

Rivals object to ACE's sale of runoff units / 3

Executive Life defendant drops out of suit / 3

Business Insurance

www.businessinsurance.com

February 21, 2005

Entire contents copyright © 2005 by Crain Communications Inc. All rights reserved.

\$5

Willis to exit wholesale business

Aon may follow suit as conflict of interest concerns loom

By SALLY ROBERTS

NEW YORK—Decisions last week by Aon Corp. and Willis Group Holdings Ltd. to divest their wholesale operations will remove any perceived conflicts of interest that may arise from the brokerages owning retail and wholesale operations, observers say.

Although the wholesale industry has not been directly targeted by investigations of industry compensation practices and potential conflicts of

interest, the general perception that such conflicts may exist in retail brokers owning wholesale units may be enough to spark such moves, they say.

London-based Willis said last Tuesday it is selling its New York-based Stewart Smith Group to Charlotte, N.C.-based American Wholesale Insurance Group, in a transaction that will allow Willis to focus on its core retail business (see story, page 18).

Aon quickly followed suit announcing it was

exploring alternatives to its ownership of Swett & Crawford Group, the world's largest wholesale brokerage.

All eyes are now turning to Marsh & McLennan Cos. Inc., which owns Crump Insurance Services Inc., the world's fourth-largest wholesaler.

While observers say Marsh will likely follow suit and divest itself from Crump, other retail brokerages say they have no plans to get out of the wholesale business.

See **BROKERS**/page 18

Late News



PHOTO: GETTY

President Bush signed the Class Action Fairness Act into law last week.

Bush signs class action reform measure

The House of Representatives last week passed, and President Bush signed, the Class Action Fairness Act. Among other things, the act permits the removal of certain class actions involving defendants and plaintiffs from multiple states to federal court from state court. Businesses have long sought such a change, holding that corporate defendants are often denied fair trials in certain overly plaintiff-friendly state courts. A similar effort in the last Congress passed the House but died in the Senate.

TRIA extension bill introduced

Two senators last week introduced legislation that would extend the Terrorism Risk Insurance Act two years beyond its scheduled Dec. 31 expiration. In addition, the measure—drafted by Sens. Robert Bennett, R-Utah, and Christopher Dodd, D-Conn.—would establish a commission to explore how to create a transitional terrorism insurance backstop after TRIA expires. TRIA currently provides a federal backstop that would help insurers cover losses stemming from future catastrophic terrorist attacks.

Chao, benefits council at odds over pensions

The Bush administration is criticizing a pension funding reform package proposed by the American Benefits Council as inadequate in overhauling pension rules. "It is disappointing that the report fails to recognize the reality that the pension funding rules are broken," said Labor Secretary Elaine Chao, who also is chairman

See **LATE NEWS**/page 19

Three more enter guilty pleas in Spitzer probe

By DOUGLAS McLEOD

NEW YORK—New York Attorney General Eliot Spitzer's continuing probe of industry practices produced three more guilty pleas last week, but the pleas did not represent a widening of the case in terms of the companies involved.

On Tuesday, a former managing director of Marsh Inc. and two officials of an American International Group Inc. underwriting unit pleaded guilty to criminal charges arising from Mr. Spitzer's investigation of fraud and bid rigging by insurance industry companies.

Joshua Bewlay, a former Marsh managing director in charge of excess casualty placements in the company's Global Broking unit in New York, pleaded guilty to a felony fraud charge before New York state Judge James Yates. Also pleading guilty to a felony was John Mohs, a manager at AIG's American Home Assurance Co. unit. Carlos Coello, an American Home underwriter, pleaded guilty to a misdemeanor fraud count.

All three were accused of participating in an alleged Marsh scheme to rig renewal bids in favor of incumbent insurers by producing deliberately inflated competing quotes, known within Marsh as "B quotes."

Mr. Bewlay and Mr. Mohs face up to four years in prison on the charges, while Mr. Coello faces a maximum of one year. All have agreed to cooperate with Mr. Spitzer's investigation.

See **SPITZER**/page 17

Insurer's use of alternative risk cover queried

Investigations of AIG's finite risk deals widen

By JUDY GREENWALD

NEW YORK—Investigations into American International Group Inc.'s accounting treatment for alternative risk transactions on its own financial statements breaks new ground in the months-long probe into insurance industry practices and could have widespread implications for the industry overall, say some observers.

Until now, investigations by New York Attorney General Eliot Spitzer and the Securities and Exchange Commission have focused on the relationship of AIG, as well as other insurers and brokerages, with their clients, whether it involved finite risk reinsurance or bid rigging. But their focus may now have expanded to encompass AIG's own financial statements, these observers say.

In a statement last week, AIG said it had "received subpoenas from the Office of the Attorney General for the State of New York and the Securities and Exchange Commission relating to investigations of nontraditional insurance products and certain assumed reinsurance transactions and AIG's accounting for such transactions. AIG will cooperate in responding to the subpoenas."

Neither the insurer, the SEC, nor Mr. Spitzer's office returned phone calls seeking comment on the subpoenas, but the reference to "AIG's accounting for such transactions" has led several observers to conclude that the investigation is now focusing on AIG's own use of finite risk cov-



erages. That would mark a broadening of investigations into finite risk, which are esoteric reinsurance transactions often used to help finance hard-to-place risks and protect reinsurers from unlimited losses.

In recent months, regulators as well as rating agencies and some industry executives have started to question the use of nontraditional risk

See **AIG**/page 17

International

P&I CLUBS FORM RENT-A-CAPTIVE

NEWSPAPER

One defendant in ELIC trial as MAAF defaults

By JOANNE WOJCIK

LOS ANGELES—The French insurers sued by the California Insurance Department for fraud in connection with the 1991 purchase of the failed Executive Life Insurance Co. have defaulted, leaving one defendant in the suit as the trial began last week in federal court in Los Angeles.

Mutuelle Assurance Artisanale de France and Mutuelle Assurance Artisanale de France Vie S.A., wholly owned subsidiaries of MAAF Assurances S.A., opted to default on Thursday because the companies have no assets in the United States, making it unlikely that any judgment ordered by the court would be recoverable, according to Richard J. Ney, an attorney with Chadbourne & Parke L.L.P. in Los Angeles, who represented the companies.

The default followed \$692 million in settlements reached with

two other defendants in the litigation: Consortium de Realisation S.A. and Credit Lyonnais have agreed to pay \$600 million, while Aurora National Life Assurance Co. put \$92 million on the table. CDR, a French-government entity, took on Credit Lyonnais' ELIC liabilities under an indemnification agreement in 1995.

The sums include \$375 million that CDR had agreed to pay on behalf of Credit Lyonnais as part of a 2003 settlement of civil and criminal charges filed by the U.S. Department of Justice. In addition, Sierra National Insurance Holdings Inc., a losing bidder in the ELIC auction, will receive \$75 million from CDR and \$12 million from Aurora to settle a lawsuit it brought against the parties in 2001. Sierra's suit, which is being tried in conjunction with the Insurance Department lawsuit, asserts that it was the only other vi-

able bidder and would have made at least \$2 billion had it won the 1991 auction.

When seized by the California Insurance Commissioner in April 1991, Executive Life was one of the largest life insurance companies in the United States, and it owned one of the largest portfolios of junk bonds in the world, valued at more than \$6 billion. The decline of the junk bond market earlier left the company financially impaired at the time.

As a result of MAAF's default and the CDR and Aurora settlements, just one defendant remains to face trial: Artemis S.A., an investment firm owned by French billionaire Francois Pinault, also the owner of Gucci Group. Artemis and Mr. Pinault were added to the lawsuit in 2000 after the department learned that the parties had joined the al-

See ELIC/page 16

Rival insurers seek to block ACE's sale of runoff units

By MICHAEL BRADFORD

HARRISBURG, Pa.—American International Group Inc. and three other insurers are asking Pennsylvania insurance regulators to bar ACE Ltd.'s sale of three of its subsidiaries that are running off asbestos and environmental liability claims.

In a Feb. 18 letter to Pennsylvania Insurance Commissioner Diane Koken, attorneys for the insurers argue that the planned sale of ACE American Reinsurance Co., Brandywine Reinsurance Co. S.A.-N.V. and Brandywine Reinsurance Co. (UK) Ltd. is an attempt by Bermuda-based ACE to "shed its legal obligations to policyholders and diminish the legal leverage" that the Pennsylvania Department of Insurance has to force ACE to honor its policies.

The other insurers in the effort to halt the sale are Allstate Corp., Chubb Corp. and St. Paul Travelers Cos. Inc. The four insurers would be adversely affected by the sale because they have ceded millions of dollars of reinsurance to the ACE subsidiaries, the letter states.

For example, the letter points out, net recoverable reinsurance the insurers ceded just to ACE Re totaled more than \$60 million as of December 2003.

A spokesman for ACE declined to comment on the insurers' move to stop the transaction.

Earlier this year, ACE announced that it was selling the subsidiaries to Randall & Quilter Investment Holdings Ltd. in the United Kingdom (BI, Jan. 10).

ACE has no legal responsibility to

the runoff business beyond an \$800 million excess-of-loss reinsurance obligation that CIGNA Corp. worked out with Pennsylvania regulators in 1996. Those funds were nearly exhausted earlier this year. ACE assumed much of the asbestos and environmental liabilities as part of its \$3.5 billion purchase of CIGNA's property/casualty operations in 1999.

In the letter to the commissioner, attorneys argue that sale of the ACE units appears to be the insurer's "initial play to shed itself of all of the more than \$5.8 billion in runoff liabilities that it purchased in 1999."

The Pennsylvania Department of Insurance is holding a 45-day public comment period regarding the planned sale, a spokeswoman for the department said.



BI to deliver more news to your in-box

Business Insurance now offers several free e-mail news products designed to deliver the important news readers want in more timely and tailor-made formats.

- **BI's Risk Management News Alert and Benefits Management News Alert** are twice-weekly e-mails designed to bring buyers the top news stories in their respective fields, as well as to provide links to relevant rankings and listings of industry vendors, online resources and magazine articles.

- **BI's Industry Focus News Alert** is a weekly e-mail for people in the commercial insurance industry who want to stay abreast of top news stories for insurers, reinsurers, brokers and consultants. This alert also will spotlight features from *BI's Industry Focus*, the monthly supplement for the seller side of *BI's* audience.

- **BI's new Custom News Alerts** are designed for readers who want to be alerted to breaking news on specific topics of interest. Users can select from a variety of risk management, bene-

fits management and commercial insurance topics, as well as specific companies. Whenever news articles are posted on these subjects at www.businessinsurance.com, an alert will be e-mailed.

The ability to deliver these new e-mail news alerts coincides with the commencement of posting articles online as the news breaks.

The new e-mails complement *BI's* existing e-mail news products: the Daily News Alert, a summary of all of the day's news; and This Week in *BI*, which highlights articles in the weekly newsmagazine.

Anyone can register online at www.businessinsurance.com to receive any of these e-mail news products and to view online news. Simply follow the log-in/register links to access "e-mail services." Existing recipients of *BI* e-mails can update their preferences online to start receiving these new products.

To register for *BI's* e-mail news alerts, visit www.businessinsurance.com/register.

Inside Business Insurance

Communicating benefits to different groups

Employers are often challenged in fording cultural divides when it comes to communicating benefit programs. **Page 4**

HUD reducing hoops for LTC liability coverage

Long-term care facilities now may use out-of-state insurers and risk retention groups. **Page 4**

Gallagher to appeal \$175 million award

The broker's financial unit says the jury lacked the technical knowledge to understand the challenges of producing synthetic fuel. **Page 6**

AARP suit will hurt retirees not help them

By hindering the EEOC's retiree health care ADEA exemption, all age groups could lose. **Page 8**



Mixed message handed down in lung-scar ruling

Anxiety stemming from pleural plaques has been ruled compensable in the U.K., but the monetary awards are small. **Page 13**

Online

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

- Searchable **directories** provide access to all the listings of industry vendors found in *BI's* Market Sourcebook.

- New **Opinion Poll** for readers: Looking back, do you think the risk management profession should have taken a harder line years ago on contingent commissions?

Departments

Advertiser Index	18
Between the Lines	12
Business Resources	12
Comings & Goings	12
International	13
Opinions	8
Perspectives	10
Professional MarketPlace	14
Ticker	19
World Updates	13

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Benefit communications redesigned for diverse workforce

By JOANNE WOJCIK

Recognizing that the American workforce is becoming increasingly multilingual and multicultural, many employers and health plans have been redesigning their health benefit communications to reach this diverse population.

But merely translating brochures, Web sites and other materials into other languages is not enough, communication experts say, because, in addition to the language barriers, there often are cultural barriers that prevent employees from diverse backgrounds from seeking appropriate medical care.

To be effective, benefit communications must take these cultural differences into account and, in some cases, go beyond the tradi-

tional workplace model and extend into the homes and communities of the groups being targeted, benefit communication experts say.

"In the written and verbal communication, we spend much more time helping them understand the health care system in this country," which is different from that in most other countries, said Kirk Rothrock, president and chief executive officer of CompBenefits Corp., a dental and vision plan based in Atlanta.

