

**Supreme Court to hear
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**PBGC surplus declining
amid plan takeovers / 3**

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\$4

Need for terror cover cited

Push for federal program gets a boost from Fed chief

By MARK A. HOFMANN

WASHINGTON—Proponents of a federal guarantee for terrorism insurance may face a somewhat easier task thanks to the chairman of the Federal Reserve Board and the General Accounting Office.

In separate appearances before the House Financial Services Committee last Wednesday, both Alan Greenspan and Richard Hillman, the GAO's director of financial markets and community investments, cited justifications for a federal backstop to help cover losses stem-

ming from a future terrorist attack.

Later, David Mair, president of the Risk & Insurance Management Society Inc., presented risk managers' concerns about the impact that the lack of terrorism insurance is having on U.S. businesses.

During his remarks before the full committee, Mr. Greenspan said that insurers and reinsurers face an "exceptionally difficult" time determining the probability or magnitude of a terrorist attack. He said advocates have argued, "somewhat effectively" that the federal government should cover part of the cost

of future terrorist attacks.

His comments drew immediate praise from insurers. "When our nation's leading economic authority says the lack of terrorism coverage for American businesses is a problem, hopefully Congress listens," Rodger S. Lawson, president of the Downers Grove, Ill.-based Alliance of American Insurers, said in a statement after Mr. Greenspan's appearance.

A few hours later, the GAO's Mr. Hillman formally presented "Terrorism Insurance: Rising Uninsured

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PHOTO: GETTY

Alan Greenspan recommended a government backstop.

Anger over AIG memo

Airlines bemoan limited options

By DOUGLAS MCLEOD

NEW YORK—Airline and insurance brokerage officials are denouncing American International Group Inc.'s effort to kill a federal aviation war risk insurance program created in response to a drastic cutback of commercial coverage after the Sept. 11 terrorist attacks.

AIG last week called on the U.S. Department of Transportation to phase out its coverage of airlines' third-party war risk exposures because a viable commercial market—principally an AIG-led insurer consortium—exists for the coverage.

In its memorandum, AIG also assailed Equitime, a proposed airline risk retention group, charging that its planned use of government reinsurance would mean that it is "hardly a private program."

Airline industry representatives, though, counter that the AIG-led consortium would have little com-

petition in the marketplace, that its coverage is too expensive and that its terms and limits are inadequate to meet the industry's needs.

AIG's "strategy is, 'Get the Feder-



al Aviation Administration out first, and then we'll go in and make a proposal on our terms,'" said Chris Duncan, vp-finance and chief risk officer for Delta Air Lines Inc. in Atlanta. "I guess it's good business, (but) it's poor client relations."

AIG's push comes as the government approaches a March 20 dead-

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ID theft suits in the cards

Companies may face liability

By JUDY GREENWALD

Companies that contribute to identity theft by failing to protect their customers' and employees' Social Security numbers and other personal information could be held liable, some observers warn.

Although relatively few cases of this type have been filed so far, some observers predict that with the incidence of identity theft rising, more frustrated victims will successfully sue companies that fail to protect this information.

They note that losses are likely to be covered under companies' commercial general liability policies or, if the criminal involved was an employee, crime policies.

But steps companies can take to minimize their liability include shredding, limiting access to personal information, conducting background checks of potential employees and acting promptly when

problems do arise, say observers.

Identity theft occurs when criminals use Social Security numbers or other identifying personal information to open new credit card accounts or gain access to existing credit, bank and stock market accounts. In some cases, criminals have used this information to buy luxury cars and even take out second mortgages on victims' homes. People with criminal records have also assumed false identities to get jobs.

The Federal Trade Commission's Identity Theft Data Clearinghouse, established in compliance with the Federal Identity Theft and Assumption Deterrence Act of 1998, receives a weekly average of about 3,000 calls on identity theft, said to be the fastest-growing white-collar crime.

Although consumers are not liable for any fraudulent charges to

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Late News

Treasury examines Bermuda HQ laws

Laws that allow companies based in the United States to establish their headquarters in Bermuda to reduce taxes are coming under scrutiny by the Treasury Department. A spokeswoman said the department is not targeting any specific industries with regard to such moves. Several insurers and reinsurers have redomiciled to Bermuda from the United States over the past several years. The movement previously led some U.S.-based insurers to lobby for tax law changes to discourage the moves. The current review comes after concern about transactions by Tyco International Ltd., a Bermuda-based company that operates in the United States.

Michigan attorney general opposes Blues deal

Michigan Attorney General Jennifer M. Granholm warned state legislators last week that selling or privatizing Blue Cross & Blue Shield of Michigan would violate state law by changing the organization's charitable mission and would jeopardize health care to residents. Ms. Granholm was responding directly to Gov. John Engler's recent

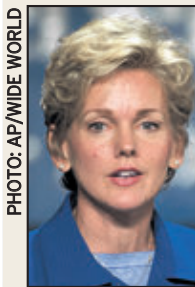


PHOTO: AP/WIDE WORLD

mention that such privatization might occur. The attorney general said a recent audit found that the health insurer "is safe and solvent," though it is justifiably concerned "over a purported \$400 million in losses in the small-group market." While that problem should be addressed, it should not be an excuse to end the insurer's unique responsibility as the market of last resort, she said. Ms. Granholm, a Democrat, is running in the November election to replace Gov. Engler, a Republican who cannot seek re-election because of term limits.

California seeks taxes on comp deductible policies

The California Insurance Department is asking insurers in the state to pay back taxes on

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Spotlight report

CLAIMS MANAGEMENT

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Inside

Rehiring dispute not an ERISA case

Mack Trucks Inc.'s refusal to rehire former workers because they would raise its pension costs does not violate ERISA, a unanimous federal appeals court panel ruled. **Page 4**

Keeping partners on speaking terms

Given the increased tension between buyers and sellers in the insurance market, is it time for a marriage counselor or a divorce attorney, wonders Editor Paul D. Winston in Commentary. **Page 6**

Don't ground FAA program yet

While a private insurance solution is preferable to a government remedy, calls to disband a federal government program to provide airlines with war risk liability coverage are premature, this week's editorial says. **Page 8**

Contracts' risk transfer questioned

Australian insurance companies are being called to account for financial reinsurance contracts amid an investigation into the collapse of HIH Insurance Ltd. **Page 29**

Management change pending

Zurich Financial Services Group has not yet named a successor to Chairman and Chief Executive Officer Rolf Hueppi, who will relinquish his duties as the insurer's chief executive later this year. **Page 29**

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

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workers compensation deductible policies. Workers comp deductible policies, which have been permitted in California since 1995, allow employers to reimburse their workers comp insurer for losses paid up to the deductible amount. Because insurers pay only the amounts exceeding the deductibles, the deductible payments from employers have been excluded from the total workers comp premiums that insurers have reported to the state. But, according to a Feb. 25 letter issued by the Insurance Department to insurers writing deductible policies, the "deductible amounts received from insured employers are considered 'gross premiums' under Revenue and Taxation Code Section 12221 and are subject to premium taxation during the tax year in which the amounts are paid." The Department requires insurers to report the amounts, which will subject to a 2.35% premium tax, for 2001 and plans to make additional assessments for 1997-2000.

11 running for California commissioner

Voters in California's primary election on Tuesday will decide from among 11 candidates who will fill the role of insurance commissioner, according to the Secretary of State. The biggest issue shaping the election centers on the candidates' willingness to accept campaign contributions from insurers. Two of the leading Democratic candidates do not accept any insurer money, while a third one does, according to the Santa Monica, Calif.-based Foundation for Taxpayer and Consumer Rights. Democrat John Garamendi, California's insurance commissioner from 1991 to 1995, does not accept any insurer contributions. Neither does Democrat Tom Umburg. Assemblyman Tom Calderon, D-Montebello, has received more than

Late News

\$1.5 million from insurers, according to the FTRC. Republican candidates Wes Bannister, Gary Mendoza and Stefan Stich have not received contributions from insurers.



Aerial view of the Mall of America

Mall owners fighting terrorism coverage rule

The owners of the largest shopping mall in the United States have gone to court to block the company servicing the mall's mortgage from forcing the owners to purchase stand-alone terrorism insurance. Simon Property Group Inc. said it obtained a restraining order Feb. 20 from the Hennepin County District Court in Minneapolis, barring GMAC Commercial Mortgage Corp. from purchasing terrorism insurance on the Mall of America in Bloomington, Minn. GMAC Commercial Mortgage would have required Simon Property and other owners to pay for the coverage the mortgage company obtained. "They were forcing us to purchase the terrorism insurance, and our position is that that was not

a requirement" of the loan agreements, said a spokeswoman for Indianapolis-based Simon Property. The Mall of America is owned by Simon Property as well as Teachers Insurance & Annuity Assn. and Triple Five Corp.

TIG president/CEO resigns from company

Courtney C. Smith has resigned as president and chief executive officer of Irving, Texas-based TIG Insurance Group. James Dowd, a senior executive with Fairfax Financial Holdings Ltd.—TIG's Toronto-based parent—will serve as interim CEO until a replacement is found. No reason was given for Mr. Smith's departure. Late last year, A.M. Best Co. downgraded TIG's financial strength rating to B++ from A-. Fort Wayne, Ind.-based K&K Insurance Group, TIG's longstanding managing general agency for several sports, leisure and entertainment programs, recently cut its ties with the insurer. About 20% to 25% of TIG's gross written premiums came through K&K.

Change at the top at American Home

John Doyle has been named president of American Home Assurance Co., a commercial umbrella/excess liability unit of

American International Group Inc. Mr. Doyle, previously executive vp of AIG's domestic brokerage group, replaces Susan Rivera. According to market sources, Ms. Rivera is to take a senior position at ACE USA, a unit of ACE Ltd. A spokeswoman for ACE USA would not comment. The former head of ACE USA, Dennis B. Reding, joined Aon Corp.'s Combined Specialty Corp. earlier this year.

Briefly noted

The **ice storm** that hit parts of the Midwest on Jan. 31 and Feb. 1 caused an estimated \$40 million in insured commercial and personal lines damage in Oklahoma. The insured damage in Kansas is estimated at \$49 million....Argonaut Group Inc. has formed **Captive Advisory Services Inc.** to provide captive formation advice and services. Kate Westover, formerly chief operating officer of Strategic Risk Solutions Vermont, will serve as president of the new Colchester, Vt.-based company....Warren, N.J.-based Chubb Corp. has requested collateral from several Chubb surety bond principals. Chubb said that while the bonds for which it is seeking the collateral are performing, **exercising collateral rights** provided for in the surety bonds' documents is "prudent" to further protect Chubb's interests in the wake of losses and anticipated losses that the company faces on Enron Corp. surety bonds....A.M. Best Co. has **downgraded Terra Nova Insurance Co. Ltd.**, a unit of Markel Corp., to B++ from A-. Markel's A rating was affirmed....The U.S. Justice Department is investigating a CIGNA Corp. hospital unit over **Medicare billing** during the 1990s, the company announced. The investigation centers on one unit, Lovelace Health Systems Inc., in Albuquerque, N.M. The Medicare billing under investigation represents about 2% to 6% of Lovelace's revenue, the company said.

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

Arbitration victory in coverage dispute gives buyers hope

EPL cover sought for overtime lawsuits

By ROBERTO CENICEROS

Some employers and their attorneys are hopeful that a recent arbitration outcome favorable to employers signals improved chances of obtaining coverage for a growing form of class-action litigation brought by employees.

Employers are seeking coverage under employment practices liability policies for lawsuits that allege employers illegally denied workers overtime pay by misclassifying them as "exempt" employees.

California, where virtually all of these disputes have occurred, sets strict guidelines for how an employer defines an exempt worker, though other states may have similar statutes. As a result, employers operating nationwide are closely watching these cases.

The recent decision by a Los Angeles arbitrator, who held that an employer was entitled to insurance coverage of its costs of defending

misclassification claims, is one of the first of its kind and has yet to be addressed in published court decisions, say attorneys.

Insurers, though, maintain that their EPL policies are intended to cover discrimination issues and contain specific exemptions for wage-related disputes, brokers, insurers and attorneys say.

In misclassification lawsuits, employees typically claim that they have been wrongly classified as exempt employees so the employer can avoid paying them for overtime work. Several employers have paid out tens of millions of dollars to settle such claims (*BI*, July 30, 2001).

Many employers have assumed that their EPL policies would not cover the claims, because that is what they were told, said Kirk A. Pasich, a commercial insurance recovery specialist at Howrey Simon Arnold & White in Los Angeles. Some policyholders have not even filed a claim for coverage, believing

that policy exemptions preclude it, he added.

But several arguments can be made as to why EPL policies should provide coverage, said Mr. Pasich. He represented Sherman Oaks, Calif.-based Earl Scheib Inc., a paint and autobody company, in the recent arbitration of a claim with EPL insurer National Union Fire Insurance Co. of Pittsburgh, Pa., a unit of American International Group Inc.

Shop managers and assistant managers in March 2000 sued Scheib, alleging the employer misclassified their status to avoid overtime payments.

David I. Sunkin, vp and general counsel for Scheib, said he assumed at first that the company did not have coverage under its EPL policy because it exempts claims related to violations of Federal Labor Standards Act and any similar provisions under state laws. The FLSA requires overtime pay for hours worked beyond a certain threshold,

usually 40 hours per week.

Most EPL policies contain exclusions for claims stemming from FLSA-related provisions and similar provisions in state laws, said Tom Hams, an EPL product leader for Aon Corp. in Chicago. Insurers are adamant that those exclusions apply to the wave of employee misclassification claims, he said. He generally advises clients that EPL coverage is not available for so-called wage-and-hour disputes.

On closer inspection of Scheib's EPL policy and the relevant federal and state statutes, however, Mr. Sunkin said he discovered that federal law allows employers with worksites in several states to appoint one employee at each location as a manager and to exempt that person's overtime pay. That applies regardless of the tasks the employee performs, he said.

"They could sweep all day long, but somebody has to be in charge,"

See EPL /page 34

Supreme Court case has high stakes for employers

Worker suing under ADA to get job despite danger

By MARK A. HOFMANN

WASHINGTON—The U.S. Supreme Court will soon decide whether the Americans with Disabilities Act can force employers to place workers in jobs that could harm or even kill them.

The justices heard oral arguments in *Chevron USA vs. Mario Echazabal* last week, and employment law experts say that the stakes for employers are high, because the high

court's action could place them in a no-win situation

"This is an important case because the plaintiff's reading of the ADA would put employers in a frustrating and depressing position," said Quentin Riegel, deputy general counsel of the National Assn. of Manufacturers.

"They would be required by law to allow individuals who are highly susceptible to a certain kind of injury to work in particular work-

places that are safe for everyone but those individuals. Such a requirement would predictably result in injury to the employee, higher injury rates and higher workers compensation costs. A more reasonable approach would be to allow employers to assign job responsibilities according to the abilities of the workers, particularly in light of expected improvements in scientific understanding of hazards and their pre-

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PHOTO: AP/WIDE WORLD

Mario Echazabal filed suit against Chevron seeking to work in a part of a refinery that could be hazardous to his health.

Workers comp secondary payer

Medicare seeks claim preapproval

By MEG FLETCHER

WASHINGTON—A push by Medicare administrators to encourage workers compensation payers to seek its approval before settling a small—but costly—segment of claims is increasing delays, costs and potential liabilities for employers and insurers.

The federal Medicare program, best known for providing health care benefits for older citizens, acts as the "secondary payer" of medical benefits to some workers comp claimants, including older workers eligible for Medicare and younger workers who qualify for Social Security disability benefits.

MEDICARE & WORKERS COMP

Medicare's administrative agency, the Centers for Medicare & Medicaid Services, aims to protect federal funds by not paying claims that are the responsibility of primary workers comp payers. In particular, it wants to assure that self-insurers and insurers are adequately funding for injured workers' future medical expenses when making lump-sum settlements.

The agency seeks to preapprove all proposed workers comp settlements that involve current Medicare beneficiaries, said a spokeswoman for the agency in Washington. The agency also wants to preapprove any proposed settlement that includes at least \$250,000 in total medical and wage-loss benefits, if the claimant may become eligible for Medicare benefits within 30 months, she said.

The agency issued new guidance to its regional offices last July clarifying how they should

review proposed settlements.

The Medicare secondary payer issue affects tens of thousands of workers comp cases across the country, estimates W. Frederick Uehlein, president of Insurance Recovery Group Inc. in Natick, Mass., which provides services to workers comp payers.

Although the federal agency cannot require that settlements be presented for its approval, self-insurers and insurers often seek it because that precludes the agency from later rejecting responsibility for benefits and imposing penalties, said Eric Oxfeld, president of UWC Inc., a Washington lobbying group representing business interests.

If Medicare discovers that it is improperly paying benefits, it can impose hefty financial penalties and void its responsibility for settled claims going back several years.

In coping with Medicare's new enforcement initiative, "the two biggest problems are delays and the lack of uniformity" in how Medicare responds to requests to approve settlements, Mr. Oxfeld said.

"The thing that concerns me is how slow the feds are, if Medicare must sign off" on an agreement, said an executive of a major self-insured employer, who asked not to be identified.

Obtaining Medicare approval of some proposed workers comp settlements may take between six and 18 months, workers comp payers say.

Some workers comp insurers report that the prolonged approval process also adds \$30,000 to \$50,000 to the cost of a claim, said Bruce Wood, assistant general counsel with the American Insurance Assn. in Washington.

Delays in getting Medicare approval of settlements increase the cost of a workers comp claim

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PBGC surplus is declining

Future large claims promise further hits

By JERRY GEISEL

WASHINGTON—Reversing a multiyear trend, the Pension Benefit Guaranty Corp.'s surplus declined substantially last year as the agency was hit with losses from several underfunded pension plans it took over.

In fiscal 2001, the PBGC's surplus fell to \$7.7 billion, a sharp decline from the prior year's nearly \$10 billion surplus in the agency's insurance program.

By far, the PBGC's biggest loss last year stemmed from its takeover of Trans World Airlines Inc.'s pension plans, which the PBGC recorded as a \$714 million loss, the second-biggest loss in the agency's 27-year history. In all, the PBGC took over 104 plans last year, with 89,000 total participants, PBGC Executive Director Steve Kandarian said in testimony last week before the Senate Finance Committee.

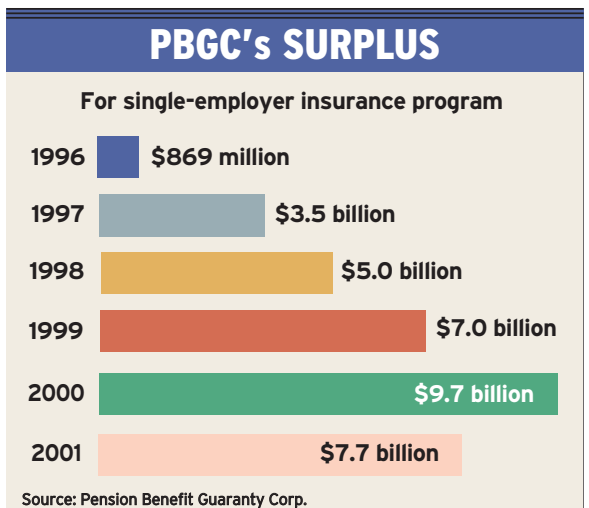
Also last week, the PBGC announced another big loss: it is taking over the pension plan of Reliance Insurance Co., the failed insurer that is being liquidated by the Pennsylvania Insurance Department.

