

**2001 losses reduce
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Business Insurance

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\$4

Notion of rate hike tolerance lacks support, study finds

Insurers misreading buyers

By SALLY ROBERTS

Discontent among large corporate buyers with this year's astronomical rate hikes will force insurers to seek rate increases of no more than 10% in 2003, predicts a new analysis of the post-Sept. 11 insurance market.

Many property/casualty insurers intend to raise rates next year based on their belief that risk managers are "understanding" and "tolerating" the hefty rate increases already imposed, the analysis shows.

Large national and global buyers are anything but tolerant, though, and they are preparing to abandon the traditional insurance market and use alternative risk financing options, according to London-based investment bank UBS Warburg, which teamed up with London-based insurance consulting and research firm Mactavish Ltd. to analyze the market.

This exodus from the traditional market will prompt a flattening of rates over the next two years, with

rate increases for larger corporate buyers dropping toward the single-digit range for 2003, the analysis predicts.

There is a huge disconnect between what insurance sellers believe to be buyer tolerance of the rate increases and what buyers see as a lack of any other options, according to the authors.

"The fact is, the suppliers of insurance are probably looking at their retention levels and saying, 'Boy, this looks good; everybody ac-

cepted the rates,'" said Michael Lewis, senior insurance analyst with UBS Warburg in New York. And if insurers got a high enough retention, they believe that "we can come back and hit them again," Mr. Lewis said.

"The interesting thing is, the major accounts are saying, 'We accepted it because we had very little alternative, but just give us time,'" he said.

Bruce Hepburn, a managing di-

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Late News

**HHS revises
medical privacy rules**

The Health and Human Services Department last week announced its proposed changes to a controversial medical records privacy rule, which was promulgated in late 2000. The rule currently requires hospitals, health insurers and other covered entities to receive written permission from patients before releasing certain medical information. Among other revisions, the new HHS proposal would change consent requirements that it believes could have hindered access to care. The proposed changes would ensure parental access to children's medical records. Health insurers generally favor the proposals.

**WorldCom facing suit
by 401(k) plan members**

Participants of WorldCom Corp.'s 401(k) plan are suing the company and two of its top executives, alleging breaches of fiduciary duty under the Employee Retirement Income Security Act. The suit alleges that Arlington, Va.-based WorldCom directed "that the (401(k)) Plan purchase and hold WorldCom stock despite the fact that WorldCom knew that its own financial results were overstated." It further asserts that "WorldCom made misrepresentations to the plan participants about WorldCom's financial results." The suit also alleges that the executives reaped millions of dollars by selling shares before the stock price tumbled following the revelation of the inflated earnings assumptions. Plan participants, meanwhile, held on to their company stock investments. A WorldCom spokeswoman said, "We believe the suit is without merit."

**Citigroup rolls out
Travelers IPO**

Travelers Property Casualty Corp. expects to generate \$3.7 billion in net proceeds from its initial public offering, which took place last

Travelers

week. The Hartford, Conn.-based property/casualty insurer is offering 210 million shares of class A common stock priced at \$18.50 per share. In addition, it granted its securities underwriters an option

See **LATE NEWS**/next page

Impasse likely on 401(k) reform in Congress

By JERRY GEISEL

WASHINGTON—Reform legislation designed to better protect 401(k) plan participants from Enron-type investment disasters is rapidly moving through Congress, but intense partisan differences that have emerged are casting doubt that legislators can agree on a compromise measure.

Last week, both the House Education and Workforce Committee and the Senate Health, Education, Labor and Pensions Committee approved 401(k) reform measures that would, in part, shorten the period of time an employer can require plan participants to hold company stock that is contributed as a company match.

Those moves follow approval

earlier this month of another reform bill by the House Ways and Means Committee (*BI*, March 18), which cleared the measure on a 36-2 vote.

The full House likely will consider a reform bill—assembled from both House panel measures—by mid-April, with passage almost certain, benefit lobbyists say.

The Senate, though, is on a much slower and less-certain track, and the Senate Finance Committee, which also has jurisdiction on the issue, is not expected to develop a proposal until mid-April.

The various 401(k) reform proposals were spurred by the collapse of one-time energy giant Enron Corp. Enron's failure and the plunge in its share price last

See **401(k)**/page 22

Lawsuit trend ups D&O costs

By ROBERTO CENICEROS

When the University of California's pension fund incurred hefty losses stemming from its investments in Enron Corp., the university turned to a plaintiffs law firm renowned for class-action securities litigation to seek restitution.

