

**Top brokers' revenue gains
to moderate in 2004/ 3**

**Hospital consolidation
limits employer choice/ 4**

Business Insurance

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\$5

Plan to switch form revealed after WTC loss: Swiss Re exec

By DOUGLAS McLEOD

NEW YORK—Swiss Reinsurance Co. didn't find out until after the World Trade Center's destruction that leaseholder Silverstein Properties Inc. planned to switch the WTC program to a policy form that Silverstein claims would treat the loss as two occurrences, a Swiss Re underwriter testified last week.

Daniel Bollier, a managing director of Swiss Re in Zurich, told the jury in the ongoing coverage trial that he learned of Silverstein's plan to use a Travelers Property Casualty Corp. form when broker Willis Group Holdings Ltd. filed a revised

notice of loss in late September 2001 and attached the form.

"In order to switch a form, I would have expected a formal request," Mr. Bollier said after



testifying that he had agreed only to a Willis form, known as Wilprop, that treats the loss as one occurrence. "And you know, now, suddenly...we receive a form which I never talked about...To me, it was strange, it was really strange."

Mr. Bollier said he raised the issue in two early-October conversations with Willis officials, one of which took place when he ran into Willis broker Paul Blackmore by chance in a Zurich hotel bar.

"I said, you know, that I find it awkward that policies are now being switched after the event,"

See TRIAL/page 26

IRS tax proposal would be costly for universities Expands 403(b) plans

By JERRY GEISEL

WASHINGTON—Colleges and universities would be hit with bigger payroll taxes and would have to extend their 403(b) retirement savings plans to more individuals who work at the schools under newly proposed Internal Revenue Service regulations.

The regulations would narrow the definition of who is considered a student, which would have huge Social Security tax and savings plan ramifications for colleges and universities.

Under law, compensation earned by students working for educational institutions is exempt from the 7.65% Federal Insurance Contributions Act tax that is imposed on the first \$87,900 of an employee's wages.

But by classifying more individuals—such as teaching assistants, who both work and study at schools—as employees and not students, colleges and universities would have to pay FICA taxes on individuals they never considered to be employees.

"They have narrowed the definition of who

See 403(B)/page 27

Insurer financial security is troubling risk managers Reserve inadequacy of concern: RIMS survey

By MICHAEL BRADFORD

Risk managers are seeing insurance prices fall or stabilize for many lines of coverage, but they worry that their markets are not as strong as they used to be, a recent survey reveals.

Concerns over market security have eclipsed all others, even terrorism, in risk managers' minds, according to the 2003 RIMS Benchmark survey, which is available this week. Deficiencies in loss reserves are at the heart of those security concerns, the survey revealed, and respondents are worried that the situation could be severe enough that efforts to address it might cut short the market's softening.

New York-based Advisen Ltd. gathered the information for the annual survey conducted by the Risk & Insurance Management Society Inc. The survey is released in printed form, and the information also is part of a real-time online benchmarking tool that risk managers can use to track such information as changes in premiums, limits and retentions by industry and type of coverage.

An overview of the survey, which was conducted through the third quarter of 2003 and polled around 1,000 risk managers, said that respondents' concerns over market security are fueled by rating agencies' moves to issue "a seemingly endless barrage of downgrades on insurers."



"The overarching concern of the analysts is an apparent deficiency in the loss reserves reported on insurers' financial statements," the overview notes.

And the downgrades and reserve deficiencies have left risk managers wary.

See BENCHMARK/page 26

Late News



PHOTO: GETTY IMAGES

General Electric is challenging an EPA-ordered cleanup of the Hudson River.

GE can challenge Superfund law: Court

General Electric Co. can proceed with a constitutional challenge to the law that created Superfund, according to a federal appeals court. The ruling arises from the company's legal challenge to an Environmental Protection Agency order that GE dredge a stretch of the Hudson River to remove polychlorinated biphenyls. GE holds that the federal law—which authorizes the EPA to order potentially responsible parties to begin cleaning up Superfund sites without outside review—violated its due process rights.

Willis board adds independent directors

Willis Group Holdings Ltd. announced that three directors associated with Kohlberg, Kravis, Roberts & Co. L.P. are resigning from Willis' 10-member board. That move follows KKR's recent sale of 24 million shares of Willis' stock, reducing its ownership of the broker to approximately 7.5%. Three new independent directors will join the Willis board. The move meets corporate governance requirements set forth by the Sarbanes-Oxley Act and the New York Stock Exchange.

IBM settles birth-defect suit

IBM Corp. has reached a settlement with a woman who claimed her severe birth defects were the result of her mother's exposure to chemicals at an IBM plant. Terms of the settlement, reached just as a trial was about to begin, were not disclosed. Candace Curtis, 22, had sued IBM for \$100 million, claiming she was mentally handicapped because her mother inhaled noxious fumes while working at an IBM plant. Last month, a California jury cleared IBM of liability in a case brought by

See LATE NEWS/page 27

International SINGAPORE REVAMPS REGULATIONS

Page 24



Tanker's hull insured in Norway

PHOTO: AP WIDE WORLD



The charred remains of a life boat from the sunken tanker Bow Mariner float off the coast of Virginia.

By PETA MILLER

NORFOLK, Va.—The Bow Mariner tanker, which sank off the coast of Virginia last week, was insured for \$11 million by the Norwegian Hull Club, according to the insurer's claims manager.

The vessel exploded and sank near Norfolk, Va., on the morning of Feb. 28. Of 27 crew members, three were killed and 18 were missing as of last Friday.

Olav Tufta, a claims manager for Bergen-based NHC, declined to comment further on the coverage.

The tanker, which reportedly was carrying 3.2 million gallons of industrial ethanol, also had liability coverage with London-based protection and indemnity club the Britannia Steamship Insurance Assn. Ltd.

The extent of potential pollution liabilities is unknown because the vessel's condition and whereabouts remain under investigation, said Robert Seward, deputy chairman at Britannia. He noted that the main pollution concern is the fuel oil on board because the ethanol likely burned off during the explosion.

The Bow Mariner, owned by Singapore-based Odfjell Asia II Pte. Ltd., was en route to Boston from New York at the time of the explosion, the cause of which is not yet known.

But rate stabilizing will make numbers hard to sustain in 2004 Double-digit revenue and profit growth reported

By SALLY ROBERTS

Acquisitions, recruitment, new business and rate increases were key plays among the world's largest publicly held insurance brokers in 2003.

All of the public brokers surveyed by *Business Insurance* reported double-digit revenue growth for the year, and all but one reported double-digit gains in profits.

But as pricing in the property/casualty insurance market continues to stabilize, curbing rate increases, brokers' revenue growth is expected to slow in 2004 and the double-digit increases of the past few years are unlikely to continue.

"The midteens earnings and revenue growth we saw in '03 is going to be a challenge to sustain in '04," said Adam Klauber, managing di-

rector of Cochran, Caronia Securities L.L.C. in Chicago.

"It's a different environment today," Mr. Klauber said. "At the production level, six to 12 months ago, brokers were more worried about placing business and making sure customers were happy. Now, most brokers are turning to production mode where they are forced to go bring in new business."

Many of the largest brokers have grown in recent years due to acqui-

sitions, and that might cause challenges as the market softens, Mr. Klauber said. "It's tough to manage a larger organization built on acquisitions in a tough market," he said.

"Clearly, a lot of what we're seeing in the year-end numbers was the last of the wave of the market," said Timothy J. Cunningham, a principal with OPTIS Partners L.L.C. in Chicago who provides consulting services to agents and brokers. "So you had increased revenues, a lot of which was market-driven, you had a historical focus on cost control and you saw great numbers as a result of that."

"But, I think, for some of the brokers, if you peel away and look at their organic growth...it's kind of a yawn," Mr. Cunningham said. "So that, combined with the modera-

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2003 BROKER RESULTS

Inside Business Insurance

Worker support sought for tort reform success

Rep. James Sensenbrenner, D-Wis., says that tort system reform is in employees' best interests. **Page 4**

Safe harbor set forth for transferring funds

The Labor Department offers guidance on closing small pension accounts and transferring funds to IRAs. **Page 4**

Damned if you do, damned if you opt out

Paul Winston looks at the plight of physicians who can neither afford to pay their medical malpractice premiums nor leave their practices. **Page 6**

Buyer beware on insurer security

Risk managers must track the financial well-being of insurers, one of this week's editorials says. **Page 8**



Dozens still missing in ferry disaster

A terrorist group claimed responsibility for the crippling of a ferry in the Philippines late last month, trapping dozens. **Page 24**

Online

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

• **Searchable directories** of risk management consultants and all other industry vendors found in *BI's* Market Sourcebook.

• New **Opinion Poll**: Do you think the Senate's failure to move on medical malpractice liability reform legislation for the second time in a year will hurt the chances of other tort reforms being enacted?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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PHOTO: AFP

Riots and looting prompted patrols by U.S. Marines and French soldiers in the capital city of Port-au-Prince, but foreign companies with operations in Haiti sustained little damage.

Business losses from Haiti upheaval likely to be minimal

By GLORIA GONZALEZ

PORT-AU-PRINCE, Haiti—Despite widespread political violence in Haiti, political risk insurers expect only minimal insured losses in the country because of limited foreign investment there.

Violent opposition to former Haitian President Jean-Bertrand Aristide has prompted riots and looting and the deaths of more than 100 people. Mr. Aristide resigned under pressure from France and the United States, and an interim president was put in office last week.

The violence, although intense, has caused only minimal damage to foreign-owned property because it has not been targeted at the assets of the few foreign companies that have operations in the troubled country, said Michel Leonard, chief economist for Chicago-based Aon Trade Credit. "The violence is not targeting corporate investment," Mr. Leonard

said. "We haven't seen major disruptions or threats to foreign assets."

Still, the unrest has caused some problems for the foreign companies that have operations in Haiti.

Fort Worth, Texas-based American Airlines Inc. and Montreal-based Air Canada were both forced to cancel flights to the country.

"Our operational risks are covered by the aviation insurance policy, and investment on local property and equipment is minimal and self-insured," said an Air Canada spokeswoman.

Five service stations owned by San Ramon, Calif.-based ChevronTexaco Corp. in Haiti were partially burned, while others were robbed and damaged, a company spokeswoman said. ChevronTexaco closed all of its operations in Haiti two weeks ago and cannot say when they will be reopened, she said.

See **HAITI**/page 6

Most losses from bird flu outbreak unlikely to trigger insurance cover

By MEG FLETCHER

Poultry producers' mounting losses from bird flu—for which insurance sources say coverage is doubtful—are prompting extensive risk control efforts both in the United States and in harder-hit Asian countries.

More than 100 million birds are estimated to have died or been culled worldwide over the past two months due to the outbreak of avian influenza. In addition, reduced demand for poultry, coupled with import bans, are costing producers millions of dollars daily, according to a report published last week by the United Nations Food and Agriculture Organization.

The only U.S. poultry infected thus far are broiler chickens, or those cultivated for meat; those used to lay eggs have not been affected, according to a spokesman for the Washington-based National Chicken Council.

Efforts to quarantine and cull birds and to disinfect processing facilities have been particularly successful in Delaware and a few other U.S. states that are dealing with less-virulent forms of the bird flu virus than those found in Asia, according to health and poultry association representatives.

In East and Southeast Asia, World Health Organization officials described the outbreak of the most severe form of the virus as

a "poultry epidemic" that especially affects small growers. WHO officials report the deaths of 22 people in Thailand and Vietnam through bird-to-human transmission, such as through contact with infected poultry or feces. Thus far, there has been no known human-to-human transmission of the virus, and thoroughly cooked chicken is considered safe, according to the Atlanta-based Centers for Disease Control and Prevention.

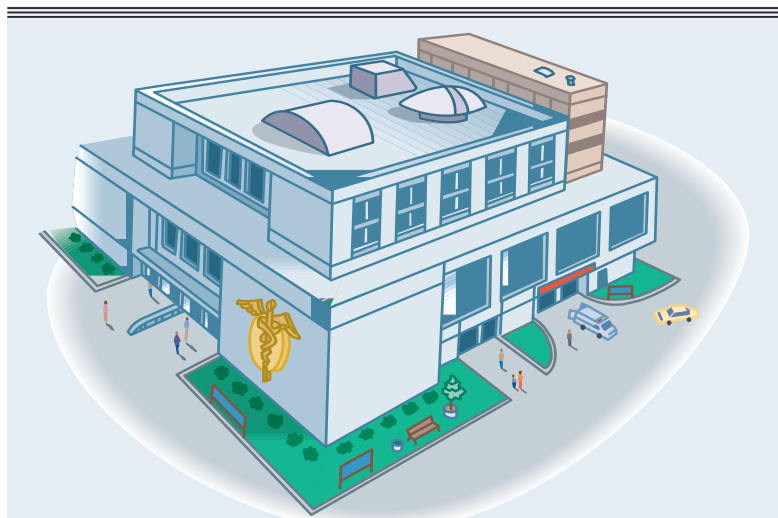
Since the outbreak began earlier this year, dozens of countries have imposed bans on U.S. poultry, which is a \$28 billion wholesale market, according to a spokesman for

See BIRD FLU/page 26



PHOTO: REUTERS/RICHARD CARSON

The outbreak of avian flu has resulted in the culling of millions of birds and prompted poultry producers to try to control their risks.