Most people from other countries typically received their health care services in clinics, whereas in the United States, "we have a generalist and a specialist community in health care, dental and vision. They struggle with this. It's not enough to translate the materials to say 'Go to a generalist for this' or 'Go to a

specialist for that,'" Mr. Rothrock said.

Furthermore, "this population is not focused on prevention," he added.

For example, "they only go to the dentist or optometrist as needed," even though virtually every dental insurance plan covers preventive care at 100%, Mr. Rothrock said.

This is the second of two articles on cultural disparities in health care.

Part 1 addressed quality of treatment (BI, Feb. 14)

Part 2 addresses communicating benefits to a diverse workforce

To encourage prevention and, hopefully, reduce future dental costs, CompBenefits employs a significant number of bilingual call center employees who have been trained to steer the conversation toward preventive care and clearly explain available benefits, he said.

Roswell, Ga.-based HispaniCare has been building bilingual versions of health plan and third-party administrator-sponsored Web sites that not only are translated from English into Spanish but are specifically designed to address the special health needs of Hispanic plan members.

For example, because Hispanics are prone to diabetes, which is linked to diet and obesity, HispaniCare has developed an interactive weight management site specific-

ly designed for Hispanics, said Dirk Schroeder, executive vp of HispaniCare.

HispaniCare is working with several large employers in Texas to test the effectiveness of the site and will present its findings at the June meeting of the National Business Group on Health's Institute on Obesity, he said.

"Health care is a unique field when it comes to communication," said Mr. Schroeder, who has spent 20 years researching cross-cultural and multicultural health care issues. "It's technical; people don't understand it, and they're scared."

And that is why people who are not native speakers of English may be more comfortable discussing their health care with others who

See **COMMUNICATION**/page 16

Tribe seeks to self-insure workers comp exposures Temp firm lost commercial cover

By ROBERTO CENICEROS

FOLSOM, Calif.—An American Indian tribe that had asserted sovereign immunity from buying workers compensation coverage for its temporary staffing company, and then bought coverage from an insurer that later was placed in receivership, is now seeking to self-insure its exposure.

tion, which is backed by a \$20 million letter of credit, is a significant turnaround for the tribe. Last year, in the face of regulatory concerns about Mainstay's coverage for staff placed at nontribal employers, the tribe argued in court papers that sovereign immunity granted to Indian tribes exempted it from state laws requiring employers to purchase insurance or obtain approval to self-insure workers compensation claims.

The Blue Lake Rancheria maintained that sovereign immunity applied even when Mainstay placed workers off the tribe's reservation and that it could use tribal courts to adjudicate disputed claims. It attempted to pay workers comp benefits to Mainstay employees through a tribal "occupational injury ordinance," which was part of a self-insurance program that the state did not authorize (BI, Jan. 5, 2004).

The still-pending court application did not deter California Insurance Commissioner John Garamendi from opposing the sovereign immunity argument and threatening regulatory action against insurance agents that helped nontribal employers bypass workers comp coverage requirements by hiring their employees through Mainstay.

Mr. Garamendi's opposition was a blow to the Blue Lake Rancheria, which is seeking an alternative revenue source for fear that the growth of legalized gambling would jeopardize its income from the casino that it

See **TRIBE**/page 6

Breach-of-contract suit against HMO to proceed

By JUDY GREENWALD

LOS ANGELES—A man whose diagnosis and treatment for Lyme disease was delayed for months can sue his health maintenance organization for breach of contract and bad faith, says a California appellate court.

A three-judge panel of the California state appellate court in Los Angeles overturned a lower court's decision in *Kotler vs. PacifiCare of California* and said plaintiff Steven Kotler could proceed with his lawsuit.

A spokesman for Cypress, Calif.-based PacifiCare Health Systems Inc. said the company is now considering its options.

According to the Feb. 10 decision, Mr. Kotler, a freelance writer,

had selected Dr. Howard Wynne of the Cedars-Sinai Medical Group in Los Angeles as his primary care physician under PacifiCare's subscriber agreement. In December

2000, he called for an appointment with Dr. Wynne while suffering from flu-like symptoms and was given a January appointment.

Tests administered by Dr. Wynne, which did not include one for Lyme disease, proved negative. After Mr. Kotler complained of pain in his joints, the physician referred him to an orthopedic surgeon, who suggested surgery. But, "when plaintiff inquired whether it was strange that four different joints were simultaneously affected, the surgeon replied that the questions was one for plaintiff's general practitioner, or for an infectious disease specialist," the decision says.

Mr. Kotler asked for a referral to an infectious disease specialist on Jan. 31, 2001, and on Feb. 26, Dr.

See **PACIFICARE**/page 6

Plaintiff charges:

- Patient's Lyme disease was not diagnosed by primary care physician
- Six-week wait for appointment with specialist
- PacifiCare refused to pay charges for out-of-network specialist

HUD lifts LTC coverage rule Facilities may use out-of-state insurers and RRGs

By MICHAEL BRADFORD

WASHINGTON—The U.S. Department of Housing and Urban Development has removed a final hurdle to risk retention groups that provide liability insurance to long-term care facilities applying for mortgages or other real estate loans guaranteed by the agency.

A HUD spokesman said last week that the agency has lifted its requirement that an insurer be licensed in the same state as the facility being covered. The rule was a particular problem for risk retention groups, because federal law allows them to hold a license in one state yet operate anywhere they have policyholders without meeting requirements outside their domiciles.

Under a rule set by HUD early

last year, every nursing home or similar operation that applied for a HUD-guaranteed loan was required to purchase liability coverage of at least \$1 million per occurrence and \$3 million annual aggregate from an insurer licensed in the state in which the insured facility is located.

Under the original rule, the insurers also had to hold at least a B++ rating from A.M. Best Co., but earlier this month the agency said ratings of A or better by Columbus, Ohio-based Demotech Inc. would meet the requirement as well (BI, Feb. 7).

Risk retention groups and other risk financing alternatives make up most of the insurance market for long-term care facilities.

Joseph L. Petrelli, Demotech's president, said he was informed by

HUD about a week after the agency announced his firm's ratings would be accepted that the rule requiring an insurer to be licensed in the state in which the long-term care facility is located had been rescinded.

The HUD spokesman acknowledged that the agency could not impose the requirement on risk retention groups because the groups operate under a federal law that allows them to write coverage in states in which they are not licensed. "However, we did require that they be licensed in one state and that they be rated by A.M. Best or another comparable rating agency so that we had confidence that they were financially solid," he said.

Mr. Petrelli said that, "obviously, if a risk retention group is appropri-

See **HUD**/page 6

PHOTO: L.A. TIMES



Opposition by California Insurance Commissioner John Garamendi has complicated an Indian tribe's plans for its temporary staffing business.

The Blue Lake Rancheria Indian tribe has applied for certification from the Self Insurance Plans unit of the California Department of Industrial Relations for its Folsom, Calif.-based Mainstay Business Solution unit. The temporary staffing company places workers for businesses located both on and off the tribe's reservation.

The self-insurance applica-

Errors & Omissions

• Due to a production error, the wrong logo was run with the PLUS

D&O Liability conference box in the Feb. 14 issue.

AJG to appeal \$175 million award

Broker's financial unit says jury lacked technical knowledge

By SALLY ROBERTS

ITASCA, Ill.—Arthur J. Gallagher & Co. will appeal the \$175 million verdict a Utah jury awarded Headwaters Inc. on Friday in a contract dispute with the financial services unit of the Itasca, Ill.-based brokerage.

South Jordan, Utah-based Headwaters sued AJG Financial Services Inc. in October 2000, alleging that the subsidiary failed to make payments and perform other obligations under a contract whereby AJG Financial licensed Headwater's technology to create synthetic fuel.

Headwaters sought \$140 million, as well as payments related to the future production of synthetic fuel.

AJG Financial Services countersued Headwaters for \$71 million,

Jury verdict:

■ **Headwaters Inc. wins \$175 million from AJG Financial over synthetic fuel contract**

but the jury made no award on the counterclaims.

In a conference call discussing the verdict, J. Patrick Gallagher Jr., Gallagher's president and chief executive officer, said the company was "extremely disappointed by the decision and, frankly, shocked by the amount of the award."

"We contracted with Headwaters to provide a process to create a synthetic fuel. We had tremendous difficulties with their binding agent and process, and, as a

result, we moved to a totally different chemical and process," he said. "We believe that the jury didn't understand the technical differences, and we hope the appeal process will bear us out on this."

The brokerage intends to file a motion to set aside the verdict and order a new trial. If those efforts fail, it will appeal the verdict, the company said.

Mr. Gallagher stressed during the conference call that the verdict was against a subsidiary company and that it will not affect its brokerage and risk management activities "in any way."

Gallagher's contract with Headwaters was part of the brokerage's overall strategy to invest in the synthetic fuel industry as a means to generate tax credits and a lower effective tax rate.

PacifiCare: Lawsuit to proceed

Continued from page 4

Wynne referred him to one. But he was told he could not have an appointment with the specialist until six weeks later, in part because the specialist saw PacifiCare patients only one day a week.

Mr. Kotler then obtained the name of an infectious disease specialist not associated with PacifiCare, whom he saw on March 14, the decision says.

Five days later, after a test determined Mr. Kotler had Lyme disease, he began his successful treatment of the disease.

After PacifiCare refused to pay his specialist's charges, he sued the insurer for breach of contract and breach of the covenant of good faith and fair dealing.

The court ruled he could proceed with his lawsuit. The specialist's charges are not reimbursable under the PacifiCare agreement because Mr. Kotler did not have an emergency medical condition, according to the decision.

However, according to the decision, Mr. Kotler still has grounds to sue.

"The obligations of a contract here, to provide plaintiff with medically necessary services of specialists, as authorized by the primary care physician—must be performed either at a time the contract specifies, or within a reasonable time," says the decision. "What constitutes such a reasonable time ordinarily presents a question of fact, dependent upon the circumstances of the case."

"Under the facts presented to the trial court, a triable issue existed as to whether or not PacifiCare had fulfilled its implied-in-law obligation to provide plaintiff timely treatment by an infectious disease specialist. Given the history of the plaintiff's illness, his condition, and the palliative failure of the care already provided under PacifiCare's aegis, a six-week wait for an appointment following Dr. Wynne's referral could well be found unrea-

sonable," the court ruled.

The PacifiCare spokesman said Mr. Kotler could have called the 800 number on the back of his health care card for help in scheduling an earlier appointment. "PacifiCare was not involved in any of the medical decision-making process and clearly those are best left to Mr. Kotler's treating physician," he said.

Mr. Kotler's attorney, Michael J. Bidart, of Claremont, Calif.-based Shernoff Bidart Darras, said, however, that patients who call that number are routinely told to call the independent practice association. "PacifiCare has been resistant to any attempt to be held accountable for the conduct" of its delegated medical professionals, Mr. Bidart said.

Steven Kotler vs. PacifiCare of California et al.; Court of Appeal of the State of California, Second District, Division Eight, No. B171654.

Tribe: Now seeking to self-insure comp

Continued from page 4

operates on its 34-acre reservation near Eureka, Calif.

Formed in June 2003, Mainstay began operations when employers were facing rapidly rising workers comp rates, and few insurers were willing to compete for their business.

The tough workers comp market helped swell Mainstay's customer base.

In response to the regulatory opposition, however, the tribe purchased commercial workers comp coverage last year from Bellevue, Wash.-based Cascade National Insurance Co., said Michael Hansen, Mainstay's chief executive officer.

The policy, with a July 1, 2004, inception date, has a \$1 million per occurrence deductible with statutory limits.

But Cascade had a C+ rating when Mainstay bought its policy, Mr. Hansen said. In late November, Washington Insurance Commissioner Mike Kreidler placed Cascade in receivership.

Insurance commissioners in several states, including California, then issued cease and desist orders for Cascade policies, so Mainstay has not been able to add new clients, Mr. Hansen said. Over the past seven months, Mainstay's revenues have plunged from about \$300 million to about \$120 million.

Insurers are unwilling to insure an Indian-owned temporary staffing business operating in California, Mr. Hansen said. "We had three strikes against us," he added.

If Mainstay does win approval to self-insure, it will be among a minority of temporary staffing companies that do so. Temporary staffing companies typically do not own assets, such as buildings or machinery, that are often necessary to meet asset requirements that regulators demand from companies wanting to self-insure, said Diana Rich, director of risk management for the

Aliso Viejo, Calif.-based Remedy Intelligent Staffing.

But the tribe has \$20 million to back the letter of credit it will put up to gain the certification, Mr. Hansen said.

In California and other states, companies must secure bonds or letters of credit as collateral before gaining approval to self-insure workers compensation claims. The collateral can be tapped if an employer fails to meet claims obligations.

In addition to self-insuring its workers comp claims, Mainstay will submit to whatever adjudication system SIP deems appropriate, a Blue Lake Rancheria spokeswoman

Insurers are unwilling to insure an Indian-owned temporary staffing business operating in California. 'We had three strikes against us.'

*Michael Hansen
Mainstay Business Solutions*

said. Mainstay is close to obtaining SIP's approval to self-insure, Mr. Hansen added.

