public liability problem.

She has rejected the idea of modeling a system on the ACC. She said New Zealand's no-fault system is "really flawed," and Australia must ensure "that the cure we advocate isn't worse than the disease."

"There may be some room for a

See LIABILITY/page 31

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LEGAL NOTICES

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NOTICE OF APPOINTMENT OF RUN-OFF MANAGER BY

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Minato-ku, Tokyo, Japan

To all Policyholders, Brokers, Cedants and all other potentially interested parties:

NOTICE is hereby given that effective 22 January 2002 Nissan has appointed Axiom Claims Consulting Ltd ("Axiom") to act as its run-off manager for Nissan's Participation in the Fortress Re Pool Business.

Inquiries should be directed to:

AXIOM Claims Consulting Ltd
Chaucer House
28 Western Road
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RM1 3JT

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Email vince.wooding@axiomcc.com

(LEGAL NOTICE)

LIBERTY MUTUAL HOLDING COMPANY INC.
175 BERKELEY STREET
BOSTON, MASSACHUSETTS 02117

NOTICE OF A SPECIAL MEETING OF MEMBERS OF LIBERTY MUTUAL HOLDING COMPANY INC. TO APPROVE THE GLOBAL TRANSACTION

A special meeting of members (the "Special Meeting") of Liberty Mutual Holding Company Inc. ("LMHC"), will be held on March 8, 2002 at 10:00 a.m., Eastern Time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts 02117. At the Special Meeting, Eligible Members will be asked to consider and vote on two separate proposals that constitute the principal elements of the Global Transaction. The first proposal involves the MHC Merger Agreement. The second proposal involves the Reorganization and Combination Agreement.

The Global Transaction is intended to conclude the series of transactions that began with the mutual holding company reorganization of Liberty Mutual Insurance Company ("LMIC") in November 2001. When consummated, the Global Transaction will result in LMHC becoming the ultimate parent company of three of the principal insurance companies within the Liberty Mutual Group, namely LMIC, Employers Insurance Company of Wausau ("EIOW") and Liberty Mutual Fire Insurance Company ("LMFIC"). Voting for the Global Transaction means voting for the MHC Merger Agreement and the Reorganization and Combination Agreement.

The MHC Merger Agreement provides for the simultaneous merger of (i) LMHC with Employers Insurance of Wausau Mutual Holding Company, with LMHC being the surviving company; and (ii) EIOW with Wausau Insurance Acquisition Corp., a wholly-owned subsidiary of LMHC, with EIOW being the surviving company. Consummation of the MHC Merger Agreement will result in EIOW becoming a subsidiary of LMHC.

The Reorganization and Combination Agreement provides for the reorganization of LMFIC into LMHC's mutual holding company structure. LMFIC will reorganize to a stock insurance company pursuant to a plan of reorganization and, immediately thereafter, merge with Liberty Insurance Acquisition Corp., a wholly-owned subsidiary of LMHC, with LMFIC being the surviving company. Consummation of the Reorganization and Combination Agreement will result in LMFIC becoming a wholly-owned subsidiary of LMHC.

Not less than two-thirds of individuals or entities who were Members of LMHC on November 30, 2001 ("Eligible Members") and who vote at the Special Meeting (in person or by proxy) must vote FOR each of the MHC Merger Agreement and the Reorganization and Combination Agreement for the Global Transaction to be approved. **Approval or disapproval of one or both of the proposals will not reduce the benefits under your policy or increase your insurance premium.**

Your vote may be cast in person at the Special Meeting or by using the proxy enclosed along with the Member Information Statement. The proxy allows each Eligible Member to authorize Christopher C. Mansfield, Richard P. Quinlan, James R. Pugh or Joshua E. Beiser to cast the Member's votes. You may also use your own proxy form authorizing individuals other than Christopher C. Mansfield, Richard P. Quinlan, James R. Pugh or Joshua E. Beiser to cast your votes by proxy; however, only proxies that meet the standards established by the Massachusetts Commissioner of Insurance and described in the Member Information Statement will be counted.

If you elect to vote by proxy, the proxy may be returned by mail to Liberty Mutual Holding Company, P.O. Box 8593, Edison, New Jersey 08818-9458. A postage pre-paid envelope is enclosed for your use. The proxy may also be submitted by fax. Please call the toll-free LMHC Information Line at 877-520-8550 to obtain faxing information. All proxies must be received by LMHC on or before 5 p.m., Eastern Time, March 1, 2002 in order to be counted.

The proxy must be marked with a vote either FOR or AGAINST adoption of the MHC Merger Agreement and FOR or AGAINST adoption of the Reorganization and Combination Agreement. If the proxy contains a vote both FOR and AGAINST the same proposal, the proxy will not be counted for that proposal. If the proxy contains a vote either FOR and AGAINST one of the two proposals but no choice is indicated for the other proposal, then the marked proposal will be voted as the Eligible Member indicated and the unmarked proposal will be voted FOR the approval of the proposal. If the proxy is executed but no choice is indicated for either proposal, the proxy will be voted FOR the adoption of the MHC Merger Agreement and FOR the Reorganization and Combination Agreement. If the proxy is not signed and dated, it will not be counted.

The Board of Directors recommends that you vote FOR both the MHC Merger Agreement and the Reorganization and Combination Agreement.

December 14, 2001

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Xcel Energy, Inc., formerly Public Service Company of Colorado, seeks a capable individual with business acumen and 8 years' experience in fire suppression equipment design and maintenance, to provide technical loss control consulting services to all Xcel clients. This position entails inspecting corporate facilities to ensure compliance with applicable local, state and national codes and maintain the highest level of insurability of the facilities.

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IN LIQUIDATION

NOTICE TO CREDITORS OF INTENTION TO DECLARE DIVIDEND

A Third dividend is intended to be declared in the above matter.

If you have not proven your debt in accordance with the order of the Supreme Court of Bermuda made on the 27 July 1996, by which a filing deadline of 31 August, 1996 was established, you will be excluded from participating in any dividend distributed before you prove your debt.

It is anticipated that a Third Dividend will be declared on the 25 February, 2002.

Any creditor who wishes to receive a Claim Form should contact the Joint Liquidators in writing at the following address: Desert Insurance Company Limited - In Liquidation, PricewaterhouseCoopers, P.O. Box HM 1171, Hamilton HM EX, Bermuda

PETER C B MITCHELL Joint Liquidator
Desert Insurance Company Limited - In Liquidation
Dated this 22 Day of January, 2002.