Hospital mergers limit payer options and boost costs

By ROBERTO CENICEROS

The consolidation of hospitals into large systems is hampering employers' ability to shape their provider networks and negotiate for the quality and cost of health care, some purchasing groups say.

Hospital consolidation also is at odds with employers' growing efforts to help employees select providers based on the quality and cost of care they deliver, said Peter V. Lee, president and chief executive officer of the San Francisco-based Pacific Business Group on Health.

The problem stems from the growing clout of hospital companies and their insistence that health plans contract with all, or none, of their facilities, the purchasing groups say. Consequently, an employer, through its health plans, can't contract with just a select few hospitals owned by one system. Similarly, though some hospitals may deliver higher-quality care than do oth-

er facilities owned by the same system, employers are unable to vary payment amounts to reward these better hospitals.

"It's a huge issue for employers," Mr. Lee said. "If one hospital does a better job on quality than another one, is more efficient in delivering care, that hospital shouldn't be treated just like another hospital just because it's in the same health care system."

In other cases, purchasers say, hospitals owned by the same system sometimes charge drastically different prices for the same procedure and identical quality.

The problem has come to a head in California, where the California Public Employees' Retirement System says that in 2003 it spent \$3.364 billion on premiums for several health plans.

CalPERS charges that its health maintenance organization premiums would be 4.1%

See CLOUT/page 14

Employers get safe harbor for small pension rollovers

By JERRY GEISEL

WASHINGTON—Employers taking advantage of a proposed Labor Department safe harbor would be shielded from fiduciary liability when they transfer terminating employees' small pension distributions to individual retirement accounts.

Introduction of such a safe harbor was mandated by tax legislation Congress passed nearly three years ago that requires employers, in certain situations, to transfer small pension benefit distributions to IRAs.

The Labor Department proposal details the requirements—including the fees that an IRA chosen for the rollover could charge—that must be met for the employer to take advantage of the safe harbor.

Under the Economic Growth and Tax Relief Reconciliation Act of 2001, if a pension benefit distribution is between \$1,000 and \$5,000 and the employee hasn't told the

employer what to do with the money, the employer must transfer or roll over the funds to an IRA selected by the employer.

If a pension benefit distribution is between \$1,000 and \$5,000 and the employee hasn't told the employer what to do with the money, the employer must transfer or roll over the funds to an IRA.

The intent of this default rollover mechanism was to increase the likelihood that pension distributions would be rolled over into IRAs and not distributed in cash, as the latter depletes a source of retirement income.

To allay employer concerns that

transferring benefit distributions to an IRA could expose them to fiduciary liability, Congress required the Labor Department to draft a safe harbor that would protect employers from liability.

In addition, Congress said that the benefit rollover mandate would not apply until the Labor Department had finalized its safe harbor regulations.

The proposed safe harbor regulations were published in the March 2 issue of the Federal Register. The Labor Department says it expects to finalize the regulations in June and that they would take effect six months after that.

Benefit experts say the safe harbor requirements are practical and easy for employers to use.

"It is a very reasonable road map," said Fred Rumack, director of tax and legal consulting services for Mellon's Human Resources and Investor Solutions in New York.

See IRA/page 25

Jobs hurt by tort system woes

Sensenbrenner says worker support needed for reform

By MARK A. HOFMANN

WASHINGTON—Employers must persuade workers that civil justice reform is in their best interests to boost tort reform efforts' chances of success, according to the chairman of the House Judiciary Committee.

The call for worker involvement came as part of a broader analysis of federal tort reform efforts—and their likely fate in the current Congress—by House Judiciary Committee Chairman James Sensenbrenner, R-Wis., during an address at the National Assn. of Manufacturers headquarters in Washington last week.

Rep. Sensenbrenner drew some laughs by updating the adage "No man's life, liberty or property is safe while the Legislature's in session" to

"No man's life, liberty or property is safe while the Circuit Court of



Rep. Sensenbrenner

Madison County, Ill., is in session." The business community considers Madison County one of the most pro-plaintiff venues in the nation.

But the veteran lawmaker grew quite serious in his criticism of the U.S. Senate's failure to enact meaningful tort reforms.

The current tort system is contributing to the exportation of U.S. jobs because it increases the cost of doing business, he said. "It's important for Congress to wake up" and recognize the impact the civil justice system is having on employment, Rep. Sensenbrenner said. The House passed several tort reform bills that then "hit a brick wall" in the Senate, he noted.

For example, the House on three separate occasions has approved

See NAM/page 22

Errors and omissions

• A Comings & Goings: Industry item in the March 1 issue failed to note that Robert W. Lampus, president of RiskProNet Interna-

tional Inc., will continue in his position as senior vp and general counsel for Dawson Insurance Inc.

Haiti: Few losses seen

Continued from page 3

Several other energy companies with operations in Haiti said their facilities have not been affected by the recent disturbances. Company spokesmen said these operations are fully insured but declined to elaborate on their coverage programs.

"Haiti is insured by the same group insurance plan that all of our subsidiaries are insured by," said a spokesman for Courbevoie, France-based Total S.A., which has a liquefied petroleum gas storage facility in Haiti.

Mr. Leonard of Aon Trade Credit said most of the foreign companies with operations in Haiti have been able to continue operating and protect their assets because they have safety programs in place. These companies were well prepared for the latest outbreak of violence because the country has experienced frequent political unrest, he said.

In fact, Aon's 2004 political and economic risk map rated Haiti as a medium risk for political violence and a medium-high risk overall. "This is not unexpected," Mr. Leonard said. "We were aware of the mounting tension and resentment. The timing of such events is what is unknown."

Most of these foreign companies have political risk insurance, al-

though Mr. Leonard said claims would most likely be related to business interruption rather than to asset damages. "People do have political risk insurance in Haiti," he said. "If there are claims, they will most likely be paid."

The number of political risk claims is expected to be minimal, though, due to the lack of foreign investment in Haiti, insurance sources say. Foreign investment in the country has been limited since the controversial November 2000 election that put Mr. Aristide in office and the subsequent suspension of economic and political support for the new government by the United States and the European Union. International Monetary Fund documents estimate foreign direct investment in Haiti at \$20 million in 2003.

Andrew Perry, associate director for London-based Miller Insurance Services Ltd., said he spoke to many Lloyd's of London and private company underwriters, and the consensus was that Haiti exposures would be minimal. "Haiti hasn't been a prominent sector for the political risk insurance market," he said. "There's nobody really exposed to Haiti."

Price Lowenstein, president and chief executive officer of Hamilton, Bermuda-based Sovereign Risk In-

surance Ltd., said he expects negligible exposure—under \$200,000, if any. "There's been so little foreign investment going into Haiti in the past five years," he said. "It just isn't a big event in the political risk insurance industry."

The political and economic uncertainty in Haiti is expected to continue to dampen foreign investment in the near term, observers say. "Anyone who was thinking of investing in Haiti certainly won't do it now," Mr. Lowenstein said.

The future of foreign investment in Haiti depends on the policies of the new government, insurance experts say. If the new government were to take an anti-foreign investment stance, that would have a negative impact, Mr. Leonard said. He noted, though, that such a development would be unexpected, because a key criticism of Mr. Aristide was his failure to attract foreign investment.

From an insurance standpoint, underwriters are going to be cautious when considering whether to provide coverage in Haiti. "Underwriters and insurers will not be in any rush to insure government perils," Mr. Perry said.

Mr. Leonard said, though, that he does not expect foreign companies and insurers to permanently shy away from Haiti. "Most likely, it will not change their risk assessment," he said. "It should not drastically alter the availability of coverage."

Paul Winston

No getting away from med mal crisis

What if you wanted to switch employers for a different or better position, but weren't allowed to leave your old job for another or better one elsewhere? Your only option is to continue in your present position or quit working?

That's how many doctors feel about the current health care system because of a perverse quirk in their insurance policies.

"Indentured servitude," is how a doctor friend of mine in Illinois describes the situation confronting many medical professionals today.

We all know that medical malpractice premiums have been sharply rising in recent years, due to the greater frequency and severity of claims, poor investment returns and the withdrawal of several carriers amid horrendous losses. This has resulted in what the American Medical Assn. has labeled a "crisis" in nearly 20 states, of which Illinois is one.

We've heard of doctors complaining about their soaring insurance rates and lack of capacity. There have been numerous reports about doctors leaving certain high-risk practices or unfavorable legal climates—or even abandoning medicine entirely—to avoid exorbitant rate hikes.

But there's another problem exacerbated by the hard market for med mal coverage, which is typically written on a claims-made basis, meaning it covers only claims made during the time the policy is in force.

When a doctor changes insurers—as occurs when changing to another practice, hospital or specialty or when a previous insurer has exited the market or gone bankrupt—a policyholder has to purchase tail coverage to cover any claims that arise from acts during the period the former policy was in force.

In the current market, though, tail coverage is often twice the annual premium of the former policy. For a doctor like my friend, a cardiologist whose practice is closing, that means he must pay about the equivalent of one year's salary to find another place to work. While he has multiple job offers on the table, it will cost him a fortune to move and have to purchase tail coverage.

So he's caught between a rock and a hard place, and he's far from alone.

The Illinois Civil Justice League recently sent me an article from The Southern Illinoisan newspaper that reported last month that the last two remaining neurologists in Southern Illinois are quitting their practices and leaving the region

because premiums have become unaffordable, at around \$300,000 annually.

But the main factor driving their decision, according to a hospital administrator, was the cost of tail coverage.

The two doctors "didn't want to get into a position where they couldn't afford to pay the insurance but couldn't afford to leave," he was quoted as saying.

As a result, people with serious neurological injuries will now have to travel many miles to get the care they need, which could make the difference between life and death. Multiply that situation by the number of other doctors forced to leave states with a medical

malpractice crisis and the need for lawmakers to act becomes clear.

Would any of us want to work in a profession where it would cost us a year's salary to change jobs? What if we had no choice, because our current jobs were being eliminated or because our insurer left the market?

My friend said he

knows of a cardiologist who changed specialties because of this situation. He is now a pathologist. While his tail coverage is, no doubt, steep and his current premiums likely remain high, at least dead people can't sue.

Hair today, gone tomorrow

After reading about the St. Baldrick's Day fundraiser in this issue's Between the Lines column (see story, page 20), and in a recent column in the Chicago Tribune, I have decided to lend my hair to the effort.

The head-shaving fundraiser, which was begun four years ago by a trio of reinsurance executives and continues to be heavily supported by the reinsurance industry, raises money for research into a cure for children's cancer. As a parent, I believe it's a very worthy cause and want to help.

If you would like to donate to this year's effort on my scalp's behalf, or on behalf of others, please visit www.stbaldricks.org. Your tax-deductible donations, which benefit CureSearch National Childhood Cancer Foundation, can be made online.

The hair comes off March 12, but donations can be made after that date.

Editor Paul Winston can be reached at pwinston@businessinsurance.com.

Spencer/Gallagher Golf Tournament

The **Spencer Educational Foundation and Arthur J. Gallagher** would like to offer this special acknowledgement and thanks to the many loyal sponsors of the Spencer/Gallagher Golf Tournament held each year preceding the opening of the annual RIMS conference. Without your loyal support and that of the many participating players each year this most vital fund raising event for the Spencer Foundation could not succeed.

We thank the following sponsors and invite everyone to participate this year at the San Diego event and we welcome any new sponsors that desire to join this elite group.

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Editorial

Buyer beware on insurer security

RISK MANAGERS ARE RIGHT to be concerned about the security of their insurers.

Despite a general increase in property/casualty insurer profitability over the past couple of years, the huge drag on earnings that prior years' liabilities have become for many insurers—and, more importantly, the potential they have to pull down future earnings—remains a dark cloud on the horizon.

As we report on page 1, the issue of insurer security is now the No. 1 concern of risk managers, according to the 2003 RIMS Benchmark Survey.

The problem with past-year lia-

bilities, of course, is that they are virtually impossible to quantify with any degree of accuracy. A few adverse court decisions today can overturn years of previous assumptions about loss development. Stock market downturns can erode investment assumptions. And the release of reserves to boost flagging bottom lines has created holes that must be filled.

Whether it be century-old insurers that are finally pushed under by the weight of general liability claims from policies they wrote years ago or insurers a couple of decades old that are significantly hampered by unknown liabilities

they picked up in more-recent acquisitions, this is a problem that permeates the insurance market.

While that problem is simple to articulate, solutions are more difficult, if not impossible, to devise.

Though the actions of rating agencies can be helpful to risk managers, they are often reactive and offer little help to policyholders that have had claims evolving over several years with insurers that are downgraded today.

As we have urged before, risk managers must themselves take on greater responsibility for tracking the financial well-being and business evolution of insurers. This in-

cludes watching the quarterly results of insurers, pondering the effect of insurer acquisitions, analyzing the integrity of insurers' reinsurance support and seeking out more-critical market intelligence from brokers.

Now, more than ever, insurance buyers must put their insurers under the microscope.