SIP, however, will only say that Mainstay has applied for a certificate. It would not provide details or say whether Mainstay is likely to win approval.

A spokesman for Mr. Garamendi warned, though, that even if Mainstay wins the right to self-insure, employers using the company are still obligated to ensure that temporary workers they obtain from the company are covered under arrangements acceptable to the Department of Insurance.

If not, the spokesman said, the insurance commissioner could prosecute companies contracting with Mainstay.

HUD: Agency lifts long-term care rule

Continued from page 4

ately domiciled in one state and operating in another," it is a legal arrangement under the law that allows the insurers to form and write coverage.

"We've convinced the folks at HUD that that's the way it's done," said Mr. Petrelli. "Based on the fact that there is a statutory requirement for them to operate that way," he said of the insurers, "HUD relented."

Meanwhile, interest is increasing from RRGs that need ratings to satisfy the financial stability requirement, Mr. Petrelli noted. "We're told that there are approximately 25 long-term care professional liability risk retention groups, and we

have been in touch with many of them," he said.

The number of loan applications under the HUD program dipped a bit after HUD originally announced the insurance requirements but should pick up now that the changes have been announced, predicted Scott Moore, president of Lancaster Pollard Mortgage Co., a Columbus-based firm that provides financial services to nursing homes and other facilities.

"Volume was down a bit nationally," he said, "and it could have been for all kinds of reasons." But the restrictions on insurers certainly helped limit the number of long-term care facilities seeking loans under the program, Mr. Moore noted.

"Be sure that you return it."

If you're racing through this issue of *Business Insurance* because you "borrowed" it from a colleague, you should have your own subscription. Then you'll be first on the list. You can take as much time as you like with all of *Business Insurance's* exclusive worldwide news of corporate risk, employee benefit and managed health care every week.

**To subscribe, use the card in this issue
or call 1-888-446-1422 toll free.**

**Subscription rates in U.S. dollars
for 1 year, 52 issues.**

Ask about our special
20% off group rate
for five or more
subscriptions.

U.S.	\$97
Canada*/Mexico	\$130
All other countries by expedited air	\$230

* Price includes Canadian GST.

Business Insurance
www.businessinsurance.com

**Subscription Dept.
1155 Gratiot Avenue,
Detroit MI 48207-2912
Outside the U.S., call (313) 446-1662**

Business Insurance

Vice President/Publisher: Martin J. Ross III (New York)
Editorial Director: Paul D. Winston (Chicago)
Editor: Regis J. Coccia (Chicago)
Editor-at-Large: Jerry Geisel (Washington)
Managing Editor: Gavin Souter (Chicago)
Assistant Managing Editor - Graphics: Kathy L. Barnes (Chicago)
News Editor: Matt Scroggins (Chicago)
Senior Editors: Michael Bradford (New Orleans); Meg Fletcher, A.R.M. (Chicago); Judy Greenwald (San Jose); Mark A. Hofmann (Washington); Dave Lenckus (Tucson); Douglas McLeod (New York); Sally Roberts (Denver); Joanne Wojcik (Denver); Rodd Zolkos—Industry Focus (Chicago)
Bureau Chiefs: Roberto Cenicerros (Los Angeles); Sarah Veysy (London)
Associate Editors: Gloria Gonzalez (New York)
Staff Reporter: Rupal Parekh (New York)
Correspondents: Carolyn Aldred (England); Elizabeth Fry (Australia)
Copy Editor/Graphics: William Murphy (Chicago)
Copy Editors: Mary B. Nick (Chicago); Joe Walker (Chicago)
Directory Editor: Kevin P. Edison (Chicago)
Assistant Directory Editor: Carrie A. Peinado (Chicago)
Online Editor: Kathy Downing (Chicago)
Online Producer: Amy R. Kepka (Overland Park)
Executive Assistant/Reprint Manager: Karen Brown Tucker (Chicago)
Editorial Cartoonist: Roger Schillerstrom (Chicago)
Advertising Director: Kenneth F. Luker Jr. (New York)
Director - Business Development: Robert L. Niesse (Chicago)
Interactive Sales Manager: Chris Crain (New York)
District Managers: Laura Booth (Irvine); Ron Kolgraf (Boston); William J. McGuire (Chicago); Robert B. Murray (New York); John L. Phillips (Chicago)
Classified Advertising Manager: Tina Vasilakis (Chicago)
Assistant to the Publisher: Pat Ghazvini (New York)
Advertising Traffic: Monique Murray (New York)
Production Manager: J. Thomas Janka (Chicago)
Circulation Manager: Rudolf Von Bartsch (New York)
Circulation Coordinator: Craig Bowman (Detroit)
Director of Communications: Ronnie I. Drachman (New York)
Promotion Manager: Michael Ambrosio (New York)
Promotion Coordinator: Barbara O'Brien (New York)
EDITORIAL: Chicago: 312-649-5200; Denver: 303-282-4260; London: 44-207-457-1400; Los Angeles: 323-370-2455; New Orleans: 985-871-1090; New York: 212-210-0100; San Jose: 408-774-1500; Tucson: 520-579-1937; Washington: 202-662-7200
ADVERTISING: Boston: 617-292-4856; Chicago: 312-649-5276; Irvine CA: 949-255-5355; New York: 212-210-0133
SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by Crain Communications Inc.

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

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

Published weekly at 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Fax: 312-280-3174. biweb@crain.com. Offices: 711 Third Ave., New York, N.Y. 10017-5806, Fax: 212-210-0704; 71121 Minkler St., Abita Springs, La. 70420; Fax: 985-871-4006; Suite 814, National Press Building, Washington, D.C. 20045-1801, Fax: 202-638-3155; 6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif. 90048-4947, Fax: 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750, Fax: 408-774-1155; 34 Southwark Bridge Road, London SE1 9EU, Fax: +44-(0)20-7457-1440; 8157 N. Torrey Place, Tucson, Ariz. 85743, Fax: 520-579-3476; 1746 Cole Blvd., Suite 150, Golden, Colo. 80401, Fax: 303-733-9941; 1133 W. 108th St., Overland Park, Kan. 66210, Fax: 312-280-3174; 77 Franklin St., Suite 809, Boston, Mass. 02110-1510; Fax: 212-210-0704. 4 Executive Circle, Suite 185, Irvine, CA 92614-6791. \$5 a copy and \$97 a year in the U.S., \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Rudolf Von Bartsch, circulation manager. Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, Business Insurance, 711 Third Avenue, New York, N.Y. 10017-5806. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48013. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For reprints or reprint permission: Karen Brown Tucker, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806, 312-649-5319, Fax: 312-280-3174.

Editorial

EEOC rule would favor retirees

IN AN IDEAL WORLD, all employers would provide affordable health insurance coverage to all their retired employees.

The world, though, is anything but ideal. Soaring health care costs and a growing pool of retired workers has led hundreds, if not thousands, of employers to cut back and even terminate retiree health care coverage over the past decade.

Despite the huge and growing costs, some organizations, especially very large corporations and state and local governments, still provide the coverage.

Since 2000, many of those retiree health care plan sponsors have been living with uncertainty regarding the legality of their plan de-

signs.

That is when a federal appeals court ruled that retiree health care plans, much to the surprise of employers, are subject to the Age Discrimination in Employment Act. That meant employers, to prevent a charge of age discrimination under long-standing ADEA rules, either would have to provide the same level of health care coverage or pay the same amount for coverage for Medicare-eligible retirees and their younger retirees.

Had the ruling been enforced, it would have exposed many employers to damages. That is because employers often provide smaller health care benefits to older retirees than they do to younger retirees. In

some cases, health care coverage ends when retirees become eligible for Medicare at age 65.

This isn't, in fact, age discrimination, but a taking into account by employers of the fact that the availability of Medicare at age 65 means older retirees don't have the same need for employer-provided coverage as do younger retirees.

Somewhat belatedly, the Equal Employment Opportunity Commission recognized this fact and said it would not enforce the appeals court decision. Still later, it proposed a final rule to exempt retiree health care plans from ADEA.

That, we thought, would put an end to the matter. But now, at the 11th hour, the AARP is suing to pre-

vent the EEOC from putting its retiree health care ADEA exemption rule in effect. The AARP contends the rule will result in the reduction or elimination of health coverage for older retirees.

That is debatable. What is certain, at a time of rising costs, is that if employers are forced to equalize benefits of the two groups of retirees, they will either cut back coverage for younger retirees or terminate coverage for both groups.

If the AARP doesn't see that as the inevitable result, we hope a federal court hearing the AARP complaint will, and will dismiss the AARP's suit and allow the EEOC's rule, which is in retirees' best interest, to go into effect.

Risk managers must lead on TRIA

LAST WEEK'S ENACTMENT of long-awaited class action reform legislation was the triumph of a broad coalition in which risk managers played a part, albeit not a leading one.

In the next significant legislative battle, risk managers—and the Risk & Insurance Management Society Inc.—had better be prepared to lead. That's the battle to extend the Terrorism Risk Insurance Act, which could begin in earnest soon. TRIA, which provides a federal backstop for insurers to cope with losses from any truly catastrophic future terrorist attacks, will expire on Dec. 31 if it is not extended

This is an effort in which risk managers can neither afford nor expect anyone else to carry their water for them. In some previous legislative struggles, insurers or producers spearheaded efforts, with risk managers and RIMS taking supporting roles. But risk managers shouldn't count on that strategy being effective with TRIA extension.

One reason is a general suspicion of the insurance industry on Capitol Hill. There's always been a certain amount of antipathy toward insurers among some lawmakers, but that could become more pronounced in the wake of the ongoing investigation of industry prac-

tices by New York Attorney General Eliot Spitzer and others. There is also a feeling among some in Washington that TRIA somehow represents corporate welfare for insurers that are rolling in money and ought to be able to cover losses from terrorist attacks, no matter how large or unexpected.

But another, and far more important, reason is that the effort to extend TRIA ought to be led by policyholders. After all, policyholders are the ultimate beneficiaries, and who is better qualified to speak for policyholders than the people who negotiate the insurance contracts, the risk managers?

More than anyone else, risk managers have the expertise to explain to Capitol Hill what's at stake in TRIA extension, and how the enterprises they represent would suffer if affordable, adequate terrorism coverage wasn't available. Lawmakers and their staffs need concrete examples from knowledgeable people about the impact of legislation, and in this case, risk managers are the people who can deliver that.

TRIA extension is an issue in which risk managers and the organization that represents them—RIMS—can't be content with a bit part. They must either lead, or very well lose.

Schillerstrom



Letters to the Editor

Business Insurance welcomes letters to the editor. This section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters.

Please send your letters to Letters to the Editor, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3174; email: rcoccia@businessinsurance.com

Online Opinion Polls

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

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

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

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

Appreciating benefits of finite risk products

By Kate Westover

In recent months, questions have been asked not only by New York Attorney General Eliot Spitzer but also the U.S. Securities and Exchange Commission concerning the legitimacy of finite insurance and reinsurance programs. And, as *Business Insurance* pointed out in a Nov. 22, 2004, editorial, hoping that investigators will see finite risk products as legitimate isn't enough. We have to do a better job of educating ourselves and others about this method of financing risk. There are three key points to understand.



First, risk is financed because

loss cost volatility is detrimental. Volatility needs to be managed so that organizations can budget cash flows and income and society can protect its citizens from nonrecoverable losses. Insurance is effective in managing loss volatility because it allows for risk pooling, distributing the cost of losses not only among insureds but over time. The first point, therefore, that risk managers have to be able to make is that using insurance to manage risk is in the public interest.

Second, finite risk insurance and reinsurance is one of the most useful tools available to the risk manager seeking to manage loss

volatility. It can protect against high-severity/low-frequency risks that do not lend themselves to traditional underwriting methods because there is no risk pool or loss history to allow for credible loss projections. The second point, therefore, that risk managers must explain, is that finite risk methodology is a necessary alternative to traditional insurance rating techniques. Finite risk premiums are higher than traditionally rated insurance premiums because the premium-to-limit ratio reflects that amount of risk. The greater the uncertainty surrounding the occurrence or amount of a loss, the higher the premium. Insureds that pay high premiums in order to remove loss volatility are right to expect long-term relationships with their finite risk partners. The finite risk insurer that fails to share, in some measure, its underwriting profits will not maintain its relationship with its insureds.

Third, it may be just a question of terminology, but "finite risk" should not be used synonymously with "financial reinsurance," which is, indeed, suspect in terms of its legitimacy. The objective of financial reinsurance is to produce a financial result, for example, surplus relief, for an insurer. Surplus relief temporarily fixes capital to reserve ratios, allowing the insurer to write more business than if it were to retain the loss reserves on its books. If the reinsurance agreement is written in such a way that the risk has not really been transferred, though, accounting rules rightly require the cedent to recognize the liability on its balance sheet. Statutory accounting has long prohibited the use of financial reinsurance. Generally accepted accounting principles have now caught up, recognizing that the use of insurance for balance sheet win-

THREE KEY POINTS TO FINITE RISK

- Risk is financed because loss cost volatility is detrimental to a business. Volatility needs to be managed so that organizations can budget cash flows and income and society can protect its citizens from nonrecoverable losses.
- Finite risk insurance and reinsurance is one of the most useful tools available to the risk manager seeking to manage loss volatility. It can protect against high-severity/low-frequency risks that do not lend themselves to traditional underwriting methods.
- Finite risk is not financial reinsurance. Finite risk is the structuring of an insurance or reinsurance program that provides a finite amount of coverage over a finite time period. As with a claims-made liability policy, losses must be reported to the insurer or reinsurer within a specified time. Once that time has elapsed, there is no more coverage.

dow dressing is not legitimate. So the third point is that finite risk is not financial reinsurance.