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NOTICE TO PROSPECTIVE PROPOSERS

RFP 02-01 Workers Compensation Third Party Claims Administration Services

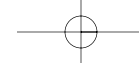
The Santa Clara Valley Transportation Authority (VTA) seeks proposals from qualified firms to perform all work necessary to provide Third Party Claims Administration (TPA) services for VTA's Workers Compensation (WC) self-insured program. The TPA shall be responsible for the administration, investigation, adjustment and resolution of litigated and non-litigated WC claims arising out of, but not limited to, bus and light rail operations in Santa Clara County. Parties interested in obtaining a copy of this Request for Proposals may do so by accessing the VTA website at www.VTA.org and clicking on Procurement (preferred method), or by faxing their request to (408) 955-9729. Please include the following information

- Name and Address of Firm
- Contact Person
- Telephone AND Fax Number
- Ref: Request For Proposal (RFP) 02-01

A pre-proposal conference is scheduled for **Tuesday, February 12, 2002 at 10:00 AM in Building A, Conference Room A106, 3331 N. First Street, San Jose, CA.** Proposals are due by close of business on **Thursday, March 7, 2002.**

This announcement may also be found on the Web at:
www.vta.org/camm





Asbestos: Parliament faults claim delays

Continued from page 29

filing in the United States by Turner & Newall's parent, Federal Mogul Corp. of Southfield, Mich., which prompted similar fears that T&N claimants with asbestos-related diseases would not have their claims paid. In 1996, T&N was hit with the first U.K. court ruling to hold a company liable for environmental—rather than work-related—exposure to asbestos (*BI*, April 22, 1996).

"Recent actions by insurance companies, asbestos manufacturers and, in particular, the courts give sufferers the impression that there is a concerted effort to avoid liability and responsibility to those suffering from an asbestos-related disease," said Michael Clapham, MP for Barnsley West.

"Developments in the insurance world and asbestos companies have thrown into question the likelihood of victims being able to claim compensation for that terrible disease," Mr. Clapham said. Claimants are "double victims," he said. "First, they were negligently exposed to asbestos by their employers and, secondly, they were let down by the failure of insurance companies—particularly in the Chester Street case." He added that they were also victimized in the Turner & Newall case "by the route taken by the parent company, Federal Mogul, to escape liability."

Federal Mogul filed for Chapter 11 bankruptcy protection last fall, citing asbestos liabilities in the United Kingdom and United States.

Many of its liabilities arise from the acquisition of Turner & Newall.

In 1996, T&N bought £500 million (\$707 million) of reinsurance coverage through its Guernsey captive, Curzon Insurance Ltd. The coverage was placed with Munich Reinsurance Co.; Centre Reinsurance Ltd.; and European International Insurance Co. Ltd., which is a Bermuda subsidiary of Swiss Re.

'Developments in the insurance world and asbestos companies have thrown into question the likelihood of (asbestos) victims being able to claim compensation.'

Michael Clapham
Member of Parliament

The reinsurance, designed to cap T&N's asbestos liabilities, "will be triggered should the aggregate cost of claims made or brought after 1 July 1996 exceed £690 million (\$975.7 million). Management now believes that the aggregate cost of claims made or brought after 1 July 1996 will exceed the trigger point. Based on this assessment, the FM Group recorded an insurance recoverable asset under the T&N policy of \$577 million in the fourth quarter of 2000," says a report prepared for Federal-Mogul's administrators.

However, on Nov. 22, European International filed a writ in London's High Court claiming that

Curzon Insurance "failed to disclose...information material to the risk accepted" that was "or ought to have been known to the defendant and/or its agents." Furthermore, before concluding the reinsurance agreement, Curzon or its agents made inaccurate or false statements about the risk that "amounted to material misrepresentations," the lawsuit states.

As a result, "the claimant is entitled to avoid the reinsurance agreement and has avoided the reinsurance agreement and tendered return of the premium by letter to the defendant dated 22 Nov. 2001," according to European International's lawsuit, which is seeking a declaratory judgment voiding the reinsurance agreement.

The £500 million of reinsurance coverage was placed by London broker Sedgwick Group P.L.C., which is now part of New York-based Marsh & McLennan Cos. Inc. A spokesman from Marsh would not comment.

Swiss Re would not comment, as the matter is in litigation.

A spokesman from Federal-Mogul said that "the detailed and complex nature of the insurance arrangements at T&N mean that it's difficult for us to comment at present."

Meanwhile, Mr. Clapham, the MP for Barnsley West, said that "the hammer blow for sufferers of asbestos-related disease" was the Court of Appeal decision in the *Fairchild* case. That court decision "effectively overturned the apportionment principle that has existed

in the courts in such cases for at least 25 years. Usually, defendants would be joined and liability apportioned according to the time that the person had worked with each employer," he said.

Although lawyers are asking the House of Lords to hear an appeal of the ruling, it will take some time before a decision is made. And, even if an appeal is accepted, the law Lords may uphold the Appeal Court decision, Mr. Clapham warned.

In that event, "we would require an insurance industry-initiated scheme to be introduced speedily to pay compensation equivalent to that awarded by the courts in similar cases," said Mr. Clapham.

A spokesman for the Assn. of British Insurers said that insurers "are acutely aware that there are victims with very serious medical conditions" not being compensated but that insurers "are acting under legal constraints of the day."

Insurers also are "looking at the implications of the *Fairchild* decision, which is an issue of law," said the spokesman.

Meanwhile, the ABI worked closely with the Treasury to find an arrangement under which asbestos sufferers and their families with claims covered by Chester Street would still be compensated despite the insurer's collapse, the spokesman noted.

However, he said, there are no plans by ABI members to establish a more general insurance industry-backed scheme to compensate asbestos plaintiffs.

World Updates

Continued from page 29

clubs plan to pass on to shipowners the costs of reinsurance rate hikes, Nigel Russell, a director of the marine division of HSBC Insurance Brokers, said in a statement.

Equitable policyholders accept liability cap

Policyholders of failed U.K. mutual life insurer Equitable Life Assurance Society have voted to accept a plan to cap Equitable's pension liabilities at about £1 billion (\$1.41 billion). Under the terms of the deal, policyholders with guaranteed annuity rate, or GAR, pensions would receive an increase in their pension funds that would average 17.5%, in return for surrendering their guarantees. Other policyholders would receive an increase in the value of their funds that would average 2.5%. The High Court must now approve the package. A group of the disgruntled policyholders announced last week that it intends to sue Equitable Life for misleading pension sales tactics. Equitable closed its doors to new business in December 2000 after failing to find a buyer. In July of that year, the House of Lords ruled that Equitable owed GAR policyholders about £1.50 billion (\$2.11 billion) after it underfunded its GAR pension plans.