Letters to the Editor

The blame must be shared for the spread of PORCs

To the editor: I am writing in response to Douglas McLeod's Commentary in the March 1 issue of *Business Insurance*. As a taxpayer, Mr. McLeod is certainly justified in his disdain for producer-owned reinsurance companies that deprive the U.S. Treasury of millions of dollars of tax revenue. And if the Internal Revenue Service ultimately determines that the PORCs in question were indeed formed for the sole purpose of avoiding U.S. federal income taxes, appropriate action should be taken. But if the taxpayer is deemed culpable in these deals, I think it's only fair to spread the blame among all of the parties that contributed to depriving the U.S. Treasury of its tax revenue.

Certainly, the lawmakers themselves bear a significant amount of blame; after all, it is they who created the IRS rules under which the alleged tax shelters were formed. How difficult would it have been to recognize the potential for abuse? They clearly had legitimate business purposes in mind when they conceived the rules. Did they intentionally create the loopholes as a form of repayment to generous campaign contributors?

Next, it's clear that the accounting profession deserves a large portion of the blame. After all, it's the accountants who recognized the tax value of the IRS provisions and, in good faith, recommended these structures to their clients. Were they aware of the possibility that the IRS might not agree with their interpretations of the rules? If so, did they express this to their clients?

Despite the accounting scandals of recent years, today's business culture clearly reflects Henry Ford's famous line "Never explain, never complain."

Even if the IRS were to find that the PORCs were nothing more than shams, the wrongdoers would pay some back taxes and a fine and then resume business as usual. Nothing will really change as long as the system conspires to allow it to happen.

Donald J. Riggin

VP

Schiff, Kreidler-Shell Inc.
Cincinnati

Coordinate risk response

THE ADAGE HOLDS THAT "forewarned is forearmed."

We certainly hope that applied to combating cyberterrorism as it does to responding to more-mundane threats.

As we reported last week, experts of all stripes testified before the Senate Judiciary Committee's Subcommittee on Terrorism, Technology and Homeland Security that the U.S. economy is growing ever more vulnerable to acts of cyberterrorism, regardless of the source.

Among other advances, the explosion of wireless technologies, helpful as that has been to the flow of information, has also presented new and frightening opportunities for cyberterrorism. Those opportunities could grow even more frightening if cyberterrorists combine efforts to unravel the nation's cyber-

security net with more-traditional terrorist tactics, such as mass murder.

Regardless of the tactics, the aim of terrorists remains the same: to instill fear in a population and destabilize society to achieve its aims.

Thus far, dealing with cyberterrorism has fallen mainly on the private sector, which controls the vast majority of the nation's computer infrastructure.

The subcommittee's ranking Democrat, Sen. Dianne Feinstein of California, questioned whether the private sector was doing enough and suggested the federal government might have to step in more forcefully.

We agree that the federal government should take a higher-profile role in this effort. That doesn't mean, though, that it should be dic-

tating every facet of cybersecurity. Instead, lawmakers could make it easier for private-sector cybersecurity officers and others involved in the area—including, perhaps, risk managers—to share information.

This means taking steps to eliminate any fear that the sharing of security information among private-sector professionals would give rise to new liabilities. This also means that the federal government could improve the way that it disseminates information about vulnerability and remediation to both the public and private sectors.

Lawmakers have been warned that the threat of cyberterrorism is real and growing. We believe that only a public/private partnership—not a government-imposed solution—will provide the best defense against an insidious enemy.

Schillerstrom



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Importance of collateral overstated

Regulators should consider flexible approach in requiring non-U.S. reinsurers to post funds

By Dave Matcham

Security considerations are of course a vitally important part of any reinsurance buying process and were rightly highlighted by the American Insurance Assn. in Steven A. Bennett's Dec. 15, 2003, *Business Insurance* Perspectives article, "Collateral



Rules Provide Solvency Protection." But, as a solvency protection tool, current U.S. reinsurance collateral requirements are a blunt instrument.

The AIA has for decades been at the forefront of efforts to reduce barriers to international trade in financial services and has helped shape U.S. regulation in order to avoid excessive or unnecessary regulatory burdens on the insurance industry. Its efforts indeed have included vigorously opposing collateral requirements when proposed for its members. But the AIA knows well the cost to consumers of excessive regulation, and, in light of the association's legacy, I accept at face value Mr. Bennett's assertions that his

position on collateral requirements is based on solvency concerns. I believe it is fair to say, however, that some other opponents of a change in collateral requirements are driven by the desire to protect market share.

Yet applied indiscriminately to all non-U.S. reinsurers, regardless of their financial strength and operational integrity, these rules are unwarranted. They drive up the cost of reinsurance and restrict vital capacity. As recently noted by Standard & Poor's Corp., they also have the unintended and pernicious effect of promoting sloppy reinsurance buying practices, as some cedents disregard the financial strength of their reinsurer and blindly assume that collateral will protect them.

The assertion that collateral is a critical solvency measure dictated by prudent regulation simply does not hold up to analysis.

No other major insurance market imposes such collateral requirements on reinsurers. The world's largest markets, including Bermuda, London, Zurich, Munich and Tokyo, operate with no collateral requirements whatsoever. They have done so for decades—in some cases for centuries—without significant problems relating to the collection of reinsurance. If collateral is so vital to the protection of ceding insurers, one must question why other markets operate so successfully without it.

Reinsurance is simply a counterparty credit

risk. U.S. regulators—and the AIA—support an insurer's right to count as an admitted asset a wide variety of unsecured debt, such as corporate bonds. It is difficult to justify a regulatory system that accepts as an admitted asset an unsecured promise to pay by a Texas energy company—think Enron—and yet requires 100% collateral from an AA-rated reinsurer that has been in existence for 100 years and is based in one of the world's leading financial centers.

Many U.S. companies go insolvent. Indeed, Mr. Bennett noted that in the last three years there have been 46 new property/casualty insurer insolvencies in the United States, including Reliance Insurance Co., Fremont Indemnity Co. and Legion Insurance Co.—all of which wrote a significant amount of reinsurance and whose cedents generally received no collateral. If it is unthinkable, as Mr. Bennett suggests, that ceding insurers should run an unsecured credit exposure to reinsurers, why do we not require U.S. reinsurers to post collateral?

Under the variable collateral requirement proposal proffered by the International Underwriting Assn. and other leading European reinsurers, the maximum amount of unsecured reinsurance from non-U.S. reinsurers would only be approximately 3% of the aggregate balance sheet of the U.S. property/casualty industry. As a result, even if one made the wild assumption that all of this reinsurance would be uncollectible, the solvency implications are, I would suggest, manageable.

The subject of U.S. collateral requirements has attracted a significant amount of attention, and *Business Insurance* itself has

called for a rethink of the existing regime in the Oct. 27, 2003, editorial, "Reconsider Collateralization Rules."

There is a danger that in this debate the true substance of the proposal offered by the IUA and Comite European des Assurances proposal may sometimes become obscured.

All that is being proposed is a system by which U.S. regulators would establish an approved list of highly capitalized reinsurers that are examined by U.S. regulators. Only reinsurers on this list would be permitted to provide less than 100% collateral. Even the strongest reinsurers, however, would have to provide at least 50% collateral.

There is a strong argument that the United States should follow the lead of the other major insurance markets of the world and eliminate the demand for collateral requirements.

The 100% collateral requirement represents an extraordinary burden that artificially restricts capacity and is hugely expensive to fulfill on a number of different levels. If this burden were removed, market forces would demand savings be passed onto U.S. cedents.

The IUA/CEA plans are a relatively modest reform. But they still have the potential to significantly improve the reinsurance capacity choices available to the U.S. market without jeopardizing security. Indeed, solvency protection would actually be improved by these potential reforms, which deserve to receive a full and fair hearing.

Dave Matcham is director of operations at the International Underwriting Assn. in London.

Invasion of privacy claim exempted from exclusion

A clause in a commercial general liability insurance policy excluding coverage for assault and battery did not apply to a claim for invasion of privacy, according to the Supreme Court of New Hampshire.

Docusearch Inc. was covered under a CGL policy issued by Preferred National Insurance Co. The policy provided coverage for bodily injury; however, it excluded coverage for bodily injury arising out of assault and battery.

Liam Youens contacted Docusearch and requested the date of birth, Social Security number and place of employment for Amy Lynn Boyer. Docusearch failed to provide Ms. Boyer's date of birth, but did provide her Social Security number and place of employment. On Oct. 15, 1999, Mr. Youens drove to Ms. Boyer's workplace and fatally shot her as she left work. He then shot and killed himself.

Helen Remsburg, as administrator of Ms. Boyer's estate, sued Docusearch in federal court, seeking damages for Ms. Boyer's death arising out of the assault and battery and for invasion of privacy for selling her Social Security number to Mr. Youens. Docusearch asked the insurer to defend it in that suit, but the insurer denied coverage. The insurer then sought a declaration from the court that it did not have a duty to defend or indemnify Docusearch in the Remsburg suit. The trial court ruled for the insurer.

On appeal, the insurer argued that the assault and battery endorsement excluded coverage because the claimed damages arose out of Mr. Youens' assault and battery and were, thus, excluded by the assault and battery exclusion. However, the court said

Legal briefs

the insurer must provide coverage for the invasion of privacy claim because that claim alleged other damages in addition to the damages arising from Ms. Boyer's bodily injuries caused by the assault and battery.

According to the court, an action for intrusion upon seclusion did not require a claimant to prove harm beyond the intrusion itself. The trial court's decision with regard to the privacy claim was reversed and the case sent back for further proceedings.

Preferred National Insurance Co. vs. Docusearch Inc., Supreme Court of New Hampshire, Aug. 19, 2003 (BI/03/A-10)

Self-inflicted injury not covered by AD&D

The 2nd U.S. Circuit Court of Appeals ruled that a group accidental death and dismemberment insurance policy did not cover a policyholder's death from engaging in autoerotic asphyxiation.

David Critchlow was covered under a group AD&D policy with First UNUM Life Insurance Co. His mother was named as a death beneficiary. The policy excluded coverage for loss caused by intentionally self-inflicted injuries.

There was no dispute concerning acts that preceded Mr. Critchlow's death. He had disrobed in his bedroom and attached a harness consisting of ropes, weights and counterweights leading to a noose around his neck. A physician concluded that Mr.

Critchlow died of "autoerotic asphyxiation." Mr. Critchlow's mother, as beneficiary, filed a claim, which the insurer denied. She sued but lost in the trial court.

An appellate court said Mr. Critchlow's act of constricting his trachea for the purpose of depriving his brain of oxygen was an intentionally self-inflicted injury.

"Certainly," the court said, "when the constriction produced a physiological effect on his brain and his body, an injury within the meaning of the exclusion occurred." The court said the fact that he did not intend to die did not make the injury less intentional. The trial court decision was affirmed.

Critchlow vs. First UNUM Life Ins. Co. of America, 2nd U.S. Circuit Court of Appeals, Aug. 6, 2003, as amended Aug. 12, 2003 (BI/01/A-10)

Employment-related claims trigger liability exclusions

The 8th U.S. Circuit Court of Appeals ruled that a commercial liability insurer did not have to defend its policyholder against an employee's suit alleging false arrest, false imprisonment and wrongful termination.

Ranbir Bajwa was the president of a corporation that owned and operated a residential property known as the Ford Hotel. Capitol Indemnity Corp. provided commercial liability insurance to the corporation.

In September 2000, Regina Delaney left her employment as the hotel's manager. Mr. Bajwa subsequently reported to authorities that she had failed to turn over all of the rent receipts collected before her departure. Ms.

Delaney was arrested based on these allegations. After her arrest, Ms. Delaney sued Mr. Bajwa and the hotel corporation in state court alleging false arrest, false imprisonment, unjust enrichment, wrongful termination and slander. Capitol undertook the defense of Mr. Bajwa and the corporation but reserved a right to disclaim coverage.

Subsequently, Capitol sought a declaration in federal court that it had no duty to defend or indemnify Mr. Bajwa and the hotel corporation with regard to Ms. Delaney's suit. The trial court found that policy exclusions barred coverage and ruled in favor of Capitol. Mr. Bajwa appealed.

The appellate court said the policy excluded coverage for personal injury arising out of employment-related practices. According to the court, the incidents of which Ms. Delaney complained, specifically false arrest, false imprisonment and slander, all flowed directly from her employment with the hotel corporation. Because her suit against the corporation and Mr. Bajwa arose out of her employment, the court said Capitol did not have a duty to defend or indemnify the corporation and Mr. Bajwa. The trial court decision was affirmed.

Capitol Indemnity Corp. vs. 1405 Associates Inc., 8th U.S. Circuit Court of Appeals, Aug. 15, 2003 (BI/02/A-10)

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available, at \$10 each, by sending a check payable to Mayo H. Stiegler to Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Provide the listed number for

Clout: Hospital consolidation hampers employers

Continued from page 4

to 5.6% less if it could narrow its network by eliminating some higher-priced hospitals from a contract with Sacramento-based Sutter Health. But Sutter insists on "global contracting," a CalPERS spokesman said.