This is because a finite transaction is not an attempt to derive the financial benefits of risk transfer without paying the price. It is, very simply, the structuring of an insurance or reinsurance program that provides a finite

amount of coverage over a finite time period. As with a claims-made liability policy, losses must be reported to the insurer or reinsurer within a specified time. Once that time has elapsed, there is no more coverage. The time period could be one year or multiple years, with a single limit for the period. Premium can be fully paid at the inception or by installments. At the end of the period, a new program may be negotiated for new coverages and a new time period. If no more coverage is required, underwriting and investment profits can be shared with the insured.

There remains the issue of transparency. In order to more easily pass the risk transfer tests of Financial Accounting Standard 113, many finite risk practitioners developed "blended" finite policies that include both risk financing (subject to experience account returns), and risk transfer (pure profit to the insurer, or its reinsurers, if there are no losses). A blended finite risk program may insure multiple types of risks, with a blended rate. The question is: Will the increased requirements for transparency, in the post-Enron era, make it harder to structure an effective blended program?

The answer to this question should be "No." Blended finite risk programs make good business sense by allowing insureds to transfer loss volatility, while improving the finite risk carriers' opportunity to earn underwriting profit. There are many casualties of the accounting and contingent commission scandals, but finite risk programs should not be one of them.

Kate Westover is vp-alternative risk financing services at Innovative Captive Strategies Inc. in Colchester, Vt.

What are insureds' D&O recision rights?

Recent cases address attempts to rescind coverage for directors and officers

By Steve Smith

Directors and officers liability insurers are filing suits in unprecedented numbers and aggressively seeking to rescind D&O policies. Fortunately for policyholders, though, the courts are closely scrutinizing the applicable policy wording and often upholding the positions advanced by the directors and officers.



Recent decisions in *Federal Insurance Co. vs. Tyco International Ltd.*, *Associated Electric & Gas Insurance Services vs. Rigas et al.*—also known as the *Adelphia* case—*In Re HealthSouth* and *Cutter & Buck Inc. vs. Genesis Insurance Co.* have addressed three major issues:

- Whether a D&O insurer can unilaterally refuse to advance defense costs to officers and directors before the final adjudication of a claim for rescission. Most courts correctly say no.

- Whether an insurer can rely on alleged misstatements in materials outside the policy application, such as U.S. Securities and Exchange Commission filings. The resolu-

This is a dangerous climate for directors and officers, who must make sure their policies do not give insurers the unilateral right to rescind.

tion of this issue is largely dependent upon the applicable wording, which is an advantage to those policyholders that carefully negotiate the language of their policies.

- When a D&O insurer can avoid covering all directors and officers in situations in which some, but not all, individuals were involved in fraud. Again, this issue typically involves an analysis of the policy wording.

In *Tyco* and *Adelphia*, D&O insurers attempted to unilaterally avoid their obligations under D&O policies by refusing to advance defense costs before a final adjudication of the rescission claim. The insurers' claims were soundly rejected in both cases. Essentially, the courts held that an insurer must abide by all obligations assumed under a contract until the insurer obtains a judgment on its rescission claim. One court said insurers should not be allowed to attempt to function as a court of law.

The *Tyco* and *Adelphia* decisions place insurers in a quandary. Insurers that include express language in policies permitting them to withhold the reimbursement of defense fees pending rescission claims proba-

bly will have a difficult time selling such policies. At the same time, though, even if an insurer tries to rescind its policy, the policyholder can argue forcefully that the rescission suit should be stayed until the underlying action is resolved to avoid prejudice to the policyholder. From the point of view of the policyholder, the advancement of defense costs is a critical element of the defense of securities fraud cases and it is a major reason D&O policies are purchased. And they can argue that the insurers should be protected, because the typical policy requires any advanced funds to be reimbursed to the insurer if fraud is actually proven.

The decisions in *HealthSouth* and *Cutter & Buck* dealt with two other important issues. These courts considered whether alleged misstatements in materials outside the policy application, such as in SEC filings, could support a rescission claim. The courts also analyzed the "severability" clauses in the policies. Such clauses address whether misstatements by one insured can be imputed to other insureds in a rescission lawsuit.

The policyholders in *HealthSouth* prevailed on these issues, primarily because the policy contained a broad severability clause that prohibited the imputation of knowledge from one insured to another and required that coverage for each policyholder be considered separately. According to the court, an alleged misstatement by an individual in a company's SEC filings could not form the basis of a rescission claim unless

the insurer proved the individual made a knowing misrepresentation.

More limited severability language was at issue in *Cutter & Buck*, and the insurer prevailed. That clause allowed the knowledge of the person who signed the application to be imputed to all other directors and officers. This allowed the knowledge of the company's chief financial officer, who pleaded guilty to fraud, to taint all other directors and officers. The court also took a very practical approach in acknowledging that financial information about companies that is available on the Internet is likely used by insurers in evaluating the risks they are underwriting and, therefore, could be used by the insurers to attempt to rescind the policy.

What can be learned from these decisions? This is a dangerous climate for directors and officers, who must make sure their policies do not give insurers the unilateral right to rescind. The policies also need to have broad severability clauses. Even with favorable policy language, though, cautious directors also should consider purchasing nonrescindable Side A coverage that responds if traditional coverage is rescinded or is otherwise unavailable. And it goes without saying that great care should be taken to ensure the truthfulness of every statement in the policy application.

Steve Smith is a partner in the Chicago office of Bryan Cave LLP.

Between the Lines

Compiled by Joanne Wojcik



A longer life, but not long enough

Statistics show that people are living longer than ever, but they're still not living long enough to receive payments from annuities sold by Midland National Life Insurance Co., a class action lawsuit asserts.

According to a suit filed late last month in Los Angeles, the Des Moines, Iowa-based insurance company has been selling annuities to senior citizens that won't mature until the buyers are at least centenarians. In fact, the lead plaintiff in the class action litigation is the widow of a man who purchased a life insurance annuity from Midland National at the age of 73 that was not scheduled to pay benefits until he turned 115.

"I couldn't believe it until I read the clause in the policy which stated the annuity payments would not start until his 115th birthday," said lead plaintiff's attorney William Shernoff, of the law firm of Shernoff Bidart & Darras in Claremont, Calif.

Not so, countered Robert "Bo" Phillips, an attorney at Reed Smith L.L.P. in Oakland who is defending Midland National. Mr. Phillips said the suit stems from a misunderstanding of the contract.

"I have tried to explain it to them," he said. "The maturity data in these contracts is the result of an actuarial calculation, and it is the latest date on which the annuitant can annuitize. It's not the earliest date."

In fact, the lead plaintiff in the litigation has been receiving annuity payments, Mr. Phillips added.

"They cannot wait any longer than the maturity date to begin receiving payment, but they can elect to begin receiving payments as early as one year after the contract date," he said.

Mr. Phillips said he plans to sit down with Mr. Shernoff next week in hopes of settling the misunderstanding without going to court.

"And, if not, we'll file our motions," he said.

From safety seats to the hot seat

21st Century Insurance Co. will have to find a new poster politician after Illinois Gov. Rod Blagojevich asked that his mug not be used in the insurer's safety newsletter.

The Woodland Hills, Calif.-based insurer's newsletter, which was mailed to policyholders with brochures and other solicitation materials, features a photo of the governor, his wife and a child with a 21st Century official, and it describes the company's work with needy children. It also includes the Illinois state seal, along side the firm's logo with the tagline: "Good People to Call."

While the governor had no problem with the insurer touting his partnership with them in promoting Illinois' child safety seat law, he said he was "uncomfortable" with packaging it with promotional materials, especially after his appearance in the brochure was recently slammed by Andy McKenna, chairman of the Illinois Republican Party, as a publicity boost paid for by a corporate entity.

"He cannot claim to be the champion of ethics reform in Illinois when he's doing something that blatantly goes against the spirit of the law he signed," Mr. McKenna told the local media, referring to the state's 2003 ethics reform law.

In response, the insurer issued a statement saying it would "remove the governor's likeness from the safety newsletter so that the focus can return to making Illinois children safer."

The tops in employee benefits

What do liquor, engine belts and incontinence have in common?

Well, organizations that deal with such things are among those that offer the best employee benefits, according to The Principal Financial Group.

Every year, businesses with outstanding perks compete for the opportunity to serve as corporate role models in The Principal 10 Best Companies for Employee Financial Security contest. Now in its fourth year, the competition is open to any growing company with between five and 1,000 employees.

Among the 2004 winners are the Distilled Spirits Council of the United States Inc. of Washington; the Clipper Belt Lacer Co. of Grand Rapids, Mich.; and the American Urological Assn. Education & Research Inc. of Linthicum Heights, Md.

For more info, see The Principal's Web site, at www.principal.com.

Tips and feedback from readers are welcomed. Please send information to wojcik@businessinsurance.com.

Comings & Goings

Brokers:

Redwood City, Calif.-based ABD Insurance & Financial Services has named **Scott Rhymes** senior risk control consultant in the Petaluma, Calif., office. Previously, he was a director of environmental health and safety with the risk management department of the Golden Gate Bridge District.

Atlanta-based Beecher Carlson Holdings Inc. has made two senior-level appointments.

• **David Gamsey**, formerly senior vp, chief financial officer, treasurer and secretary of Innotrac Corp., has been named senior vp and CFO.



Mr. Gamsey

New York office. Previously, he was vice chairman of the financial and professional liability team for Marsh & McLennan Cos. Inc.

Priya Cheria Huskins has been named a partner at San Francisco-based Woodruff-Sawyer & Co., where she previously was a vp in the firm's directors and officers liability practice.

Reinsurance:

Peter C. Hearn has been named chief executive officer of Willis Re US in New York, where he previously was president. He replaces George Reeth, who has been named president of Willis North America.

Scottish Re Group Ltd., based in Hamilton, Bermuda, has named **Hugh T. McCormick** executive vp of corporate development. Before joining Scottish Re, Mr. Mc-

Cormick was a senior partner at LeBoeuf, Lamb, Greene & MacRae L.L.P.

Insurers:

Robert N. Darby has been appointed president of San Francisco-based American All Risk Insurance Services Inc. Previously, Mr. Darby was a managing director at Guy Carpenter & Co. Inc.

ACE USA has named **Stephen D. Dennison** senior vp and regional executive, Northwest region. Previously, he was senior vp, West operations, for ACE US International. Mr. Dennison will be based in San Francisco.

Robert Lusardi, former CEO of XL Capital Ltd.'s Financial Products & Services unit, has been named executive vp and managing director of Hamilton, Bermuda-based White Mountains Insurance Group Ltd.

Bill Casey has been named senior vp for regional management of North America commercial marketing for Zurich Financial Services in Schaumburg, Ill. Previously, Mr. Casey was a vp.

Other providers:

Nicholas Leighton has been named director of operations for the recently formed Cayman office of captive management firm Strategic Risk Solutions. Previously, he was managing director of Caledonian Insurance Services.

Wayne Wicker has been named senior vp and chief investment officer



Mr. Wicker

of ICMA Retirement Corp. in Washington. Previously, he was CIO of The Colony Group.

The Frank Gates Cos. Inc., based in Dublin, Ohio, has made several senior-level promotions.

• **Robinson M. Overly**, formerly executive vp and director of operations for the Western region, has been promoted to president.

• **J. Luke McCormick**, corporate secretary, has been given the additional duties of executive vp.

• **Rick Stasi** has been named chief operating officer of Frank Gates Alternative Risk. Previously, he was vp.

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

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

Business Insurance

www.businessinsurance.com

SINGLE-COPY SALES

To order any current or back issue of *Business Insurance*, call the single-copy sales division of *BI's* Circulation Department:

1-888-446-1422

LIST RENTAL

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

313-446-1625

CHANGE OF ADDRESS?

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

Business Resources

To place your ad, contact **Tina Vasilakis** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: tvasilakis@BusinessInsurance.com
Business Insurance, Business Resources, 360 N. Michigan Ave., Chicago, IL 60601-3806.

CPCU®

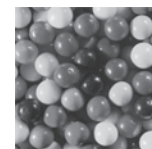
AIC, ARM, IIA, CLU/ChFC, and CIC candidates

You'll pass. You'll learn more faster. And, you'll love The Burnham System or your money back. Guaranteed!

Call 1-888-BURNHAM Now!

www.BurnhamSystem.com
19 Everett St., Southbridge, MA 01550

Some things just work better in color.



Like your BUSINESS RESOURCES ad in *Business Insurance*. Contact Tina Vasilakis at 312-649-5340.



Mind Your Business!