IRM settles dispute with former exec

The Institute of Risk Management said last Monday that it had reached an "amicable settlement" of a dispute with former IRM Chief Executive Maureen Gibbins. Last year, Ms. Gibbins filed a complaint of sexual discrimination and constructive dismissal against the London-based IRM, from which she resigned in June 2001 after 16 years of employment. No further details of her allegations were made public. Ms. Gibbins' case was scheduled to go before an employment tribunal at the end of January. The IRM declined to provide details of the settlement but said that no "material costs" were involved.

Reed to head Lloyd's St. Paul unit

David Reed has been named chief executive officer of The St. Paul at Lloyd's, the Lloyd's of London operation of Minneapolis-based The St. Paul Cos. Inc. Mr. Reed, formerly chief operating officer, will succeed Duncan Wilkinson, who is leaving St. Paul on Feb. 28. Mr. Reed joined St. Paul's Lloyd's unit in 2000; before that, he was managing director of the Lloyd's managing agency of QBE Insurance Group Ltd.

Liability: Soaring rates spur reform calls

Continued from page 29

no-frills scheme, where insurers can put together products that allow people who run really small events to have cover. I wouldn't be persuaded that the New Zealand experience is one we would follow here," she said.

New Zealand's Accident Compensation Corp. has \$4.9 billion Australian (\$2.50 billion) in unfunded liabilities and has undergone many modifications, Ms. Coonan said. "I certainly wouldn't want an unfunded taxpayer liability in

'I certainly wouldn't want an unfunded taxpayer liability in this country for public liability.'

Helen Coonan
Assistant Treasurer
Australian federal government

this country for public liability," she said.

The first step in reforming public liability is to identify the drivers of increasing premiums, she said.

"High (common law) verdicts have obviously had some role, but...premiums have been low in this country for a long time."

The insurance industry also had structural problems, caused by the impact of the failure of HIH and issues such as claims management and the withdrawal of cover from some classes, which Ms. Coonan said required investigation.

ARIMA's Mr. Ferguson said all options should be considered. "I don't know if the New Zealand scheme is the right answer for Aus-

tralia. It is just one option that ought to be scrutinized. New Zealand has certainly encountered difficulties in funding its scheme.

"I suggest the establishment of a working party which includes risk managers, insurers, lawyers, and state and federal government representatives to come up with alternatives."

While most businesses have seen premiums escalate, small businesses and community organizations have been hit hard because they do not have the funds to pay increased premiums.

Queensland's state government has established its own task force to look at potential solutions, and the state premier, Peter Beattie, said he would consider strategies such as an insurance pool, a group policy for nongovernment organizations or a national approach determined in cooperation with the federal government.

Mr. Hockey has cited plaintiff attorneys as one of the reasons liability claims are increasing. They are engaged in "a feeding frenzy," he said.

But Eugene Arocca, a senior partner with the Melbourne office of plaintiffs law firm Maurice Blackburn Cashman, said it was "utter nonsense" for Mr. Hockey to blame lawyers. "People don't sue if they don't get injured," Mr. Arocca said.

"Be sure that you return it."

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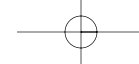
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Olympic: Coverage in place

Continued from page 1

Airport's liability insurers, Old Republic International Corp. in Chicago and Lloyd's of London underwriters, withdrew coverage for terrorism soon after the Sept. 11 attack on the World Trade Center, according to Richard Lane, founding partner and executive vp of Seattle-based Sullivan & Curtis of Washington, the airport's broker. The rest of the airport's liability program remained intact, however.

The airport was offered a separate \$100 million terrorism policy by American International Group Inc., but it was "too cost-prohibitive" he said.

For example, "the premiums for a one-year, \$100 million policy were approximately 10 times what the existing premium was for the entire liability program previously," Mr. Lane explained.

As a result, the airport is essentially going bare for terrorism risks. However, it has instituted some indemnification requirements in its contracts with vendors and other affiliated businesses, Mr. Lane said.

In the meantime, the airport authority has said it is hoping the federal government will provide some assistance, such as a terrorism reinsurance backstop, so the facility can obtain coverage again.

So far, however, the only word coming from Washington is that the Justice Department will be cracking down on security at the Olympics, especially at sites away from athletic venues.

At the 1996 Olympic Games in Atlanta, one person was killed and more than 100 were injured when a pipe bomb exploded in an entertainment area in downtown Atlanta known as Centennial Park, which was away from the athletic venues.

Should terrorists attack any of the athletic venues at this year's Olympic Games, there will be insurance coverage under "an interestingly layered program placed in the London and European markets," said Mr. Moreton.

He declined to provide coverage details or limits other than to say that the limits were "appropriate for this type of event." Mr. Moreton added that the "vast majority" of the excess portion of the program was placed in Lloyd's by London broker Prentis Donegan & Partners Ltd. The coverage is led by Lloyd's syndicate 33, managed by Hiscox Syndicates Ltd.

The primary layer of SLOC's property/casualty insurance program was written by American Specialty Cos. Inc., a Roanoke, Ind.-based managing general agent that will also act as claims administrator for all compo-

nents of the insurance program, with the exception of workers compensation, Mr. Moreton said.

Workers compensation coverage for the Games' approximately 4,000 full-time employees is underwritten by the Workers Compensation Fund of Utah, the state's competitive fund. The fund also covers some 40,000 to 50,000 volunteers, for whom workers compensation will be the exclusive remedy, according to Mr. Moreton.

Regents Blue Cross Blue Shield of Utah provides health insurance to SLOC employees under a traditional indemnity plan, according to a company spokesman.

Health coverage for Olympic athletes is provided by the Blue Cross & Blue Shield Assn., which is also a sponsor of the Games, according to David Mair, risk manager for the U.S. Olympic Committee in Colorado Springs, Colo. Anthem Benefits Administrators Inc. of Columbus, Ohio, is the claims administrator.

The coverage is a "manuscripted hybrid program with a lot of traditional indemnity provisions but also access to Blue Cross & Blue Shield PPO networks nationwide," Mr. Mair said. The program also includes an extension-of-benefits provision for up to 52 weeks after an injury or illness occurs.

In addition to serving as SLOC's insurance broker, Fred A. Moreton is providing risk management services: SLOC's risk manager, Joanne Walker, is an employee of Fred A. Moreton, as are Greg Norman, safety director for the torch relay; Ned Leonard, special projects director; and Kim Aithen, administrative assistant.

The brokerage also has subcontracted with Simms Critical Incident Management Services of Sydney, Australia, to provide emergency and safety management consulting services. SIMS also was involved in the 2000 Olympic Games in Sydney.

Fred A. Moreton was selected to serve as broker and risk management consultant to the Salt Lake City Winter Games in 1996 after a competitive bidding process, according to Mr. Moreton.

The Utah-based broker already had as clients the state and the Delta Center, home of the Utah Jazz basketball team. Fred A. Moreton also is the insurance broker for the U.S. Ski & Snowboard Assn.