CalPERS' potential savings are based on an actuarial study provided by San Francisco-based Blue Shield of California. CalPERS requested that Blue Shield, a CalPERS health plan, conduct the analysis.

Sutter is a nonprofit health system serving more than 20 Northern California counties with more than

two dozen acute care hospitals, physician groups and other health care entities.

A procedure performed at one Sutter hospital can cost CalPERS twice as much as for the same procedure performed at another Sutter facility, with no variance in quality, the CalPERS' spokesman said.

Overall, Sutter is 60% more expensive than other hospitals in Northern California, the CalPERS spokesman added. Yet CalPERS—which provides health coverage for 1.2 million active and retired public employees and their family members—depends on Sutter because it

requires Blue Shield to provide employees with care throughout 40 California counties.

"In some of those counties, the only game in town is a Sutter hospital," the spokesman said. "Global pricing is killing us because we can't be selective."

So CalPERS is weighing several options to "put enough pressure on Sutter to have them lower their price," the spokesman said. Those options include pushing for legislation regulating hospital pricing and asking the state attorney general's office to pursue antitrust action.

A Sutter spokesman said, though,

that the company's level of cooperation with CalPERS "has been miscategorized." The spokesman added that Sutter, on several occasions, has notified CalPERS it is willing to consider providing a restricted network that does not include all of its hospitals.

Nonetheless, Sutter declined a CalPERS request that it give Blue Shield broad rights to establish reimbursement guidelines and select individual hospitals for networks, the Sutter spokesman said. That request was too extensive, he said.

"We are open to negotiating, but we have no interest in granting

them broad contractual discretion to arbitrarily, and in a vacuum, make decisions about a network," he said.

Additionally, Sutter says its analysis reveals that charges for its services are midrange among California hospitals. Sutter's analysis is based on data provided by the state and includes payment information from all payer types served by Sutter.

Nor is California the only place where hospital consolidation is having a negative impact on health care purchasers, though the headaches may differ depending on the region.

'In some . . . counties, the only game in town is a Sutter hospital. Global pricing is killing us because we can't be selective.'

*Spokesman
California Public Employees'
Retirement System*

Larry Boress, vp for the Chicago-based Midwest Business Group on Health, said he expects problems to continue for employers as health systems exercise "take-it-or-leave-it" clout in reimbursement negotiations with health plans. Their clout, he said, derives from acquiring more hospitals within a single region.

In Chicago, for example, employers during the past two years intervened in tense negotiations between the area's largest hospital group, Advocate Health Care, and the region's largest health insurers, Mr. Boress said.

Advocate has implemented many high-quality care services that employers have been asking for, Mr. Boress said. Advocate has also explained to employers that consolidation helps it to deliver those services efficiently.

Consequently, Mr. Boress said, employers are caught between a health plan negotiating for lower rates and a hospital group they want to direct their employees to. Employers' biggest fear, he said, is that health plans and the hospital systems will part ways and disrupt relations between thousands of employees and their medical providers.

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Employers finding corporate gyms work out well

Investment in onsite fitness centers viewed as valuable benefit tool

By LISA FICKENSHER

NEW YORK—For three years, Wall Street firms laid off thousands of employees, slashed a host of department budgets and watched profits plunge.

One area that never came under the knife, however, was the corporate gym. In fact, three investment banks have built gyms or upgraded old ones since Sept. 11, 2001. With the stock market on the mend, the trend is accelerating.

Wall Street is not alone in its devotion to working out. Companies large and small, from law firms to media conglomerates, are installing gyms in efforts to keep their employees healthy. There are some 100 professionally managed gyms in the city, mostly in large companies, according to Plus One Health Management Inc., which runs such facilities. About 25 were recently built or upgraded.

"Companies are recognizing the importance of having an onsite fitness center and program for the health of their employees and for bringing in new talent," says Tom Maraday, senior vp of Plus One.

The gym manager boasts that the past three years have been the best in its 18-year history.

With health care costs rising between 15% and 30% annually, it's easy to understand why corporations are getting physical. A healthier workforce lowers those costs, cuts down absenteeism and arguably raises productivity.

What's more, in a city where diet-obsessed denizens blanch at the thought of a bulging waistline, corporate gyms are seen as the perfect employee recruitment and retention tool.

"Fitness centers used to be a nice-to-have perk, but over the past few years they have transitioned into a must-have for a lot of companies," says Jennifer Smith, vp for the Eastern region at Minneapolis-based Health Fitness Corp.

In 2002, Bear Stearns built a state-of-the-art, 15,000-square-foot fitness center in its new midtown Manhattan headquarters to keep up with its competitors. Raymond Santiago was just the type of employee the company had in mind when it invested more than \$1 million in the gym. An associate director in

the information department, Mr. Santiago lost 20 pounds last year, largely because working out was more convenient for him.

Indeed, the cushy facility, managed by Plus One, offers perks such as gym clothing—laundered T-shirts and shorts in all sizes—a steam room, personal trainers, physical therapy and nutrition counseling, as well as 65 pieces of equipment.

"My stress has gone down and my energy level is up," reports Mr. Santiago, a 17-year veteran of Bear Stearns. His assessment is music to the ears of any company that spends between \$1 million and \$9 million to build a fitness center.

Not every employer can afford such a lavish amenity. Employees cover some of the operating costs through membership fees, but the corporation still absorbs the bulk of the investment.

The typical corporate gym is 5,000 to 8,000 square feet. In a city such as New York, where real estate costs can make an employer's heart race without having to jump on a treadmill, building a gym can seem like a task best suited to the Fortune 500.

Even so, smaller companies are breaking ground on corporate gyms, too. In the past several years, a number of boutique investment banks and law firms have begun working with Plus One.

Aetos Capital, a 50-person investment bank, moved into an 18,000-square-foot office last month and devoted 800 square feet for a gym

that Plus One is managing. The 3½-year-old firm was started by a group of executives from Morgan Stanley who were accustomed to working out in-house. "It makes us competitive with some of the larger firms," says Yvonne Petrasovits, a vp at Aetos Capital.

Plus One is talking to four other boutique firms about building similar centers. "There are a lot of people who came out of the big firms and want to do something on a smaller scale," says Mr. Maraday. Moreover, he adds, "With kids coming out of universities that have state-of-the-art facilities, they have some expectations about the workplace, and corporate gyms are a strong recruiting tool."

Health Fitness, which manages the gyms at Sony Music Entertainment, NBC, Moody's Investors Service and Verizon, among other New York City-based companies, has experienced a growth spike, too.

Some of that is coming from new programs designed to get staffers into a fitness routine, such as inter-department competitions in which groups of employees vow to hold their current weight. "It's a maintain, don't gain, program," says Ms. Smith.

Another program encourages employees who don't belong to the gym to try it. These workers may be smokers or overweight. "They are afraid to enter a gym environment," says Ms. Smith. "We are tar-



geting them with personal training and walking programs."

Without identifying specific clients, Health Fitness executives say that New York companies are also turning to so-called health-risk assessments. These are questionnaires and health screenings that employees complete anonymously. The incentive to do so is typically a discount on their benefit costs of about \$500. Employers, in turn, learn what sort of health risks its workforce faces and can gear preventive programs toward reducing those risks.

With a heightened awareness of weight and diet issues, corporate fitness centers are certain to continue proliferating. U.S. News Corp., for one, agrees. The media conglomerate built a gym just last year in its headquarters at 1211 Sixth Ave.

Lisa Fickensher is a reporter for Crain's New York Business, a sister publication of Business Insurance.

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For more information, contact Jeffrey Grange, senior vp of Chubb & Son Inc. and worldwide

professional liability manager for Chubb Specialty Insurance, in the Warren, N.J., office at 908-903-3370 or jgrange@chubb.com.

FM Global releases property loss catalog

JOHNSTON, R.I.—Factory Mutual Insurance Co. has released its 2004 "Property Loss Prevention Resource Catalog."

Johnston, R.I.-based FM Global's property loss catalog contains information on products that can help risk managers and those responsible for loss prevention manage property-

related hazards. The material included in this catalog covers property loss prevention, emergency planning, facility and warehouse protection, fire prevention and control and natural hazards, among other categories. The products include periodicals, CD-ROMs, engineering data sheets, videos and learning kits.

A PDF version of this catalog can be downloaded by visiting www.fmglobal.com/catalog, or a printed catalog can be ordered by telephoning 877-364-6726.

Anthem provides employee assistance site

INDIANAPOLIS—The employee assistance program of Anthem Behavioral Health, a division of Anthem Inc., has launched a Web site to help employees manage their work and home lives. The site also provides information to assist employers.

Anthem EAP's new Web site enables employees to access online resources and interactive tools to improve or maintain their well-being. The site's resources include financial and legal tools that allow employees to research wills and

estate planning and student loan payoff plans. The Indianapolis-based company's Web site also helps employees locate child and elder care facilities and providers that offer assistance with additions, adoptions, education and mental health care.

The site is designed to help employers by featuring an employer resource suite, which allows employers to access information regarding debt and credit, employment laws and guidelines, as well as tax, banking and financial information.

To learn more, access Anthem EAP's Web site at www.anthemcap.com.

messaging communications.

The Enterprise Risk Audit tool calculates a risk rating based on an information technology manager's responses to a series of questions regarding corporate policies and procedures about Internet use. The audit tool also offers recommendations for managing the risks it identifies.

To use Enterprise Risk Audit, visit www.surfcontrol.com/era. To obtain more information, contact SurfControl's sales office in Scotts Valley, Calif., by calling 800-368-3366 or at sales.us@surfcontrol.com.

Publication offers data on agent, broker M&A

HARRISBURG, Pa.—WFG Capital L.P., an investment banking and corporate financial advisory firm for the insurance industry, has released its 2004 "Financial Insights—Agency and Brokerage Merger & Acquisitions Sourcebook."

The publication consists of analytical and statistical information on 2003 merger and acquisition activities among agents and brokers, as well as transaction statistics, earnings and deal structures and profiles on the top 20 regional and national broker and bank acquirers.

To order the M&A publication, contact the company's Harrisburg, Pa., office at 717-780-7800 or visit www.wfgca.com.



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BI News flash

Between the Lines

Compiled by Joanne Wojcik



Shear brilliance for a good cause

While some self-conscious men may opt for “comb-overs” to hide receding hairlines, nearly 2,000 men, women and children will bravely bare it in the name of charity this week during the annual St. Baldrick's Day celebration.



Participating in last year's St. Baldrick's Day events in Chicago were, from left to right: Pierre Laurin, Zurich North America; Tom Leonhardt, Towers Perrin Reinsurance, and Ronald McDonald.

What began as a St. Patrick's Day pub challenge in 2000 involving three reinsurance industry executives in New York has become a phenomenon in which thousands of men and women worldwide are shaving their heads to raise money for the National Childhood Cancer Foundation. Challenged by friend and colleague Tim Kenny, president and chief executive officer of QBE Reinsurance Corp., John Bender, senior vp at Platinum Underwriters Reinsurance, and Enda McDonnell, president and CEO of Access Re Inc., decided to transform their St. Patrick's celebration into an altruistic endeavor for children with cancer. Because chemotherapy often causes hair loss, the group recruited volunteers to have their heads shaved in public in return for pledges from friends and family to support their sacrifice. The event became known as St. Baldrick's Day, and it is typically held close to St. Patrick's Day.

Mr. Kenny is the chairman of this year's event, scheduled for March 12, while Sal Zaffino, chairman and CEO of Guy Carpenter & Co., and a cancer survivor himself, is honorary vice chairman. Mr. Bender will shed his locks this year for the fifth time, while Chicago-based Towers Perrin Reinsurance Senior Vp Tom Leonhardt is making his third appearance.

Altogether St. Baldrick's Day has raised more than \$3 million since 2000. More information can be found at www.stbaldricks.org.

Home health care fraud

A Michigan couple has admitted to sending \$865,000 in bogus bills from their home health care business to Medicare and Blue Cross & Blue Shield of Michigan to finance the construction of their home.

The couple, Elena and David Szilvagy, last month pleaded guilty to three counts of conspiracy to commit health care fraud and mail fraud in U.S. District Court for the Eastern District of Michigan in Grand Rapids. They have agreed to pay restitution.

The couple, owners of Prime Care Services Inc., was indicted on charges they improperly billed Medicare and the health insurer for the cost of an architect they hired to design their Clarkston, Mich., home. The indictment also alleged they issued payroll checks to pay for plumbing, kitchen cabinets and building materials. The Szilvagyis will be sentenced May 11.

And now for something completely different

Monty Python's Flying Circus may not have been too far out of step with its “Ministry of Silly Walks” comedy sketch.

According to the Royal Society for the Prevention of Accidents in Great Britain, more than 12,000 people who slipped while walking on wood floors were hospitalized during 2002, four times as many as in 1998. In addition, more than 5,000 people in 2002 sought treatment for injuries sustained while attempting to pull up their trousers, up from 3,695 in 1998.

Fortunately, “zipper-related mishaps” among British men declined to 700 in 2002 from 800 in 1998.

Room service but no minibar

Maybe “one night in Bangkok” really does make “the tough guys tumble.”

Insurers are denying claims filed by Thai politicians under health insurance policies because many of them seem to prefer the hospitality of hospitals to hotels while traveling away from home, according to news reports from Thailand.