The Reliance plan, which has about 8,700 participants, is underfunded by about \$124 million, with assets of \$143 million and benefit liabilities of about \$267

million.

And even bigger losses are just around the corner. On March 31, the PBGC expects to take over the pension plans sponsored by bankrupt steelmaker LTV Corp.,

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Bermuda Insurance Symposium

CEO panel assesses terrorism and how insurers respond

By MICHAEL BRADFORD

SOUTHAMPTON, Bermuda—Although some insurance executives say that the marketplace ultimately will find a way to cover terrorism and other difficult risks, others aren't so optimistic.

"A lot of this is a function of time," said Paul Ingrey, chairman and chief executive officer of Arch Reinsurance Ltd. in Bermuda. "As time goes on, fear tends to diminish."

Speaking as a panelist during a far-ranging discussion at the Fifth Bermuda Insurance Symposium last month, Mr. Ingrey said that as time passes, insurers are becoming more willing to step up to the plate and take on terrorism risks. He noted, for example, a pool put together by American International Group Inc. that offers a "basic price being paid for terrorism coverage that is one-fifth of the fire and allied lines rate,

which gets very close to being affordable today."

He pointed out that there have been "many special risk situations, including the Olympic Games, where terrorism coverage was provided" at affordable prices.

Insurers' ability to solve tough

price, stop-loss protection for all the insurance companies in the business," he noted. Less than two years later, though, insurers decided that they were paying "way, way too much" for the stop-loss protection, he said.

As a result, the marketplace eventually developed its own solutions, Mr. Ingrey recalled.

Jacques Blondeau, chairman and CEO of Paris-based reinsurer SCOR S.A., said that time might not be as much of an ally as some think.

"If nothing happens for the next six months or a year, you begin to think that you are safe and there is no longer a problem. But in essence...we would be kidding ourselves," he said. "We are living in a

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'If nothing happens for the next six months or a year, you begin to think you are safe and there is no longer a problem.'

Jacques Blondeau
SCOR S.A.



problems has a precedent in the late 1960s, when coverage for losses from riots became unavailable, Mr. Ingrey said. The government stepped in and provided, "for a



PHOTO: MACK TRUCK INC.

Hiring dispute not an ERISA case: Court

By MICHAEL PRINCE

PHILADELPHIA—Employers do not violate federal law when they refuse to rehire laid-off workers on the grounds that the former workers would cost them more in retirement benefits, a federal appeals court has decided.

In upholding a lower court opinion that dismissed a suit brought by 78 former employees of Mack Trucks Inc., the 3rd U.S. Circuit Court of Appeals in Philadelphia ruled late last month that rehiring is not covered by the Employee Re-

tirement Income Security Act.

ERISA "simply does not require that employers blind themselves to the effect on future pension liability when making hiring decisions," states the unanimous decision written by Judge Jane Roth.

The case dates back to 1987, when Mack Trucks laid off workers at a plant in Allentown, Pa. Ten years later, the company needed workers for a nearby plant and offered jobs to former Mack Trucks workers. The company rehired several previous employees, but stopped when it realized that it

would incur lower pension costs if it hired workers who had no history with the employer.

The passed-over former workers sued in federal court, claiming Mack Trucks' refusal to hire them violated ERISA. The company admitted that it had stopped hiring former workers to save on pension costs but said that the practice was permissible. In a November 2000 opinion, the trial court agreed and dismissed the suits.

In its opinion, the appeals court divided the former workers into two groups: workers with vested

pension rights and nonvested workers.

If Mack Trucks rehired the nonvested workers, their years of prior employment would count toward pension vesting and they would be eligible for pension rights sooner than workers new to the company.

Those former workers lack standing to bring a suit under ERISA, the court stated. ERISA permits individuals to bring suit only if they are a "participant" in the plan, according to the ruling.

Although the former workers acknowledged that they are not current participants, they argued that they would have become participants once Allentown, Pa.-based Mack Trucks rehired them. The court rejected this argument, stating that "Mack's refusal to rehire former employees did not 'in and of itself' strip them of their employee status. The plaintiffs initially lost employee status when they were laid off many years earlier."

Rehiring vested former workers would also increase Mack Trucks' pension costs, the court said. Vested workers would become eligible for higher benefit rates the company introduced after they were laid off, the court said. But Mack Trucks still did not violate ERISA in refusing to rehire those former workers because the law does not cover hiring decisions, according to the ruling.

ERISA was designed to protect benefits already promised to employees and does not apply to the ex-workers' suit, the court ruled.

"Unlike a discharge or other workplace harassment, a failure to hire does not amount to a circumvention of promised benefits because job applicants who have yet to be hired have not been promised any benefits," the opinion states.

The ruling is the first by a federal appeals court stating that ERISA does not apply "to the hiring process," said Edward Ellis, with Montgomery, McCracken, Walker & Rhoads, Mack Trucks' attorneys in Philadelphia.

Another suit claiming that Mack Trucks' hiring practices violated the federal Age Discrimination in Employment Act was on hold pending this decision.

Now that it has been dismissed, the ADEA suit will proceed to trial, Mr. Ellis said.

Because other appeals courts have ruled that ERISA can apply when no employment relationship exists, the former workers may appeal this decision to the U.S. Supreme Court, said their attorney, Quintes Taglioli, a partner with Markowitz & Richman in Allentown.

Those cases, however, did not deal with hiring or rehiring employees.

He said this opinion allows employers to reject applicants based on their pension costs, a position that he believes violates ERISA. "They read the word 'discriminate' out of the statute," he said.

Becker v. Mack Trucks Inc., 3rd U.S. Circuit Court Appeals, No. 00-4414, Feb. 21, 2002.

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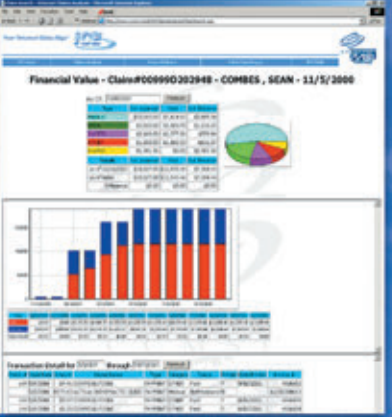
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Commentary

The honeymoon is officially over

There is a lot of fear, anger, recrimination and unhappiness in commercial insurance relationships today.

Buyers and sellers, partners in this dance we call insurance, are becoming increasingly polarized as the marketplace hardens and coverage prices and terms change. At several recent conferences and industry gatherings, the widening gulf between both camps was evident.

At the Bermuda Insurance Symposium last month, for example, a panel of CEOs who gathered to address industry concerns seemed far more preoccupied with solving the needs of shareholders than reaching out to their disaffected

partner, the policyholder. It was like a spouse who pays more attention to his mother than his wife, and it spelled trouble.

At a later session, a panel of risk managers lashed out at the market executives for overlooking their needs and suggested that if the market didn't care about them anymore, then they might be better off on their own. Later at the same meeting, some industry execs acknowledged their oversight and tried to make up, while others stubbornly refused to budge.

What is one to make of this growing tension and animosity between the two? Is this a new thing or is it as cyclical as the market conditions that give rise to today's mood?

Will it quickly pass like a lovers' quarrel, or does it signal more serious, irreconcilable differences?

Psychologists offer several warning signs of an impending breakup that may offer a clue:

• **Constant fighting or refusal to speak to one another.** While not all coverage negotiations this year were acrimonious, many descended into the kind of name-calling and spiteful behavior that signals splitsville.

• **Feeling that affection is rejected.** Many insurers are angry that for years they stood by buyers and made all the sacrifices they were asked to, but now, when they need a little premium affection, some buyers are dumping them for a cheap new date.

Likewise, some buyers who for years stayed faithful are seeing that devotion thrown in their face.

This situation spawns the kind of ugly breakup that lands people on "Jerry Springer" or behind bars.

• **More and more subjects are 'off limits' for discussion.** From the buyer's point of view, this is

certainly true as insurers outright refuse to discuss certain risks. From the insurer's perspective, buyers' stubborn refusal to even consider triple-digit rate hikes is a source of frustration and a treacherous impasse.

• **One of you has threatened to leave.** Sadly, this, too, is increasingly prevalent in many insurance relationships. How many buyers, after years of devotion, have seen their insurance partner walk away in these trying times, rather than stay and try to work things out?

And how many insurers have been heartbroken as their buyer has left to live a single, alternative life-style, or has taken up with

another partner?

• **Feeling trapped or taken for granted.**

Some buyers, typically those too small to be able to break from an insurer and live the single, self-reliant life, feel trapped in an unhappy relationship that is proving ever more costly, with less and less security.

Others who have the wherewithal to leave are hanging on, hoping

their insurance partner will change and quit taking them for granted before it's too late.

If you are engaged in an insurance relationship that displays any of these warning signs, I hope you will seek counseling and try to salvage what was once known as "a relationship business."

Normally, I would advise you to seek out an impartial intermediary to help patch things up, but in recent years they have become part of the problem.

Brokers once played the role of conciliator or "marriage counselor," bringing suitable partners together and trying to smooth over bumps in relationships. But in recent years, there has been more than one example of buyers jilting their insurer and shacking up with their broker instead. This occurred as brokers tried to make themselves more appealing by forming their own risk financing facilities when buyers did not find any of their traditional insurer partners attractive. Bermuda is a popular destination for these illicit affairs.

Let's hope the winter of insurance partners' discontent gives way to the bloom of reconciliation in the spring.

Editor Paul D. Winston's Commentary appears fortnightly and on www.businessinsurance.com. He can be reached at pwinston@crain.com.



Paul D. Winston

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Editorial

Don't ground FAA's coverage plan yet

THE PRIVATE INSURANCE marketplace, subject to free-market forces, provides a better solution for most risks facing businesses than government relief.

This is true even for the new and enlarged terrorism threat facing U.S. companies, whose exposure was made obvious in a terrible way on Sept. 11.

But while the private market may be the preferable approach, that is not to say it is always willing to provide coverage for new and potentially catastrophic risks. And even where it is willing, there is a delay before it is willing to offer affordable or comprehensive protection. In short, it takes time for a viable market to emerge that truly meets the needs of buyers, though we are confident that in the long run the private insurance market has the creativity and will to fulfill that role.

Such is the case today with airlines' exposure to third-party war risks, which arise from injuries or property damage on the ground caused by a hijacked aircraft. Following Sept. 11, governments around the world, including the United States, stepped in to provide this coverage after commercial insurance capacity vanished from the market.

Shortly after the terrorist attacks, a consortium of insurers led by American International Group Inc. was formed to offer the coverage, but with limits and terms and conditions that airline buyers still regard as unacceptably expensive and inadequate to their coverage needs. Despite a lack of buyer support, AIG in a letter to the Federal Aviation Administration argues that the federal program should be discontinued, because it and other insurers are willing to provide the coverage.

We applaud the insurers for stepping into the breach, but until more insurers and reinsurers are willing to participate, there is insufficient competition to produce a viable and satisfactory market for this coverage. The private consortium would have a virtual monopoly on the market. Until competition creates more capacity, lower premiums and less onerous coverage terms, the government program should remain in force.

Schillerstrom



Letters to the Editor

Editorial ignored pros of premium trust funds

To the editor: In your Feb. 11 editorial on the handling of premiums, you make several interesting points. However, let's not "throw the baby out with the bath water" just because of the alleged misdealings at Near North. There are some fundamental problems with your advocacy on behalf of the insurance buyer.

First, as of the effective date of coverage, is not the buyer's premium now the insurance company's premium? For you to say the agent/broker is holding the buyer's money for 30 to 45 days is technically incorrect. We're holding the insurance company's money. If the company wishes to wait 30 to 45 days to collect its money from the agent/broker, that's the company's business decision, not the insurance buyer's decision. Since the buyer certainly expects coverage at 12:01 a.m. on the effective date, the premium belongs to the company simultaneously. You wouldn't want the company to be confused about when coverage is bound, would you?

You'll be happy to know many companies have shortened that period to 30 days, and even more companies are using electronic funds transfer capabilities for swifter payment. The agent/broker's "float" is not as buoyant as it used to be.

Secondly, if the agent/broker is not the middleman to collect premiums, who will make the good credit decisions when the insurance buyer needs a little time? Do you realize that school corporations don't always get their tax money on time? That subs don't always get paid by the general on time? A manufacturer's cash flow can be affected by delays on a government contract? That doesn't make them bad customers necessarily. Should they be canceled for nonpayment? Direct-bill insurance companies do that.

Indiana is not a premium trust state, yet we are proud to be one of the major agency consultants' best collectors. However, at times our receivables over 45 days can approach \$200,000 or 5% of our agency revenues. Only the agent/broker entrepreneur can assess those credit risks and take them. If you take us out of the transaction, the buyers' cost actually increases to finance their own ups and downs.

Lastly, who's going to pay for the insurance companies to upgrade their computer and accounting systems to accept payments directly from the buyer? Obviously, the buyer. Our technology is pathetic in the insurance business. Please don't get me started on the millions of dollars and thousands of people we've wasted as an industry on poor automation the last two decades. Agent/brokers spend an inordinate amount of our time straightening out both direct-bill and agency-bill premium accounting problems. The only sector of our economy more confusing to the consumer is airline ticket pricing.

See LETTERS/page 28

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments.

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Buyers increase risk load

Claims service needs higher in hard market

By MICHAEL BRADFORD

Insurance buyers are taking on more risk in the current hardening market, and that is changing the demand for claims services.

Rising insurance rates, which accelerated after last year's terrorist attacks, have driven many risk managers to retain more risk or seek risk financing in alternative markets. As a result, many losses typically handled by claims adjusters are no longer covered by traditional insurance.

That doesn't mean that adjusters have been tossed out of the claims management loop, but it does mean their roles are changing.

The Sept. 11 terrorist attacks forced "everybody to be a bit more creative from the risk management side," said Tom Simoncic, who splits his time between Cleveland and New York as manager of GAB Robins' executive loss division. And as risk managers assume more risk as a way to lower insurance costs, they are seeing more uninsured losses, he noted.

A company with a \$1 million deductible that previously carried only \$250,000, for example, may now see losses between those amounts that are no longer considered "true claims," Mr. Simoncic explained. Therefore, the services companies need from a claims adjuster are different from those required when losses are insured.

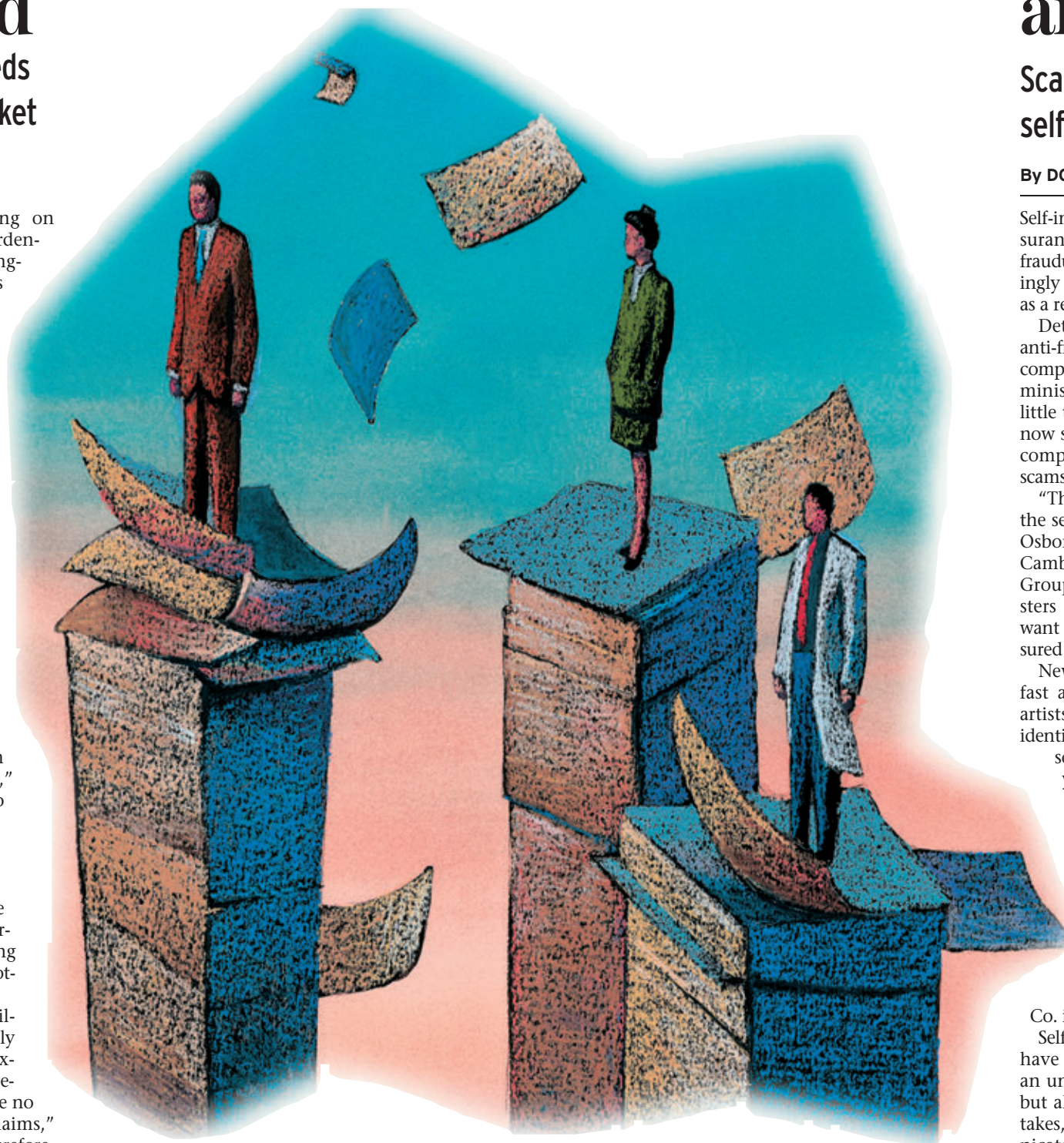
The damage will still exist, no matter who is funding the loss, Mr. Simoncic pointed out. And questions such as whether an outside party contributed to a loss, identifying the extent of damage and handling subrogation issues still will require adjusters' expertise, he added.

Atlanta-based Crawford & Co. is seeing more queries to its risk management services unit as businesses look to increase their levels of self-insurance, said Grover Davis, president and chief executive officer. He said risk managers are looking for more third-party administrator services as they assume more risk.

David Ives, chief executive officer at Niis/Apex Group, a Salem, Mass.-based company that provides claims management and consulting

See **CLAIMS**/page 14

Claims Management



TPAs seek wider acceptance of flexible spending accounts

Debit cards make use of FSAs easier for employees

By JOANNE WOJCIK

The flexible spending account debit card, one of the latest innovations in the third-party benefits administration marketplace, could boost employee participation in the tax-exempt medical savings programs, say advocates of the tools.

The cards, currently offered by a handful of vendors around the country, also reduce the cost of processing medical claims by nearly 30%, vendors say, and many third-party administrators are promoting

use of the cards by passing the savings along to their employer clients.