Given its experience, "we knew the facilities and the exposures going in," Mr. Moreton said.

Fred A. Moreton is the 99th largest broker of U.S. business, according to the 2001 *Business Insurance* survey, based on 2000 revenues of \$14.9 million (*BI*, July 16, 2001).

E&O: Auditors' liability insurance costs to rise

Continued from page 3

sions, but there will be less appetite in the market for accountants," said Andrew Fryer, a director of Willis Group Holdings Ltd. in London.

Until now, capacity in the commercial insurance market for the Big Five auditors probably totaled between \$200 million and \$500 million each, while midsize international firms could probably buy between \$50 million to \$150 million of insurance, said Mr. Fryer.

The market will continue to support large global accounting firms in offering E&O and D&O capacity in the "hundreds of millions" of dollars but "we have a responsibility to our shareholders, and it is important that we assess the risk and ultimate exposure and price at that level of exposure," said Mr. Lescault of Swiss Re.

Meanwhile, the Enron affair will further focus partners' minds on the "open-ended" risks they run, especially when partners are jointly and severally liable for unlimited losses.

The Enron affair "will send a scare around all professional partnerships with unlimited liability," said Mr. Ward of Hiscox.

In the United Kingdom, proposals have been made to limit the professional liability of auditors. The Company Law Review plan completed last year for the U.K. Secretary of State for Trade recommended allowing auditors to cap their liabilities on a client-by-client basis, as is done in other countries, such as Germany. Under existing U.K. legislation, auditors have unlimited professional liability to their clients.

The size of settlements now hitting accountants is worrying the firms' partners, and their exposure to unlimited liability means that the Big Five firms must struggle to get insurance coverage and are "effectively self-insured," said Rodger Hughes, head of assurance and business advisory services for PricewaterhouseCoopers in the United Kingdom.

In recent years, accountants have faced some huge E&O claims. For example, in January 2000, Ernst & Young settled a \$335 million lawsuit alleging negligence brought by shareholders of Cendant Corp. In December 2001, London's High Court approved an offer of £65 million (\$91.6 million) by Coopers & Lybrand, now part of PwC, to settle a negligence claim made against it by the liquidator of Barings P.L.C. In 1995, Coopers & Lybrand

was involved in the \$430 million settlement of litigation brought by pensioners of the failed Maxwell Communication Corp P.L.C.

It is possible, though, that Andersen's liabilities stemming from the Enron collapse could exceed all those that have gone before.

"Andersen's potential liabilities were already a source of concern among the Big Five auditors even prior to Enron's collapse," noted one source.

For example, Andersen's auditing of collapsed Australian insurer HIH Insurance Ltd. is under scrutiny by a Royal Commission investigating the bankruptcy in Australia.

The firm has been involved in several high profile negligence claims in connection with

its auditing recent years.

Those cases include a \$110 million settlement over an audit of Sunbeam Corp. last year and \$75 million to settle a lawsuit brought by Waste Management Inc. in 1998.

As a result of the growth in litigation and settlement amounts paid by auditing

firms, the big global firms now have large self-insured retentions ranging from \$70 million to \$100 million before E&O coverage in the commercial market kicks in. The firms also have a complex network of captives, mainly in the Cayman Islands and Bermuda, to finance their retentions.

Aon Corp. and Marsh, which manage self-insurance and reinsurance arrangements for the Big Five auditors, refused to comment on the auditors' insurance arrangements.

In recent years, reinsurers have placed Big Five exclusions in reinsurance policies, forcing many smaller insurers, including Lloyd's underwriters, to stop writing E&O coverage for the top accounting firms, said Hiscox's Mr. Ward.

Although Lloyd's underwriters historically wrote a significant amount of E&O insurance for the large global auditors, commercial property/casualty coverage for global accountants now tends to be written at a very high excess level by four or five reinsurance companies, including Swiss Re and units of XL Capital Ltd.

XL would not comment on E&O coverage for accountants, but a spokesman noted that XL's estimated total net exposure to the Enron bankruptcy of \$75 million includes estimates of its exposure to claims on professional liability policies.

The Enron affair 'will send a scare around all professional partnerships with unlimited liability.'

Nick Ward
Hiscox P.L.C.

Kandarian: PBGC head reviews challenges

Continued from page 3

tal. He also was managing director of Lee Capital Holdings, a private equity firm in Boston.

Mr. Kandarian, who holds a law degree from Georgetown University in Washington and a masters of business administration from Harvard Business School, says after many rewarding years in the private sector, "it just made sense to give something back" by working for the government.

While he regards it as premature to lower PBGC premiums, the executive director said now is the time for policymakers to consider other PBGC-related issues. For example, the Bush administration supports proposals—dropped for technical reasons from a sweeping tax and

pension bill Congress passed last year—that would temporarily reduce PBGC premiums for small employers starting new pension plans.

The administration backs proposals that make it easier for employers to start and maintain pension plans, as long as those provisions wouldn't threaten the security of employees' pension benefits, Mr. Kandarian said.

In addition, Mr. Kandarian says it may be time to reconsider—as business groups have urged—a rule that requires employers to use the interest rate on 30-year Treasury bonds to calculate their pension liabilities and their PBGC premiums. Interest rates on Treasury bonds have fallen in the wake of the Trea-

sury Department's announcement last year that it would not issue new bonds.

Business groups argue that the falling interest rate on Treasury bonds has artificially inflated their pension liabilities, forcing employers to contribute more to their pension plans than is really necessary. They say interest rates on higher-quality, long-term corporate bonds would be a more appropriate index to use in valuing liabilities.

Mr. Kandarian acknowledges that the interest rate on Treasury bonds may be artificially low because of an imbalance in supply and demand. In light of that, he said the question of what is an appropriate index to value pension liabilities should be

studied.

But for now, with the likely termination of LTV's pension plans looming, the PBGC's immediate challenge is to be sure that the agency can handle the flood of new participants whose benefits the PBGC will have to administer.

"This is likely to be our biggest year ever in terms of the number of participants taken on by us. We want to be sure we have the systems in place to handle this," he said.

At the same time, the PBGC wants to be at the forefront of "e-government," so that employers and beneficiaries will be able to get more information and conduct more transactions electronically with the PBGC, he said.

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Products & Services

CitiStreet forms new unit

QUINCY, Mass.—CitiStreet, the joint benefit outsourcing unit of Citigroup Inc. and State Street Corp., is forming a new unit to provide a full range of benefit consulting services to employers.

CitiStreet Consulting Services will be based in Jacksonville, Fla., where CitiStreet now has a major outsourcing center. Actuarial consulting will be offered through Chicago Consulting Actuaries, which will open an office adjacent to CitiStreet's Jacksonville facility. In addition, CitiStreet will offer health benefit plan consulting through Minneapolis-based consultant eBenX.