“Some checked into hospitals despite being well. I don't know if it was because they did not want to pay hotel expenses or not,” the Bangkok Post quoted Thai Parliament Speaker Uthai Pimchaichon as saying. “When they asked for compensation, the insurers felt it was not right and refused to pay,” he said.

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

GAO finds number of bogus health plans on the increase

MARK A. HOFMANN

WASHINGTON—Health insurance scams appear to be on the rise, according to a new report by the General Accounting Office.

The report—“Private Health Insurance: Employer and Individuals Are Vulnerable to Unauthorized or Bogus Entities Selling Coverage”—cited Department of Labor and individual state statistics showing that 144 “unique entities” not authorized to sell health benefits operated from 2000 to 2002. “Over those three years, the number of such plans newly identified each year almost doubled from 31 in 2000 to 60 in 2002,” said the report.

With rising health insurance prices, small employers, in particular, have found it increasingly difficult to obtain coverage for their workers, the GAO said. In such an environment, both employers and individuals “may increasingly be targeted by entities not authorized to sell health insurance,” said the GAO report.

The 144 plans collectively failed to pay at least \$252 million in health claims, the GAO found.

Only \$52 million—or about 21%—of those claims had been recovered, said the GAO.

among the federal government, state regulators and the National Assn. of Insurance Commissioners.

Sen. Grassley made clear that his hearing was not about association health plans, a means for small businesses to pool together to offer health insurance to their workers without having to comply with some state regulations. The Bush administration has been promoting AHPs as a means to allow more small employers to provide health care coverage to their workers. The senator noted that the Finance Committee does not have jurisdiction over the implementation of such plans.

The Blue Cross & Blue Shield Assn., which opposes AHPs, issued a statement calling the report “particularly insightful and timely as the debate in Washington about federal legislation that would exempt AHPs from state laws and regulations continues.” AHPs that are not subject to state regulation “would be a recipe for disaster,” the Blues said.

The GAO report is available at www.gao.gov.

HEALTH INSURANCE SCAMS, 2000-02

144 bogus entities offered health insurance

15,000 employers and 200,000 policyholders affected

Plans failed to pay at least \$252 million in medical claims

Source: GAO



In a March 3 hearing, Senate Finance Committee Chairman Charles Grassley, R-Iowa, said he will formally request that the GAO evaluate the effectiveness of current antifraud coordination efforts

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NAM: Getting workers involved

Continued from page 4

legislation that would permit the removal of certain multistate class actions to federal from state court under some circumstances, but the Senate has yet to approve such legislation, he said. He noted that the House has also approved medical malpractice liability legislation, only to have it die in the Senate. The lack of malpractice liability reform has led to increased health care costs as doctors practice defensive medicine to avoid suits, Rep. Sensenbrenner said.

Employers and taxpayers have to foot the bill, which has a negative impact on pay raises, he said. "As health insurance costs go up, that means there's less money for wage increases," he said.

"You've got to get the workers involved," Rep. Sensenbrenner urged.

For example, he noted that the U.S. Supreme Court has twice called on Congress to change the way in which workers with asbestos-related diseases receive compensation. Without congressional action, more companies will join those

that have already been forced out of business because of asbestos liabilities, he said.

"Who's being helped by that?" Rep. Sensenbrenner asked. Certainly not victims of asbestos-related illnesses or current workers who have retirement savings severely cut when their employers have gone into bankruptcy, he said.

"Why shouldn't we treat asbestos injuries like we do a broken arm?" he asked, such as through a workers compensation-like no-fault system.

But Rep. Sensenbrenner also said

that as chairman of the House Judiciary Committee, he took the position that since the Senate has yet to pass any major tort reform bills, that body should take the lead on asbestos liability reform. The Senate has negotiated a bill that would replace the current litigation-based system for compensating victims of asbestos-related diseases with a no-fault trust fund paid for by defendant companies in asbestos liability suits and their insurers, he said. "If the Senate should pass an asbestos reform bill, it will be hotlined" through the House Judiciary Committee and on to the House floor, said Rep. Sensenbrenner.

But, he added, "don't hold your

breath" waiting for such a bill to emerge from the Senate.

Rep. Sensenbrenner made clear that he does not blame Senate Majority Leader Bill Frist, R-Tenn., for the Senate's inaction. Rep.. Frist has only the slightest of majorities, and blocking filibusters requires at least 60 votes, he pointed out.

Michael Baroody, NAM's executive vp, said that NAM is "committed" to having its members engage manufacturing workers more effectively on tort reform issues. He said that the NAM's Fair Litigation Action Group has been working to raise awareness of the costs of the legal system to both NAM members and their employees.

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LEGAL NOTICE

THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE LIQUIDATION)
STATEWIDE INSURANCE COMPANY) 04 CH 00150

NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES

PLEASE TAKE NOTICE, that on January 6, 2004 the Circuit Court of Cook County, Illinois, entered an Agreed Order of Liquidation ("Order of Liquidation") against Statewide Insurance Company ("Statewide"). J. Anthony Clark, Director of Insurance of the State of Illinois, was affirmed as the statutory Liquidator of Statewide (the "Liquidator").

TAKE FURTHER NOTICE, that pursuant to the Order of Liquidation, all rights and liabilities of Statewide and its policyholders, creditors and stockholders, and all other persons interested in its property or assets, are fixed as of January 6, 2004.

TAKE FURTHER NOTICE, that on February 26, 2004, the Circuit Court of Cook County, Illinois, entered an Order providing for the filing of claims and setting a claim-filing deadline ("Claim Filing Order"). Pursuant to the Claim Filing Order, all persons, companies or entities who have, or may have claims against Statewide, its property or assets, or against a Statewide insured or policyholder, shall have the right to present and file with the Liquidator proper proofs of claim on or before January 6, 2005 at 4:30 p.m. (C.S.T.).

TAKE FURTHER NOTICE, that any insured under an insurance policy issued by Statewide shall have the right to present and file with the Liquidator a proper proof of claim setting forth a contingent claim on or before January 6, 2005 at 4:30 p.m. (C.S.T.). No contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the fourth priority level, 215 ILCS 5/205(1)(d), unless such claim has been liquidated and the insured claimant has presented and filed evidence of payment of such claim to the Liquidator on or before January 6, 2006 at 4:30 p.m. (C.S.T.). Any contingent claim for which a proper proof of claim is filed on or before January 6, 2005 at 4:30 p.m. (C.S.T.), but which is not liquidated on or before January 6, 2006 at 4:30 p.m. (C.S.T.), may be estimated pursuant to 215 ILCS 5/209(4)(b) for purposes of participating in any distribution of estate assets that may be made at the fifth priority level, 215 ILCS 5/205(1)(e), unless otherwise directed by the Court.

TAKE FURTHER NOTICE, that the form and required contents of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with, and may be obtained from, the Liquidator of Statewide, c/o the Office of the Special Deputy Receiver, located at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed filed or received by the Liquidator based upon the postmark date, or the date of delivery to the United States Postal Service, or private mail courier, for delivery to the Liquidator with postage pre-paid. The Liquidator reserves the right to require such additional information with respect to any claim filed with him, as he may deem necessary. The Liquidator further reserves any and all defenses available to Statewide upon all filed claims. All proofs of claim must be duly sworn to before an officer authorized to take oaths.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS, COMPANIES OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIM AGAINST STATEWIDE, ITS PROPERTY OR ASSETS, OR AGAINST A STATEWIDE INSURED OR POLICYHOLDER, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE JANUARY 6, 2005 AT 4:30 P.M. (C.S.T.)

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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 26, 2004, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. §304 ORIGINALLY ENTERED IN THIS CASE ON JULY 31, 2001. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING SCHEDULED TO BE HELD ON FEBRUARY 24, 2005 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.

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International

23

Singapore adopts risk-based capital rules

Market among first in Asia to tighten insurer solvency requirements

By MICHAEL BRADFORD

SINGAPORE—Insurers and reinsurers in Singapore are coming under closer financial scrutiny as new risk-based capital requirements give regulators a better tool to gauge the strength of the companies.

The new requirements confirm Singapore's reputation as a well-regulated Asian insurance community and give a measure of comfort to buyers that their markets are secure, experts report.

Compared to its Asian competitors, "Singapore is actually early to the game" in establishing risk-based capital standards, said Robert Gibbons, executive director and president of the International Insurance Foundation in Washington. While risk-based capital standards have been in place in the United States and Australia for decades or longer, he noted, they have been slow to take hold in Asia.

Singapore's move to new capital standards,



PHOTO: AFP

Mr. Gibbons said, shows why it is regarded "as a leader in the Asian region among regulators."

Current solvency requirements will remain in force for insurers during 2004, but they must be prepared to use a new Web-based platform to submit the 2004 year-end financial information required by the new regulations by March 31, 2005. Reinsurers have a longer period to comply, with compliance phased in over the next two years. A spokesman for Singapore's regulatory agency, the Monetary Authority of Singapore, said captive insurers and specialty risk underwriters are exempt from the regulations, at least for now.

Mr. Gibbons said the new requirements, like those in the United States, give regulators a more sophisticated approach to measuring a company's assets and liabilities.

"The risk-based capital approach involves discriminating among different classes of assets and liabilities" so that the riskiness of each is consid-

See **SINGAPORE**/next page

Pollution directive adds uncertainty

By PETA MILLER

BRUSSELS, Belgium—Although two controversial provisions of the European Union's environmental liability directive have been dropped from the final version, others open up new areas of liability that currently are unlikely to be insured.

The final draft of the directive, which has been in the works since the 1980s, was agreed to last month by the European Parliament and

the Council of the European Union and is expected to be officially published this month.

Excluded from the finished piece are two provisions that had drawn sharp criticism from companies and insurers. A requirement that companies demonstrate appropriate financial security—such as insurance—to cover their potential environmental liabilities was dropped on the grounds that it would be too difficult to enforce in the absence of a sufficiently developed market for

such insurance products.

The other major concern for European companies was a proposal that would have introduced joint-and-several liability for environmental damage. Critics of that provision said that, under such a change, companies could be held individually liable for damage caused by more than one polluter (*BI*, June 9, 2003). This provision also was dropped from the final version, and the issue was left to member states to determine individually.

However, the directive does broaden European companies' environmental liability and creates new exposures for which they may not be insured.

According to the European Commission's original proposal, the directive aims to establish a framework under which environmental damage—which comprises "damage to protected species and natural habitats," "water damage" and "land damage"—would be prevented.

See **POLLUTION**/next page

World Updates

European reinsurers' premium volume grows

The premium volume of Europe's four largest reinsurers grew by 2% at the Jan. 1, 2004, renewal, according to estimates by London-based Benfield Group Ltd. About two-thirds of the treaty business written by Munich Reinsurance Co., Swiss Reinsurance Co., Hannover Reinsurance Co. and Conventium Holding A.G. came up for renewal Jan. 1 and about 78% of that was renewed, Benfield said. Europe's fifth-largest reinsurer, Paris-based SCOR S.A., renewed about 47% of its large corporate account business at Jan. 1.

Catastrophes in 2003 claimed 60,000 lives

Natural and manmade catastrophes cost insurers about \$18.5 billion in 2003, according to Zurich-based Swiss Reinsurance Co. Swiss Re said 60,000 people worldwide were killed by catastrophes last year, the seventh-highest such total in 30 years. Of the overall economic losses of \$70 billion in 2003, about \$12 billion resulted from manmade events, mainly industrial fires and satellite losses, Swiss Re said.

Lloyd's honors two U.S. brokers

Lloyd's of London has honored two U.S. brokers for their contributions to the market in 2003. Gary Cooney, vice chairman of Birmingham, Ala.-based McGriff, Seibels & Williams Inc., was named Lloyd's U.S. Surplus Lines Broker of the Year. John Gilbert, president of New York-based Holborn Corp., was named Reinsurance Broker of the Year. Lloyd's established the broker awards in 2002.

Individual names increase capacity

Individual names are providing £3.3 billion (\$6.16 billion)—or 22%—of Lloyd's of London's 2004 underwriting capacity of £14.9 billion (\$27.82 billion), the Assn. of Lloyd's Members said. Last year, individual investors provided £3 billion (\$5.60 billion), or 20%, of capacity.

Briefly noted

Catlin Group Ltd. plans to raise about \$200 million through an initial public offering on the London Stock Exchange in April....The Lloyd's Market Assn. has launched an **electronic claims database** for the London market. Xchanging London Market Services is providing the infrastructure for the database, which the LMA said will give all parties to a claim instant and contemporaneous access to data.

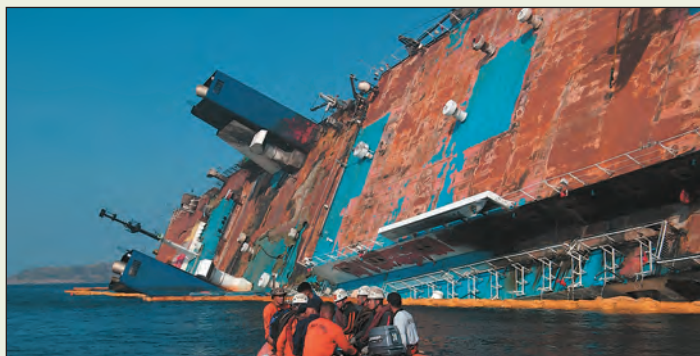


PHOTO: GETTY IMAGES

The Superferry 14, listing sharply in the central Philippines, is insured in London.