Employers also stand to save money from increased FSA contributions by employees: For every \$1,000 deposited into a tax-free FSA, employers save \$76.50 in payroll taxes. FSAs, which are governed by Section 125 of the Internal Revenue Service Code, are accounts to which employees contribute pretax dollars to fund health care expenses, such as deductibles, that are not otherwise covered.

And, as employers examine ways

to shift more of the burden of health care costs onto employees, the cards could help make cost-shifting more palatable to employees, said Denise Steele, chief operating officer of Evolution Health L.L.C. Avon, Conn.-based Evolution Health introduced its trademarked FSA debit card, the Benny Card, last month.

"It's a way for employers to allow employees to pick up more of their health care costs in a tax-free environment," she said.

See **CARDS**/page 20

Phony claims are costly

Scam artists targeting self-insurers and TPAs

By DOUGLAS MCLEOD

Self-insurers have lagged behind insurance companies in fighting fraudulent claims and have increasingly become targets of scam artists as a result, fraud experts warn.

Deterred partly by the cost of anti-fraud efforts, many self-insured companies and their third-party administrators have done relatively little to fight phony claims and are now seen as easy marks for workers compensation and slip-and-fall scams, experts say.

"There's a real Achilles' heel in the self-insured market," said Doug Osborne, assistant vp with TPA Cambridge Integrated Services Group Inc. in Seattle. "The fraudsters have figured out that if you want to get paid, you go to a self-insured program."

News about easy targets travels fast among personal injury scam artists particularly, and "if you get identified as a large company that is soft on fraud, then watch out—you'll be entertaining fraudulent guests on a regular basis," he said.

"If people don't believe anyone is looking, they're going to believe there is no risk," observed Donald C. Marshall, national director of the Fraud Abatement Service Team at TPA Gates McDonald & Co. in Concord, Calif.

Self-insurers' efforts to fight fraud have been hampered not only by an unwillingness to spend money but also by a variety of other mistakes, including failure to communicate with employees, misuse of surveillance services and failure to prepare strong criminal cases for prosecutors, these experts say.

Most of these problems can be overcome and fraud losses can be reduced if corporations dedicate resources specifically to investigate and pursue bogus claims, they say.

A sizable problem

The scope of the fraudulent claim problem for the industry overall is difficult to pin down, and for self-insurers alone even more so.

The National Insurance Crime Bureau, a Washington-based organization supported by insurers and self-insurers, has pegged the annual cost of insurance fraud at \$30 billion, including personal injury, workers comp, auto repair and homeowners scams. Insurance fraud ranks second only to tax evasion as the costliest white-collar

See **FRAUD**/page 18

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Claims: Length and cost increased after Sept. 11

Continued from page 12

claims services as a part of their insurance product are now "looking to claims services providers."

Companies that are self-insuring are looking for a "higher level of service and a greater degree of customization of claims services to meet their needs," Mr. Ives noted.

Adjusters agree that the Sept. 11 attacks have changed the demand for their services but say there has been no change in the basics of the way they manage claims.

"Adjusters still have to touch the same bases," said Joseph A. Dotoli, president and CEO of McLaren's Toplis North America Inc. in Chicago. "They have to make sure they communicate in the same fashion."

With large losses such as the World Trade Center, "everybody has to make sure they are dotting the I's and crossing the T's," Mr. Dotoli emphasized. "All that you do will be reflected in the final adjustment."

Fundamentally, property and casualty claims always have been "very different" in the way they are handled, said Brad Murlick, North American practice leader with Deloitte & Touche L.L.P.'s business insurance claims consulting group practice in Chicago.

"Typically, a property claim is of short duration," Mr. Murlick explained. "Prior to Sept. 11, a two-year rebuild was lengthy," he said, but acknowledged that such a time

ter have presented adjusters with the challenge of sorting out how much of a policyholder's losses should be attributed to the catastrophe and how much was due to the weakening economy before the terrorist strike.

And, Mr. Ives said that "one of the legacy effects" of the terrorist attacks "will be a greater appreciation of multiline integration," meaning a policyholder can have a single loss that hits a number of its coverages. The World Trade Center attacks left many policyholders not only with property damage but also

business interruption, workers compensation and other losses.

Mr. Simoncic said adjusters are "still trying to determine the full extent of Sept. 11 from a variety of places." Contract wording, exclusions and other coverage issues are expected to "work themselves out over the next six to 12 months," he said. "Claims remain active from 9-11 with all the normal issues of the claims adjustment process, except that the severity of the damage is much more extensive" than typical claims.

Geographical influences with re-

gard to claims adjusting generally boil down to jurisdictional issues.

'One of the obvious things is that many times the allegations surrounding liability claims are subjective.'

*Grover Davis
Crawford & Co.*

"You will find there are different parts of the world, not just different

parts of the U.S., where it is more difficult to handle a particular claim," said Mr. Davis. "It depends on the laws within a particular jurisdiction," he explained, which may make the process harder or easier on adjusters.

"We have to stay in tune with that," Mr. Davis said, and "know what the jurisdictional requirements are" where the loss occurs.

Other geographical challenges can be more physical.

Mr. Collins pointed out, for example, that settling a property

See CLAIMS/next page

'Everybody has to make sure they are dotting the I's and crossing the T's. All that you do will be reflected in the final adjustment.'

*Joseph A. Dotoli
McLaren's Toplis North America Inc.*

frame won't be met on many claims stemming from the New York attack.

Mr. Murlick also pointed out that it is harder to quantify the business interruption losses of companies that have grown dramatically in recent decades because policies that cover those losses have not changed much in the last 40 years.

Unlike property claims, many casualty claims—those related to asbestos or other long-tail liabilities—can take some time to resolve, Mr. Murlick said.

Mr. Davis of Crawford & Co. agreed that the two types of claims take two very different settlement approaches. "When you look at issues you are faced with, one of the obvious things is that many times the allegations surrounding liability claims are subjective," he said. "A great deal of documentation and investigation has to be done to prove the extent of the damage. But when you look at a property claim, it's pretty well black and white."

The Sept. 11 attacks have made adjusters' jobs harder in some ways.

John Collins, GAB Robins' general manager for New York, said claims from the World Trade Cen-

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LARGEST PROPERTY/CASUALTY TPAs			
Ranking of TPAs that specialize in property/casualty claims administration			
Company	2001 revenues from self-insured clients	2001 claims paid for self-insurers	Total clients
Crawford & Co.	\$165,025,000	\$1,943,057,622	5,100
ESIS Inc.	\$120,000,000	\$2,000,000,000	457
Risk Enterprise Management Ltd.	\$74,000,000	\$869,106,733	184
AIG Claim Services Inc.	\$69,000,000	\$783,000,000	2,014
GAB Robins North America Inc.	\$68,441,000	\$1,131,754,352	318
RSKCo	\$64,220,000	\$2,026,123,680	850
Ward North America Inc.	\$51,000,000	\$120,000,000	530
Constitution State Services L.L.C.	\$47,000,000	NA	495
ManagedComp Inc.	\$40,000,000	\$125,960,400	10,599
Cunningham Lindsey	\$35,000,000	\$250,000,000	600
Source: BI Survey			

Claims: Getting closer look after terrorist attacks

Continued from previous page

claim in Manhattan means material and equipment have to be moved in at night in order to avoid traffic and street tie-ups. "Those are road-blocks you may not have in rural areas," he said.

Since the terrorist attacks on Sept. 11, risk managers are asking a lot

more questions about how to prepare for such events, adjusters agree.

Many businesses now look more closely at disaster planning, said Mr. Murlick. From loss control issues such as protecting data through backups to "what happens when an event like this takes place, who does what, where do the exec-

'Risk managers who have some experience in large claims and know what is required...can aid the effort tremendously.'

Joseph A. Dotoli
McLarens Toplis North America Inc.

utives rendezvous to make decisions?" risk managers are more concerned about having plans in place, he noted.

Risk managers don't usually sit on the sidelines while adjusters do their jobs, sources agree.

They typically are "very, very involved" in the claims process, Crawford's Mr. Davis said. "That's been our experience, and frankly, we welcome that. That way, there seldom are surprises."

"The risk managers who have some experience in large claims and know what is required to efficiently adjust a large claim, these folks can aid the effort tremendously," said McLarens Toplis' Mr. Dotoli. "A well-prepared risk manager who prepares the company for the adjusting process can reduce the time it takes to adjust the claim because you are not having to reinvent the wheel."

Risk managers have come to rely even more on their third-party administrators since the terrorist attacks, Mr. Davis emphasized. The attacks led them to consider that they are "faced with possibilities that they never thought of before," he said, and as a result, risk managers have forged closer working relationships with TPAs that sometimes are able to bring to their attention loss control and coverage issues the client might not have considered.

Disaster preparedness is a good example, Mr. Davis said. "It's something we've done and customers knew we did it. But since 9-11, we've seen more inquiries for that capability."

GAB Robins' Mr. Collins said adjusters working claims often get coverage questions unrelated to the loss that they can't answer. Questions often center on whether policies will cover acts of civil unrest or if coverage is in place if one business—an airport for example—shuts down and that closure affects the client's business. "They are questioning whether they have coverage, and we have to refer them back to their agent or broker."

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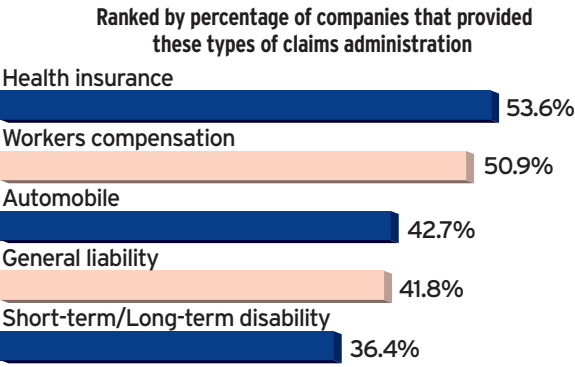
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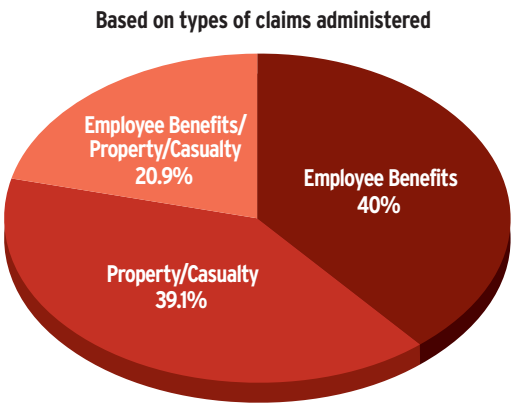
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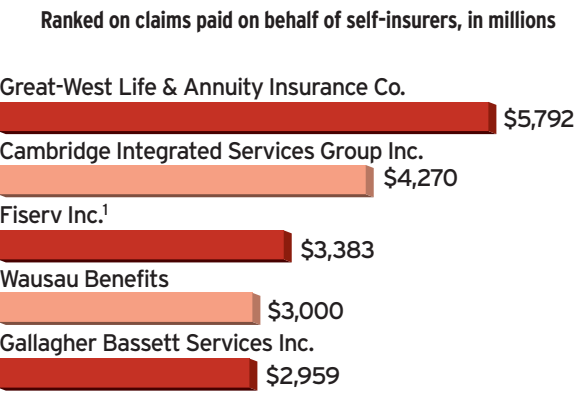


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CLAIM ADMINISTRATORS BY TYPE



CLAIMS PAID BY ADMINISTRATORS



¹ Includes Benefit Planners Ltd., Benesight and Harrington Benefit Services.

Top 10 claims administrators
Based on 2001 revenues from self-insured clients

Rank	Company/Address	Phone/Fax/Web	Parent Company	2001 revenues from self-insured clients	2001 claims paid for self-insurers	Total clients	Claims staff	Type of claims administered
1	Delta Dental Plan of California P.O. Box 7736 San Francisco, Calif. 94120	415-972-8300 Fax: 415-972-8466 www.deltadentalca.org	NA	\$1,200,000,000	\$950,000,000	7,585	NA	Employee Benefits
2	Great-West Life & Annuity Insurance Co. 8515 E. Orchard Road Greenwood Village, Colo. 80111	303-737-3000 Fax: 314-525-6622 www.gwla.com	Power Corp.	\$708,100,000	\$5,791,477,000	7,791	995	Employee Benefits
3	Cambridge Integrated Services Group Inc. 4B Cedar Brook Drive Cranbury, N.J. 08512	800-662-1170 Fax: 609-655-0503 www.cambridgeintegrated.com	Aon Corp.	\$241,500,000 ¹	\$4,270,000,000	8,293	2,400 ²	Employee Benefits & Property/Casualty
4	Gallagher Bassett Services Inc. The Gallagher Centre, 2 Pierce Place Itasca, Ill. 60143	630-773-3800 630-285-4000 www.gallagherbassett.com	Arthur J. Gallagher & Co.	\$207,000,000	\$2,959,000,000	2,180	NA	Employee Benefits & Property/Casualty
5	Sedgwick Claims Management Services Inc. 1100 Ridgeway Loop Memphis, Tenn. 38120	901-415-7400 901-415-7406 www.sedgwickcms.com	NA	\$172,020,000	\$2,300,000,000	432	1,880	Employee Benefits & Property/Casualty
6	Crawford & Co. 5620 Glenridge Drive, N.E. Atlanta, Ga. 30342	404-526-0830 404-847-4025 www.crawfordandcompany.com	NA	\$165,025,000	\$1,943,057,622	5,100	1,958	Property/Casualty
7	CoreSource Inc. 400 Field Drive Lake Forest, Ill. 60045	847-604-9200 847-615-3900 www.coresource.com	Trustmark Insurance Co.	\$149,000,000	\$2,900,000,000	1,598	1,178	Employee Benefits
8	The Principal Financial Group-National Accounts 7745 Office Plaza Drive N. West Des Moines, Iowa 50266	515-235-9351 515-235-9280 www.principal.com	NA	\$122,000,881	\$1,437,203,351	253	622	Employee Benefits
9	ESIS Inc. 1601 Chestnut St. Philadelphia, Pa. 19103	215-640-1847 215-640-5538 www.esis.com	ACE USA	\$120,000,000	\$2,000,000,000	457	1,361	Property/Casualty
10	USI Administrators Inc. 4150 International Plaza, Suite 900 Fort Worth, Texas 76109-4899	817-737-1700 817-737-1758 www.usi-administrators.com	USI Insurance Services Corp.	\$105,000,000	\$920,000,000	781	600	Employee Benefits

¹ *BI* Estimate ² Estimate
Source: *BI* Survey

Fraud: Various options available for fighting fraud

Continued from page 12

crime, according to NICB.

Still, "by its definition, fraud is secret (and) there is no way of measuring the extent of the problem," Mr. Marshall maintained.

State insurance departments for years have required insurers to implement anti-fraud programs, and many states require self-insurers to comply with the same regulations.

While these companies have complied with anti-fraud mandates, some have been more aggressive than others. A study by the California Workers Compensation Insti-

tute, for example, found that the vast bulk of fraud referrals to state regulators and prosecutors during 2001 came from a handful of the 16 insurers and three large self-insurers surveyed. In the third quarter of last year, four of the surveyed companies generated 80% of the group's fraud referrals, and six companies accounted for all of the quarter's fraud arrests, CWCI found.

Insurance companies have generally been more aggressive than self-insurers on fraud, experts add.

Expense is a major reason, as many self-insurers and TPAs have

refused to incur costs in general anti-fraud efforts that cannot be allocated to specific claims, Cambridge's Mr. Osborne said.

Some self-insurers instead have assigned unskilled staffers to fraud investigation or have transferred the job to outside vendors who may not have the expertise or support from their clients to be effective, experts say. TPAs, meanwhile, are often more focused on closing claim files quickly than in pursuing expensive fraud investigations.

"Not many TPAs are willing to make the investment," said Keith

Zimmerman, a Cambridge managing director in Dallas.

Some TPAs have developed anti-

'If there is minimal risk and high reward, almost anybody will try something.'

*Donald C. Marshall
Gates McDonald & Co.*

fraud units as separate profit centers, charging clients additional fees for the "a la carte" services. Self-in-

surers often view this as little more than a TPA's effort to add more fees, an attitude that must be overcome to begin dealing with the problem, Mr. Marshall suggested.

Self-insurers that have spent money to combat fraud, meanwhile, can make expensive errors.

One frequent mistake is putting too much faith in video surveillance to catch supposedly injured workers or personal injury claimants in activities that show they're not really injured.

Often, companies use surveillance out of frustration over problems in dealing with a claim and end up with sizable bills for useless videotape, Mr. Marshall observed.

Surveillance is usually most effective when investigators have a tip that they will be able to catch a claimant at a certain place and time doing work that belies the claimed injuries. Companies must also have a clear idea of what to do with the tape once they have it, Mr. Marshall said. This could include getting a doctor's testimony, based in part on the tape, that the claimant misrepresented his injuries.

Even then, surveillance may not do the trick, he warned.

"Everyone will give you horror stories of unbelievably damning video that just went nowhere" in court, Mr. Marshall said. A claimant might only have to argue, for example, that he has "good days when he can lift 100 pounds. and bad days when he can hardly walk. Boom, you just wiped out \$4,000 worth of video."

Weapons against fraud

Self-insurers that are serious about fighting claims fraud have to be willing to invest wisely to make it happen, Mr. Zimmerman suggested. Such investments range from building a staff of dedicated fraud investigators who will work closely with TPAs to buying effective anti-fraud hardware. A department store, for example, may have a video surveillance system designed to spot a \$5 shoplifting incident when an wider-ranging and slightly more expensive system could catch a \$20,000 staged slip-and-fall "accident," Mr. Osborne said.

The most important thing companies can do to cut fraud losses is create a strong accident investigation program that, coupled with safety programs, will make it clear to employees that the company is keeping a close eye on worker injuries, Mr. Marshall said.

"If there is minimal risk and high reward, almost anybody will try something," he said. Companies and TPAs "must place an impression of high risk on fraud."

In certain workplaces—where, for instance, management and workers have a longstanding adversarial relationship—it may make sense to create that impression dramatically, he added.

"Nothing will send shivers through a workplace faster than having department of insurance fraud investigators come in and put cuffs on some guy and lead him

See **FRAUD**/page 20

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AGENT/BROKER TOPICS

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

Consolidation



Banks, brokers lead merger, acquisition trend

More deals expected in 2002

By **ROBERTO CENICEROS**

Insurance industry merger and acquisition consultants generally expect deal-making to continue in 2002.

In particular, banking companies will continue to look at buying insurance producers, though they are unlikely to acquire underwriting operations, consultants say. And the financial strength of publicly traded brokerages likely will fuel their appetite for acquisition.

Consultants are divided, however, about the likelihood of significant consolidation among insurers. Although some note that

dismal results in the wake of the Sept. 11, 2001, terrorist attacks will spur several insurers to explore becoming part of stronger players, other consultants say that rising prices in the hard market will generally preclude such drastic moves.

During 2001, there were 56 announcements of U.S. insurers acquiring or merging with other insurers, according to SNL Financial L.C., a Charlottesville, Va.-based financial research and publishing company. Meanwhile, banks and thrifts announced 58 acquisitions of insurance agencies, and brokers announced 64 deals in which they would purchase other producers, according to SNL.