Quincy, Mass.-based CitiStreet also will expand its existing communications consulting practice, which is now limited to defined contribution plans, to include defined benefit, health and stock option/purchase plans.

"By offering a bundled, one-stop-shopping

approach, CitiStreet can provide in a timely manner the consultation to help plan sponsors meet their human resources goals and objectives," said Monica Gallagher, director of CitiStreet's client relationship practice in Jacksonville. More information about CitiStreet is available at www.citistreetonline.com or 904-791-2192.

AIR offers new model to predict comp losses

BOSTON—Applied Insurance Research Inc. has released a probabilistic model capable of estimating workers compensation losses that might result from potential catastrophes occurring in the United States.

AIR, a Boston-based provider of catastrophe modeling services and climate data, says its new product can calculate workers comp losses based on the level of

damage to buildings. Potential estimates include the number and severity of injuries and the average cost of treating injuries. The new model can calculate losses for individual policies or for entire portfolios.

While the company's new workers comp model will provide loss estimates primarily for insurers and reinsurers, it can also produce injury and fatality estimates for individual employers, said Uday Virkud, AIR senior vp in Boston.

For more information, visit www.air-boston.com.

Historical weather data from AccuWeather

STATE COLLEGE, Pa.—Risk managers who need specialized weather information can find forecasts and historical data at AccuWeather.com.

AccuWeather Inc. offers historical weather data covering the past 10 years as well as detailed and customized forecasts at the site. The information includes 10- to 15-day forecasts for any location on earth.

Users can access the information at the Web site or have customized graphics, text and live video weather content delivered to



their Internet or intranet sites.

AccuWeather's "forensic weather services" include historical data, temperature and storm profiles and site-specific weather reconstruction that will help determine liabilities to such exposures as building and roof collapses due to snow and ice and automobile accidents.

AccuWeather also arranges consultations with its meteorologists who can help determine how weather is likely to impact business around the world. Those reports can be delivered by fax, e-mail or to a private Web site.

More information is available by e-mail at info@accuwx.com.

Surety: Losses mean tighter market for buyers

Continued from page 1

Prudent risk managers always inform their organizations' finance departments when purchasing financial guarantees, said Ellen Vinck, risk manager for U.S. Marine Repair Inc. in San Diego. Additionally, purchasing the bonds generally requires obtaining a letter of credit, which necessitates the finance department's cooperation, said Ms. Vinck, who also is a board member of the Risk & Insurance Management Society Inc.

Surety bonds are often used by self-insured employers to meet the collateral requirements established by state workers compensation regulators. Employers also use the financial guarantees for collateral when purchasing insurance coverages with large deductibles. The bonds serve to protect the insurers, which are ultimately held responsible by regulators when policyholders cannot meet the losses within their retentions.

While letters of credit and cash may also be used to meet collateral requirements, financial guarantee surety bonds have several strategic advantages. They need not appear on a corporation's balance sheet, for example, and their use does not diminish a company's line of credit.

Even before the announcement of troubles at Enron and Kmart, risk managers had been reporting in recent months that a hardening surety market was causing them great concern (*BI*, Nov. 19, 2001). Commercial surety companies—which generally are business units of commercial property/casualty insurers—had been increasing rates, tightening their underwriting and demanding that clients increase collateral to obtain the bonds.

Surety companies started to get stricter after they began to see substantial losses in 2000 and 2001. Contraction among insurers and

reinsurers further reduced capacity for financial guarantees.

And because surety bonds are essentially instruments of credit that take on increasing risk exposure in times of economic weakness, last year's economic downturn led surety companies to raise the bond rates they charged.

Regulators in several states began noticing in recent months that some employers, both large and small, were being forced to post other forms of collateral because insurers had stopped providing them with sureties, said Bruno R. Czyrka. Mr. Czyrka is co-chairman of the self-insurance committee of the International Assn. of Industrial Accident Boards & Commissions in Lawrence, Kan., and is also deputy director of the Michigan Bureau of Workers' Disability Compensation in Lansing, Mich.

Then came the revelations of troubles at Enron and Kmart.

The outstanding surety bond liability for Enron is estimated to exceed \$2 billion, much of it in the form of guarantees for product deliveries. The full cost to insurers has not yet been determined, though at least one insurer, Chubb Corp., is facing \$183.6 million of Enron-related surety losses (*BI*, Jan. 28).

But whatever that final total will be, the Enron collapse will drive insurers to reduce the capital they allocate to surety bonds, further tighten their underwriting standards and increase their pricing, said Mark Reagan, chairman and chief executive officer in New York for the construction practice at broker Willis Group Holdings Ltd.

As for Kmart, the Troy, Mich.-based retailer holds \$275 million in surety bonds for workers comp liabilities, according to documents the company filed in U.S. Bankruptcy Court for the Northern District of Illinois in Chicago. Furthermore, the court documents say, Kmart had 19,000 workers comp claims and \$196 million in reserves at the time of its filing.

Although Kmart representatives did not return calls, court papers say that many of the companies providing the retailer with its surety bonds had demanded that Kmart post supplemental security. Those demands indicate, several observers say, that the surety companies had learned that Kmart was struggling financially and had sought additional collateral.

That development, along with poor earn-

ings performance and intense competition, drained Kmart of cash and led it to seek reorganization protection, the company reported.

Contracts often contain an agreement that allows a surety company to demand additional collateral should it find that its client is experiencing an economic downturn. Some agreements even relieve a surety company of the entire obligation or allow it to demand collateral for 100% of its exposure, Mr. Heekin explained.

But there's irony in demanding that a company in financial trouble post additional cash or collateral, said Willis' Mr. Reagan. "If you had collateral," he said, "you wouldn't have an eroding financial position."

Kmart, in accordance with its bankruptcy filing request, received court approval to continue paying its workers comp claims. Meanwhile, the bonds it holds—and the surety companies that provided those bonds—remain at risk until the retailer is out of bankruptcy, Mr. Heekin said.

Several insurers that provided financial guarantees to Enron and Kmart declined to comment for this story.

But the Surety Assn. of America, which represents the industry in Washington, said that sureties continue to be available and remain a viable option for guaranteeing financial performance.

Still, the number of companies that qualify for A rated financial guarantee sureties will continue to shrink as a result of the developments at Enron and Kmart, predicted Keith Newell. Mr. Newell is vp of surety for Lockton Insurance & Risk Management Specialists in Los Angeles, a unit of Kansas City, Mo.-based Lockton Cos. Inc.

Increasingly, surety companies are loath to issue financial guarantee bonds to clients in industries that are prone to economic slowing, he said. Furthermore, the surety companies are willing to provide bonds only to very large corporations, leaving companies with individual net worths of less than \$500 million struggling to obtain the bonds, Mr. Newell said.