Advertise in *BI's*
Business Resources

Call (312) 649-5340

February 21, 2005

International

P&I clubs establish rent-a-captive in Bermuda to retain more liability risk

By MICHAEL BRADFORD

HAMILTON, Bermuda—Leading marine liability insurers have formed a Bermuda rent-a-captive to help them retain more risk and increase their bargaining power when negotiating their massive reinsurance contract.

Hydra Reinsurance Co. Ltd. was scheduled to begin operating in Bermuda late last week after a lengthy formation as organizers worked to satisfy legal requirements in the countries where the 13 protection and indemnity clubs are based.

The clubs make up the International Group of P&I Clubs, which provide coverage for much of the world's shipping risks.

"Given the various requirements of all the jurisdictions, it took longer than expected to get all the clearances," said David Ezekiel, president of International Advisory

'The clubs have made a decision to start participating by retaining some of the risk in the lower layers of that structure. The record of those layers has traditionally been very good from a loss history standpoint.'

David Ezekiel
International Advisory Services Ltd.

Services Ltd., the Hamilton, Bermuda-based company that is managing Hydra. After 18 months of putting the rent-a-captive together, "we're ready now to set it in motion," he said last week.

The P&I clubs set up the rent-a-captive as a way to increase their re-

insurance below an excess reinsurance contract led by Lloyd's of London syndicates. With limits of \$2.05 billion, the placement is among the world's largest reinsurance contracts.

Currently, the P&I clubs each take a \$6 million retention; they then pool their liabilities in a \$44 million layer and buy reinsurance for liabilities above \$50 million.

Under the new structure, the clubs will each take a larger, undisclosed retention through their individual rent-a-captive cells before the pooling layer.

"The clubs have made a decision to start participating by retaining some of the risk in the lower layers of that structure," Mr. Ezekiel noted. "The record of those layers has traditionally been very good from a loss history standpoint."

The clubs aim to gain flexibility in their reinsurance arrangements and perhaps save some of the cost

of buying the coverage.

"The reason the clubs are doing it is to provide more stability to their reinsurance costs because they effectively are taking a share of their reinsurance out of the commercial market," said Nigel Russell, managing director of the marine division of HSBC Insurance Brokers in London.

By keeping that exposure, the clubs should gain some leverage in their efforts to purchase cheaper reinsurance coverage on what remains, he said. "It will strengthen their bargaining position with the commercial market."

Hydra will give the P&I clubs "more flexibility going forward in how they work to structure their reinsurance," said Joseph Hughes, chairman and chief executive officer of the New York-based Shipowners Claims Bureau Inc., which manages the American

See HYDRA/page 14

U.K. workers awarded partial victory in case over lung conditions

By CAROLYN ALDRED

MANCHESTER, England—A High Court judge in the United Kingdom handed workers a mixed victory last week when he ruled that anxiety stemming from a benign asbestos-related condition is compensable but handed down awards that are significantly lower than is typical



Scars known as pleural plaques are typically benign conditions.

for such cases.

Insurers involved in the litigation had argued that lung scars, which are known as pleural plaques, should not be considered a compensable injury because medical evidence has shown that the condition does not typically cause any harmful symptoms and will not necessarily develop into more serious diseases.

Mr. Justice Holland ruled on Feb. 15 that pleural damages in themselves could not be categorized as a "disease" nor as an "impairment of physical condition." He said,

though, that he was "satisfied that when, as in the instant cases, anxiety is engendered by tortiously inflicted physiological damage, it can properly contribute to 'damage' or 'injury' so as to complete the foundation of a cause of action."

As part of his ruling, the judge awarded 10 claimants with pleural plaques damages ranging from £4,000 (\$7,472) to £33,292 (\$62,193).

"Awards of £4,000 were made for provisional damages to those who had chosen provisional compensation. They will have the right to return to court for further compensation if the victims develop a more serious asbestos disease, such as mesothelioma," according to a statement from the Manchester-based law firm of John Pickering & Partners, which represented some of the claimants.

Awards of £7,000 (\$13,077) or more were made to those claimants who had chosen full and final compensation. They will not have the right to return to court for further compensation if they develop a more serious asbestos-related disease, the law firm noted.

A spokesman for Norwich Union Ltd., the Norwich, England-based subsidiary of Aviva P.L.C., one of the defendant insurers, noted that the insurer was "reasonably comfortable with the element of clarity" provided by the court but did not rule out an appeal.

The spokesman also pointed out

See COURT/page 14



PHOTO: ABC/KORPA

Allianz, Mapfre cover destroyed skyscraper

MADRID, Spain—A Madrid skyscraper that was destroyed by fire that started Feb. 12 is insured by units of Corporacion Mapfre S.A. and Allianz A.G. Holding.

Madrid, Spain-based Mapfre said its Mapfre Industrial unit has a 40% coinsurance share in the property insurance policy covering the Windsor Building in Madrid and that its reinsurance unit is among the reinsurers of the policy. Based on an initial damage estimate, Mapfre reported its total exposure at about \$10 million euros (\$12.87 million), net of reinsurance and retrocessions.

A spokesman for Allianz Seguros, the Spanish subsidiary of Munich, Germany-based Allianz, said it is still assessing the damage but will be able to meet its obligations under the insurance policy.

—By Gloria Gonzalez

World Updates

Converium renews hit by downgrades

Converium Holding Ltd., which suffered ratings downgrades last year following reserve boosts, said it was able to renew 63% of its nonlife treaty business up for renewal in January, representing about \$1.24 billion in premiums. This estimate excludes business from its Converium Reinsurance (North America) Inc. operation, which was placed in runoff last year after downgrades that took it out of the A range. "As expected, Converium's current financial strength ratings triggered substantial cancellations and share reductions," the reinsurer said in a statement.

Bermuda group honors AIG executive

Joseph C.H. Johnson has been awarded the Bermuda Insurance Institute's 2004 Lifetime Achievement Award. Mr. Johnson, chairman of American International Group Inc.'s Bermuda operations, has served as president of the Bermuda Chamber of Commerce and chairman of the chamber's international companies division. In addition, he has held posts on the Bermuda government's Insurance Advisory Committee and the Insurance Admissions Committee, and he served for five years as an independent senator in the Bermuda Parliament.

RSA boosts reserves for U.S. business

Royal & SunAlliance Insurance Group P.L.C. said it boosted its reserves for U.S. business by \$160 million (\$305.6 million) in the fourth quarter of 2004. Most of the addition—\$95 million (\$181.5)—relates to workers compensation business, the insurer said. RSA will publish its 2004 results March 10.

Briefly noted

SCOR S.A. recorded gross written premiums of 2.53 billion euros (\$3.15 billion) in 2004, down 31.5% compared with 2003. The reinsurer has been reducing its writings in certain lines as part of a turnaround strategy....Marie-Louise Rossi is stepping down as chief executive of the International Underwriting Assn. to concentrate on her "political activities," the London-based group said in a statement. No successor has been named....

Endurance Specialty Holdings Ltd.'s profits rose to \$355.6 million in 2004, up from \$263.4 million the year before. Gross premiums written at the Bermuda-based insurer rose to \$1.7 billion from \$1.6 billion the year before.

Hydra: Marine cover

Continued from page 13

Steamship Owners Mutual P&I Assn. Inc., a member of the International Group.

But the rent-a-captive is not being formed solely because the clubs want to seek lower reinsurance costs, Mr. Hughes said.

Reinsurance costs for the clubs have been "fairly stable" in recent years, according to Mr. Hughes. The International Group's "bulk buying power" has enabled the clubs to buy coverage at a reasonable expense from global reinsurers, he said.

The captive is being put in place "to give the International Group options for the future" when putting together their reinsurance program, Mr. Hughes said.

Any impact on the group's reinsurance pricing won't be immediate, "but just flags up a competitive issue for the future," said Mr. Russell. "The formation of Hydra gives the possibility that they can use this as a competitive bargaining chip."

'The reason the clubs are doing it is to provide more stability to their reinsurance costs because they effectively are taking a share of their reinsurance out of the commercial market.'

Nigel Russell
HSBC Insurance Brokers

Mr. Ezekiel said if the loss history continues favorably in the layers assumed by Hydra, the rent-a-captive's members may consider taking on an even greater share of their exposures. If the new captive performs as expected, "Hydra owners will have retained part of the profitable risk and will consider retaining more" if reinsurance prices in the commercial market are not to their liking, he added.

Court: Workers' mixed victory

Continued from page 13

that the judge had cut the general level of damages to about one-third the amount usually awarded in such cases.

Bill Paton, chief claims officer for Zurich UK General Insurance, part of Zurich Financial Services Group, another defendant insurer in the case, also welcomed the "judge's pragmatic review of the appropriate levels of damages that should be awarded for people with pleural plaques."

Pleural plaque insurance claims in the United Kingdom have risen from just 200 a year in 1990 to 3,300 in 2002. Prior to last week's High Court ruling, insurers had estimated that pleural plaque claims could cost the industry some £1.4 billion (\$2.62 billion) over the next 35 years, according to the Norwich Union.

Plaintiff law firm John Pickering & Partners said that pleural plaque victims have "been compensated by the legal system for the last 20

years, but the numbers of victims have grown to such an extent that the insurance industry felt it necessary to try to change the law."

While the court agreed that plural plaques will remain a condition for which the courts compensate victims suffering from anxiety, "the decision will reduce the overall amount of compensation paid to plaque victims, which is good news for the insurance industry," according to the law firm.

"Insurers blame the compensation culture for the rising number of pleural plaques victims. The real cause is the widespread and indiscriminate use of asbestos in many industries until the early 1980s and a failure by employers to protect workers," the law firmsaid.

"Asbestos-related injuries are increasing due to the history of exposure and the time it takes for the disease to manifest itself," agreed Amicus, the largest manufacturing trade union in the United Kingdom.

"This judgment is good law and good news for thousands of workers. Asbestos is not yesterday's problem," said Derek Simpson, general secretary of London-based Amicus.

"Amicus is receiving hundreds of calls a week in response to the union stepping up its campaign to compensate asbestos claims," Mr. Simpson said, adding that the union, which represented some of the claimants in the test case, "has created a database which is a structured permanent register detailing cases of asbestos exposure."

Both Zurich and Norwich Union confirmed that they are considering appealing the ruling to the Court of Appeals.

"An appeal court ruling would be binding on all future court cases and bring further clarity," a Zurich spokesman pointed out.

John Grieves & Nine Others vs. F.T. Everard & Sons & British Uralite PLC & Nine Others.

Professional MarketPlace

To place your ad, contact **Tina Vasilakis** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: tvasilakis@BusinessInsurance.com
Business Insurance, Classified Department, 360 N. Michigan Ave., Chicago, IL 60601-3806. Call for details on blind box and internet advertising

LEGAL NOTICE	LEGAL NOTICE
<p>UNITED STATES BANKRUPTCY COURT • SOUTHERN DISTRICT OF NEW YORK</p> <p>In re Petition of the Board of Directors of THE BRITISH AVIATION INSURANCE COMPANY LIMITED, Debtor in a Foreign Proceeding.</p> <p>NOTICE IS HEREBY GIVEN that, in connection with the Petition filed by the Board of Directors (the "Petitioner") of The British Aviation Insurance Company Limited (the "Company") on February 7, 2005, pursuant to section 304 of the Bankruptcy Code (the "Petition"), with respect to the Company, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an Order Scheduling Hearing and Specifying the Form and Manner of Service of Notice, dated February 9, 2005 (the "Order"), pursuant to which a hearing will be held on March 31, 2005 at 10:00 a.m. before the Honorable Stuart M. Bernstein in Room 723 of the Bankruptcy Court, One Bowling Green, New York, New York (the "Hearing"), to consider the Petition and the Petitioner's Request for a Permanent Injunction on the terms as substantially set forth below:</p> <ol style="list-style-type: none"> that the Scheme of Arrangement (as defined in the Petition) shall be given full force and effect in the United States, and shall be binding on and enforceable against all Scheme Creditors (as defined in the Petition) in the United States; that all Scheme Creditors are hereby permanently enjoined from taking any action in contravention of, or inconsistent with, the Scheme of Arrangement; that all Scheme Creditors are hereby permanently enjoined from seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds thereof, to any person or entity other than the Scheme Manager (as defined in the Petition); that all Scheme Creditors are permanently enjoined from: (a) commencing or continuing any action or legal proceeding in connection with any Claim (as defined in the Petition) (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, against the Company, or any property in the United States that is involved in the foreign proceeding, or any proceeds thereof, and seeking discovery of any nature against the Company; (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award obtained in connection with any Claim, and commencing or continuing any act or action or legal proceeding in connection with any Claim (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim arising out of a Claim against the Company or any of its property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; (c) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) and such statute, rule or requirement will be rendered null and void for proceedings; provided, however, that nothing in the Permanent Injunction shall in any respect affect any Security Interest (as defined in the Petition) in existence at the Effective Date (as defined in the Petition) or the replacements for such security; (d) drawing down any letter of credit established by, on behalf of or at the request of, the Company, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (e) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established; that all persons and entities in possession, custody or control of property of the Company (or the proceeds thereof) associated with Scheme Business (as defined in the Petition) and located in the United States, shall turn over and account for such property or its proceeds to the Petitioner, the Company or Scheme Manager unless such a person or entity has a bona fide defense to this obligation to turn over; that all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf of or at the request of the Company or parties to any trust, escrow or similar arrangement in which the Company has an interest, are required to: (a) provide notice to the Petitioner's United States counsel of any drawdown on any letter of credit established by, on behalf of or at the request of, the Company, or any withdrawal from, setoff against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Petitioner to assess the propriety of such drawdown, withdrawal, setoff or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff, or other application was made, and provide such notice and other information contemporaneously therewith; and, (b) turn over and account to the scheme manager for all funds resulting from such drawdown, withdrawal, setoff, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established unless such Scheme Creditor has a bona fide defense to this obligation to turn over; that nothing in the Permanent Injunction shall in any respect prevent the commencement or continuation of proceedings against any person or entity other than the Company; provided, however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than the Company, such settlement or judgment shall not be binding on or enforceable against the Company; that no action taken by the Petitioner or the Scheme Manager, their successors, agents or representatives, or any of them, or their counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Scheme of Arrangement shall be deemed to constitute a waiver of the immunity afforded the Petitioner or the Scheme Manager, their successors, agents or representatives pursuant to section 306 of the Bankruptcy Code; <p>All parties-in-interest opposed to the Petition and the Petitioner's Request for a Permanent Injunction must appear at the Hearing at the time and place set forth above. All papers submitted for the purpose of opposing the Petition and the Petitioner's Request for a Permanent Injunction shall be filed with the Bankruptcy Court with a copy to Chambers of the Honorable Stuart M. Bernstein and served on Chadbourne & Parke LLP (Attn: Howard Seife, Esq.) so as to be received on or before March 17, 2005 at 5:00 o'clock p.m., New York time. The Petition and supporting papers will be made available upon request at the offices of the Petitioner's United States counsel at the address below:</p> <p>CHADBOURNE & PARKE LLP Attorneys for the Petitioners • 30 Rockefeller Plaza • New York, New York 10112 • (212) 408-5100 Attn: Howard Seife, Esq. • Francisco Vazquez, Esq.</p>	<p>In a Proceeding Under Section 304 of the Bankruptcy Code Case No. 05-B-10720 (SMB)</p>