Dozens missing after Philippine ferry disaster

MANILA, Philippines—A ferry that caught fire and listed late last month in the central Philippines was insured for £12 million (\$22.4 million) on an excess hull slip led at Lloyd's of London, sources said.

As many as 131 of the 899 passengers and crew on board the Superferry 14 were still missing March 4 after the fourth death related to the fire was confirmed, according to reports.

The vessel also has liability coverage from Steamship Insur-

ance Management Services Ltd. The London-based protection and indemnity club confirmed the loss but declined to comment further.

The fire followed an explosion that occurred while the vessel was en route from Manila Bay for Bacolod City.

Abu Sayyaf, a Muslim extremist group, claimed responsibility for the blast, but authorities said that they had not verified the claim.

—By Peta Miller

Liability fund adequacy questioned

Asbestos maker's move raises queries

By ELIZABETH FRY

SYDNEY, Australia—Australian authorities are investigating the circumstances of the redomestication of one of the country's leading asbestos manufacturers and allegations that the funds it left behind to meet its liabilities are inadequate by hundreds of millions of dollars.

The manufacturer, James Hardie Industries N.V., which redomesticated to the Netherlands in 1991, contends the \$293 million Australian (\$226.5 million) fund it created to meet its asbestos liabilities was actuarially approved at the time and questioned more recent assessments that figure the liabilities have ballooned.

The investigation is the latest development in a dispute between James Hardie and the state over the company's asbestos-related liabilities.

The New South Wales government late last month announced plans to establish a commission to

investigate the circumstances surrounding the redomestication of the building products company, which was previously based in Sydney, Australia. The inquiry is due to report its findings on June 30.

NSW Premier Bob Carr told the state Parliament that James Hardie in 1991 set up the Medical Research and Compensation Foundation to fund its asbestos liabilities, prior to its move to Amsterdam, Netherlands. The company claims that as it vested the fund with assets to manage the asbestos liabilities, it is no longer liable for any claims.

According to Mr. Carr, the company's asbestos liabilities have since grown and the fund could be inadequate by at least \$800 million Australian (\$618.4 million). As a result of the shortfall, asbestos-injury claimants may now target other parties, including insurers and the state and federal governments.

A spokesman for the MRCF confirmed that asbestos-related com-

See **ASBESTOS**/next page

Singapore: RBC rules adopted

Continued from previous page
ered, he explained.

It's a more "forward-looking" approach that aims to avoid solvency problems in a very competitive Singapore market, Mr. Gibbons remarked. Greater scrutiny by regulators means buyers are "better protected by this approach," he said.

The new regulations "encourage insurers to strengthen their capital base, internal controls and risk management systems," said Ronnie Cheah, chief accountant for Allianz A.G. Reinsurance Branch Asia Pacific in Singapore. Policyholders, therefore, are better protected from potential insurer failures, Mr. Cheah said.

The changes mark a "broader shift in the philosophy of the insurance regulator," said Mark Lingafelter, senior vp and country manager with Chubb & Son in Singapore. In the past, the MAS "followed a fairly prescriptive approach to regulating the market," he explained.

"Both the consumer and the in-

dustry as a whole are hurt by insurers with inadequate financials...so we strongly support the efforts by the MAS to take a proactive approach to identify early signs of financial stress," Mr. Lingafelter said.

"In the long term, it is to the buyer's advantage to ensure than an insurer entering into a promise to pay is financially strong and solvent when the loss occurs," said Mr. Lingafelter. "If this new regulatory approach works," he added, and helps avoid insurer failures such as the \$5.3 billion collapse of HIH Insurance Ltd. in Australia, "then, I think, the policyholder is significantly protected by the move to a risk-based approach."

Policyholders may pay a little more for the extra security, sources agree.

Mr. Cheah noted that policyholders might ultimately pick up some of increased expenses associated with complying with the new regulations.

And while it is too early to assess

the impact of the changes on the marketplace, some insurers may even consider moving to other locations in Asia where requirements are less stringent, Mr. Cheah suggested. That, he said, could affect coverage pricing and availability in Singapore.

Mr. Lingafelter pointed out, though, that as part of the new regulations, the minimum paid-up capital requirements have been reduced, which could encourage new players to enter the Singapore market.

As for the cost of adhering to the new regulations, Chubb could face some increased costs, he noted. "Certainly, the new requirements are more involved and draw increased time and attention as we try and work through the implications," he remarked. "But, to date, Chubb has not incurred any meaningful increase in our operational costs."

The insurer, Mr. Lingafelter said, is "very supportive of this change."

Pollution: Directive increases liability

Continued from previous page

ed or remedied. Subject to certain exceptions, the company that causes environmental damage—or threat of such damage—must to bear the cost of preventive measures or remediation.

The part of the directive that applies to water and land damage was designed simply to harmonize E.U. member states' existing regulations and to set minimum standards. But the other part, which refers to damage to species and natural habitats, introduces new liability, observers say.

Specifically, the directive creates liability for damage to species and natural habitats protected under the European Union's 1992 Habitats Directive and 1979 Birds Directive.

While polluters previously could be held liable for land and water contamination, the directive broadens their liability to include damage to the environment when there is no third party involved. So, for example, if a certain species were wiped out on a particular stretch of river, the polluter would be required restock the river or pay damages to local authorities.

Companies could face substantial cleanup costs related to such liabilities, and the extent to which insurance would respond to such losses is unclear, experts say.

Although insurers offer environmental impairment policies for European companies, the liabilities created under the E.U. directive generally are not covered, and underwriters are expected to review policy wordings in light of the new directive.

Currently, most companies do not have insurance that would cover damage to protected species or habitats, said Stephen Roberts, business development leader at Marsh in London.

Companies buy public liability insurance, which covers sudden-and-accidental pollution, but not gradual pollution, he said.

And while some specialist environmental impairment liability policies do cover gradual pollution, insurers will have to review the new directive before they offer specific coverage for the new exposure, said Cristin Bullen, environmental practice leader at Marsh.

In the United States, it took several years for the insurers to develop environmental policies that covered liabilities stemming from enactment of the Comprehensive Environmental Response Compensation and Liability Act in 1980, Ms. Bullen noted.

Those policies in the United States eventually offered coverage for damage to natural resources, she said.

Several aspects of the directive are

of concern to insurers, said Tony Lennon, European manager of Chubb Environmental Solutions, a London-based unit of Chubb Insurance Co. Europe S.A.

"The difficulty is making sure the way (the liability) is handled in the environmental insurance policy accords with the directive wordings," he said.



PHOTO: AFP/J.L. CERREJUDO

A seabird was still recovering in 2003 from exposure to the massive 2002 oil spill off Spain by the tanker Prestige.

Also, it is not yet clear how courts will interpret the directive, so the likely magnitude of damage awards is not known, Mr. Lennon said. "That is where the problem comes: What cost will courts assign to companies? That is perhaps the scariest bit both for operators and insurers," he said.

And while insurers may be willing to cover the risk, buyers must also change their perception of environmental risk, Mr. Lennon said.

"The whole mindset of insurance buyers tends to be rather blind to environmental issues as a whole; I think this could well be a wake-up call," he added.

Patrick Wegerdt, legal councilor at the Brussels, Belgium-based European Chemical Industry Council, said that companies need to review how they might be exposed under the directive.

In addition, he noted it would take some time for the insurance market to adjust to the new exposures.

"When any new insurance area is opened up, often quotes can vary wildly," Mr. Wegerdt said. "At this initial phase, there is concern that the insurance industry is not developed enough, and (insurers) have made that clear. There will be a teething period where if environmental damage does occur, people will see how much it costs," he added.

Once the directive is implemented, member states will have three years to incorporate it into national laws. Three years after that, the European Commission will consider whether to make mandatory the purchase of some form of financial security, such as insurance, to cover environmental liabilities.

Asbestos: Move raises questions

Continued from previous page

pensation claims have increased over the past three years and that the fund now has only \$200 million Australian (\$154.6 million) in assets to meet future claims estimates that exceed \$1 billion Australian (\$773 million).

Actuarial consultant Trowbridge Deloitte, which assessed the fund when it was first established, says that the foundation has enough funds to cope with payouts for five years but faces another 40 years of claims.

According to Mr. Carr, James Hardie has refused to add to the fund.

"James Hardie maintains it acted on legal and actuarial advice in calculating that \$293 million Australian figure. They also claim they

owe a duty to current shareholders that prevent it from making additional funds available," he said.

Peter Macdonald, chief executive officer of James Hardie, said in a statement that he welcomed the inquiry. But he expressed concern

mer company.

James Hardie and the New South Wales government are already embroiled in legal proceedings that are due to be resolved this month when the state's Court of Appeal decides whether asbestos companies and victims can sue state governments for failing to protect workers from a material they knew to be dangerous.

The case stems from a decision last August by Australia's High Court that overturned an earlier

New South Wales Court of Appeal decision that the state government should not have to contribute to asbestos cases because it was a taxpayer-funded entity, rather than a for-profit company.

The High Court ruled that the source of funds was irrelevant and instructed the lower court to reconsider the matter on its merits and assess the state government's actual involvement before deciding what the proper contribution should be, if any.

The case involved a worker at a state-owned power company who was exposed to asbestos in James Hardie products.

James Hardie claims that there were many inspectors at the site and that the state government had as good or better information than its unit about asbestos. In addition, it maintains that the government had the power and the responsibility to direct and enforce safety and that it was negligent in not enforcing safety precautions, according to court documents.

'It is difficult if not impossible to understand how the projected future liability (of the asbestos claims fund) could have trebled in less than three years.'

Peter Macdonald
James Hardie Industries N.V.



PHOTO: NEWSPIX

that the inquiry's terms of reference would fail to examine the escalation in asbestos liability estimates for all asbestos manufacturers and users over the past several years.

He expressed surprise that there were thought to be insufficient funds in the foundation to pay all expected claims.

"According to the advice of experts at the time, the foundation's assets were sufficient for it to meet all future legitimate claims," Mr. Macdonald said.

"The figures now being claimed by the foundation are a dramatic departure from a well-established trend over the 15 years before the foundation was established. It is difficult if not impossible to understand how the projected future liability could have trebled in less than three years, especially given that previous projections had been relatively stable."

He says the company's position remains unchanged and it is not obliged to pay more funds to a for-

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Brokers: Most report growth

Continued from page 3

tion in the market, I think...the numbers are not sustainable."

"We expect revenue growth to slow for all of the brokers we cover and probably slip into high single digits by the end of the year for many of them," said Jay Cohen, an analyst with Merrill Lynch & Co. Inc. in New York.

Acquisition growth

For a number of the largest publicly held brokers, acquisitions continue to fuel the growth of brokerage revenues. Brokerage revenues are commissions and fees from brokerage and related services but exclude interest income.

Glen Allen, Va.-based Hilb, Rogal & Hobbs, which changed its name last September to reflect its July 2002 acquisition of Atlanta-based Hobbs Group L.L.C., reported the largest revenue gains in 2003, by

percentage, among its public brokerage peers.

HRH's brokerage revenues rose 24.4% to \$555.7 million, while net income improved 15.1% to \$75.0 million.

Roughly \$85 million of HRH's brokerage revenues in 2003 came from acquisitions made in 2002 and 2003, said Carolyn Jones, senior vp and chief financial officer. HRH in 2003 made six acquisitions, with annualized revenues of about \$46 million, she noted. Only 5.5% of HRH's total revenue growth in 2003 was organic, the company said.

Daytona Beach, Fla.-based Brown & Brown Inc. also was in acquisition mode last year, making 23 deals worth \$43 million in annualized revenues, a company spokesman said. Brown & Brown's brokerage revenues rose 20.6% to \$545.3 million in 2003, and net income rose 32.7% to \$110.3 million. Organic growth in 2003 was 4.6%, the spokesman said.

Acquisitions of another sort helped fuel growth at two other publicly traded brokers in 2003.

Itasca, Ill.-based Arthur J. Gallagher & Co., for instance, hired 130 new producers between July 2001 and September 2002.

That recruitment effort "really shined" in 2003 for Gallagher, according to Nik Fiskien, an analyst with Stephens Inc. in Little Rock, Ark. "They stopped recruiting and the ones they brought on rolled their books over and you saw internal growth about the best out of any of the other U.S. brokers in '03 because of that," he said.

Gallagher's brokerage revenues increased 14.9% in 2003 to \$1.16 billion, of which 11% was organic growth, the company said. Gallagher excluded from its 2003 brokerage revenues certain acquisition-related commissions totaling \$40.7 million. Profits rose 12.5% to \$146.2 million in 2003.

In addition to a strong sales culture and expense management, Willis Group Holdings Ltd.'s results are buoyed by an aggressive recruitment effort. In 2003, 151 producers joined the broker and so far in 2004, it has hired 30 producers.