"There are fewer insurers willing to take on that risk," he said.

Additionally, Mr. Newell said, insurers and reinsurers are limiting the capital they commit to each account. Consequently, he said, brokers must find a greater number of insurers in order to meet the needs of each client.

Florida: Workers comp

Continued from page 3

then it shouldn't qualify for permanent total benefits."

Attorneys in the state are critical of the proposed reforms.

The proposals would "virtually eliminate permanent total disability claims," charged Paul Anderson, chairman of the Florida Academy of Trial Lawyers' workers compensation section. "For all practical purposes, it would be virtually impossible" to claim a permanent total disability under such strict criteria, he said.

The reform proposal also would change the way attorneys are paid. Under current law, fees are paid on a sliding scale based on the benefits paid to an injured worker. "It works out to an average of around 10%," according to Mr. Anderson. If the payment is deemed by a judge to be inadequate, the judge may allow attorneys to charge an hourly rate, he added.

Under the coalition's proposal, hourly fees would be prohibited except in medical cases, and fees above the sliding scale in those cases would be capped at \$1,000.

Mr. Anderson pointed out that, like other businesses, law firms are in business "to make

money. We don't take business if we are going to lose money doing it." He said a typical case in which an attorney fought to obtain coverage of a magnetic resonance imaging scan for a client likely would mean a maximum fee of 10% of the cost of the MRI, plus \$1,000, around \$1,060. Mr. Anderson said in some circumstances, that fee could be too low.

While seeking to limit the payment of permanent total benefits and attorneys fees, employers and insurers would like to see doctors paid more and propose revising medical fee schedules. Ms. Schroeder explained that the aim is to increase medical payments to attract good doctors to the occupational care system and to discourage providers from ordering unneeded procedures just to collect adequate fees.

The coalition also proposes eliminating exemptions that currently allow construction companies to operate in the state without workers compensation insurance. "Right now, anyone with half a brain can exempt themselves from having to have workers comp," said Mr. Stander, because of loopholes in current law.

The legislative session ends March 22.

Fraud: Near North CEO, facing charges, resigns

Continued from page 1

In standard insurer/agency agreements, agents do not have to remit premiums to insurance companies until 45 days after the close of the month in which the business was transacted. Illinois requires licensed insurance agents to maintain trust accounts for all premiums collected from policyholders, and state law regulates withdrawals from the accounts.

Agents can, for example, use the fund to pay insurers, return premiums due policyholders and pay out commissions owed to agents. The law explicitly states that the fund "shall not be used as a general operating account or claim payment account."

Federal prosecutors allege that Mr. Segal caused money to be disbursed to Near North from the trust in an amount exceeding the commissions and other money due the agency, and that, at his direction, Near North used the funds for personal expenses, business acquisition and expansion and as general operating funds.

The federal complaint also alleges Mr. Segal defrauded insurers and customers by misrepresenting premiums due from Near North customers and credits and refunds owed them.

State regulators notified

Late last summer, Near North notified the Illinois Department of Insurance about "problems with its premium trust account," according to a company statement, "then worked with the IDI and resolved the issue."

"Steps were taken to immediately correct the accounting deficiencies," said Harvey M. Silets, a partner with the Katten Muchin Zavis law firm in Chicago, who is representing Mr. Segal.

But the federal complaint alleges Mr. Segal caused his company "to make false, material statements" to the Illinois department to conceal the alleged fraud.

"We frequently pursue regulatory action on PFTA matters as a result of consumer complaints or company complaints where somebody was harmed by the violation and seeks to make the department aware of the problem," said Illinois Insurance Director

Nathaniel S. Shapo. "That was not the case here until this week. In this case, the company came in and reported the problem and claimed self-evaluation privilege."

Under the self-evaluation privilege, if a company comes forward to report to regulators that it is out of compliance with regulations and has taken, or is taking, satisfactory steps to correct the problems the information is kept confidential by regulators.

'When you have substantial business with an agency, it's certainly not uncommon to make loans for a variety of business purposes.'

Fireman's Fund spokesman

Still, state regulators say they planned an onsite examination of Near North early this spring. Now, "If technically feasible and not conflicting with the criminal investigation, we are accelerating our planning for the exam and would like to go in as soon as possible," Mr. Shapo said.

A California Department of Insurance spokeswoman said regulators there are also reviewing Near North, which has a film insurance brokerage unit based in Los Angeles.

According to the federal criminal complaint, late last year Near North obtained \$10 million in loans from New York-based American International Group Inc. and Novato, Calif.-based Fireman's Fund Insurance Co. to replenish the PFTA.

AIG would not comment, but a Fireman's Fund spokesman confirmed that his company made such a loan to Near North.

"I think you'll find if you poll many different insurers, when you have substantial business with an agency it's certainly not uncommon to make loans for a variety of business purposes," the spokesman said.

In investigating Mr. Segal, the FBI interviewed two former Near North employees identified as "Cooperating Individual #1" and "Cooperating Individual #2."

The criminal complaint said CI-1 "was employed as a high-level officer of Near North

for the past two years and his duties included reviewing financial transactions involving Near North." CI-2, meanwhile, "was employed with Near North for more than 10 years and resigned within the past 12 months. CI-2 was a manager in the property and casualty department of Near North at the time of his resignation."

Near North noted it has not been charged with any wrongdoing and is cooperating fully with authorities. And both the company and Mr. Segal, through his attorney, contend that no customer, insurer or client of Near North was hurt by the trust account problems.

Mr. Segal's position "is basically that these charges are without foundation and, when given an opportunity, he will successfully defend against them," Mr. Silets said.

With Mr. Segal's resignation, John Harney, a Near North senior vp, was named interim chief operating officer. The company also was forming an independent board of directors, which will not include Mr. Segal, said Sherri C. Stanton, senior vp and general counsel at Near North National Group. "Our hope is to have it done within days," she said Thursday.

The new board will name the company's new CEO, Mr. Harney said.

Mr. Silets noted that while Mr. Segal has "stepped down as CEO...he has retained his equity interest in the company." Mr. Segal owns 100% of Near North.

Fund-dipping common

Several insurance agency consultants said many smaller to midsize privately held insurance agencies dip into premium fund accounts to supplement operating expenses.

Marsh Berry & Co. Inc., for example, estimates that 28% of the thousands of insurance agents in its database are currently out of trust, meaning that some of the premiums have been removed for other purposes, said Albert Lloyd, a vp with the Concord, Ohio-based agency consulting firm. All of the agencies are privately held companies, he said.