Much of this year's agent/broker consolidation activity will involve banks buying producers, observers note. Bank/insurer deals, on the other hand, are expected to be few and far between.

Even before Citigroup Inc. announced plans last year to spin off Travelers Property/Casualty Corp.—signaling the unraveling of the first major bank/insurer link-up—merger and acquisition advisers did not expect more such deals.

Banks want to give their customers access to options available through multiple underwriters, explained John M. Wepler, senior vp of merger and acquisition services for Marsh, Berry & Co. in Concord, Ohio.

The financial institutions don't want to restrict their customer offerings by acquiring the limited capabilities of just one insurer.

By acquiring agencies, banks can offer their customers an array of insurance options, Mr. Wepler said, noting that he expects to see banks continuing to build up their insurance distribution capabilities.

The trend of banks buying agencies slowed during 2001 for several reasons, including volatility in banks' stock prices, Mr. Wepler said. Indeed, SNL tallied 16 fewer bank/broker deals in 2001 than in 2000.

But now that economic conditions have

See M&A/next page

**More bank/broker
deals likely/ 18D**

**Agency buyers
in seller's market/ 18F**

**Gramm-Leach-Bliley
and Enron/ 18G**

AGENT/BROKER TOPICS

M&A: High demand pushing up prices of agencies for sale

Continued from previous page

begun to improve somewhat, Mr. Wepler said he expects many banks to look at buying agencies in 2002.

"We have more bank acquisition activity in the pipeline than we ever have," he said.

Meanwhile, the earnings potential and stock value of publicly traded brokers will remain strong as they continue benefiting from higher insurance pricing. That strength puts them in a position to acquire more agencies, Mr. Wepler said.

And, he added, demand by brokers and banks has pushed the prices of agencies to a 20-year high (see story, page 18D).

"There is a lot more demand than there is supply" of available agencies and brokerages, said Bobby Reagan, president and chief executive officer of Reagan Consulting Inc. in Atlanta.

Banks that have yet to acquire insurance producers want to do so as part of their distribution strategies, Mr. Reagan said. And many banks that already have

purchased are looking to buy more, he added.

A shrinking pool of successful, large acquisition targets could slow activity, he noted. As a result, banks or brokers seeking to add new producer operations may have to consider purchasing smaller agencies, Mr. Reagan said.

Nevertheless, "there is still going to be a significant amount of activity in 2002 and beyond," he predicted.

Observers differ on whether the underwriting sector will see

significant consolidation—including some big deals—in 2002.

As insurers publish their financial statements for 2001, a broader picture of the implications of the Sept. 11 losses will emerge, said Bill Chrmelich, leader of PricewaterhouseCoopers L.L.P.'s transaction services group for financial services in New York.

Since the Sept. 11 attacks, insurer disclosures have focused on estimates of claims stemming from the disaster. The year-end financial reports, however, will shed greater

light on the attacks' impact on insurers' balance sheets, their reinsurance arrangements, their ratings and other measures of their financial health, Mr. Chrmelich said.

Companies with weak financial positions will then contact investment bankers in a hunt for capital to improve their operations.

"Once those conversations begin by some of the weakened players, that is when things will start to happen," Mr. Chrmelich predicted. As a result, 2002 could see a half-dozen transactions valued at \$1 billion or more, and mostly involving commercial insurers, he said.

'There are fewer companies out there looking to be acquired to be saved.'

Barbara Stewart
Stewart Economics

Others say that improved business prospects in the hard market will diminish the need for consolidation.

With insurance prices continuing to rise, "There are fewer companies out there looking to be acquired to be saved," said Barbara Stewart, president of Stewart Economics, an Atlanta-based company that advises insurers on regulatory matters and market conditions.

But, she added, "that is not to say there are not some out there."

Insurers' losses from the terrorist attacks are massive, Ms. Stewart acknowledged. Nevertheless, she said she has not seen any insurers that have been pushed to the brink of ruin by those losses.

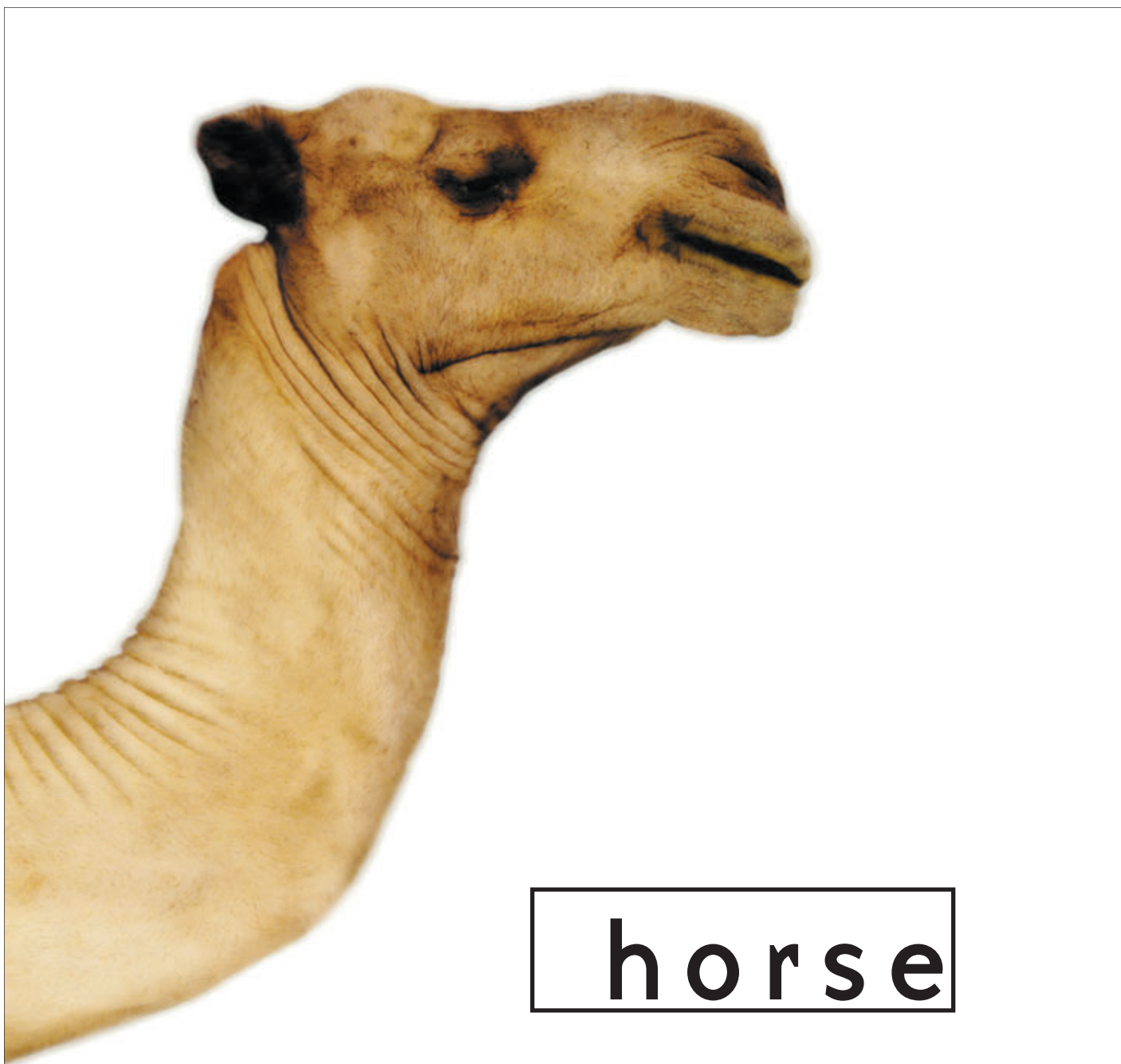
Yet her prediction for few insurer mergers or acquisitions applies only to the next couple of years. After that, she expects activity to increase because there are too many players in the property/casualty insurance market, she said. When soft market conditions return, some of those insurers will face difficulties surviving, she said.

One effect that the Sept. 11 terrorist attacks had on consolidation was to slow or stop many mergers and acquisitions that were under way in 2001, Mr. Chrmelich said.

Prior to the attacks, some large transactions were completed during 2001, such as American International Group Inc.'s acquisition of American General Corp.

And other deals were in the works, Mr. Chrmelich said. But amid the uncertainty in the wake of Sept. 11, insurers stepped back to assess their losses and the liabilities of other companies that otherwise might have been ripe for acquisition.

"There was a fair amount of activity going on, but it just all came to a grinding halt right after Sept. 11," Mr. Chrmelich said.



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AGENT/BROKER TOPICS

Observers see more mergers, acquisitions on horizon

By SALLY ROBERTS

Two major deals in which banks purchased insurance brokerages may be harbingers of more such financial services convergence.

2001 saw the two biggest bank/broker deals to date when Wells Fargo & Co. purchased Acordia Inc. and Greater Bay Bancorp bought ABD Insurance & Financial Services Inc. Industry

observers say that banks' interest in acquiring insurance intermediaries

'There's continued appetite for banks to round out their mix with insurance products.'

Marty Becker
Hales & Co.

continues and that they would not be surprised if other large bank/bro-

ker deals take place.

In addition, one insurance agency consultant said he believes it is just a matter of time before one of the megabrokers becomes part of a global financial services organization.

Bank/broker deals are expected to continue in the coming months.

"There will continue to be Wells/Acordia and Greater Bay/ABD deals," said Timothy J. Cunningham, a principal with agency consulting firm IMCG in Chicago. "I think those deals give

affirmation to other banks" considering such moves, he said.

Marty Becker, chairman of consultant Hales & Co., agrees. "I think, clearly, there's continued appetite for banks to round out their mix with insurance products. One of the ways to do this is to buy an insurance agency, and that's at all levels of the spectrum—from small, local banks buying small, local agencies to larger, regional or national banks buying larger, regional or national agencies," he said.

John Wicher of San Francisco-based insurance investment bank John Wicher Associates Inc. predicts that there eventually will be a major financial services deal involving global brokerage giants Marsh & McLennan Cos. Inc. or Aon Corp.

"There will be one more transaction for Marsh and Aon, and that will be becoming part of a large global financial services organization," he said. "This may not happen in '02, but that is their future."

He cited Citigroup Inc.'s divestiture of Travelers Property/Casualty Corp. late last year as an indication that the financial services giant had lost its appetite for underwriting and was more interested in the distribution side of the business.

Mr. Cunningham said that although he would "never say never," he doesn't necessarily expect to see Marsh or Aon become part of a financial services giant such as Citigroup.

"You're not going to get blockbuster returns" from a Marsh or an Aon, he said. "Their margins are not that significant" in comparison to other financial services.

One of the reasons Citigroup cited in its decision to spin off Travelers P/C was that insurance underwriting did not yield the same returns as do other financial services (*BI*, Dec. 24, 2001).

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AGENT/BROKER TOPICS

Buyers shopping for agencies experiencing a seller's market

Expansion-minded banks paying more to get foot in the door

By MICHAEL PRINCE

It's a good time to be selling an insurance agency.

A plethora of buyers—spearheaded by banks set loose on a buying spree—along with higher revenues and profits caused by the hard market have pushed up prices for agencies to levels not seen in years.

The historic way of valuing an agency by looking at its revenues no longer applies. For years now, buyers have turned away from simply valuing an agency at between one and two times its revenue and now look at profits instead.

"If you value based on revenue, you ignore expenses," said Albert Lloyd, vp at Marsh, Berry & Co. Inc. in Concord, Ohio.

The more common and accurate method, agency consultants say, is calculating an agency's earnings before interest, taxes, depreciation and amortization, or EBITDA. Generally, buyers will pay between five to seven times this figure. The multiple varies by buyers' perception of the amount of risk that this income stream will continue.

"Low-risk agencies get higher multiples," said Robert Smith, senior vp at Reagan Consulting Inc. in Atlanta.

The greatest risk concerns an agency's largest asset: its people. "This is a people business. The inventory goes up and down in the elevator every day," said Michael Cloherty, executive vp at Arthur J. Gallagher & Co. in Itasca, Ill. The brokerage has purchased 16 agencies in the past year, he said.

A major concern for agency buyers is that employees will leave after the purchase and take business with them.

To avoid this problem, key employees should be required to sign "non-piracy" contracts that prevent them from leaving the agency and taking accounts with them, said Dave Evans, vp, retirement and financial planning with the Independent Insurance Agents of America Inc. in Alexandria, Va. The agreements usually let the employee take the

accounts by paying for the privilege, he said.

These agreements are important because if the people and accounts can simply leave after a purchase, "at that point, what are you buying?" Mr. Evans asked.

Buyers also look at the concentration of the agency's business with few accounts, the concentration of the accounts in a certain industry or placed with a small number of insurers when calculating this multiple.

With rising insurance prices

'It would be pure folly to view the hard market cycle to have any sustainability to it. To base price on a four- to five-year hard market cycle is absolute folly.'

Michael Cloherty
Arthur J. Gallagher & Co.

pushing up agency revenues and profits, buyers face the dilemma of deciding whether to pay more for an agency because its earnings have risen in recent years.

The big unknown "is how permanent is that bump. How sustainable is that margin?" asked Timothy Cunningham, principal at IMCG, an insurance consulting firm in Chicago.

So far, the hard market has made its impact felt. Prices paid for agencies grew by 10% to 20% in the past year, Mr. Cloherty said. "That corresponds to what you've seen in the profit and revenue increases today," he said.

Mr. Cloherty believes that this hard market may last longer than past ones because of the unique circumstances following the Sept. 11, 2001, terrorist attacks.

Mr. Cunningham, however, believes the hard market lacks legs. "It would be pure folly to view the hard market cycle to have any sustainability to it," he said. For a buyer "to base price on a four- to five-year hard market cycle is absolute folly," he added.

Another factor driving up prices

has been the aggressive purchasing by banks. Unleashed by changes in federal law a few years ago, banks have been snapping up agencies in virtually every part of the country.

Banks have "created a whole new set of buyers for the agencies out there," Mr. Smith said.

And, as some believe, not very shrewd ones. To get started, many banks paid hefty prices to buy agencies. This has been particularly true for banks buying their first agency in a geographic location.

"They are paying big-time premiums," Mr. Cunningham said.

Some statistics gathered by Marsh, Berry bear this out. In 2001, banks paid an EBITDA multiple of 8.01 for an agency in a region into which it's expanding. This compares with a multiple of 5.53 paid by privately held agencies. The average multiple is 6.59, the statistics show.

"They will pay more for that organization than others are willing to pay," Mr. Lloyd said.

Once banks become established in an area, the premium they pay drops, statistics show, with the multiple falling to 6.69 times EBITDA.

To protect themselves, more buyers are making a portion of the purchase price contingent on the agency reaching certain financial goals in the years after the sale. The percentage of upfront money varies from 50% to 95%, with the contingent amount paid if the agency attains certain revenue and earnings goals over a two to three year period.

"It allows the buyer to minimize the risk while providing the revenue to the seller if the results are there," Mr. Cunningham said.

Even with prices at historic levels, he cautioned that just because some buyers will pay a premium does not mean prices for all agencies have gone up. Rather, each sale should be evaluated on its own merits.

Agencies can increase the price they'll fetch by creating a brand with which customers identify. That way, the buyer will recognize that the value lies in the agency as a whole and not in any owner or group of agency leaders who could walk away, Mr. Evans said.

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AGENT/BROKER TOPICS

GLB not responsible for Enron collapse, panel says

Congress urged to resist temptation to tamper with law

By MARK A. HOFMANN

Lawmakers and regulators must resist the temptation to overreact to the collapse of Enron Corp. or risk undoing the good accomplished by the modernization of federal financial regulation.

That was the message delivered by participants in a forum in Washington on developments in the financial services marketplace since enactment more than two years ago of the Gramm-Leach-Bliley Financial Services Modernization Act. The forum was part of a Feb. 21 event sponsored by the New York-based Insurance

'There will be a tendency and a need for the political process to do something' in the wake of Enron. 'But there will be a danger to overreact.'

*Cantwell F. Muckenfuss III
Gibson, Dunn & Crutcher L.L.P.*

Information Institute and the Washington-based Financial Services Roundtable.

The Enron debacle "has resulted in a virtual corporate witch hunt," said H. Rodgin Cohen, chairman of New York-based law firm Sullivan & Cromwell. The attitude on Capitol Hill has been one of "accuse, convict and then ask questions," just like in the 1692 witch trials in Salem, Mass., he said.

Mr. Cohen said that some critics of financial modernization blame GLB for the Enron situation and, therefore, maintain that the law should be repealed, he said. Mr. Cohen said that argument has no validity. GLB was not the cause of the Enron collapse, he said.

He also said that people who think enacting GLB was an unnecessary exercise because few cross-industry deals have occurred are wrong. The passage of the act led to an "atmospheric shift" from a Depression-era mentality to one more attuned to the realities of the current financial services marketplace, he said. The banking and insurance synergy that GLB would permit was never focused on property/casualty insurers anyway, he said.

Mr. Cohen said that regulators will need to be careful in the post-Enron environment to avoid saying things that will undermine confidence in financial institutions.

Another speaker warned against unrealistic expectations.

"There will be a tendency and a need for the political process to do something" in the wake of Enron, said Cantwell F. Muckenfuss III, a partner in the Washington office of Gibson, Dunn & Crutcher L.L.P.

and a former federal regulator. "But there will be a danger to overreact," he said.

Deregulation—like GLB or the approval of interstate banking some years ago—causes difficulties in the marketplace, said Mr. Muckenfuss. But he said that both the financial services industry and its regulators will prove to be resilient and have the ability to withstand shocks that the system

couldn't handle when he first came to Washington in the midst of the Watergate crisis in 1974. Banks now are well capitalized, more flexible and more sophisticated in their financial risk management, he said.

Mr. Muckenfuss said he views GLB as necessary, but as a "way station" to further reform because of several problems that remain unresolved. For example, "it makes

no sense" not to have optional federal chartering of insurers, he said.

As the events of Sept. 11 and the resultant and ongoing debate over a federal backstop for terrorism insurance underscore, "when a crisis comes, it is useful to have a reservoir of knowledge" available in Washington, he said.

A third speaker, Charles W. Calomiris—a visiting scholar at the

American Enterprise Institute in Washington—predicted GLB will eventually be amended, but not until Alan Greenspan steps down as chairman of the Federal Reserve Board. He said Mr. Greenspan's influence helped assure that the Fed received the leading regulatory role for integrated financial services under GLB.

Insurance Information Institute President Gordon Stewart and Financial Services Roundtable President Steve Bartlett also participated in the discussion.

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AGENT/BROKER TOPICS

A/BT briefs

Independent producers dominate market: IIAA

A recent study by the Independent Insurance Agents of America found that the total commercial lines direct written premium placed by independent agents grew 7% in 2000, to \$145.9 billion.

According to the IIAA's "Industry Market Share Report Calendar Year 2000"—which is based on data provided by A.M. Best Co.—independent producers in 2000 held 73.3% of the commercial lines marketplace. In eight states, agents wrote 80% or more of the commercial lines business, including 84.8% in Massachusetts.