FOR SALE

BUSINESS FOR SALE

Small P&C Insurance Consulting Firm with National Client Base.

Ideal as adjunct to agency, law firm, competing consulting firm, or aspiring entrepreneur.

Current owner willing to stay through transition period.

Send inquiries to:
Business Insurance
Box 3229
360 N. Michigan Ave, Chicago, IL 60601
email: bibox3229@BusinessInsurance.com

Looking to fill a job opening?

Reach experienced candidates through **BI's Professional MarketPlace.**

Call 312.649.5340 for details.

Help Wanted, Agency For Sale, Legal Notice, Business Opportunity...

Whatever your needs in the Corporate Risk Management, Employee Benefits, and Managed Health Care arena, advertising in **BI's Professional MarketPlace** can help you fulfill them.

Upcoming Advertising Opportunities:

<p>March 14 Open News/Features Ad Closing: March 8</p>	<p>March 21 Terrorism & Captives Management Ad Closing: March 15</p>	<p>March 28 Benefit Consulting & Outsourcing Ad Closing: March 29</p>
<p>April 4 RIMS Conference & Philadelphia Tourism Preview Ad Closing: March 29</p>	<p>April 11 Open News & Features Ad Closing: April 5</p>	<p>April 18 Risk Manager of the Year Ad Closing: April 12</p>

Call 312-649-5340 for details

ELIC: Insurers default

Continued from page 3

leged conspiracy in 1992 by purchasing both the insurance business and the junk bonds from Altus Finance and the original buyer.

The insurance department sued all of the parties involved in the ELIC sale in February 1999, seeking \$3.7 billion in damages and interest and charging that the group deceived the department when it made its bid for ELIC as part of an auction process orchestrated by then-Commissioner John Garamendi in 1991. The suit alleges that Altus was controlled by Credit Lyonnais, a French government-owned bank, making the sale illegal under both state and federal law (BI, May 10, 1999).

Meanwhile, the Executive Life Action Network, an activist group of former Executive Life policyholders, is calling on State Sen. Jackie Speier, chairwoman of the Senate Insurance Committee, to investigate the settlements, saying they fall far short of the \$4.5 billion they lost as a result of the insurer's failure.

"We are shocked and outraged that the largest financial fraud in California history would be settled for so little and without even a fight, and we're calling on Senator

Speier to stop this madness," said Sue Watson, co-founder of the Executive Life Action Network, in a statement.

"The commissioner's own staff reported that losses to policyholders were more than \$4.5 billion. How can the commissioner now settle for less than \$600 million?" she asked.

The policyholder group also asked the Senate Insurance Committee to order an audit of all Executive Life estate funds that have been paid to investment and accounting experts, lawyers, real estate experts, and department staff, alleging that policyholders have not fully benefited from the litigation.

ELAN is also calling for Mr. Garamendi's immediate resignation.

In response to ELAN's comments, an insurance department spokesman explained "we couldn't sue over the collapse. We sued because Credit Lyonnais committed fraud. It's a point of distinction that's being lost here. The policyholders will certainly benefit from what we're doing here. As it stands now, they had lost money and our suit is on their behalf to get back some of the money that was taken because of the fraud."

ELIC, the continuing saga

The settlement last week between the successor company to Executive Life Insurance Co. and prosecutors was the latest turn in a saga that had its roots in the junk bond deals of the 1980s when investment powerhouse Drexel Burnham Lambert helped assemble Executive Life's bond portfolio.

April 1991: California regulators take over Executive Life following concern about the decline in value of its extensive junk bond holdings.

August 1991: In an effort to avoid liquidation, in his first term as California insurance commissioner, John Garamendi establishes a competitive bidding process to sell the life insurer.

December 1991: A French investment group headed by Altus Finance and Mutuelle Assurance Artisanale de France receives court approval to pay \$3.25 billion for the bulk of Executive Life's bond portfolio, transform Executive Life into Aurora National Life Assurance Co. and infuse \$300 million into the company.

April 1993: Aurora and the California Insurance Department file a motion to preserve the sale after some policyholders seek to have the deal rescinded, arguing that the junk bond portfolio was undervalued at the sale. Thanks to a rebound in bond prices, the portfolio is estimated to be worth \$2 billion more than the purchase price.

February 1999: Then-California Insurance Commissioner Chuck Quackenbush sues the French investment group seeking \$3.7 billion in damages and interest and charging that the group deceived the department when it made its bid for Executive Life. The suit alleges that Altus was controlled by a French government-owned bank and that the sale was illegal under state and federal law.

January 2000: French investor Francois Pinault, his investment firm Artemis S.A., Aurora, and New California Life Holdings, Aurora's parent, are added to the suit following allegations that Mr. Pinault participated in the deal.

June 2001: Two additional lawsuits are filed by the California Attorney General's Office and Sierra National Insurance Holdings Inc., a losing bidder in the ELIC auction.

January 2002: California Attorney General Bill Lockyer adds four associates from former junk bond firm Drexel Burnham Lambert to the lawsuit, alleging they participated in the fraud.

December 2003: The French government-owned bank, Credit Lyonnais S.A., and other investors agree to pay \$771.8 million to settle charges that the bank concealed its role in the deal.

February 2005: On the eve of a fraud trial over the sale, Aurora agrees to pay \$92 million to settle the consolidated suit. The next day, French-government entity Consortium de Realisation S.A. settles on behalf of Credit Lyonnais and agrees to pay \$600 million to be removed from the case. As jury selection begins, MAAF Assurances S.A., the parent company of the insurers named in the suit, elects to default from the case, saying any judgment would be unenforceable in France since it does no business in the United States nor has any assets here.



Spanish versions of pages from the Christus Health and AtlantiCare Web sites are more than simply translations from the English-language pages. They are designed to address the needs of Hispanic plan members.

Communication: Cultural skills training goes beyond translation

Continued from page 4

health care symptoms, conditions and treatments, said Shani Dowd, director of clinical cultural competence training at the Institute for Linguistic & Cultural Skills at the Harvard Pilgrim Healthcare Foundation in Quincy, Mass.

"You may be fluent in French, but if you're in Paris and you've been diagnosed with breast cancer and your doctor is discussing with you whether or not to have a mastectomy, wouldn't you want to hear it in your native language?" he asked.

In acknowledgement, the Blue Foundation for a Healthy Florida, Blue Cross & Blue Shield of Florida's philanthropic affiliate in Lakeland, recently awarded We Care of Polk County a grant to hire a part-time, bilingual outreach coordinator.

"It is difficult at times for us to communicate with our minority clients who do not speak English or do not speak it well," said Sandy Swanson, director of We Care of Polk County. "This grant will allow us to better serve our clients, providing a bilingual coordinator to follow up with patients and ensure they complete the necessary treatment plan."

Even when the language is understood, though, cultural nuances could also interfere with communication, according to Robert Oscar, president and founder of RxEOB, a Web-based communications vendor based in Richmond, Va. Earlier this month, RxEOB launched a Spanish-language version of its Web site under a partnership with Triple-S of Puerto Rico, a Blue Shield licensee.

"It's important to be sensitive. That's one reason we ask our clients to review the Web site to make sure we're not accidentally saying something inappropriate," Mr. Oscar said.

There is an assumption at some companies that, because their employees are required to speak English and have at least a high school education, there is no need to engage in any special communications in other languages.

But even highly educated people who can speak conversational English may not be able to understand the abstract English used to describe

health care symptoms, conditions and treatments, said Shani Dowd, director of clinical cultural competence training at the Institute for Linguistic & Cultural Skills at the Harvard Pilgrim Healthcare Foundation in Quincy, Mass.

"They may be quite fluent in both languages but may not be fluent in medical terminology," Ms. Dowd said.

Even in medical offices with bilingual staff, communication errors could occur, leading to noncompliance with certain treatments or, worse, to medical errors, she said.

"A lot of bilingual staff who are called upon to interpret may not

'There clearly is a growing awareness and interest in trying to provide more information and support in different language.'

Suzanne M. Kenney
Hewitt Associates inc.

have training in medical terminology or understanding why physicians ask questions the way they do," she explained.

The institute provides two levels of training for medical interpreters—a basic program and an advanced program for those who need disease-specific information, including translations for describing common treatments or tests that are used.

"There clearly is a growing awareness and interest in trying to provide more information and support in different languages," said Suzanne M. Kenney, a communications consultant at Hewitt Associates Inc. in Lincolnshire, Ill.

In some cases, employers are using nontraditional benefit communication venues, she said.

"For example, in some cultures, particularly if it's a first-generation immigrant to the United States,

there may be a greater sense of confidence and trust and comfort with a local newspaper, or perhaps a particular person in the community who is considered an activist," she said.

In fact, Hewitt has been talking with some ethnic media organizations in California about running announcements on employers' health promotion efforts, she said.

The alternate venue has proved effective in the African-American community, according to Virgil Simons, founder and president of Prostate Net, a nonprofit health education company based in Guttenberg, N.J.

More than 10,000 men were screened for prostate cancer after they learned about the disease at their local barbershops, which had been recruited by Prostate Net as part of a nationwide campaign that also included partnering with Los Angeles-based Metro-Goldwyn-Mayer Inc. in the release of the 2004 film "Barbershop 2."

"Barbershops are places where men come to socialize, engage in dialogue, open and free communication. It's a country club, of sorts, where men can literally 'let their hair down,'" he said.

"There's also a historical paradigm related to African-American barbershops," he said. "Going back to the civil rights movement, the planning and mobilization sessions took place in the barbershop, because it was considered a safe place to talk and share strategy."

Though Prostate Net's program is currently focused on prostate cancer screening, plans are to expand it to include other diseases endemic in the African-American male population, according to Mr. Simons.

"From a benefit manager's standpoint, it's important that they recognize that their traditional ways of communicating have to be expanded to include some kind of community partnerships to really get the messages out and get them acted upon and adopted by the communities," he said.

AIG: Investigation of insurer's finite deals expands

Continued from page 1
financing products.

Last year, AIG agreed to pay \$126 million in penalties and disgorgement payments to the U.S. Department of Justice and the SEC to settle charges over certain structured financial transactions between AIG units and Pittsburgh-based PNC Financial Services and Plainfield, Ind.-based Brightpoint Inc., a mobile telephone distributor (*BI*, Nov. 29, 2004).

The insurer also agreed to the appointment of an independent consultant to review certain transactions from 2000 and 2004 to determine whether they violated accounting rules or were used to manipulate financial results.

The SEC has also requested information on the use of finite risk products from other companies, including General Re Corp., Chubb Corp., ACE Ltd. and Swiss Reinsurance Co.

But observers say this may be the first time regulators are investigating these products' impact on an

insurer's own book, rather than on its clients'.

"I think what is significant in those subpoenas is they've addressed the accounting practices of AIG itself," said Donald Light, a San Francisco-based senior analyst with Celent Communications, a business and technology research and consulting firm.