"There are people throughout the industry that are not following the trust laws as fully as they should or to the letter of the law," agreed Bobby Reagan, president and CEO of consulting firm Reagan Consulting Inc. in Atlanta.

Ken Crerar, president of the Council of Insurance Agents & Brokers in Washington, said that after interviewing several companies in the CIAB membership—which does not include Near North—he does not believe any members are out of trust. "There's a very, very strong sense of integrity around those accounts," he said.

Buyers' views mixed

Risk managers' opinions differ on premium trust accounts.

Beaumont Vance, risk manager for VICORP Restaurants Inc. in Denver, said, "It reminds me of those scurrilous individuals who collect money from a group of people that have lunch together and then shortchange the tip and pocket the remaining money."

But Bill Witt, director-corporate insurance programs for Fremont General Corp. in Santa Monica, Calif., said he views premium trust accounts as "for the benefit of the producer, the client and the insurer."

"By virtue of the dishonest act, however, it does not mean that the system is not functional and should not be continued," he said.

While an agency's being out of trust might damage client relationships, it shouldn't put the buyer at risk of coverage cancellation for nonpayment. "The buyer is not in jeopardy because payment to the agent is the same as payment to the insurer, so coverage is not jeopardized," said Timothy J. Cunningham, a principal in the Chicago office of agency consulting firm IMCG.

But at least one risk management consultant advises clients to request that payment be remitted directly to the insurer or ask for written confirmation from the insurer that payment was received.

"In the insurance market conditions that exist right now, I wouldn't want any client to run any risk that their policy would be canceled for nonpayment," said Karen MacWilliam, a Vancouver, British Columbia-based independent risk management and insurance consultant.

Crain's Chicago Business, a sister publication of Business Insurance, contributed to this report.

Catch-up: Employers seek modification of rules

Continued from page 3

more plans will not offer every single eligible catch-up participant an opportunity to make catch-up contributions," ERIC said in its letter.

It would be "excessive and wholly disproportionate" of the IRS to deny all eligible employees at a company the opportunity to make catch-up contributions if catch-up contributions were not available to just a handful of employees, the ERIC letter said.

In addition, ERIC and the American Benefits Council are asking the IRS to modify the universal availability requirement as it now applies to employees represented by unions. Under the current IRS rules, the employees' unions have, in effect, veto power over whether an employer can offer catch-up contributions to all employees.

That is because if the unions were to refuse to accept an employer's offer to add catch-up contributions to plans that cover union employees, the employer, under the

universal availability requirement, could not offer catch-up to any other eligible employees.

While it is unlikely that the unions would say no, benefits experts say that giving labor unions this kind of de-facto power over employers' ability to offer catch-up contributions to all their eligible employees would give the unions a huge bargaining chip.

"In effect, a union could hold an employer and the rest of its employees, including other collective bargaining employees for whom the catch-up was already negotiated, hostage on this issue," said Larry Sher, a principal and director of research for Buck Consultants Inc. in New York.

In the letter, ERIC said the situation would be remedied if the IRS were to make it clear that an employer would have satisfied the universal availability rule if it had offered unions the opportunity to agree to a catch-up provision even if the unions had not accepted that offer.

California: Workers comp

Continued from page 2

quire actively directing a contractor or a contractor's employee. It can result from an omission or failure to act, she wrote.

"For example, if the hirer promises to undertake a particular safety measure, then the hirer's negligent failure to do so should result in liability if such negligence leads to an employee injury," she wrote.

Mr. Hiestand said the court's ruling confuses what constitutes affirmative contribution. "You can see that in the future when an employee sues the hirer they're going to say, 'The hirer affirmatively contributed to my injuries by either doing or failing to do something,'" he said. "What are the dimensions of that?"

In the companion case, *Brian McKown vs. Wal-Mart Stores Inc.*, the Supreme Court held that an employer is liable for injury to an independent contractor's employee "insofar as the hirer's provision of unsafe equipment affirmatively contributes to the employee's injuries."

Mr. McKown worked for a contractor installing sound systems in Wal-Mart store ceilings. He was injured when a platform atop a forklift fell. Wal-Mart had requested that the

contractor use its forklifts whenever possible, court papers show. But Wal-Mart did not supply an adequate number of chains required to secure the platform to the forklift, the court records show.

The trial court ruled that Wal-Mart was partly liable, along with Mr. McKown's employer and himself, for the accident. The appeals court agreed that Wal-Mart was negligent and could be sued, which was affirmed by the high court.

Wal-Mart argued it should not be liable because it merely requested, and did not insist, that the contractor use its equipment. But the court found that Wal-Mart's affirmative contribution to the employee's injuries made it liable.

The Civil Justice Assn. that Mr. Hiestand represents filed amicus briefs in both cases. The organization represents insurers, employers and associations throughout California.

Roseanne Hooker vs. Department of Transportation, California Supreme Court; SO91601. Jan. 31, 2002

Brian McKown vs. Wal-Mart Stores Inc., California Supreme Court; SO9097. Jan. 31, 2002

FTR

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

U.K.'s FSA scrutinizing financial reinsurance

The U.K. Financial Services Authority is increasing its scrutiny of financial reinsurance after two high-profile insurer failures. At the London-based Assn. of Insurance & Risk Managers' annual lecture in London last week, FSA Chairman Sir Howard Davies said the FSA has been investigating the use of financial reinsurance and "insurance-based investment banking," or credit-risk transfers between banking and insurers and reinsurers. He noted that one feature common to the collapse of Independent Insurance Co. Ltd. in June 2001 and that of Equitable Life Assurance Society in December 2000 was "financial reinsurance treaties, of doubtful value, with unregulated reinsurers."

Enron employees sue 401(k) trustees

A lawsuit filed last month on behalf of current and former employees of

Enron Corp. charges that the company's 401(k) plan trustees and administrators failed to warn plan participants that concentrated investments in Enron stock were "imprudent." The suit, filed under the Employee Retirement



Income Security Act, is the first Enron-related suit to assert that employees should have received investment advice

regarding company stock. More than 60% of the Enron 401(k) plan assets were invested in company stock at the time of Enron's bankruptcy filing in December.

Grocery benefits protected by ERISA: Judge

Retirees of a New Orleans grocery store chain are entitled to nearly \$5.4 million under a voucher plan that a U.S. District Court judge has ruled is protected by the Employee Retirement Income Security Act.

Judge Carl Barbier last month issued his final ruling in the suit filed by 200 former employees of Schwegmann Giant Super Markets Inc. The judge determined in August 2001 that the practice of issuing monthly vouchers, each redeemable for \$216 worth of groceries, constituted a



retirement benefit under ERISA (*BI*, Sept. 3, 2001). The retirees sued after the vouchers were stopped in 1997, when the chain was sold.