Total personal lines direct written premiums placed by independent agents increased 2.5% in 2000, to \$156.6 billion. The independent agency system held 32.6% of the personal auto market and 36.8% of the personal homeowners market at the end of 2000, according to the report.

The IIAA noted that although independent agents remained strong in the personal lines marketplace, they increased their market share only slightly in 2000, compared with healthy gains in this line in 1997 through 1999.

A free copy of the report can be downloaded at www.independent-agent.com or obtained by calling IIAA's fax-on-demand service at 800-296-0578 and selecting document 3058.

Net Insurance launches automated sales system

BOSTON—Boston-based Net Insurance Technologies L.L.C. recently launched BrokerageBox, a Web-based insurance automation

system.

The system combines a single-entry, multiple-company interface Web site for rating and binding property/casualty coverages with a client/server-based agency management system.

Through BrokerageBox, producers can complete an insurance application, receive quotes from multiple insurers and then immediately bind coverage for their new or renewing personal or commercial lines customers.

BB&T to acquire Kaplan Insurance

RALEIGH, N.C.—BB&T Insurance Services Inc. will expand its property/casualty operations with the addition of Macon, Ga.-based Kaplan Insurance.

Terms of the transaction, which is expected to close in March, were not disclosed.

Kaplan Insurance will continue to operate in Macon with its current employees. It will eventually combine its operations with the existing BB&T-Macon Insurance office. Mike Kaplan, president of Kaplan Insurance, will become sales and marketing manager of BB&T's insurance operations in Macon.

Raleigh, N.C.-based BB&T ranked as the 10th-largest broker of U.S. business, with \$177.9 million in 2000 brokerage revenues, according to *Business Insurance's* rankings.

Giuliani to speak at CIAB forum

WASHINGTON—Former New York City Mayor Rudy Giuliani will be the keynote speaker at the 89th annual Insurance Leadership Forum, co-sponsored by the Council of Insurance Agents & Brokers and the Council of Insurance Company Executives.

The forum will be held Oct. 5-9

at The Greenbrier resort in White Sulphur Springs, W.Va.

In addition to Mr. Giuliani, former Secretary of State James A. Baker and Tipper Gore, wife of former Vice President Al Gore, will be featured speakers.

Acordia using Web system for certificates

CHICAGO—Acordia Inc. recently entered into an agreement with San Diego-based ConfirmNet Corp. that will allow Acordia to provide its commercial clients with online certificates of insurance.

The agreement provides Chicago-based Acordia's multiple branch operations with a subscription to CertificatesNow, ConfirmNet's online insurance certificate service.

"This is another example of bringing valuable service resources to our clients in an effort to go beyond the typical broker commitment of insurance-related services," Charles L. Ruoff, senior vp and chief marketing officer of Acordia, said in a statement.

Internet security alliance formed

IRVINE, Calif.—e-Sure Underwriting Managers and CorpNet Security recently established an alliance to help policyholders establish guidelines, policies, procedures and employee education regarding the proper and secure use of e-mail and network and Internet access.

By combining CorpNet's security awareness programs with e-Sure's e-business insurance products, companies can be better prepared to reduce and respond to threats and losses from Internet and e-mail risks, according to the companies.

e-Sure Underwriting Managers is an insurance facility of wholesaler Swett & Crawford Group.

ChamberBiz sets up independent agency

WASHINGTON—ChamberBiz, a Web portal created in part by the U.S. Chamber of Commerce, recently formed its own independent insurance agency.

ChamberBiz Insurance Agency will have immediate access to millions of small-business owners through the established Web portal, according to the Washington-based company.

"We are committed to providing businesses the tools they need to succeed and win in today's competitive business environment," Greg Lebedev, acting chief executive officer of ChamberBiz, said in a statement.

The agency will offer a wide range of insurance products and loss prevention, litigation management and claims management services.

John Sherlock, a former vp at the Herbert L. Jamison Agency, is the new president of ChamberBiz Insurance Agency.

"We are offering small and medium U.S. businesses something they have never had before—the undivided attention of a national agency dedicated solely to serving their insurance needs," Mr. Sherlock said in the statement.

IIAA clarifies position on regulation

WASHINGTON—The Independent Insurance Agents of America Inc. recently adopted a new position on the reform of insurance regulation.

Although the Alexandria, Va.-based IIAA still rejects federal regulation of insurance, the association now is advocating the use of some federal legislative tools to foster uniformity and to streamline the state-based regulatory system.

"Although the need for greater

efficiency and uniformity in the state insurance regulatory system is clear, federal regulation goes too far," the IIAA's president, Thomas B. Ahart, said in a statement.

Leading insurance industry concerns outlined in the association's new position include producer licensing; rate and form filing; privacy and consumer protection; as well as other insurer concerns, such as insurance company licensing, market conduct examination, audits and solvency.

The IIAA proposes using "federal tools"—such as minimum standards, national reciprocity and multistate uniformity, and the pre-emption of certain state laws—to achieve needed reforms.

"The advantage of this approach is that it offers the best of all worlds," IIAA Chief Executive Officer Robert A. Rusbuldt said in the statement.

"It will promote the establishment of more-uniform standards and streamlined procedures from state to state, protect consumers while enhancing marketplace responsiveness and emphasize that the primary goals of insurance regulation can best be met by improving, not abandoning, the state-based system that has been in place for more than 150 years," he said.

Agent/Broker Topics

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www.businessinsurance.com

Fraud: options for fighting fraud

Continued from page 18
out," he said.

Wherever possible, though, employers should make it clear to workers that they will be treated fairly and should try to forge a bond of mutual loyalty.

"If (employees) believe they are honestly going to be taken care of," they will be less inclined to file a false claim, Mr. Marshall said.

Employers should also make sure that workers understand their benefits. A worker injured off the job who is not aware that he could receive short-term disability might be

tempted to file a phony workers comp claim if he believes he'll miss his mortgage payment otherwise, Mr. Marshall added.

Once a company has evidence of a fraudulent claim, it must organize the evidence—including any exculpatory information—so that a prosecutor will pursue criminal charges, he said.

An insurer or self-insurer that simply sends off a stack of documents and a video is less likely to get a prosecutor's attention than one that presents a well organized case that covers the points a prose-

cutor must prove: that a claimant lied, that the lie was "material" and intentional and that the claimant knew he was committing fraud.

"It's basically got (to have) a big bow around it," Mr. Marshall said of a case referral.

Whether self-insurers actually become more aggressive in fighting fraud may depend on how badly they are hurt by fraud losses in coming years, experts say.

"They're going to have to see it and feel it on the bottom line" before they take action, Mr. Osborne predicted.

Cards: Debit system simplifies FSA use

Continued from page 12

Other benefit companies and TPAs are offering similar debit cards to their employer clients.

Waltham, Mass.-based Med-i-Bank offers a trademarked product called Flexcard, which is linked to MasterCard. FlexAmerica in Bethesda, Md., also offers FSA debit cards, as do Northern Capital Trust, a Fargo, N.D.-based employee benefit trust manager, and Champaign, Ill.-based administrator BPC Inc.

FSA debit cards are designed to eliminate the so-called "double-hit" that plan participants experience, Ms. Steele pointed out. The first hit occurs when the money to fund the FSA accounts is automatically deducted from the employee's paycheck; the second happens when a participant pays for medical expenses as they occur. Although the participants will eventually be reimbursed, they must first go through the tedious process of completing a claim form and mailing it with receipts to the FSA administrator, Ms. Steele explained.



The Benny Card, developed by Evolution Health, is designed to simplify transactions involving flexible spending accounts.

FSA debit cards eliminate both the paperwork and reimbursement delays.

Approximately 90% of U.S. employers with 1,000 or more employees offer flex plans, according to Lincolnshire, Ill.-based benefit consultant Hewitt Associates L.L.C.

Yet only an average of 22% of employees at those companies participate in health care FSAs, according to the Employers Council on Flexible Compensation, a Washington-based employer organization.

"One reason employees don't participate in FSAs is the paperwork," said Jean LaVecchia, vp of human resources at Northeast Utilities in Berlin, Conn., which began offering the Benny Card to its 7,000 employees this year.

"When a plan participant uses it at the point of service, it operates just like a debit card," Ms. LaVecchia explained.

Even though the cards withdraw money from the FSAs as they would a bank account, a personal identification number, or PIN, is not required to use them. The provider swipes the card using a standard credit card reader, and the copayment or other qualified health care expense is deducted from the participant's FSA account immediately. Employees can keep track of their Benny Card transactions over the Internet.

Even though FSA debit cards carry standard credit card logos—the Benny Card has a MasterCard insignia—they are programmed to prevent participants from using them for nonqualified transactions, Ms. Steele said.

The Benny Card is also programmed to generate a letter asking a plan participant for more information, such as a copy of a receipt, if a transaction falls outside stan-

See **CARDS**/page 22



Frank C. Witthun,
President and Chief Executive Officer

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LARGEST EMPLOYEE BENEFIT TPAs

TPAs that specialize in employee benefit claims, ranked by revenues from self-insured clients			
Company	2001 revenues from self-insured clients	2001 claims paid for self-insurers	Total clients
Delta Dental Plan of California	\$1,200,000,000	\$950,000,000	7,585
Great-West Life & Annuity Insurance Co.	\$708,100,000	\$5,791,477,000	7,791
CoreSource Inc.	\$149,000,000	\$2,900,000,000	1,598
The Principal Financial Group-National Accounts	\$122,000,881	\$1,437,203,351	253
USI Administrators Inc.	\$105,000,000	\$920,000,000	781
Wausau Benefits	\$73,882,000	\$3,000,000,000	416
Brokerage Concepts Inc.	\$57,132,016	\$1,502,500,000	1,036
Zenith Administrators Inc.	\$50,000,000	\$883,000,000	237
Group Resources Inc.	\$33,200,000	\$234,000,000	244
United Medical Resources Inc.	\$30,600,000	\$531,638,000	127

Source: BI Survey

Cards: Debit system simplifies FSA use

Continued from page 20

dard IRS rules for FSA reimbursements, she said. If a nonqualified transaction is completed, however, and the usage is later determined to be inappropriate, the plan participant will have to reimburse the benefit plan for the expense, Ms. Steele explained.

Although Northeast Utilities' employees have used the Benny Card for only two months, "anecdotally, the feedback is great," Ms. LaVec-

chia said. "The only obstacle is the fact that a number of doctors still don't take MasterCard or Visa."

In those cases, FSA plan participants can still seek reimbursement the old-fashioned way, completing a claim form and mailing it along with a receipt to the TPA, said Jennings Hart, senior vp at Acordia National, Northeast Utilities' benefit claims administrator. Acordia National is a Charleston, W.Va.-based TPA unit of Acordia Inc.

Acordia National, which is marketing the Benny Card to both its new and existing clients, has created interface programs to link the debit card system with its own proprietary benefit claims processing systems.

'It's technically feasible to use the card technology on dependent care, but we don't expect as high a usage.'

Jennings Hart
Acordia National

Although the debit card charges will appear immediately on participants' online statements, the manually processed claims will come later, sent as part of a "batch" at the end of each business day, Mr. Hart said. Acordia National also generates paper reports of FSA expenditures that are sent to plan participants quarterly, he added.

So far, the largest number of claims paid using the debit card have been for prescription drugs, but the biggest dollar amounts have gone to pay orthodontists and optometrists. Mr. Hart said.

Mr. Hart estimates that, among employers offering the card, 70% of FSA expenses are being paid electronically, while 30% are still being processed manually. And because it costs the TPA less to process the claims paid using the debit card, Acordia National is passing on some of those savings to its employer clients. Northeast Utilities, for example, is getting a 6.5% discount on its TPA fees because it is using the cards, said Ms. LaVecchia.

While Acordia initially is only offering the Benny Card in connection with medical spending accounts, it can be used for other types of Section 125 transactions, such as dependent care, according to Mr. Hart.

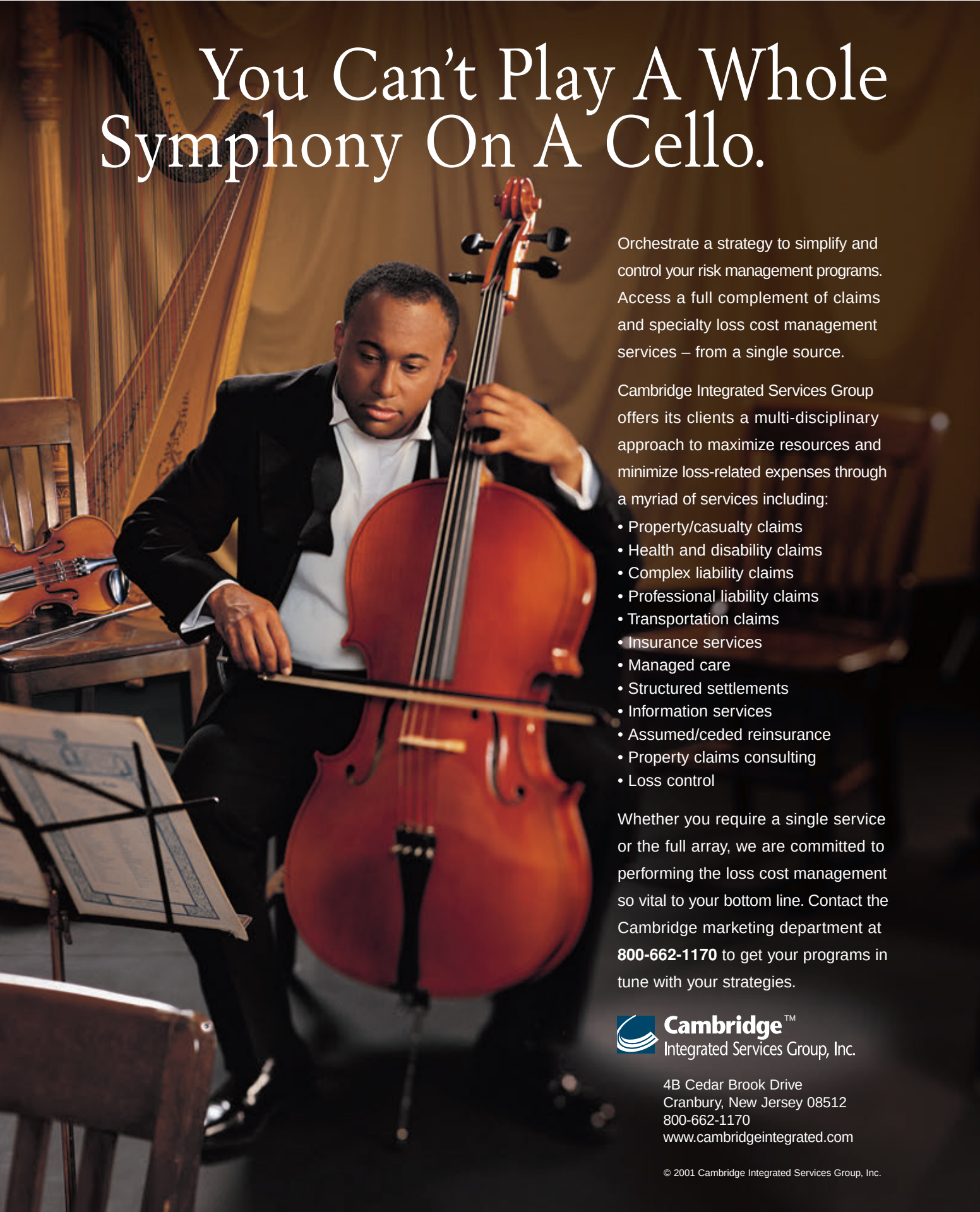
"It's technically feasible to use the card technology on dependent care, but we don't expect as high a usage," he said, noting that dependent care often is provided by small businesses that don't have credit card readers.

Dependent care accounts also operate at a deficit because the cost of day care or elder care usually exceeds the allowable IRS deduction for such expenses, he explained.

The card also can be used to aid the use of defined contribution-style health plans, according to

See CARDS/next page

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Cards: Simplify the use of FSA

Continued from page 22
Robert E. Patricelli, chairman and chief executive officer of Evolution Health.

Such plans, which are seeing growing interest, in general involve individual health care spending accounts into which an employer makes a defined contribution annually. Employees are given information on the cost and quality of various health care services, allowing them to shop around before spend-

ing their money from their accounts. And unused funds in the accounts, unlike those in FSA accounts, can be rolled over from year to year.

"The Benny Card has a lot of legs to it," Mr. Patricelli said. "It can be a low-cost health payment card that could apply to consumer-driven personal care accounts. It can also be used to fund retiree medical programs. It can also be used to fund ancillary coverages."

LARGEST MULTILINE TPAS

Ranking of TPAs that offer both employee benefits and property/casualty administration

Company	2001 revenues from self-insured clients	2001 claims paid for self-insurers	Total clients
Cambridge Integrated Services Group Inc.	\$241,500,000 ¹	\$4,270,000,000	8,293
Gallagher Bassett Services Inc.	\$207,000,000	\$2,959,000,000	2,180
Sedgwick Claims Management Services Inc.	\$172,020,000	\$2,300,000,000	432
Acordia Inc.	\$59,500,000	\$1,426,872,650	588
Gates, McDonald & Co.	\$56,795,000	\$300,000,000	320
The Frank Gates Cos. Inc.	\$35,000,000	\$220,000,000	440
The Loomis Co.	\$25,480,000	\$750,000,000	610
RMSCO Inc.	\$14,500,000	\$300,000,000	195
Keenan & Associates	\$13,220,000	\$198,000,000	978
Cannon Cochran Management Services Inc.	\$12,000,000	\$75,000,000	255

¹ BI estimate
Source: BI survey



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Bermuda Insurance Symposium

Captives face problems with fronting, reinsurance

By MICHAEL BRADFORD

SOUTHAMPTON, Bermuda—Captive insurers should expect their future to involve fronting difficulties, higher reinsurance costs and larger retentions, according to a panel of experts.

"Fronting is going to be one of the biggest challenges," said Peter J. Mullen, president of Hamilton, Bermuda-based ARTEX Underwriting Managers Ltd. Few fronting companies are available to captives,

and many of those that are around, are inexperienced, he noted.

Mr. Mullen was part of a panel at the fifth Bermuda Insurance Symposium discussing challenges that captives face. The symposium was held Feb. 19-22 at the Fairmont Southampton Princess Hotel in Southampton, Bermuda.

The bloom is off the rose for many fronting companies, according to panel moderator David McManus, president of Arthur J. Gallagher & Co. (Bermuda) Ltd. The

fronting companies "were the darlings," he said, and "the market promoted them. For many years, they performed fantastically and creatively because they were trailblazers." Fronting arrangements were seen by insurers as "this fabulous, no-risk insurance contract," he said.

But, Mr. Mullen said, fronting is not a risk-free transaction. The companies "take 100% of the risk and then they try and lay that risk off," he said. "We all understand

the theory of that. The practice of it, though, is something else."

As proved by Legion Insurance Group, fronting companies are exposed to risks. Legion, a unit of Bermuda-based Mutual Risk Management Ltd., last year added \$30 million on an aftertax basis to net loss reserves because program losses from prior years are expected to exceed reinsurance limits. A.M. Best Co. has downgraded Legion's financial strength rating to B from A.