"I would read between the lines to say that there's questions in the SEC's and/or Spitzer's mind that AIG had been manipulating its own earnings and/or balance sheet through the use of reinsurance agreements, so it's kind of a new twist, as opposed to AIG helping other people like Brightpoint and PNC manipulate their earnings," said Mr. Light. "The question is, was AIG putting forth an honest balance sheet? I think that's where they're heading."

Mr. Light said everyone recognizes the difficulty insurers have had over the past ten or 15 years to reserve properly in light of the mass torts and other long-term expo-

sure. As a result, "I think that any time a big, complicated insurance company can deliver a smooth, increased earnings" as AIG has done "it raises questions."

Michael Miller, an attorney with Piliero, Goldstein Kogan & Miller in New York, said the subpoenas "certainly seem to reflect a movement in the investigation towards the broader question of whether these insurance companies have been misrepresenting their financial condition to their shareholders."

But not everyone is convinced that the SEC and Mr. Spitzer's focus is on AIG's own financial statement. "I don't think there's any obvious evidence that that's what's going on," said Rodney Clark, a director with rating agency Standard & Poor's Corp. in New York. "As far as we know, there's nothing outstanding that supports that idea."

It could take some time for the results of the SEC's and Mr. Spitzer's investigation of AIG to emerge, say some observers. "I'm sure it's going to take quite a bit of time for the

regulators to complete that part of the investigation because of the large amount of the accounting records that have to be looked at," said Robert Heim, an attorney with Meyers & Heim in New York, who has worked for the SEC's enforcement division.

AIG is likely to have been given 30 to 60 days to produce all the records, "and from there, the SEC and the AG have to read what will likely be a fairly voluminous amount of documents," he said.

However, Mr. Miller said, "If the SEC and the AG's office issues these subpoenas based on specific information, it's quite possible that that specific information may become a matter of public record in the next few weeks."

John Ward, a Cincinnati-based independent insurance analyst, said he believes that General Re's subpoena in particular may have led to the AIG subpoena.

People within the insurance industry are concerned that the investigation into finite risk coverage

could balloon, he added.

"Part of the concern here is that this investigation brings focused attention to a complicated area that is governed by very, very soft accounting rules." The concern is how the accounting rules will fare "under the weight of the intense regulatory investigation and analysis of these types of issues," said Mr. Ward.

If it is determined that there has not been a significant amount of risk transfer for their finite reinsurance transactions, insurers may have to restate their earnings, and the dollar impact could be "substantial," said Mr. Ward.

However, David Mendelsohn, an attorney with DLA Piper Rudnick Gray Cary in Chicago, said while the possibility of restated earnings exists if there is inadequate risk transfer, "I have not seen evidence that the improper accounting of these transactions pervades the industry, so my suspicion at this time is that this is not likely to be a material problem for the industry."

Spitzer: Three more guilty pleas entered

Continued from page 1

Mr. Bewlay was mentioned in a felony complaint that Mr. Spitzer filed against a Marsh senior vp, Robert Stearns, who pleaded guilty to a fraud charge last month. The complaint alleged that in March 2003, Mr. Bewlay instructed another Marsh broker to obtain a "B quote" on a risk.

confirmed. "He is saddened by (the plea) but he takes responsibility for his actions and apologizes to his colleagues and is prepared to move forward," said his lawyer, Nelson Boxer with Dechert L.L.P. in New York.

Messrs. Mohs and Coello have both been placed on leave by American Home, an AIG spokesman said.

Both reported to Karen Radke and Jean-Baptist Tateossian, two American Home executives who pleaded guilty to felony charges related to the bid-rigging scheme last year.

Mr. Mohs is "looking forward to righting this wrong and getting on with

his life," said his New York-based lawyer, Jeffrey Lichtman.

Mr. Coello is "pleased to put this behind him," commented his lawyer, Nicholas DeFeis, with DeFeis, O'Connell & Rose.

In a statement, AIG said the pleas "reflect information provided by AIG as part of its ongoing cooperation with the New York Attorney General's investigation.

"AIG takes this matter very seriously and deeply regrets that some of its employees were involved," the insurer said.

Mr. Spitzer's investigation has now produced nine guilty pleas, also including one official of an ACE Ltd. unit and two executives of Zurich American Insurance Co.

Merck to face consolidated class actions in federal court

By RUPAL PAREKH

NEW ORLEANS—Merck & Co. Inc. is one step closer to facing former Vioxx users in court, after a ruling last week consolidated hundreds of individual and class action lawsuits brought against the drug company by plaintiffs alleging the painkiller caused heart damage, kidney failure and other ailments.

Under the order by the federal Judicial Panel on Multidistrict Litigation, all product liability cases filed nationwide against Whitehouse Station, N.J.-based Merck will be reassigned to a New Orleans federal court for pretrial proceedings.

Several shareholder securities

Additionally, to help cover related personal injury damages and legal defense costs, Merck has nearly \$630 million in product liability insurance, it said in a 2004 fourth quarter earnings report. For potential securities liability, Merck has at least \$190 million in directors and officers liability coverage, at least \$275 million in Employment Retirement Income Securities Act claims coverage, and possible additional coverage available under up-

per-level excess policies.

Merck has not identified its insurers.

The company Wednesday issued a statement saying it "intends to vigorously defend itself" in future Vioxx litigation. Merck "acted responsibly every step of the way" and "acted in the best interest of its patients," the statement said.

Vioxx-related lawsuits have also been in other countries, including Canada, Brazil and Israel.

PHOTO: AP/WIDE WORLD



Carlos Coello, left, and John Mohs of American International Group Inc. pleaded guilty to bid rigging-related charges in New York last week.



Mr. Mohs is "looking forward to righting this wrong and getting on with

While entering his guilty plea Tuesday, Mr. Bewlay also described "an official protocol whereby Marsh clients were given a significantly understated figure when they asked about the amount of revenue Marsh derived from placement service agreements," according to the attorney general's office.

In his October 2004 bid-rigging lawsuit against Marsh—which the broker recently settled by agreeing to pay \$850 million in restitution—Mr. Spitzer also charged that Marsh funneled business to insurers paying it the highest contingent commissions under placement service agreements.

Mr. Bewlay is no longer employed at Marsh, a spokeswoman



Studies have linked Vioxx to higher heart attack rates.

class actions also have been filed against Merck in federal courts around the country—claiming top executives misled investors about the drug's safety—but a consolidation decision for those cases has not yet been made.

Last September, Merck pulled its arthritis medication Vioxx from markets worldwide when studies found that the drug increased patients' chances of a heart attack or stroke.

The company has since established a reserve of \$675 million for future costs of legal defense and investigations associated with Vioxx.

PHOTO: ZUMA

Travis invented Cobra software in 1986.....
We've Re-invented it in 2005.....
WebCOBRA™ is here!

WebCOBRA.com
Unlock the Benefits in COBRA Administration

WebCOBRA.com, the new Internet-based system from Travis Software, pioneer and leader in COBRA administration software, is ready now for you to log in and use!

You don't have to choose between buying expensive software or outsourcing to help you perform COBRA administration. Get the administration you need with WebCOBRA.com, designed for the Internet, with unique features that compare to nothing you've seen before!

With WebCOBRA.com, you can do COBRA administration from any computer with Internet access. Anywhere. There's no software to buy and install and no need to ask your IT people to get involved.

Just call us at (866) 866-9264 or visit us at www.webCOBRA.com to start using this complete, intuitive and easy-to-use system from the only company with eighteen years' experience providing COBRA software to over 4,000 employers and TPAs.

WebCOBRA from Travis Software Corp.
Cobra software – re-invented.
www.webcobra.com

Travis Software

© 2005 Travis Software Corp.

Brokers: Willis to sell wholesale unit to AmWINS

Continued from page 1

At the same time, as larger brokers divest from noncore operations, some observers say that reinsurance brokerage units may be the next to go (see related story).

"Swett & Crawford has a great future," Patrick G. Ryan, Aon's chairman and chief executive officer, said in a statement announcing Aon's intentions for its wholesale unit. "By exploring alternatives, we expect to determine if Swett & Crawford's potential can be realized more fully under different ownership."

Aon would not comment further. Willis said in a statement that the sale of Stewart Smith is part of the brokerage's overall strategy to focus on its core retail business.

"Since (Chairman and CEO) Joe Plumeri arrived at Willis, he has stated that we are going to grow our core competency. We are going to do one thing and we're going to do it really well," a Willis spokesman said.

"As the world gets more complex and risk and risk analysis becomes more complex, clients need a great insurance broker that is not dis-

tracted by noncore businesses. We've sold off (third-party administrators), we have divested personal finance consulting interests and other companies that didn't fit with the mission of growing our retail business," he said.

"Our decision to divest Stewart Smith is not related to Mr. Spitzer's investigation," the spokesman added. He referred to New York Attorney General Eliot Spitzer, whose investigation has centered on contingent commissions, bid rigging and fraud in the industry.

Potential for conflicts?

While neither Aon nor Willis would link their decisions to the current industry investigations, observers say the inherent potential for conflicts that arise between owning retail and wholesale operations most likely played a part.

Even though Willis said the divestiture is consistent with its strategy of focusing on its core retail brokerage operations, "we suspect avoiding potential conflicts

See **BROKERS**/next page

Some see reinsurance as next on the block for large brokerages

By **SALLY ROBERTS**

As Aon Corp. and Willis Group Holdings Ltd. divest themselves from the wholesale brokerage business, some observers say the reinsurance brokerage units of large retail brokers could be the next items on the block.

Unlike the wholesale business, New York Attorney General Eliot Spitzer and others for several months have been investigating potential conflicts inherent in the ownership of reinsurance brokerages by retail brokers.

Specifically, they are looking into potential tying arrangements, in which brokers demand reinsurance placement assignments in return for producing insurance business.

By shedding noncore operations, brokerages distance themselves from the regulatory and legal turmoil that has resulted from the investigations, observers say. As such, divesting themselves from the reinsurance brokerage business could be the next logical step.

"I wouldn't be surprised to see more of a trend of brokers selling their reinsurance units," said Rob Lieblein, president and managing principal with WFG Capital Advisors L.P. in Harrisburg, Pa. "That is clearly more of a potential conflict than on the wholesale side. You can still have it on the wholesale side, but that's sometimes more of a conflict in the channel distribution and not necessarily as much of a client

issue that you can have with a reinsurance unit," he said.

"I wouldn't be surprised to see similar divestitures of reinsurance operations," agreed Timothy J. Cunningham, a principal with OPTIS Partners L.L.C. in Chicago.

But Donald Light, a San Francisco-based senior analyst with Celent Communications, for one, said he doesn't see it happening.

"My gut feeling says they will try harder to hold on to their reinsurance brokerage operations," he said, noting, the reinsurance units "make a lot of money."

Indeed, unlike their wholesale holdings, reinsurance brokerage units represent a much larger percent of the world's largest brokerages' total revenues.

For example, while Aon's Swett & Crawford Group generated \$267.0 million in 2003 revenues, Aon Re Global, its reinsurance unit, generated revenues of \$945.0 million.

Similarly, Marsh & McLennan Cos. Inc.'s wholesale unit, Crump Insurance Services Inc., generated \$80.0 million in 2003 while its reinsurance unit, Guy Carpenter & Co. Inc., generated \$850.0 million. And compared to Willis' Stewart Smith Group, which generated \$74.7 million in 2003, Willis Re generated \$513.0 million.

When asked about its reinsurance operations, the Willis spokesman said Willis Re is considered one of brokerage's core competencies.

Spokespeople for Aon and MMC would not comment.

Largest wholesale brokerages and their parents †

Rank	Company	Parent	2003 premium volume	2003 gross revenue
1	Swett & Crawford Group	Aon Corp.	\$3,000,000,000	\$267,000,000 ¹
2	CRC Insurance Services Inc.	BB&T Corp.	\$1,622,000,000	\$127,700,000
3	American Wholesale Insurance Group Inc. ²	—	\$1,306,817,077	\$88,863,561 ¹
4	Crump Insurance Services Inc.	Marsh & McLennan Cos. Inc.	\$1,053,000,000	\$80,028,000 ¹
5	Stewart Smith Group ²	Willis Group Holdings Ltd.	\$1,008,000,000	\$74,655,985
6	BISYS Commercial Insurance Services Inc.	The BISYS Group Inc.	\$949,000,000	\$83,000,000
7	Heath Holdings USA Inc. ³	Heath Acquisition Co. Inc.	\$945,000,000	\$67,300,000
8	Risk Placement Services Inc.	Arthur J. Gallagher & Co.	\$872,000,000	\$67,200,000
9	ARC Excess & Surplus L.L.C.	—	\$392,000,000	NA
10	Westrope	—	\$342,000,000	\$25,400,000

† Companies deriving the majority of their premium volume from wholesale brokerage. 1 BI estimate. 2 Combination of American Wholesale and Stewart Smith pending 3 Now known as Colemont Insurance Brokers. NA Not available
Source: BI survey

AmWINS moves quickly up ranks of world's largest wholesalers

By **ROBERTO CENICEROS**

CHARLOTTE, N.C.—Barely two and a half years ago, M. Steven DeCarlo launched American Wholesale Insurance Group Inc. and rapidly began converting the company into a distribution powerhouse.