Merck to spin off PBM unit

Drug maker Merck & Co. Inc. plans to spin off Merck-Medco, one of the nation's largest prescription benefit managers. The move, expected to take place later this year, will turn Merck-Medco into a separate, publicly traded company. Since Merck-Medco's 1993 purchase by Merck for \$6.6 billion, the PBM has expanded its revenues from \$2.2 billion in 1992 to \$26 billion in 2001, Whitehouse Station, N.J.-based Merck said. The PBM's number of covered lives has nearly doubled, to 65 million, during that time.

Marsh revenues, profits lower in 2001

Marsh & McLennan Cos. Inc.'s revenue and profits for 2001 fell, as declining investment management results offset gains in its insurance businesses. New York-based MMC's gross revenues in 2001 were \$9.94 billion, a 2.1% decline from 2000. Although revenues from risk and insurance services rose 7.8% to \$5.15 billion in 2001, unit Putnam Investments Inc.'s revenues fell

18.8% to \$2.63 billion as assets under management shrank. Consulting revenues rose slightly to \$2.16 billion. Net income fell 17.5% to \$974 million. The drop reflected \$396 million in one-time charges, including \$173 million related to the terrorist attacks that destroyed MMC's World Trade Center offices and killed 295 employees.

Bush to propose hike in Medicare HMO payments

President Bush this week will propose an increase in federal payments to Medicare health maintenance organizations, to halt HMOs' exodus from Medicare. Under

the proposal, most Medicare HMOs would get a 6.5% rate increase next year, compared with the 2% to 3% increases the plans have received each year since 1998.

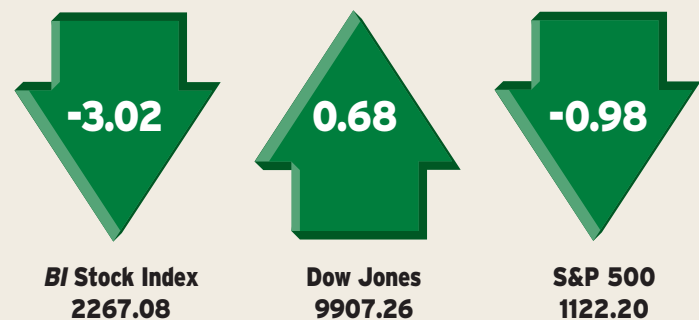
XL forms excess casualty unit

XL Winterthur International has set up a large-account excess casualty underwriting unit in New York. The unit of Bermuda-based XL Capital Ltd. will offer lead umbrella capacity of \$25 million excess of a \$1 million minimum attachment point. The insurer also will offer up to \$50 million in limits for accounts for which it attaches at higher layers.

BI Stock Index [1-24 - 2-1]

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

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



Largest gains

Meadowbrook Insurance Group	15.76
Willis Group Holdings	10.60
Philadelphia Cons. Holdings	10.08
Hilb, Rogal & Hamilton	8.50
Brown & Brown	8.29

Largest losses

Gainsco Inc.	-20.86
ESG Re Ltd.	-9.65
Mutual Risk Management Ltd.	-7.28
AXA-UAP Group	-7.26
AEGON N.V.	-6.87

Weekly change by market segment

Brokers	2.31
Insurers/Reinsurers	-0.52
Managed Care Organizations	0.80

Source: CNET Investor (investor.cnet.com)

Online Poll [1/24 - 2/1]

How much are your health insurance plan costs going up this year?

5-10%	10-15%	15-20%	>20%
17.1%	17.8%	11.8%	53.3%

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

Time for insurers to take charge of balance sheet

By MYRON M. PICOULT

We are again going through the fourth quarter and year-end ritual when insurers do their mea culpa. This time around, the



housecleaning dynamics are being driven by the lingering effects of the Sept. 11 loss and the want and need of many managements to position their companies to be able to capitalize on the ongoing rise in rates.

Hence the "kitchen sink" phenomenon. Managements are warning of earnings shortfalls for the fourth quarter and the full year. The shortfalls are ascribed to restructuring charges, exposure to Enron Corp. and reserve strengthening.

We have long been critical about the integrity of the industry's balance sheet, brought about by years of deficient pricing and poor reserving strategies. The key question is whether the companies are doing

Taking stock

a complete housecleaning. Indeed, we suspect that many management teams that have gone through the process have been constrained by fears of spooking the rating agencies into rating reductions or negative watches.

In addition, they are concerned about investors who would likely bail out of insurance investments that were perceived to be markedly lagging peers in terms of balance sheet strength and earnings momentum.

For the most part, industry gurus applaud these moves, as they seemingly enhance future earnings prospects.

Clearly, earnings visibility is enhanced. Some even note that the adjustments are meaningless or inconsequential, as 2001 results were already shot. Some write-offs are brought about by accounting changes. Other write-offs tend to mirror past mistakes or misjudgments. In any event, write-downs are never meaningless. We find it curious that commentators never seem to address the prior overstatement of earnings and the erosion of book value.

In all fairness, a distinction should be made between write-downs taken by a new CEO who has been brought in to right a listing ship, and ones taken to address a management team's own faux pas. We applaud the tenacity to step up to the plate, but we find it frustrating that the charges are taken "below the line." If the restructuring or transformational charge is related to poor reserve development, poor underwriting judgment or deficient pricing, the charge should be above the line—against operating earnings—as this was all related to ongoing operations.

Likewise, if the charge is related to staff reconfiguration because an insurer decides to exit a line or lines of business that it had no business getting into or growing at an excessive pace, that too mirrors operational judgment.

We recognize that reserving is an art. However, there are insurers that clearly have excelled at maintaining above-average reserving records. One almost gets the feeling that the modus operandi in many shops is to skimp on reserves to boost near-term earnings and not to worry about potential shortfalls because they will come in below the line and the industry gurus will ignore it anyway.

Hence, our redefinition of IBNR. Perhaps it really stands for "incurred but never reported...at least above the line." Developing accurate loss picks is not easy. However, managements, actuaries and company auditors can do a better job of using more realistic parameters, including the prospects of reinsurance recoveries. In our opinion, actuaries and auditors are signing off on reserve levels in many entities that are still weak, notwithstanding the fact that the reserving parameters used are within various accounting guidelines. In too many cases, the parameters are wide enough to drive an 18-wheeler through them.

The inherent leverage that exists in insurance companies is such that a better job must be done of monitoring both sides of the balance sheet. The flight to quality that has been working its way through the industry has not yet run its course. What we have seen in recent years is that when an insurance entity hits the skids, it goes down quickly. It no longer takes years to disappear.

Myron Picoult is senior adviser, Financial Institutions Group, at Dresdner Kleinwort Wasserstein in New York. He is a past president of the Assn. of Insurance & Financial Analysts.

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