Mr. Mullen pointed out that

there are a lot of players that are much less experienced than Legion. In soft markets, such as the one that recently ended, "the amateurs tend to stray into our business," he said. "Companies who reduce pricing on the guaranteed-cost side look to earn fees for just issuing paper. They see it as an attractive business and get into it."

But many stick around only until market conditions change, Mr. Mullen said.

As reinsurance prices rise, cap-

'Companies who reduce pricing on the guaranteed-cost side look to earn fees for just issuing paper. They see it as an attractive business and get into it.'

Peter J. Mullen

ARTEX Underwriting Managers Ltd.

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tives are being forced to increase their retentions, Mr. Mullen said. And some, he noted, are in a better position to do so than others.

Those that have built up their capital will be able to comfortably boost their retention levels, but those lacking capital will have to approach their parents and answer some questions as to why they need funding, Mr. Mullen said.

Panelist Henry Good, director of insurance at Rohm & Haas Co. in Philadelphia, told symposium attendees that a captive's parent is bound to be asking questions these days about the viability of the vehicles. Providing answers is not always easy.

"I challenge you to find many (chief financial officers) who understand what a captive really is," Mr. Good said. But with the pressure on management created by the "Enrons of the world" to better understand all aspects of their business and to be able to answer questions from their boards, risk managers are seeing a lot more management interest in their captives.

In Rohm & Haas' case, one question from upper management has been why a specialty chemical manufacturer needs an insurance subsidiary. "The answer there, partly, is that there are certain insurance companies that will sell insurance to our captive, but will not sell insurance to the parent company," Mr. Good said.

Also tricky is explaining how such items as reserves and incurred-but-not-reported losses can be listed on the captive's books but not the parent's, Mr. Good remarked. Such offshore transactions tend to raise eyebrows.

He also pointed out that Rohm & Haas forms captives only if they offer a tax benefit. In fact, without such a benefit, there would be "no need at all for a captive," Mr. Good said. "You sit back and say, 'Should you form a captive just for tax benefits?' And the answer is 'no.' But, in

See CAPTIVES/next page

Letters to the Editor

Continued from page 8

So, your want for a direct-bill perfect world is unattainable and even undesirable. In that same world, the agent/broker would be paid his direct-bill commission on the effective date by electronic transfer. We sometimes wait three to four months for those checks. We think it's just fine that the few bucks we make on the agency float offset that and the credit risks we take.

Should agencies operate "out of trust"? No. Is misappropriating client premiums acceptable? Absolutely not. However, before you let a few bad apples spoil the whole bunch, who is really the advocate for the insurance buyer? Although contractually bound to the company, ask any agent/broker who really butters their bread—the insurance buyer. That's why the Big I agent/brokers are now known as "The Trusted Choice."

Jay G. Smith
President/CEO
MBAH Insurance
Lafayette, Ind

Buyers are protected despite fund handling

To the editor: I would like to respond to your Feb. 11 editorial, "Time to Change Brokers' Handling of Premiums," and a few inaccurate

statements contained within it.

First, your statement, "While the practice originated as a way for insurers to reward their agents" is erroneous. This practice originated as a way to allow the consumer to obtain insurance coverage immediately by paying their local agent and to rest assured their insurance was in force (binding authority).

In years past, agents collected the premiums in person. With the progression of automation, practically all personal lines (homeowners, personal auto, etc.) premiums are now paid directly to the insurance company. Today, most commercial lines premiums are still paid directly to the agent, as most clients prefer to pay this way, and the agent can earn interest on the premiums until he or she pays the company. Coverages for large commercial clients also are becoming more complex and often involve several insurers, deductibles and retention limits.

However, premium monies are held in trust, the agent is in a fiduciary capacity and the Illinois Department of Insurance monitors these accounts closely. In fact, the Illinois Insurance Code and Regulations clearly define every aspect of how this trust account must be maintained and handled.

Secondly, no matter what may happen in the small percentage of circumstances where an agent misappropriates premiums, the con-

sumer is always protected. In Illinois, once a consumer has given a producer premium monies, the consumer is guaranteed coverage with the designated carrier in every circumstance. The company is responsible, and the consumer and their coverage are never in peril.

You state that "30% of the country's small and midsize agencies routinely dip into these funds to cover their operating expenses." Did you bother to confirm this with the Illinois Department of Insurance? Even highly respected Crain's must attribute this to someone other than "agency consultants." The Professional Independent Insurance Agents of Illinois holds as its mission to maintain the highest ethical and moral standards for our members. We have sponsored educational classes for years, in coordination with the Illinois department, on compliance with regulations and statutes governing premium trust accounts and fees and commissions.

The Illinois department has been enforcing the insurance regulations for years, and one only has to look to the department's monthly newsletter to see the results of its actions against producers and agencies. Our industry, like all others, will have those who violate state laws and the trust of others.

We also wonder why the federal authorities brought these charges since the Premium Fund Trust Ac-

count statute is not a federal statute, but a state statute. However, one would hope that publications such as yours could distinguish for your readers between a highly politicized event such as this, from say an Enron, where thousands of individuals suffered irreparable financial harm.

Michael J. Tate

Chief Operating Officer
Professional Independent Insurance
Agents of Illinois
Springfield, Ill.

Brokers aren't always upfront about practices

To the editor: I've been in the insurance business for more than 35 years. As a former vp/account executive with a national brokerage and now as an independent property/casualty consultant, I wholeheartedly agree with your Feb. 11 editorial.

If the brokerage community balks at letting policyholders remit premiums directly to the carriers, I say let's have all brokers divulge exactly what their interest/investment income is as a result of holding on to their clients' premiums until they, the brokers, are obliged to pay the premiums to the carriers. This practice falls along the same lines as the brokers receiving contingency commissions that their clients, the policyholders, have no knowledge of.

The problem at Near North is the tip of the iceberg. I believe there is

widespread abuse of brokers holding premiums and using their client's monies not only to earn interest and investment income but also for other self-serving uses.

What about the widespread practice of brokers billing clients for renewal premiums 30 days in advance when the broker knows very well that the renewal policy will be issued and billed by the carrier 45 to 60 days beyond the renewal date? Policyholders are made to believe that if they don't pay a renewal premium before they receive their policy, they will have no coverage.

This is one of many deceptive practices in the insurance game.

David J. Skolsky

President
Insurance Analysts & Consultants
Decatur, Ga.

Editor's note: An online poll that Business Insurance conducted Feb. 11-15 about brokers' use of client premiums found that:

- 23.0% of respondents said premium trusts should be more tightly regulated.
 - 20.2% said premiums are rarely misused, so no changes are needed in brokers' practices.
 - 34.3% said premiums should be paid directly to insurers.
 - 22.5% had no opinion.
- Other weekly polls are conducted at www.businessinsurance.com.

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Insurers distance themselves from HIH probe

Australians deny use of finite risk

By DAMIEN TOMLINSON

SYDNEY, Australia—Two of Australia's largest insurers sought to distance themselves from the world of financial reinsurance last month as the use of such programs is scrutinized at ongoing hearings on the collapse of HIH Insurance Ltd.

QBE Insurance Group Ltd. and Insurance Australia Group Ltd. both say they do not use financial reinsurance products.

The denials were made soon after

a witness at the Royal Commission hearing claimed that financial programs structured to defer insurance losses to later reporting periods are rife among Australia's insurers.

Andrew Allison, former treaty manager at Sydney-based GeneralCologne Re Australia Ltd. and now general manager of Sydney-based Copenhagen Reinsurance Co. (Australia), testified that he knew of three "questionable" reinsurance deals placed with GeneralCologne Re, besides one it wrote for FAI In-

surance Ltd., which HIH later acquired. FAI's losses led to huge losses for HIH, which was placed in bankruptcy last year.

The Royal Commission had earlier heard that FAI, to boost its June 30, 1998, financial results, bought \$65 million Australian (\$33.3 million) in reinsurance coverage from GeneralCologne Re in May that year, which was to include a fee for GeneralCologne Re. However, a "side letter" was signed, in which FAI agreed not to make any claims

on the policy, so no transfer of risk occurred.

The Royal Commission previously heard testimony regarding a finite risk coverage for FAI that was placed with National Indemnity Co.

The broker that placed the deal acknowledged one of its purposes was to "arrange reinsurance, which would have the effect of allowing (FAI) to bring \$40 million Australian (\$20.5 million) of reinsur-

See HIH/next page

Analysts praise plan for Zurich changes

By EDWIN UNSWORTH

ZURICH, Switzerland—Zurich Financial Services Group's announcement last week that Rolf Hueppi will step down this year as chief executive officer but stay on as chairman is drawing praise from insurance analysts.

The move, expected to take place in mid-2002, brings the company in line with current thinking on corporate governance and at the same time appeasing shareholders, analysts say.

Zurich, Switzerland-based ZFS has not yet named a successor to Mr. Hueppi, and it remains to be seen whether the company's next CEO can restore the group's fortunes.

Analysts welcome the decision as a move in the right direction. Not

only has ZFS had flagging profitability, but its share price has fallen more than 60% in the past year. ZFS shares were trading late last week around 226 Swiss francs (\$132.50).

Stephen Dias, an insurance analyst with London-based Goldman Sachs International, said ZFS' management change "injects fresh blood into the company, so that even if there is no direct association, people can at least feel the company is making a fresh start again."

In addition, views on corporate governance increasingly call for a separation of the positions of chairman and CEO, in the belief that it

creates a better system of checks and balances, Mr. Dias said.

Mr. Hueppi, who has worked at ZFS for 35 years, has served as CEO since 1991 and was elected chairman in 1995. He transformed the insurer into a worldwide group but last year faced criticism from shareholders.

Analysts, including Mr. Dias and Standard & Poor's Corp. insurance analyst Rob Jones, said Mr. Hueppi could be succeeded by either Peter Eckert or James Schiro, who were recently named joint chief operating officers of ZFS. The analysts did not rule out the possibility, however, of ZFS naming an



Mr. Hueppi

outsider.

Mr. Eckert joined Zurich in 1980 and in July 2001 was named CEO of its newly created Continental Europe Business Division. James Schiro was formerly CEO of PricewaterhouseCoopers.

Constantine Iordanou, formerly senior executive vp of Group Operations at ZFS and once considered to be a possible successor to Mr. Hueppi, left the company to join Arch Capital Group Ltd. in December 2001.

Donna Galer, ZFS' New York-based head of investor and media relations, noted that the company is one of the world's strongest insurers, with shareholders equity of around \$18 billion and strong reserves and cash flow.

See ZURICH/page 31

World Updates

Swiss Re ups estimate for Sept. 11 losses

Swiss Reinsurance Co. has increased its estimated net losses from the Sept. 11 terrorist attacks by 45%, to 2.95 billion Swiss francs (\$1.78 billion), after retrocessions and tax. Zurich-based Swiss Re predicted that "unprecedented large losses in 2001" and the decline in investment markets would cause it to report a loss of about 200 million Swiss francs (\$126.6 million) for 2001. Swiss Re will report actual results April 10.

Jurisdictions avoid OECD tax haven list

The Organization for Economic Cooperation and Development said last week that the Channel Islands of Guernsey, Jersey and Gibraltar have committed to improving the transparency of their tax and regulatory systems, and they will not be included on the OECD's list of tax havens. The agreement, reached just ahead of the Paris-based OECD's Feb. 28 deadline, leaves 22 jurisdictions open to inclusion on its list. Earlier this month, the OECD took the captive domicile of Barbados off its list. Captive domiciles that as of Friday had not committed to improving their tax systems are the British Virgin Islands, U.S. Virgin Islands, Panama and the Turks & Caicos. Jurisdictions on the tax haven list may face sanctions.

JLT sees gains in revenues, profits

Jardine Lloyd Thompson Group P.L.C. recorded brokerage revenues of £349.7 million (\$509.2 million) in 2001, a 21.7% increase over the previous year. London-based JLT's net income for 2001 rose 5.9%, to £55.4 million (\$80.7 million). JLT said the improvement in its business was a result of both organic growth and acquisitions, including the purchase of U.K.-based Abbey National Benefits Consultants.

Investment losses keep CGNU in the red

CGNU P.L.C. recorded a loss of £728 million (\$1.06 billion) for 2001, compared with a loss of £1.64 billion (\$2.39 billion) for 2000. A spokeswoman for London-based CGNU said that the loss for 2001 in large part stemmed from investment losses of £2.58 billion (\$3.76 billion). CGNU's pretax operating profit for the year was £1.81 billion (\$2.64 billion), up from a £336 million (\$489.2 million) profit in 2000. CGNU's net premiums for 2001 rose 4.8%, to £28.34 billion (\$41.26 billion). CGNU also plans to change its name to Aviva.

See WORLD UPDATES/page 31

Underwriter seeks to recover from police for claims paid following U.K. fire loss

By CAROLYN ALDRED

LONDON—A Lloyd's of London underwriter is seeking to recover up to £43 million (\$61.6 million) from the Bedfordshire Police Authority following a fire that caused extensive damage to an immigration center last month.

David Pye, underwriter for syndicate 962, managed by Creechurch Underwriting Ltd., confirmed that loss adjuster Capita McLaren has notified the Bedfordshire Police that financial recovery will be sought under the Riot (Damages) Act 1886. Under the act, insurers may obtain compensation from police for claims paid for riot-caused damage, but insurers must give notice of their intent to seek recovery within 14 days of the event.

Syndicate 962 provided more than £100 million (\$143.3 million) of coverage under a property policy for the Yarl's Wood Detention Centre in Bedfordshire. The policyholders on the contract are



Half of the Yarl's Wood Detention Centre in Bedfordshire, England, was destroyed by a series of fires Feb. 14-15.

Broadway-based security management company Group 4 Falck Global Solutions Ltd., Abingdon-based private finance company Amey Group P.L.C. and the U.K. Home Office.

The Bedfordshire Police Authority described the insurer's decision to seek damages as "quite outrageous," adding that the Authority "will resist it vigorously."

Mr. Pye said the action was standard procedure, however, and that insurers would be un-

likely to cover such premises if they had no protection under the Riot (Damages) Act. Insurers have pursued compensation under the act in the past, most recently after last year's May Day riots in London (BI, May 7, 2001).

Half the accommodation at the center, which housed asylum seekers, was destroyed by a series of fires Feb. 14-15 believed to have been started by the inmates, and a number of detainees escaped during the blaze.

PHOTO: N SYNDICATE

Global benefits a challenge

By EDWIN UNSWORTH

Growing globalization means that companies must increasingly deal with the challenges of providing benefits to a diverse, international workforce.

A new survey, conducted in early 2001 by William M. Mercer Inc., found that most multinational companies provide retirement programs and other benefits for their overseas employees.

Survey results were based on responses from 133 large companies, 90% of which have annual revenues of more than \$1 billion. Companies in the survey employ, on average, 200 third-country nationals, which Mercer characterized as "globally nomadic employees that companies move between countries outside the headquarters country." Mercer noted that such employees tend to be high-profile, high-value individuals who often are difficult to attract and retain.

Such employees "provide distinct challenges for multinational employers, in that they may be scattered around the globe, making it difficult to achieve comparability of pay and benefits," said Peter Blake, a Mercer consultant based in Chicago and the survey's au-

See MERCER/page 31

HIH: Deals under scrutiny

Continued from previous page

ance recoveries on to the profit and loss account for the year end 30 June 1998" (BI, Feb 25).

When asked which companies used similar deals, Mr. Allison wrote their names on a piece of paper and submitted it to the commission.

Commissioner Neville Owen partially suppressed the note, releasing it only to commission staff and the Sydney-based Australian Prudential Regulation Authority, the Australian insurance regulator.

Shortly after Mr. Allison's testimony last month, Sydney-based QBE and IAG both released state-

ments denying they ever used financial reinsurance.

QBE said it issued a statement "to avoid unwarranted speculation," saying its whole-account aggregate stop-loss reinsurance policy programs, in place since 1988 and 1996, were not financial reinsurance. QBE Chief Executive Frank O'Halloran said it was company policy not to enter into arrangements that enabled deferral of insurance losses.

IAG released a similar statement, claiming it "neither has, nor had, any financial reinsurance contracts. IAG is confident it is not one of the

companies named." The statement said IAG did have a whole-account aggregate stop-loss policy and that it was approved by APRA and signed off by tax and legal advisers before finalization.

APRA Chief Executive Graeme Thompson, at a separate Federal Senate hearing, said that he did not know of any other insurers using financial reinsurance contracts similar to those used by FAI and that all reinsurance contracts used by Australian insurers would come under closer scrutiny.

"I'm certainly not aware of contracts of that kind," he said.

Mr. Thompson added that reforms to the General Insurance Act 1973, which came into force on July 1, 2002, would impose tougher prudential supervision of all insurers.

"As part of that process, we will be looking closely at reinsurance strategies and programs of all the companies," he said.

In earlier evidence before the HIH commission, HIH's auditor, the Sydney office of accounting firm Arthur Andersen L.L.P., was criticized in a special report prepared by APRA for the commission last year but was not released until APRA inspector David Lombe gave his evidence.

"The auditors may have knowingly involved themselves in verify-

ing accounts which they knew to be false," Mr. Lombe said.

Wayne Martin, counsel assisting the commission, told of a \$200 million Australian purchase by HIH Investment Holdings of redeemable FAI shares, which was backdated to purport that FAI was solvent at June 30, 2000.

An Andersen spokesman said the accounting firm would not respond to the allegations until its testimony is called, which is scheduled for April.

Andersen was criticized at the time of the HIH collapse, having signed off HIH's accounts as being solvent just five months before the company collapsed with estimated debts of \$5.3 billion Australian (\$2.72 billion).

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LEGAL NOTICES

IN THE HIGH COURT OF JUSTICE
(IN ENGLAND AND WALES)

CHANCERY DIVISION
COMPANIES COURT

No. 916 of 2002

IN THE MATTER OF

**HASSENEH INSURANCE CO.
(UK) LIMITED**

and IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an Order dated 12 February 2002 made in the matter of Hasseneh Insurance Co. (UK) Limited ("the Company"), the High Court of Justice in England and Wales ("the Court") has directed that a meeting ("the Creditors' Meeting") of the Company's Scheme Creditors (as defined in the scheme of arrangement hereinafter mentioned) be held on 17 April 2002 at the address below commencing at 11.00 am (London time). All Scheme Creditors are requested to attend at such place and time either in person or by proxy. The purpose of the Creditors' Meeting will be to consider and, if thought fit, to approve (with or without modification) a scheme of arrangement proposed to be made between the Company and the Scheme Creditors pursuant to section 425 of the Companies Act 1985 ("the Scheme"). The Scheme Creditors may vote in person at the Creditors' Meeting or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

It is requested that Forms of Proxy and voting forms be lodged with the Company at 8-10 St Saviours Wharf, 23 - 25 Mill Street, London SE1 2BE by 9.00am on 17 April 2002. A faxed copy of the Form of Proxy and voting form will be accepted if legible and if the original voting form is received by the Company by the close of the business day on 24 April 2002. Forms of Proxy may also be handed to the chairman of the Creditors' Meeting at the meeting.

A copy of the proposed Scheme, the statement required pursuant to section 426 of the Companies Act 1985, the Form of Proxy and voting form, may be obtained from the offices of the Company during usual business hours prior to the day appointed for the Creditors' Meeting. By the same Order, the Court has appointed Dan Yoram Schwarzmann of PricewaterhouseCoopers or, failing him, Ivor Kiverstein to act as chairman of the Creditors' Meeting and has directed the chairman to report the result of the Creditors' Meeting to the Court.