Brokerage revenues at the world's third-largest broker increased 20.7% to \$2.0 billion and net income increased 97.1% to \$414.0 million. Willis said brokerage revenues grew 15% on an organic basis.

Cochran Caronia's Mr. Klauber said that Willis has not just focused on hiring more producers, but also on hiring the "right producers."

"They've acquired some very top people...from different brokers at the top level," he said. "Their acquisition of practice leaders has been very good. And given their critical mass and laying the right people into that, it's enabling them to grow," he said.

In commenting on Willis' and Marsh & McLennan Cos. Inc.'s 2003 brokerage results, Mr. Cohen of Merrill Lynch noted: "I think they had very successful years. The results there either matched or exceeded our expectations. You really couldn't complain about the results at either company."

Marsh's brokerage revenues grew 15.9% to \$9.59 billion in 2003. Broken down, risk and insurance services revenues increased 16.2% to \$6.87 billion, and rose 13% on an organic basis. Consulting revenues rose 15% for the year to \$2.72 billion and 3% on an organic basis.

Companywide, including its Putnam Investments unit, Marsh profits grew 13% to \$1.54 billion in 2003.

While Mr. Cohen said that higher insurance rates aided Willis' and Marsh's growth, "each company I think would have had respectable growth even if rates hadn't been going up."

That is due to new business production, he said, which comes from selling more to existing clients, new business, expanding business geographically or growing in areas where they are still relatively small.

Marsh and Willis' biggest competitor, Chicago-based Aon Corp., also posted double-digit growth in 2003.

Aon's brokerage revenues increased 11.3% to \$6.88 billion last year. Broken down, revenues from Aon's risk and insurance brokerage services unit increased 14.2% to \$5.68 billion, while consulting revenues rose 13.2% to \$1.19 billion. Organic revenues grew 9% and 5%, respectively, for each of those segments. Aon's profits grew 34.8% to \$628.0 million in 2003.

Aon's "results did appear to stabilize relative to the prior two years," Mr. Cohen noted.

On the positive side, certain Aon businesses like reinsurance brokerage and its international brokerage business performed "pretty well" in 2003, he said. "The weak links were the claims services business and also...the insurance brokerage business in the U.S., where organic growth rates slowed quicker than we expected," Mr. Cohen said.

In its year-end results statement, Aon noted that it is "evaluating strategic options" for its claims management operation, Cambridge Integrated Services Group.

"We have more work ahead of us to achieve the true profit potential of our organization, but I am pleased with the progress we have made in several areas," Patrick G. Ryan, Aon's chairman and CEO, noted in the statement.

"Our expectations are that the results will in fact improve, maybe not dramatically but steadily in 2004 and 2005, although the environment will become less accommodating" for Aon, Mr. Cohen said.

M&A outlook

As the property/casualty insurance market stabilizes, the pace and number of acquisitions by brokers is going to accelerate, some analysts predict.

"I think with the rate environment declining, you're going to see many of these smaller private brokers out there asking, 'Is this as good as I can get? If it is, I've got to monetize what I've spent my life building because I can probably get more now than I can get three to four years down the road,'" Mr. Fiskien said.

And "if you listen to all the public brokers, all are stating that their pipelines for acquisitions are as full as they've ever been in the history of these companies," Mr. Fiskien said. "And that's an indication you're going to see a lot of activity."

"We are seeing stronger real interest in the acquisition and merger arena than we saw in early 2003," said Jim W. Henderson, president and chief operating officer of Brown & Brown, in a statement. "As we move into 2004, more and more entrepreneurs seem to be recognizing the value of joining forces with larger, stronger partners like Brown & Brown and are more inclined to pull the trigger," he said.

Martin L. Vaughan, chairman and CEO of HRH, agreed. "Our pipeline continues to be robust and, despite increased competition, we are confident that we will be able to attract new business partners during 2004 that will generate annualized revenues of between \$30 million and \$60 million," he said.

Steve McGill, CEO of Jardine Lloyd Thompson Group P.L.C. in London, noted at a press conference announcing JLT's 2003 results that it, too, is seeing opportunities to acquire staff and businesses. "These opportunities are the greatest they have been for the past five years or even the past decade in the U.K. market," he said.

As part of this trend, Mr. McGill noted that JLT is in exclusive negotiations with London-based Heath Lambert Group P.L.C. about taking over some of Heath Lambert's Latin American operations.

JLT, the world's fifth-largest broker, in 2003 reported that brokerage revenues increased 10.4% to £429.0 million (\$701.1 million) in 2003. Net income rose 8.8% to £75.7 million (\$123.8 million).

Consolidation among the world's largest brokers is less likely today, some analysts say, as there are fewer targets available that could truly increase the acquirer's size.

Other factors could inhibit large broker deals from being sealed, Mr. Klauber pointed out.

"The pricing expectations, particularly for anything above \$25 million, is up significantly" and many brokers are not willing to pay those kinds of multiples, Mr. Klauber said.

He said the November 2003 acquisition of McGriff, Seibels & Williams Inc., in which BB&T Insurance Services Inc. paid nearly four times McGriff's revenue, exacerbated those expectations.

Raleigh, N.C.-based BB&T announced it would pay \$354 million in stock and cash and agreed to another \$102 million in "earnouts" for Birmingham, Ala.-based McGriff based on performance targets over the next five years.

The deal, which closed last month, could catapult BB&T into the ranks of the world's 10 largest brokers (*BI*, Nov. 17, 2003). BB&T Insurance is a unit of Winston-Salem, N.C.-based BB&T Corp., a banking and financing services holding company.

Results are not yet available for the remaining top 10 brokers.

Financial results for Chicago-based Acordia Inc., the world's sixth-largest broker, are not broken out by its publicly traded parent, Wells Fargo & Co.

London-based HLF, the seventh-largest broker, is privately held and has not yet reported 2003 results.

South Africa's Alexander Forbes Ltd., the world's eighth-largest broker, is publicly traded, but its fiscal year does not close until March 31.

Meanwhile, other large public brokers that are not among the top 10 turned in similarly strong results for 2003.

Briarcliff Manor, N.Y.-based USI Holdings Inc. reported brokerage revenues of \$352.3 million, up 8.2% over 2002. USI's net income increased 223% to \$35.3 million.

Chicago-based Hub International Ltd. reported a 30.2% increase in brokerage revenues to \$286.4 million. Net income for the year was \$36.5 million, up 24.2% over 2002.

2003 YEAR-END BROKER RESULTS

Year-end financial results for the world's largest publicly held brokers. Dollar amounts in millions

Brokers	Brokerage revenues ¹	% change from 2002	Corporate revenues	% change from 2002	Net Income	% change from 2002
Marsh & McLennan	\$9,587.0	15.9%	\$11,612.0	11.00%	\$1,543.0	13.0%
Aon	6,793.0	14.8	9,810.0	11.4	628.0	34.8
Willis	2,004.0	20.7	2,076.0	19.7	414.0	97.1
Arthur J. Gallagher	1,161.7	14.9	1,263.8	19.2	146.2	12.5
Jardine Lloyd Thompson ^{2,3}	701.1	20.1	729.4	18.9	123.8	18.3
Hilb, Rogal & Hobbs	555.7	24.4	563.6	24.5	75.0	15.1
Brown & Brown	545.3	20.6	551.0	20.9	110.3	32.7

1. Brokerage revenues exclude revenues not related to brokerage and consulting services as well as all corporate and fiduciary investment income.
2. British pound= \$ 1.6341 (12/31/2003); British pound= \$1.5025 (12/31/2002) 3. 2002 figures have been restated

IRA: Safe harbor

Continued from page 4

To qualify for the safe harbor, the IRA provider selected by an employer must be a state or federally regulated financial institution. In addition, any fees imposed by the provider must be comparable to those it charges for other rollover distributions. Any fees, with the exception of a startup fee, must be assessed against income earned by the IRA rather than against its principal.

Furthermore, the distribution itself must be invested in a product designed to preserve principal and provide a reasonable rate of return.

"The requirements seem fairly reasonable," noted Anne Waidmann, senior consultant with the human resources unit of PricewaterhouseCoopers L.L.P. in Washington.

The Labor Department estimates that roughly 100,000 pension plan participants receiving small distributions fail to tell their former employers what to do with the money.

Indeed, such failures are "very common," said Nina Falci, senior benefit analyst in Gainesville, Va., with Aerojet, a unit of GenCorp Inc.

If a benefit distribution is rolled into an IRA, participants avoid a 10% penalty tax imposed on distributions taken before age 59½ and defer regular income taxes. The funds rolled into the IRAs earn tax-deferred interest.

Under federal law, employers are allowed to cash-out pension benefits of participants who terminate employment if the value of the benefit is less than \$5,000.

Small pension distributions are common when an employee quits after a few years of service and participated in a final-average-pay pension plan where benefits earned during the first few years of employment are low.

Trial: Plan to switch forms revealed after loss: Swiss Re

Continued from page 1

Mr. Bollier testified, noting that by then the dispute over the number of occurrences was already public. "I told him...if that's what you are going to do, if you are going to switch the form on us, then, you know, please at least put your occurrence definition of Wilprop into Travelers."

In his own testimony last week, Mr. Blackmore denied that Mr. Bollier said anything about a policy switch during the bar conversation, but said that Mr. Bollier did ask for a change in the policy's occurrence definition. Lawyers for Silverstein contend that this shows Mr. Bollier knew Swiss Re was bound by the Travelers form.

"What, if anything, did you say in response to Mr. Bollier's request that the occurrence definition for Wilprop be inserted into the Travelers form?" asked Herbert Wachtell, a lawyer with Wachtell, Lipton, Rosen & Katz in New York, representing Silverstein.

"I think I said I would report back to my colleagues and let him know if there is anything we can do. I didn't commit to anything," Mr. Blackmore testified.

Silverstein and a dozen of its in-

surers are entering the fifth week of a trial in a New York federal court to determine whether the WTC's \$3.55 billion property program is governed by the Wilprop form or the Travelers form.

Insurers, led by Swiss Re, say they are bound by Wilprop, which was included with Willis' original underwriting submission and which a federal appeals court has already ruled would treat the Sept. 11, 2001, terrorist attack as a single event.

Silverstein, however, argues that it was in the process of switching the program to the Travelers form in July 2001 and that Swiss Re and the other insurers either knew of the switch or had waived approval of the policy form. The Travelers policy contained no occurrence definition, and Silverstein contends that this should allow it to recover two policy limits for the twin towers' destruction.

Mr. Blackmore testified that although Willis never informed London market underwriters of the form switch, it was under no obligation to do so because they had waived approval of policy wording. He also said that he told Mr. Bollier of the switch in a phone call and

that Willis followed up with a July 23, 2001, e-mail attaching a blank Travelers declaration page and a separate specimen property insurance form.

When Mr. Bollier signed a revised binder July 26—a week after the program's revised July 19 effective date—he committed Swiss Re to the Travelers form, Silverstein contends.

Mr. Blackmore conceded that Swiss Re never explicitly agreed to the Travelers form, but he testified that Mr. Bollier had also rejected the Wilprop form and that there was thus no agreed form backing the binder as of Sept. 11. In this case, the last form exchanged—Travelers—would presumably govern the program.

Mr. Bollier rebutted those contentions over three days on the witness stand last week.

Mr. Bollier told jurors that he never rejected Wilprop and would not have agreed to bind coverage without an underlying form.

In the days after the program's July 19 effective date, Mr. Bollier said he was working with Mr. Blackmore to resolve several coverage issues, the most important of which was the program's lack of

adequate sublimits for various exposures.

When he received Willis' July 23 e-mail attaching the Travelers forms, Mr. Bollier said that he was expecting a list of proposed sublimits. He said he disregarded the blank Travelers declaration page and scrolled through the specimen policy form, mistaking it for a revised version of the Wilprop form and looking in vain for the added sublimits.

Mr. Bollier said he called Mr. Blackmore, demanding to know "Where the heck are those sublimits?" In that conversation and in a follow-up e-mail, Mr. Blackmore said nothing about a change of policy form, Mr. Bollier testified. Willis officials likewise never mentioned a form change while negotiating four endorsements to the July 26 binder over several weeks in July and August of 2001, he said.

"Prior to and including July 23rd, did you ever discuss with Mr. Blackmore any change from the Wilprop form to some other policy form with respect to the World Trade Center coverage?" asked Mary Kay Vyskocil, a lawyer with Simpson, Thacher & Bartlett, representing Swiss Re.

"No, never," Mr. Bollier replied.

"Did you ever discuss with Mr. Blackmore the potential use of a Travelers policy form?"

"No, never."

"At any time prior to Sept. 11?"

"No. No."

About two weeks after the terrorist attack, Mr. Bollier said he asked Mr. Blackmore for a "final, cleaned-up" version of the WTC policy. Mr. Blackmore said he would check on it but never forwarded a policy and never mentioned Travelers, Mr. Bollier testified.

Swiss Re received the Travelers policy with a Sept. 24, 2001, notice of loss from Willis, he said.

Lawyers for Swiss Re had earlier introduced a Sept. 19, 2001, letter in which Willis Chairman and Chief Executive Officer Joseph Plumeri notified insurers that Willis would not provide them with copies of the WTC contract language.