Last week's announced purchase of wholesale broker Stewart Smith Group Inc. from Willis Group Holdings Ltd. marks \$1.5 billion worth

of premium volume acquisitions that his company has made in the past year, said Mr. DeCarlo, American Wholesale's president and chief executive officer.

With this latest acquisition, the company known as AmWINS becomes the second largest U.S. wholesaler, according to *Business Insurance's* 2004 ranking.

The Stewart Smith purchase will bring its total premium placements to more than \$2.4 billion, AmWINS spokesman said. Its revenues will increase to more than \$150 million, up from \$100 million before the acquisition, Mr. DeCarlo said.

AmWINS' new size could tempt other wholesalers to try to keep up by making their own acquisitions, said Lawrence M. Wesson, president and chief operating officer for U.S. Risk Insurance Group in Dallas.

But there is still "very much a place for the smaller, more nimble, wholesale brokers and MGAs, and they occupy a very important place in the distribution system," Mr. Wesson added.

Willis' sale of Stewart Smith shows that large brokers are rethinking the wisdom of simultaneously owning retail and wholesale operations, said Mr. Wesson and Marshall P. Kath, CEO of Heath Holdings USA Inc. in Dallas.

Both Mr. Wesson and Mr. Kath are board members of the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd.

For AmWINS—which markets itself as "the nation's largest independent wholesaler"—the Stewart Smith purchase represents a geographical expansion and positions AmWINS to increase the business it transacts with Willis. It also acquires specialty expertise in areas such as construction and environmental liability, an AmWINS spokesman said.

AmWINS is now heavily concentrated on the East and West Coasts, the spokesman said. Stewart Smith

offices in Seattle, Grand Rapids, Mich., and Tampa, Fla., will help AmWINS expand its presence in those areas. It also helps it expand into other parts of the South, such as Nashville, he added.

For now, Stewart Smith offices will not be renamed; decisions about integrating any duplicate offices will be made later, the spokesman said.

Mr. DeCarlo says he has worked in the excess and specialty insurance business for 25 years. In 2001 he moved the "small little company," named Americana Financial Services Inc., from New York City to Charlotte, N.C.

Americana Financial primarily operated as a managing general agency. In June 2002, it acquired Chatsworth, Calif.-based wholesaler MTS Insurance Services L.L.C., which owned a New York broker and a California managing general agency.

That is when its growth took off and when Mr. DeCarlo changed its name to American Wholesale.

American Wholesale Insurance Group Inc. is now a holding company with three core divisions, AmWINS Brokerage, AmWINS Specialty Underwriting which is made up of five MGAs, and AmWINS Benefits Brokerage.

Building a giant the American way

■ **June 2002**
Americana Financial Services Inc., a wholesaler holding company, merges with MTS Insurance Services L.L.C., New Century Global Inc. and Specialty Programs & Facilities Managers Inc. The combined company, named American Wholesale Insurance Group Inc., represents wholesale premiums of about \$681.7 million for 2001.

■ **September 2002**
Acquires Woodus K. Humphrey & Co. Inc., with wholesale premiums of about \$30 million in 2001.

■ **May 2003**
Buys Seaboard Underwriters Inc., with wholesale premiums of \$45.0 million in 2002.

■ **March 2004**
Acquires Property Risk Services L.L.C., with wholesale premiums of \$163.9 million in 2003.

■ **February 2005**
Agrees to purchase Stewart Smith Group, with about \$1.00 billion in 2003 wholesale premiums, from Willis Group Holdings Ltd.
Source: Company reports, BI surveys

ADVERTISER

INDEX

Issue of February 21

ADVERTISER	PAGE #
Aetna Corporate	5
AIG	20
Aon Corporation	2
Burnham System	12
Business Insurance	9, 11, 15
Harvard Pilgrim Health Care	11R
Old Republic Risk Management	7
Renaissance Reinsurance	11R
Travis Software	17

February 21, 2005

Late News

Continued from page 1

of the board of the Pension Benefit Guaranty Corp. The council, among other things, rejected any increases in PBGC premiums before it is determined what impact a small increase in interest rates and improvement in the equity markets would have on the PBGC's reported \$23.3 billion deficit. The administration had proposed increasing the base PBGC premium to \$30 per participant from \$19.



Active hurricane season likely, forecaster says

There is a 76% chance of an above-normal hurricane season, according to London-based forecaster Tropical Storm Risk. TSR also predicted that 14 tropical storms—eight of which will grow into hurricanes—will form during this year's Atlantic hurricane season, which runs from June 1 through Nov. 30. TSR said that four tropical storms—two of which will be hurricanes—will strike the United States. TSR's prediction is based on the likelihood of weaker-than-

normal trade winds and warmer-than-normal waters, both of which favor heavier hurricane activity.

Georgia Legislature passes tort reforms

Georgia Gov. Sonny Perdue has signed tort reform legislation that won the approval of the state Senate earlier this month. Among other changes, S.B. 3 caps noneconomic damages in medical malpractice cases at \$350,000 per provider, with an aggregate cap of \$1.05 million. The act also contains "I'm sorry" language that makes statements of sympathy or apology by health care providers inadmissible as evidence of liability. The measure also sets more restrictive rules regarding expert witness testimony in all civil cases.

Judge OKs settlement in IPO class action

Investors who claim that hundreds of companies defrauded them in initial public offerings during the technology boom would recover at least \$1 billion under a settlement of coordinated class action litigation that a New York federal court judge preliminarily approved last week. Directors and officers liability insurers for the 298 technology companies would pay plaintiffs up to \$1 billion, but that amount would be reduced by any amount plaintiffs recover from the technology companies' investment banks. The banks, which include Goldman Sachs Group Inc., Credit Suisse First Boston and Morgan Stanley, also are named as defendants in the litigation but are not part of the settlement.

Am Re reserve boosts prompt Best downgrade

American Re Corp. reported net income of \$103.1 million for 2004, down 60.8% compared with 2003, due mainly to catastrophe losses and adverse loss reserve developments in the year of around \$482 million. Gross premiums declined 8.8% to \$4.21 billion. Following the announcement, A.M. Best Co. lowered its financial strength rating of American Re's member companies to A from A+, due largely to the reserve strengthening, Best said.

European P/C rate cuts modest, Best says

European insurers are refusing to make significant cuts in property/casualty rates despite ample available capacity, according to Oldwick, N.J.-based A.M. Best Co., which bases its report on the European January renewals. Overall, premium rates have decreased moderately, with some expected increases in U.S. property lines exposed to last year's hurricanes, according to Best.

Briefly noted

Concentra Integrated Services Inc. has received a subpoena from New York Attorney General Eliot Spitzer requesting information relating to its relationships with health insurers and third-party administrators. The Addison, Texas-based health care and disability outsourcing firm said the request came as part of a larger probe into contractual relationships

in the workers compensation industry, and noted that it intends to cooperate fully....The New York Assembly's committees on insurance and labor heard testimony last week regarding the **Workers' Compensation Security Fund's** financial status. New York's Insurance Department notified the Legislature in January that WCSF would soon be bankrupt....The Senate voted 98-0 late Thursday to approve the **Genetic Information Nondiscrimination Act** of 2005. The measure would prohibit employers and insurers from discriminating against individuals on the basis of genetic information....West Virginia Gov. Joe Manchin last Wednesday signed into law **workers compensation legislation** he said will reduce employers' premiums by 15% next year. The law will convert the state monopoly workers compensation program into a private mutual insurance company and open the state to insurer competition....The Canadian property/casualty insurance industry posted net income of \$4.2 billion in 2004, according to the Toronto-based **Insurance Bureau of Canada**. The industry paid out \$20.6 billion in claims last year, IBC said.

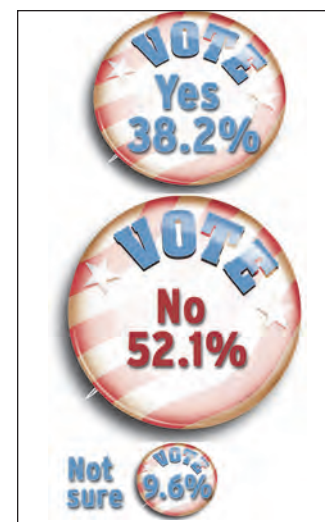
Check out BusinessInsurance.com

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

Online Poll

[2/14 - 2/18]

Do you think that elected insurance commissioners represent policyholder interests more effectively than appointed commissioners?



BI Stock Index

[2/14 - 2/18]

Up-to-the-minute data for all 87 companies that comprise the *BI* Stock Index can be found at www.businessinsurance.com

Percentage change of BI Stock Index vs. key indicators

BI Stock Index **2490.27** **-1.28**

Dow Jones **10785.22** **-0.10**

S&P 500 **1201.59** **-0.31**

Largest gains

Clark Inc.	22.04%
EMC Insurance Group Inc.	8.50%
HCC Insurance Holdings	8.05%
W.R. Berkley Corp.	7.25%
Philadelphia Consolidated	5.17%

Largest losses

Trenwick Group Ltd.	-20.00%
PMA Capital Corp.	-11.78%
Harleysville Group	-7.36%
AIG	-5.73%
United Fire & Casualty	-4.74%

Weekly change by market segment

Brokers	1.31%
Insurers/Reinsurers	-0.45%
Managed Care Organizations	1.13%

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

Brokers: Willis to sell wholesale unit

Continued from previous page

of interest between retail and wholesale insurance brokerage operations may have been a factor," Jay H. Gelb, an analyst with Prudential Equity Group L.L.C. in New York, said in a report last week.

Mr. Gelb noted in another report that, based on a conversation he had with an attorney, potential conflicts of interest regarding wholesale operations may be an area for state attorneys general outside of New York to seek monetary damages from insurance brokers.

Willis and Aon are "just trying to reduce any real or perceived conflict of interests," said Dave Sheusi, senior property/casualty analyst with J.P. Morgan Securities Inc. in New York. "If you have noncore businesses like a wholesale operation that doesn't drive a tremendous level of revenues or earnings for a company, yet there could be a potential for some perceived problems, it's time to get back to basics," he said.

"It's not surprising given the push for greater transparency," agreed Timothy J. Cunningham, a principal with OPTIS Partners Inc. in Chicago. "This is not to suggest there is anything fundamentally wrong with a retailer having a

wholesale operation, but it makes the transparency disclosure that much more difficult."

John Wicher, a principal with John Wicher & Associates in San Francisco, said that is especially true for Aon, given the much larger size of Swett & Crawford. In *Business Insurance's* 2004 ranking, Swett & Crawford's gross revenues were estimated at \$267 million, while Stewart Smith's revenues were \$74.7 million.

"Even with all the disclosure, you don't want to have that conversation with a retail client as to whether you're going to place that business with a wholesale facility, which is ultimately owned by the same parent," he said. "I just think that's probably a complicated discussion for" Aon.

"I think it has to be seen as a contributing element," said Donald Light, a senior analyst with Celent Communications, referring to conflicts of interest. "When the brokers participate in all of the levels of a distribution channel...it gives the potential appearance of a conflict and may actually create a conflict in certain situations. And if there is anything brokers are running away from fast, it's an appearance of a conflict of interest."

Mr. Light said the divestitures also may be a means for the broker-

ages to shore up any balance sheet problems in light of potential settlement payouts and the loss of contingent commission income.

"They either have now or may be concerned about the strength of their balance sheet. And a classic response when you have balance sheet problems is to sell assets," he said.

Observers say the pressure is now on Marsh to follow suit.

"We would expect Marsh to follow suit," Mr. Sheusi said. "I think the issue is coming down to you either have to make a choice of being in the fee business or in the commission business," and brokerages cannot accept fees from clients and commissions from insurers on the same business.

"Based on our conversations with Marsh, it appears unlikely that a sale of its wholesale operations is on the table because the lack of transparency has been addressed," Mr. Gelb said in his report. "However, we would not be surprised if MMC put Crump on the block to further alleviate any perceived conflicts of interest."

An MMC spokeswoman would not comment on speculation.

Others stand pat

While some of the megabrokers

may be divesting their interests, other middle-market brokers say they have no intentions of getting out of the wholesale business.

"We think the wholesale business is great and are not looking to get out of it," said Cory Walker, chief financial officer of Brown & Brown Inc.

The Daytona Beach, Fla.-based broker announced earlier this month that it was acquiring Hull & Co. Inc., a Fort Lauderdale, Fla.-based wholesaler with about \$63.0 million in revenues.

"I can see the larger broker mentality where they have primarily fee-based clients and they've got to try to avoid any appearance of conflict," Mr. Walker said. "With middle-market brokers, we're all commission-based, and so you just don't have that conflict."

A spokeswoman for BB&T Insurance Services Inc., whose parent BB&T Corp. also owns CRC Insurance Services Inc., the second-largest wholesaler, also said the company has no plans to divest itself from CRC.

"We're in that business; we like it and we hope to stay there," said J. Patrick Gallagher Jr., president and CEO of Arthur J. Gallagher & Co. Inc., referring to the brokerage's Risk Placement Services Inc. wholesale unit.