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

Dated this 28th day of February 2002.

LEGAL NOTICES

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF
DAN YORAM SCHWARZMANN AND
MARK CHARLES BATTEN,
AS PROVISIONAL LIQUIDATORS OF
INDEPENDENT INSURANCE
COMPANY LIMITED,
DEBTOR IN A FOREIGN PROCEEDING
CASE NO. 01-13899 (SMB)

NOTICE IS HEREBY GIVEN THAT ON FEBRUARY 5, 2002, THE BANKRUPTCY COURT ENTERED AN ORDER (AS AMENDED BY ORDER DATED FEBRUARY 21, 2002) CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. §304 ORIGINALLY ENTERED IN THIS CASE ON JULY 31, 2001 (THE "ORDER"). THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING SCHEDULED TO BE HELD ON AUGUST 7, 2002 AT 10:00 A.M. (THE "RETURN DATE") BEFORE THE HONORABLE STUART M. BERNSTEIN, CHIEF UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT LOCATED AT ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING THE CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE STUART M. BERNSTEIN AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

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

e-mail iamleshi@crain.com

REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS

NEW YORK CITY HOUSING AUTHORITY

PUBLIC NOTICE - INVITATION FOR BID PRIMARY/EXCESS PROPERTY AND BOILER & MACHINERY INSURANCE

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Coverages are to become effective July 1, 2002.

Proposals must be made in the format included in the Invitation For Bid package containing instructions, specifications and detailed submission requirements. Packets may be obtained by calling NYCHA's Property Insurance broker/consultant: Tillinghast-Towers Perrin, One Stamford Plaza, 263 Tresser Boulevard, Stamford CT, 06901 at (203) 363-1939. In order to be eligible, completed bid proposals must be received by 4:30 P.M. on April 19, 2002

All inquiries for information regarding the Invitation For Bid are to be directed, in writing, to Gene Silvers, Consultant, Tillinghast-Towers Perrin at the aforementioned address/phone.

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Business Insurance

World Updates

Continued from page 29

RSA records loss of \$1.8 billion in 2001

U.K. multiline insurer Royal & SunAlliance Insurance Group P.L.C. posted an aftertax loss of £1.24 billion (\$1.80 billion) for 2001, compared with a £29 million loss (\$42.2 million) for the previous year. London-based RSA said that its 2001 results were hit by an estimated £215 million (\$313.0 million) loss stemming from the Sept. 11 terrorist attacks and a £384 million (\$559.1 million) increase in reserves for asbestos claims and discontinued business. The insurer also posted a short-term investment loss of £845 million (\$1.23 billion) for 2001. RSA's nonlife net premiums for 2001 were £8.81 billion (\$12.83 billion), up 5.3%. Life net premiums totaled £2.90 billion (\$4.22 billion) in 2001, a 15.7% decline, according to RSA.

Kiln to up capacity by 74% for 2002

Lloyd's of London-based insurer Kiln

P.L.C. plans to boost its capacity by 74% for 2002, to £664.0 million (\$949.5 million). The increase hinges on two quota-share agreements, Kiln said. One such deal with Arch Reinsurance Ltd. would add 10% to Kiln composite syndicate 510's capacity of £388.6 million (\$555.7 million), subject to Lloyd's approval. Earlier this month, Kiln reached a quota-share agreement with subsidiaries of W.R. Berkley Corp. to add about £86.0 million (\$123.0 million) to Kiln's 2002 capacity.

Briefly noted

The European Commission has authorized government insurance programs in Ireland and the Netherlands designed to help the countries' airlines obtain **coverage for war and terrorism risks**. The arrangements, which are authorized to operate until the end of March, are similar to programs in place in the United Kingdom, France and other European Union member states....**The Shipowners Claims**

Bureau Inc., manager of the protection and indemnity insurer The American Club, has been spun off from Marsh Inc. The American Club has retained the fixed assets of SCB but transferred its equity to a new holding company, Eagle Ocean Management L.L.C., which is owned by the P&I club's management staff....The first risk using the new **London Market Protocols** slip has been placed in the Lloyd's of London market. The risk was placed in the nonmarine market by the special risks division of Aon Ltd. and was led by Ascot Underwriting Ltd. syndicate 1414. The slip, part of efforts to reform the London market's operations, is intended to clarify arrangements for the risk at the point of contract....Brian Horwell has been appointed director of the professional risks unit of the London-based **Miller Insurance Group Ltd.** Mr. Horwell was formerly underwriter for nonmarine casualty business at DJ Marshall syndicate 839. Martin Benatar, formerly of MarshBank, has been appointed associate director of the company's risk consulting arm, Dawson Risk Management Services. John Eltham, director, has been promoted to head of the business unit for special risks.

Zurich: Analysts praise move

Continued from page 29

She pointed out too that the company has said at its last annual meeting that the roles of chairman and chief executive would be split "when the time was right."

Since last September, Standard & Poor's has twice downgraded ZFS' financial strength rating—first from AA++ to AA and then on Feb. 15 to AA-. S&P said the downgrades reflect concern about "the consistency of management's strategies, earnings underperformance, reduced capitalization and financial flexibility."

Mr. Jones said that after Zurich's Feb. 25 announcement, the outlook on the rating remains "stable."

The company's weak share price, its profit warnings over exposure to the Sept. 11 World Trade Center attack, and its underperforming life business all meant that management wasn't viewed very positively by investors, Mr. Jones said.

This would have made it difficult for the group to go forward, particularly if it wanted to raise capital, he added.

In December, ZFS said it expected a net loss for 2001 of up to \$400 million, after direct insurance losses from the Sept. 11 attacks of \$750 million.

ZFS also announced the departure of Steven Gluckstern, CEO of its global asset business division, "to pursue other interests." At one time, Mr. Gluckstern was considered a potential successor to Mr. Hueppi.

David Wasserman, senior managing director of the global asset business division, will become CEO of that division on March 1.

Mercer: Benefits for expatriates

Continued from page 29

thor. The survey found that almost all respondents provide some sort of retirement benefits for expatriate employees. Just over half—55%—of the respondents operate special retirement plans for such employees.

Mercer found that 42% of companies offering retirement plans in 2001 had defined benefit plans for third-country nationals, down sharply from 79% 10 years earlier. Forty-eight percent had defined contribution plans, and 10% had hybrid plans.

A surprising finding is that European companies are more likely to have a defined contribution plan for third-country nationals than are North American companies, the survey shows.

Mr. Blake said the finding was surprising due to the fact that most European nations have generous

statutory or compulsory pension programs, into which multinational employers can put expatriate employees.

Nearly all survey respondents to the survey provide expatriate employees with some sort of medical coverage, as well as death and disability benefits.

Mercer's survey also found that special international medical plans—those designed specifically for expatriate employees and their families—have become more popular. Such plans are used by 53% of companies, up from 29% of companies in 1991, according to the survey.

As companies with expatriate employees come to grips with the threat of terrorism, there are several steps employers should take, Mercer says in its report.

They include:

- Reviewing war and terrorism coverage of all existing welfare pro-

grams, such as death, disability, accidental death and dismemberment, and business travel accident.

- Assessing whether the company is adequately prepared for kidnapping risks.

- Reviewing emergency assistance provider coverage for employees in high-risk countries.

- Reviewing tax implications of lump-sum death benefits.

Mr. Blake said employers must examine their insurance coverage closely to determine whether coverage for terrorism is excluded. He warned that companies need to be particularly cautious at the next renewals, as insurers may change the wording of policies.

The "2001 Retirement and Benefits Survey for Third-Country Nationals" is available for \$1,000 from Mercer at www.imercer.com/international or by calling 1-800-333-3070.

Identities: Business faces new liabilities

Continued from page 1

their credit cards above \$50, it can take considerable effort and expense to repair their credit histories. Victims take an average of 175 hours trying to resolve the problems caused by identity theft and spend up to \$2,000, excluding lawyers' fees, according to a study by the Los Angeles-based California Public Interest Research Group and the San Diego-based Privacy Rights Clearinghouse. Identity theft can also cause "potentially severe emotional or other nonmonetary harm," says a report issued last month by the General Accounting Office.

In many cases, consumers have no way of tracking down how their personal data fell into the wrong hands. But when the problem can be traced to individual companies, those businesses will increasingly find themselves named as defendants in lawsuits, say some observers.

One such case involves San Diego-based Ligand Pharmaceuticals Inc. According to the San Diego County district attorney's office and the plaintiffs' attorney in the case, a lab assistant found a box with 38 former employees' personnel records. The assistant used the information to acquire at least 75 credit cards and \$100,000 in merchandise, open 20 cellular telephone accounts and rent three apartments. The assistant was subsequently convicted and imprisoned.

Fourteen of the former employees filed suit, charging Ligand with negligence. A confidential, "significant six-figure" settlement is expected to be approved by the court soon, said Dan Bacalski, an attorney with San Diego-based Bacalski, Byrne & Koska. A Ligand official had no comment.

More litigation can be expected, said Mr. Bacalski. "I see it as a potentially huge issue facing businesses." Furthermore, the damages involved are likely to increase significantly due to the Internet and other technology that "allows an identity to be used in Hong Kong in a matter of seconds...and it's of course impossible for a victim of identity theft to be sure they won't run into a future problem," he said.

Sean B. Hoar, Eugene, Ore.-based assistant U.S. attorney for the District of Oregon, said he has spoken to groups of plaintiffs attorneys on the topic and the reaction has been, "My gosh, this is a huge new area for civil litigation because of the likely liability that will be incurred."

"I think that victims of identity theft are becoming much more cognizant of the fact that they have been hurt more by the negligent or careless acts of the companies than they are by the criminals," said Mari Frank, a Laguna Niguel, Calif.-based attorney who has specialized in the area of identity theft since she became a victim herself in 1996.

"Companies that do go to trial

are likely to find juries unsympathetic, particularly if their co-defendants are credit reporting agencies," said David Szwak, an attorney with Bodenheimer, Jones, Szwak & Winchell in Shreveport, La. "Juries do not like this problem, and they favor the consumer."

Jeffrey Dion, deputy director of the Washington-based National Crime Victims Bar Assn., however, said, "I think a lot of companies are reacting quickly in trying to settle these claims because they don't want these cases to go to court and they don't want to establish case law which is going to hurt them. They are recognizing their liability."

Michael Matossian, senior vp and director of enterprise compliance for Charlotte, N.C.-based Wachovia Corp., said that aside from the liability issue, "Companies need to retain the trust of their customers and maintain their reputation, and that to us is our most important objective for having the controls, the safeguards in place."

Observers say that to minimize their liability, companies can:

- Shred information wherever possible. "Dumpster diving" is a common method for criminals to gain access to personal information.

- Minimize access to personal data. Establish written policy on access to personal information and back it up with employee training. Social Security numbers and other personal data such as mothers' maiden names should be accessible to employees only on a "need to know" basis. Firms should make sure they have the physical, technological and administrative safeguards in place to protect their computerized data and paper files.

- Avoid using Social Security numbers whenever possible. Some companies still put employees' Social Security numbers on their ID badges or use them as passwords. Retailers should also refrain from asking customers for unnecessary personal information on their personal checks, such as Social Security, driver's license and major credit card numbers.

- Conduct careful background checks of employees.

- Act promptly if identity theft does happen, despite a company's best efforts, advises Glenn Trest, Plano, Texas-based North American security manager for Ericsson, a telecommunications company. Several Ericsson employees became victims of identity theft when a trusted employee gave personal information to an ally, who then used it to steal money from their online stock trading accounts. The thieves were caught and imprisoned.

Once Ericsson recognized the problem, it identified potential victims and taught them how to handle identification theft, he said. It also worked very closely with the law enforcement agencies, credit bureaus and financial institutions involved "to assure that these employees' credit was not affected in any way," said Mr. Trest, noting that the company was not sued.

Chevron: ADA case in high court

Continued from page 3

vention. This approach is also the one we believe is recognized by the language of the ADA," he said.

Backers of Mr. Echazabal's position claim that denying a job applicant employment simply because he could cause harm to himself—but not others—reeks of paternalism. "The real issue is whether the employer or the employee gets to make the decision," said Samuel Bagenstos, a Harvard University law professor who presented Mr. Echazabal's case to the high court.

The case began when Mr. Echazabal, who had worked for several outside contractors at Chevron's El Segundo, Calif., refinery for about 20 years, applied for a job at Chevron in 1995. Chevron made him a job offer contingent on his passing a physical.

But both a Chevron physician and his personal physician said that Mr. Echazabal's chronic liver condition would be aggravated by exposure to certain chemicals with which he'd have to work. Chevron declined Mr. Echazabal's applica-

tion. In fact, Chevron asked the contractor for whom Mr. Echazabal was working to move him to a job where he wouldn't be exposed to the potentially lethal chemicals.

Mr. Echazabal sued both his employer and Chevron, claiming employment discrimination under a variety of statutes, including the ADA. Although a district court granted summary judgment in favor of Chevron, a three-judge panel of the 9th U.S. Circuit Court of Appeals ruled 2-1 in 2000 that Chevron couldn't refuse Mr. Echazabal employment simply because it would kill him. Chevron appealed to the Supreme Court.

Much of last week's oral arguments revolved around Mr. Echazabal's contention that self-endangerment—unlike endangering others—does not constitute a defense under the ADA. Chevron's attorney—Stephen M. Shapiro of Mayer, Brown & Platt in Chicago—held that the 9th Circuit had gone too far in holding that "injury to self is beyond the employer's concern," and that it is indeed a business ne-

cessity that workers not be placed in jobs that present dangers to their well-being.

'It is hoped that the Court will recognize that the ADA was not intended to displace common sense.'

Brian Ashe
Seyfarth Shaw

Mr. Bagenstos said later that the case involved a disagreement over the amount of risk, and that Mr. Echazabal should be the judge of whether he would accept the risk.

At one point, Associate Justice Anthony Kennedy told Mr. Bagenstos that his argument could allow an employer to take positions that were "completely barbarous" in regard to a worker's safety.

"I think generally the court understood the business problem here. What do you do with people who are intent on either injuring them-

selves or potentially injuring themselves and does an employer have to abide by their wishes to do so?" said Stephen Bokart, executive vp of the National Chamber Litigation Center Inc. in Washington.

Employment law experts agreed that the court's action could have a significant impact on worker safety.

"The case will decide how to resolve...a dilemma in which employers often find themselves. Can a worker with an ADA-protected impairment be denied an employment opportunity due to the potential threat the job's performance would have for harming himself or herself, or must an employer's management discretion yield to the employee's judgment as to whether or not the job is worth the potential risk to their well-being?" asked Gerald L. Maatman Jr., chair of the global employment law practice at Chicago law firm Baker & McKenzie.

"Any and all risk professionals, human resource managers and business executives making hiring and firing decisions will be impacted significantly by the Supreme Court's ultimate ruling. It will be especially significant for employment decision relative to safety sensitive positions, and employees with AIDS/

HIV infection and with substance abuse problems," said Mr. Maatman.

"The ADA was never intended to allow employees to harm themselves in the course of work. What the statute intended was to stop employers from discriminating against qualified individuals due to the person's disability. The 9th Circuit stretched this law beyond its original meaning by forcing employers to disregard an individual's disability even if doing so posed a risk to that person," said Brian Ashe, a partner in the San Francisco office of Chicago-based Seyfarth Shaw.

"Now, the United States Supreme Court has heard oral argument on whether this interpretation was correct. It is hoped that the Court will recognize that the ADA was not intended to displace common sense. Many laws and public policies in America require employers to provide safe working environments for their workforces. Those laws apply to all people, regardless of whether they are disabled. It should not matter that a person has a disability—employers should not be forced to put any employee into a situation that may be perilous to his or her health," he said.

PBGC: Surpluses taking large hit

Continued from page 3

which will be the largest claim in its history, exceeding \$1 billion, Mr. Kandarian said (*BI*, Feb. 25). In addition, the PBGC continues to face exposure to potentially large losses from troubled companies in the steel, airline and retail sectors.

The PBGC also could be hit with a big loss if the bankrupt Enron Corp. terminates its defined benefit plan. The Enron plan, which has a cash balance type design, is underfunded by at least \$125 million, according to PBGC estimates.

While the PBGC is closing monitoring the Enron situation, there are no plans yet for the agency to take over the Enron pension plan. The

PBGC is not liable for the more than \$1 billion in losses suffered by Enron's 401(k) plan participants. The PBGC does not insure defined contribution plans, such as 401(k) plans.

The decline in the PBGC's surplus reverses a multiyear trend of mounting surpluses. Since 1996, the surplus has increased each year amid a strong economy that kept down pension failures and aided the PBGC's own investment performance. In 1997, the PBGC's surplus jumped to about \$3.5 billion from \$869 million in 1996. In 1998, the surplus leaped to more than \$5.0 billion and increased again in 1999 to about \$7.0 billion and \$9.7 billion in 2000.

With the fall in the PBGC's surplus and the likelihood of a further decline this year, just about rule out the possibility of a reduction in the premiums employers with defined benefit plans pay the PBGC. Earlier, business groups such as the ERISA Industry Committee said the agency's surplus had grown so large that it was time to cut premiums.

The PBGC uses those premiums to guarantee the benefits of participants in plans it takes over. Employers with fully funded plans pay an annual premium of \$19 per plan participant, while the premium for underfunded plans is \$9 per \$1,000 of plan underfunding.

Still, while its surplus is shrinking, the PBGC's financial condition by no means resembles the dire straits it was in the early 1990s, when the agency's deficit was nearly \$3 billion and some members of Congress worried that a federal bailout of the agency might be necessary if its financial woes worsened.

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Selective Insurance upgrades Web site

BRANCHVILLE, N.J.—Selective Insurance Group Inc. has revamped its Web site in an effort to make it more user-friendly.

The site, www.selective.com, offers insurance buyers an agent locator that lists intermediaries in their area. There also is an online claim-filing and bill-paying capability, as well as information on ratings, financial results and other performance measures for Selective's units. The site also features links to Branchville, N.J.-based Selective's subsidiaries.

Agents have access to features at the redesigned site that include software and product updates.

"Selective's redesigned Web site makes it easier to do business with us," Jim Ochiltree, executive vp for insurance operations, said in a statement. "Whether it's paying a bill, filing a claim or getting updates to the latest software, we want to make these services easy

and accessible online for agents and their customers who choose to do business this way."

Chubb offers coverage for credit unions

WARREN, N.J.—Credit unions can purchase a new insurance bond product from Chubb Corp.

ForeFront Security by Chubb-Credit Union Bond covers employee dishonesty, premises and transit risks at limits of up to \$25 million. Also available under the program are coverages for losses related to check kiting and forgery, noncompliance with federal consumer protection laws and expenses resulting from workplace violence.

"Over the past decade, credit unions rapidly expanded their services in response to demands from their members," Jeff Brown, credit union product manager in Chubb's Department of Financial Institutions, said in a statement. "The broadening of financial services makes them very competitive, but it also widens their exposure to fraud, cybercrime, employee dishonesty, forgery and other risks—any of which can place a credit union in financial jeopardy."