On the witness stand, though, Mr. Blackmore denied that Mr. Plumeri's letter was the reason he did not forward a policy to Mr. Bollier, explaining that "we didn't have, I don't believe, at that particular time a final version from Travelers."

Benchmark: Insurer financial security troubles buyers

Continued from page 1

"The confidence in the underwriting community, from the standpoint of being there when you need them, isn't what it used to be," said Christopher E. Mandel, RIMS' chief risk officer. Insurance buyers would be wise to keep that in mind when purchasing coverage, he advised. "We all need to be concerned about how much risk we transfer and who we transfer it to."

"There is a cloud hanging over in terms of loss reserve deficiencies," said Dave Bradford, executive vp and chief knowledge officer at Advisen in New York. "Depending on how companies address that, it could dry up capacity in a hurry," he said, leading to a "short and shallow soft market."

Mr. Mandel said the terrorist attacks in 2001 "proved that the concept of expected losses may be a misnomer. What we thought was unthinkable" is possible, he noted.

Despite the increases in loss reserves, risk managers report that insurance rates are stabilizing in most casualty lines and are falling for property risks. Data collected for the online benchmarking tool since the survey was completed further confirm the softening, according to Mr. Bradford. It shows "very clearly that the market has turned in property lines" and most casualty lines are "at the tipping point," where they should begin to fall, he said.

But fiduciary liability and medical malpractice rates continue to rise, the survey revealed.

Mr. Mandel said that, barring a disaster on the scale of the 2001 attacks, the survey points to "a much brighter 2004 and 2005" as regards insurance pricing and availability.

But even though prices for conventional coverage are beginning to wane, risk managers' interest in risk funding alternatives continues to grow. And captives continue to lead the pack as risk managers' favorite alternative vehicle.

The hard market "triggered an explosion in new captive formation," the overview points out. Nearly 40% of respondents to the survey reported that they have or place business with a captive or risk retention group.

"Maybe one surprising finding is how aggressive midsize and smaller

companies are in pursuing new alternatives," Mr. Bradford said. Captives are such a "well-established part of the arsenal" to control risk costs that "smaller companies feel comfortable doing it now," he said.

In addition to using captives, many risk managers are choosing to substantially increase retentions and, "in a sense, becoming underwriters of their own risk," Mr. Bradford said.

But when risk managers look for conventional coverage they are increasingly likely to look to insurers in Bermuda for coverage, further cementing the island's position as a significant global market, according to the survey. "The emergence of Bermuda as a major global insurance center has profoundly

changed the dynamics of the insurance industry," the overview stated. "Savvy investors have learned to leverage Bermuda's business-friendly tax and regulatory environment to quickly form new insurance and reinsurance entities to seize emerging opportunities."

The rapid formation of Bermuda companies has significantly increased the efficiency and competitiveness of the global market and likely means insurance buyers "will never again have to endure the sorts of capacity shortages and outright unavailability of some types of insurance that characterized the hard market of the mid-'80s."

More information on the survey is at the RIMS store at www.rims.org and at <http://rims.advisen.com>.

Bird flu: Outbreak unlikely to trigger cover

Continued from page 4

the National Chicken Council.

For example, the top five importers of U.S. broiler parts, which paid an average of \$9 million a week last year, are now banning the import of any U.S. poultry, the council spokesman said. Those are China, Hong Kong, Mexico, South Korea and Japan. In addition, Russia is banning imports of chickens from Delaware, he said.

Although the extent to which the infection has spread to commercial operations is unclear, it can create "a double loss," because the processing company loses its investment in the birds and contract growers who raise the chicks to maturity are not paid for their expens-

es, another industry source said.

But there is little or no insurance coverage to respond to the large monetary losses, observers say.

Due to the typical lack of coverage for those engaged in broiler production, "we don't see (bird flu) as a significant event for the insurance industry," said Gregg Caletini, chief marketing officer for the American Wholesale Insurance Group in Charlotte, N.C.

Animal mortality and business interruption coverage is generally not available for companies engaged in raising and processing broiler chickens, industry sources say. Workers compensation coverage, though, might be triggered if a worker were to become ill while engaged in a dis-

posal operation, according to a spokeswoman for the Insurance Information Institute in New York.

However, "much like 'mad cow' disease, the potential insurance ramifications for U.S. insurers could be far-reaching, with a number of complex tort issues," she said. That would only occur, though, if infected poultry got into the food chain and sickened people, who might then claim negligence against the retailer and processor.

Delaware-based poultry producers also may have some extra protection if members decide to trigger an existing risk sharing arrangement that was designed to protect them from catastrophic losses, including illnesses. The risk financing

arrangement calls for a member to assume the first \$100,000 in losses before making a claim against pooled funds.

It is the only such arrangement in the United States, according to the National Chicken Council spokesman.

For now, though, the focus is on risk control.

Trade groups like the Delmarva Poultry Industry Inc. in Georgetown, Del., are getting "excellent" cooperation from members and suppliers in adopting measures to prevent the spread of the virus, according to Bill Satterfield, the organization's executive director. Steps include imposing strict quarantines and postponing nonessential deliveries and repairs.

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Late News

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two former workers who alleged systemic chemical poisoning from their work at another plant.

Csiszar, NAIC rebut consumer group criticism

The National Assn. of Insurance Commissioners is rebutting assertions by a consumer coalition



Mr. Csizsar

that NAIC President Ernest Csizsar is pushing an agenda that would weaken insurance regulation and hurt consumers. Specifically, the groups

contend that Mr. Csizsar is promoting more liberal personal lines rate and form model regulation—endorsed by the National Conference of Insurance Legislators—over a more conservative NAIC proposal. They also question Mr. Csizsar's commitment to state-based insurance regulation. "I have absolutely not abandoned state regulation nor any NAIC-established policies," Mr. Csizsar, South Carolina's director of insurance, said in an NAIC statement.

Pension funding bill conferees appointed

Negotiations to produce a compromise pension funding reform bill are likely to begin soon following the naming by House Speaker Dennis Hastert, R-Ill., of nine House members to a conference committee

to work out differences in House and Senate-passed measures. The measures passed earlier by the House and Senate both contain a provision that for 2004 and 2005 would substitute the yield on long-term corporate bonds instead of the yield on the 30-year Treasury bond to value pension liabilities.

Bogus health plans up sharply: GAO

Health insurance scams appear to be on the rise, according to a report by the General Accounting Office. The report cites Department of Labor and individual state statistics showing that 144 "unique entities" not authorized to sell health benefits operated from 2000 to 2002. "Over those three years, the number of such plans newly identified each year almost doubled from 31 in 2000 to 60 in 2002," the report states. The 144 plans collectively failed to pay at least \$252 million in health claims, the GAO found.

Catholic Charities ordered to cover contraceptives

Catholic Charities of Sacramento Inc. must provide prescription



contraceptive coverage within its insured group health care plan even though Catholic religious beliefs oppose artificial contraception, the California Supreme

Court has ruled. The court ruled that Catholic Charities' rights were not violated and that it does not qualify as a religious employer as defined under the state law's exemption.

Hard market leads to fewer failures: S&P

The number of U.S. insurance failures fell to a five-year low last year because of the property/casualty and health insurance markets' hard pricing and the improvement in the economy, particularly in the equity markets, according to a Standard & Poor's Corp. study. Twenty-eight insurers were put under regulatory supervision in 2003, the lowest number since 1998. This compares with 39 in 2002 and 35 the year before that, according to the study.

EEOC to finalize retiree benefit rules

The Equal Employment Opportunity Commission expects to finalize by late September proposed rules that would clarify employers can offer richer health care benefits to younger retirees than to Medicare-eligible retirees without fear of being sued for age bias by the EEOC. Under the rule the EEOC first proposed last July, health care plan changes affecting retirees eligible for Medicare would be exempt from Age Discrimination in Employment Act enforcement.

Briefly noted

Average annual renewal rates for property/casualty insurance business placed through Internet portal Marketscout.com increased 9% in February compared with 11% in January, the company reported....Multicounty grand jury indictments against **Oklahoma Insurance Commissioner Carroll Fisher** and Opal Ellis, his top assistant, alleging embezzlement and operation of an illegal charity have been replaced with criminal charges. A prosecutor said the

change expedites prosecution of Ms. Ellis—who was convicted in 1995 on a federal charge of misapplication of bank funds—as a habitual felon and make her potentially liable for stiffer penalties in this case...More than 100,000 people may die in the United States over the next decade from **asbestos-related diseases**, according to a report by the Washington-based Environmental Working Group Action Fund. The study, prepared with \$176,000 in funding from the Assn. of Trial Lawyers of America, calls for banning the use of asbestos, tightening the monitoring of asbestos removal and creating a national program of health screening for those exposed to asbestos. While the study does not dismiss the creation of a national trust fund to compensate victims of asbestos-related disease, it holds that victims should be allowed to opt out and retain the right to pursue damages in court... Senate Majority Leader Bill Frist, R-Tenn., said that he "will begin floor **action on an asbestos bill** either the last week of March or first week of April." Speaking to the full Senate late last week, Sen. Frist said that negotiations on a bill that would replace the current litigation-based system for compensating victims of asbestos-related diseases with a nation no-fault trust fund had resulted in "good progress" during the past few months.

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Online Poll

[3/1 - 3/5]

Do you think prescription drugs manufactured for the Canadian market are as safe as those produced for the U.S. market?



Yes: 86.8%

No: 6.3%

Not sure: 7.5%

BI Stock Index

[3/1 - 3/5]

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

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

***BI* Stock Index**  **2348.14** **0.14**

Dow Jones  **10595.50** **0.11**

S&P 500  **1156.86** **1.04**

Largest gains

Trenwick Group Ltd.	100.00%
Gainsco Inc.	15.48%
Selective Insurance Group	6.23%
HCC Insurance Holdings	6.14%
PacificCare Health Systems	5.88%

Largest losses

Vesta Insurance Co.	-21.66%
EMC Insurance Group Inc.	-8.65%
Unico American Corp.	-7.26%
PMA Capital Corp.	-2.88%
Allstate Corp.	-2.59%

Weekly change by market segment

Brokers	1.96%
Insurers/Reinsurers	2.24%
Managed Care Organizations	1.72%

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

403(b): Universities may pay higher taxes

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is considered a student too much," said Kelly Farmer, tax director of the University of Minnesota in Minneapolis.

The student/employee classification issue goes beyond FICA tax liability and also would affect the chief retirement savings plan—known as a 403(b) plan—that most colleges and universities offer to employees.

While 403(b) plans are often described as the nonprofit world's equivalent of the 401(k) plan, there is a key difference between the two plans, a difference directly affected by the student/employee classification issue.

Unlike 401(k) plans, salary deferrals made by 403(b) plan participants are not subject to nondiscrimination testing. However, 403(b) plans that accept salary deferrals must be made available to all employees.

This universal availability requirement does not apply to students employed by schools and colleges, though, if those individuals' compensation is not subject to

FICA taxes.

By stripping away the FICA tax exemption, colleges and universities would have to extend their 403(b) plans to individuals they never would have considered eligible before.

"Schools and colleges will have to re-examine their eligibility rules for their 403(b) plans," said Joe Walshe, a principal with the human resources unit of PricewaterhouseCoopers L.L.P. in Washington.

The IRS regulations, published in the Feb. 25 issue of the Federal Register, are the latest battle in a long-running war between schools and the IRS over the student classification issue.

"It is a recurring theme. The IRS is looking for ways to narrow the FICA tax exemption," said Cathie Eitelberg, a senior vp with The Segal Co. in Washington.

One of those battles resulted in a 1998 court ruling in which the 8th U.S. Circuit Court of Appeals rejected the IRS' position that medical residents at universities are employees and their wages are subject to

FICA taxes. That case involved the University of Minnesota.

The proposed rules, though, apply well beyond medical residents, which the IRS still proposes to classify as employees, in spite of the 8th Circuit ruling.

Under the rules, individuals who are studying at colleges and universities but who would be considered ineligible for the student FICA tax exemption based on services they perform for the institution include:

- An individual who consistently works at least 40 hours per week for the educational institution.
- Individuals who are required to have a license to perform their services.
- Individuals who are covered under employee benefit plans, including vacation and sick leave, as well as retirement, life insurance, dependent care assistance or adoption assistance.

"If you get benefits, there is no FICA exception," said Dan Schwalie, a consultant with Hewitt Associates Inc. in Cleveland.

- Individuals whose work re-

quires knowledge of an advanced type in a field of science or learning, requires the consistent exercise of discretion and judgment and whose work is predominately intellectual and varied in character.

For example, a teaching assistant who receives a cash stipend, is required to grade quizzes and provides class and laboratory instruction in accordance with a lesson plan developed by a professor would be considered a student because his or her work does not require the consistent exercise of discretion and judgment, according to the IRS.

Conversely, in another IRS-provided example, a medical resident would be considered an employee because that individual, while his or her work is subject to supervision, must consistently exercise discretion and judgment regarding the treatment of patients.

The proposed regulations also make clear that for the student FICA tax exemption to apply, an individual must be regularly attending classes at a school, college or university.