More information on the new

credit union product is available at www.chubb.com.

Delta Dental of N.J. enhances site

PARSIPPANY, N.J.—Delta Dental Plan of New Jersey has launched a redesigned Web site that includes new features for employees, customers and providers.

At www.deltadentalnj.com, users can access benefit and eligibility information under the "benefits connection" area of the site.

Subscribers and their dentists can obtain detailed information about benefits, including lists of covered services, percentages of service covered and deductibles.

Benefit managers can also make all eligibility changes online. They can enroll and terminate subscribers, view subscriber profiles, print and save submission logs and perform other transactions. Eligibility changes made from the desktop usually go into effect within 24 hours, and the site eliminates using faxes, phone calls and letters to make the changes.

"User feedback was critical in the development of Delta Dental's Web enhancements," Walter Van Brunt, president and chief executive officer of the Parsippany, N.J.-based plan, said in a statement. "We consulted with benefits administrators and others who regularly do business with us to learn which features they would most like to see incorporated on our Web site."

Medicare: Agency seeks comp review

Continued from page 3

by extending the duration of wage-loss benefits paid to workers, as well as reducing incentives for workers to return to the job. That can raise a company's loss costs and ultimately its cost of experience-rated workers comp coverage in the future.

Adding to the delays is the fact that Medicare's guidelines for reviewing proposed settlements—while improving—are sometimes vague and not uniformly applied.

For example, Pennsylvania saw a big drop in workers comp settlements in the first half of last year because the regional Medicare agency wanted to review nearly every potential settlement to which it might be exposed, said James Pocius, an attorney in the Scranton, Pa., office of Marshall, Dennehey, Warner, Coleman & Goggin P.C. The situation improved after Medicare issued the new guidelines last July, said Mr. Pocius.

Also, regional Medicare officials interpret the guidelines differently. For example, several payers reported that officials in the agency's Atlanta office are slower than other offices in approving settlements. That office oversees policy determinations for eight states—Alabama, Florida, Georgia, Kentucky, Missis-

sippi, North Carolina, South Carolina and Tennessee.

Meanwhile, business and insurer representatives met with Medicare administrative officials last week asking them to reconsider some guidelines, including the need to review settlements of small-dollar amount claims. Though unsuccessful at persuading Medicare officials to establish a formal advisory group, they hope to have input into a proposed series of "frequently asked questions" on the topic.

In addition to Medicare penalties, workers comp payers also could face new liabilities for underfunded settlements depending on the outcome of a pending lawsuit.

The suit was filed in Alabama in September 2001 against St. Paul Fire & Marine Insurance Co. The insurer was named representing a class of all payers—including self-insurers—that have settled workers comp medical claims without providing adequate funds for claimants' future medical expenses, said Garve W. Ivey Jr. of Ivey & Ragsdale in Jasper, Ala., the plaintiffs' attorney.

Next week: A look at federal proposals to address Medicare's concerns about workers comp liabilities.

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Aviation: Airlines deem market coverage inadequate

Continued from page 1

line for deciding whether to continue its war risk program, which insures U.S. airlines excess of the \$50 million in third-party limits available from private insurers.

Before Sept. 11, airlines typically had \$1.5 billion in war risk limits for both passenger liability and third-party risks of injury and property damage on the ground. After the terrorist attacks, aviation insurers canceled and rewrote the coverage, cutting the third-party limit to \$50 million.

The Department of Transportation has reviewed and extended the program twice since its creation last September, finding that the airlines had no reasonable commercial alternative.

Shortly after Sept. 11, AIG helped form the consortium of about two dozen insurers that now offers third-party war risk limits of \$950 million excess of \$50 million. Roughly 200 non-U.S. airlines have bought the coverage, but no U.S. airlines have followed suit.

In its memo, AIG maintains that its insurance program makes the government's unnecessary and urges the Federal Aviation Administration as of March 20 to begin offering its coverage only as excess insurance over the AIG or other commercial programs for a 60-day period.

Predicting that more insurers will return to the market to boost available limits to \$1.5 billion to \$2 billion, AIG proposes that the govern-

ment terminate its program at the end of the 60 days.

The memo also attacks Equitime because the proposed RRG would retain only \$300 million of its \$1.5 billion war risk limit, reinsuring the balance with the government until commercial reinsurance could replace it (BI, Feb. 11).

Delta's Mr. Duncan said the AIG memo is at least partly an effort to scuttle Equitime. The RRG will not be capitalized and running before the March 20 deadline for extending the FAA program.

While Berkshire Hathaway Inc. has written some aviation war risk business since Sept. 11, the AIG-led consortium would be nearly the only choice for airlines absent the FAA program, Mr. Duncan and others say.

AIG "talks about a free market," but "what Equitime is doing is reinjecting competition into a monopolistic marketplace," Mr. Duncan said.

Airline representatives cite a host of other problems in terminating the government program.

One is cost. While the FAA charges \$7.50 per airplane takeoff, AIG suggests in its memo that it might charge \$1 to \$1.50 per pas-

senger. Delta carries about 700 million passengers a year, meaning that its premium for the AIG consortium's \$950 million in coverage



'The FAA is playing an essential role in providing the excess insurance capacity that the insurance industry has abandoned.'

*Chris Duncan
Delta Air Lines Inc.*

would be \$1.05 billion at \$1.50 per passenger, Mr. Duncan noted.

"That's not insurance. That's merely funding a limit," he said.

The extent of the actual third-party exposure is also unknown. While Sept. 11 showed how horrendous that exposure can be, virtually none of the aviation market's war risk losses before Sept. 11 was third-party, noted Jerry Frick, head of the global aviation practice for Marsh Inc., which is consulting in Equitime's formation.

Experts hired by AIG to assess the risk predicted three terrorist attacks on airlines worldwide over the next two years, but they also said they could make no assumptions about "the severity of ground damage that might result from such attacks."

Still, John A. Myers, president and chief executive officer of AIG Aviation Inc. in Atlanta, said the

commercial market's pricing is reasonable and that "the FAA price is unreasonably low."

Coverage terms are also a problem for airlines: "The \$1 billion in coverage that AIG is proposing is insufficient to our shareholders and our passengers," Mr. Duncan said.

Like the aviation market, the AIG consortium also features a seven-day cancellation provision in its policy, a provision that U.S. airlines see as a threat to their stability and that spurred them to begin forming Equitime.

The AIG program also includes an "interlocking clause" that effectively combines the AIG limit with the aviation war risk market's passenger and \$50 million third-party liability limits, creating a single combined limit even though airlines are paying for two separate programs.

Mr. Myers said AIG is seeking the

agreement of its consortium partners to extend the cancellation provision to 30 days and to eliminate the interlocking clause, making the AIG limit a separate cover.

Another issue, Mr. Duncan noted, is that airlines are now able to indemnify "essential contractors," such as baggage handlers, security firms and refuelers, for war risk liabilities with the backing of the FAA program. It is unclear whether commercial insurers would allow this indemnification or would otherwise insure these contractors, he said. "That's a pretty big hole," he said.

"The FAA is playing an essential role in providing the excess insurance capacity that the insurance industry has abandoned," Mr. Duncan said. Last week's memo "is a great entrepreneurial initiative on AIG's part, but it's just not a viable alternative for the airline industry."

EPL: Employers seek coverage of claims

Continued from page 2

and the federal law understands that," said Mr. Sunkin, who oversees risk management for Scheib.

California law, though, does not allow that same exemption from overtime pay for employees not classified as managers, he said.

As a result, the suit alleging that Scheib violated California's employment law should be covered, he argued, because the state law is not similar to the FLSA law, as required in his EPL policy's exclusion.

Mr. Sunkin presented that argument when seeking coverage of Scheib's defense costs to National Union, which eventually offered to settle the claim for \$150,000. But he believed it would cost Scheib more than \$150,000 to defend itself, and the company has \$3 million in coverage limits.

He sought arbitration, as the policy required, and the arbitrator last month ruled for Scheib. Mr. Sunkin sought only defense costs, not indemnification, because he believes Scheib can win the ongoing case.

National Union declined to comment.

Although most EPL policies require arbitration of coverage disputes, Mr. Pasich, Scheib's attorney, said several Fortune 500 companies are seeking coverage, and one currently is in court because its policy does not have an arbitration clause.

The dissimilarity between provisions in the FLSA and provisions in state law is just one potential argument for obtaining EPL coverage for these claims, Mr. Pasich said.

Many EPL policies, for example, cover "misrepresentations" made by employers. If employees are told they are exempt and they are not, that is a misrepresentation, he said.

Many policies also cover issues such as "deprivation of career opportunities," which Mr. Pasich interprets in part to mean the oppor-

tunity to receive overtime pay.

But other factors besides the FLSA exclusion demonstrate that insurers did not intend to cover these claims, another attorney says.

Another reason that employee misclassification claims are not covered is that they are not listed among the named perils found in EPL policies, said Julianna Ryan, a partner at Kaufman Borgeest & Ryan in New York.

To underwrite this risk, insurers would have to examine employer payroll records, but they do not, said Ms. Ryan, who represents insurers and defends employers in discrimination cases.

"That is one issue we point to in demonstrating it wasn't an intended coverage," Ms. Ryan said. "Underwriters do not look for that."

Contract language and discussions with policyholders make clear that insurers do not intend to cover wage-and-hour claims, said Michael J. Maloney, vp-employment practices liability product manager for Chubb Specialty Insurance in Simsbury, Conn. It is disappointing, he said, when policyholders try to find coverage on technicalities.

Employers face a growing number of wage-and-hour claims.

Tim Bartl, assistant general counsel for the Labor Policy Assn. in Washington, said an increasing number of employers are facing employee misclassification lawsuits, though the association does not track the specific number of cases. The association represents human resource professionals.

The majority of lawsuits are filed in California because of the differences between the FLSA and California's wage-hour laws, Mr. Bartl said. But because the lawsuits target national companies, a growing number of LPA members nationwide are asking for training on how to prevent the lawsuits, he said.

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FTR

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

Minnesota to tap workers comp funds

The Minnesota Legislature acted quickly to override Gov. Jesse Ventura's veto last week of the state's budget bill, H.B. 351. The state may now tap into monies from two special workers



Gov. Ventura

compensation funds, including \$282 million from its second-injury fund. Gov. Ventura had vetoed the bill saying it "comes up short on balance, its cuts are haphazard and it has consequences that even legislative leaders are not aware of." The Alliance of American Insurers

had lobbied against the measure, arguing that tapping the reserves of Minnesota's Special Compensation Fund to balance the state's budget would lead to higher assessments against self-insured employers and workers comp insurers. Insurers, in turn, would pass the costs on to employers in the state, the Alliance said.

Swiss Re, XL resolve dispute over credit swap

Swiss Re Financial Products Corp. and XL Insurance (Bermuda) Ltd. have withdrawn claims against one another in a lawsuit filed last year in connection with a credit default swap between the two companies. At issue was the validity of a reference entity—a company whose bankruptcy or credit deterioration can trigger payments by the seller of protection in a credit default swap—and other terms and conditions in a swap SRFP

purchased from XL in June 2000. In statements announcing the settlement, both companies said "such a contractual dispute may occasionally arise as the industry fine-tunes processes and definitions associated with credit derivative contracts." As part of the settlement, SRFP and XL will keep the swap in place while amending and restating the written confirmation the two companies originally executed. Other details of the settlement were kept confidential.

Verizon settles EEOC discrimination suits

Verizon Communications Inc. has reached a settlement with the Equal Employment Opportunity Commission resolving two class-action lawsuits that allege the company and its



predecessors discriminated against pregnant women. The settlement involves thousands of women who claimed that they did not receive service credit toward their retirement benefits when they were out on pregnancy or maternity leave. The claims against the New York-based company extend back to absences taken as early as 1965. Under terms of the settlement, women who took maternity or pregnancy leave from 1965 to 1977 will receive seven additional weeks of service credit for every leave taken. Women taking leaves after 1977 will receive two weeks' credit per leave.

Oregon seeks to block Enron D&O advance

Oregon Attorney General Hardy Myers last month asked a bankruptcy court to block an Enron Corp. request for an advance of \$30 million from the company's directors

and officers liability insurers. Allowing the Houston-based company to tap its \$350 million in existing D&O coverage could diminish funds available to pay shareholders that have lost money invested in Enron stock, according to Oregon's attorney general. The Oregon State Public Employee Retirement Fund, like other pension funds, has lost millions of dollars, according to the Oregon motion filed in U.S. Bankruptcy Court for the Southern District of New York. Many other states support Oregon's motion, the attorney general said. But Oregon has a special interest in the case because Enron is incorporated in the state.

Most employers adding 401(k) catch-up: Survey

Most employers are amending their 401(k) plans to add a catch-up provision allowed under a 2001 federal law, but some are waiting until the second half of this year to make the change, according to a new survey. The survey of 163 large employers by benefit consultant Hewitt Associates L.L.C. of Lincolnshire, Ill., found that 80% of respondents are changing their plans to allow catch-up contributions, while 16% are considering adding the feature. Among those modifying their plans, 63% will do so during the first half of 2002, and 31% will wait until the second half of this year. Some employers are delaying the change because their recordkeepers need time to modify their systems to handle the contributions, said Rob Reiskytl, a consultant in Hewitt's Minneapolis office.

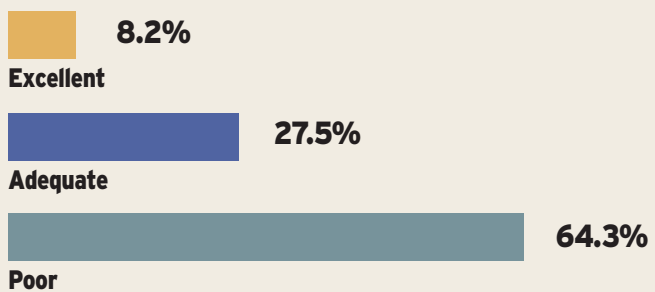
Briefly noted

An employment discrimination complaint does not have to contain

specific facts establishing a case to proceed, the U.S. Supreme Court ruled last week. Such a complaint needs only a short statement showing that the plaintiff is entitled to relief, the high court ruled. The case in question was brought by Akos Swierkiewicz, a former senior vp at the U.S. unit of Paris-based reinsurer Sorema S.A., who charges that he suffered job discrimination because of his age and national origin. The justices remanded the case to U.S. District Court for the Southern District of New York....**Leslie Kramerich**, the acting assistant secretary of the Labor Department's Pension and Welfare Benefits Administration during the Clinton administration, has joined the Washington office of benefit consultant William M. Mercer Inc. as an attorney....Idaho Gov. Dirk Kempthorne is expected to sign legislation that would bring state tax law in line with a 2001 federal law that permits employees 50 and older to **make catch-up contributions to their 401(k) plans**. The Legislature passed the measure, H.B. 492, last week. Meanwhile, the West Virginia Legislature has passed a measure, S. 140, that would bring its state law in line with the federal catch-up provisions....Susan Meisinger has been named president and chief executive officer of the **Society for Human Resource Management**. Ms. Meisinger has been executive vp and chief operating officer of the Alexandria, Va.-based organization since 1999. She replaces Helen Drinan, who will leave SHRM at the end of this month....President Bush called for **Superfund reform** when asked about his commitment to funding the environmental cleanup program during a White House press conference on Monday. "I'm committed to cleaning up the environment without enriching lawyers," the president said. "I think there's too much litigation when it comes to environmental cleanup."

Online Poll [2/25 - 3/1]

How would you rate state regulation of the insurance industry:



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

GAO: Need for terror insurance

Continued from page 1

Exposures to Attacks Heightens Potential Economic Vulnerabilities" to the committee's Oversight and Investigations Subcommittee.

"Many of the most severe potential negative consequences resulting from the lack of terrorism coverage will only become evident if another terrorist attack occurs," he read from the report. "The shifting of risk from reinsurers to primary insurers to commercial policyholders and other affected parties could place more risk and economic burden on businesses and the public at large should another terrorist attack similar to Sept. 11 occur. Consequently, a lack of such coverage in the event of another attack could have much broader effects on the economy."

The report, which was prepared at the request of the subcommittee's chairwoman, Rep. Sue Kelly, R-N.Y., notes that "deciding whether Congress should act to help business is properly a matter of public policy." But it adds that "the consequences of continued inaction,

however, may be real and are potentially large."

Another witness, Deputy Assistant Treasury Secretary Mark Warshawsky, said that he understood the Securities and Exchange Commission "is considering whether to require businesses left without commercial terrorism risk insurance after the Sept. 11 attacks to disclose the loss to investors as a material risk factor." The SEC declined to comment.

Mr. Mair said in an interview before his appearance that the challenge facing advocates of a federal backstop is that there hasn't been a "hue and cry" for such action. He said this stemmed from the fact that not everyone affected has gone through a renewal since the attacks, that terrorism insurance is "a really, really boring conversation at the coffee shop" and that the degree of the issue's importance to the U.S. economy isn't "effectively understood."

"This kind of puts RIMS back in the center of the radar screen with Congress. This is an exciting oppor-

tunity to represent the consumers of insurance on what is a really critical issue for America," said Mr. Mair, who is director of risk management for the U.S. Olympic Committee in Colorado Springs, Colo.

The House passed a terrorism insurance bill drafted by Financial Services Committee Chairman Mike Oxley, R-Ohio, in late November (*BI*, Dec. 3, 2001). The Senate, however, has yet to act on any of several such bills introduced last year.

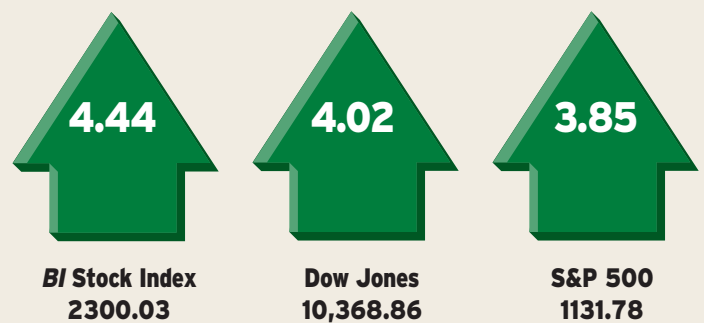
In her opening statement last week, Rep. Kelly slammed the Senate by saying the "leadership's failure to act on terrorism insurance legislation is imposing a fear tax on America, costing real jobs when the country is trying to pull out of a recession."

"Terrorism Insurance: Rising Uninsured Exposure to Attacks Heightens Potential Economic Vulnerabilities" can be accessed at the General Accounting Office Web site at www.gao.gov.

BI Stock Index [2/25- 3/1]

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



Largest gains

Mutual Risk Mgmt. Ltd.	30.95%
Trenwick Group Ltd.	16.62%
ESG Re Ltd.	12.07%
Clark Bards Holdings	10.39%
Tokio Marine & Fire	8.96%

Largest losses

Gainsco Inc.	-14.29%
SCPIE Holdings Inc.	-14.27%
Vesta Insurance Co.	-8.42%
PacificCare Health Systems	-5.95%
United HealthGroup	-4.66%

Weekly change by market segment

Brokers	2.90%
Insurers/Reinsurers	2.48%
Managed Care Organizations	0.06%

Source: CNET Investor (investor.cnet.com)