The university's recent move illustrates a trend of large institutional investors leading or joining class-action securities lawsuits, which the insurance industry contends is in-

creasing the settlement costs of such litigation. That, in turn, will add pressure to increase rates for directors and officers liability insurance, brokers and insurers say.

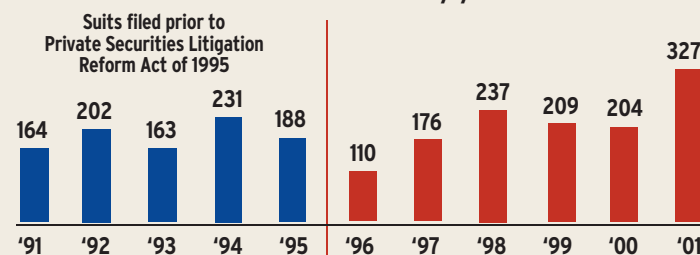
Securities litigation by institutional investors is replacing an older pattern, in which plaintiff attorneys would steer such lawsuits and settlement negotiations after rounding up small, individual shareholders to represent as a class.

Overall, securities litigation is in-

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SECURITIES FRAUD CLASS ACTIONS GROW

Number of federal securities fraud class-action lawsuits filed in federal court by year



* Does not include 138 suits alleging IPO fraud only

Source: Stanford Law School Securities Class Action Clearinghouse, Cornerstone Research

International

**GERLING CEO
INVITING BIDS**

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Inside

How much is too much?

As rate increases for commercial property/casualty business continue, some observers are asking how many more double-digit rate hikes companies will take before many turn to the alternative market. **Page 4**

All could benefit from compromise

Senior Editor Dave Lenckus writes in Commentary that Congress can find a way to protect patients' rights and ensure fairness for health plans. **Page 6**

Without action, no satisfaction

With research indicating that health plan claim denials are seldom appealed to state external review systems, lawmakers should consider whether adding federal review programs is the best way to address patient-rights issues, this week's editorial says. **Page 8**

Employers' liability expanded in France

A ruling by France's highest court has expanded employer liability for worker illnesses and injuries, which previously were the responsibility of the French social security system except where employer misconduct was proved. **Page 15**

Aviation rate hikes on horizon

Further rate increases are needed to achieve stability in the aviation insurance market, despite the rate hikes and coverage restrictions that have been imposed over the past six months, insurance and reinsurance executives are saying. **Page 15**

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

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CONTINUED FROM PAGE ONE
to buy another 21 million shares. Travelers is being spun off by Citigroup Inc. Net proceeds of the IPO will be used to pay debts to Citigroup. Travelers will trade on the New York Stock Exchange under the symbol "TAPa." Travelers' shares closed last Friday at \$19.55.

N.Y. regulator proposes captive law changes

New York's top insurance regulator has proposed changes to the state's captive legislation to encourage



Mr. Serio

more companies in the state to set up captive insurers. The proposed changes would help New York businesses that face increased insurance costs and reduced coverage following the Sept. 11 terrorist attacks, said Gregory V. Serio, New York's Superintendent of Insurance. The proposals would expand "the opportunities and options for New York businesses to look at alternative risk financing facilities," Mr. Serio said. Under the proposed changes, the minimum net worth an organization—or group of organizations—must have to form a captive would drop to \$25 million from \$100 million. In addition, the proposals would permit the state, the city of New York and other public authorities to form captives, and they would allow rent-a-captives to form in New York, Mr. Serio said.

Canada's Hub seeks IPO

Canadian broker Hub International Ltd. has filed a registration



statement with the U.S. Securities and Exchange Commission for a proposed initial public offering of common shares. Neither the

Late News

number of shares Hub plans to issue nor the proposed share price was disclosed. The Toronto-based broker said, however, that it would use about \$47 million of the net proceeds to reduce debt and use the balance for general corporate purposes, including acquisitions. Hub is seeking to trade on the New York Stock Exchange under the symbol "HBG."

South Carolina eases redomiciliation rules



Gov. Hodges

South Carolina has amended its captive legislation to simplify the process of moving a captive to the state from other domiciles. The amendments—which were

passed by the Legislature and signed into law by Gov. Jim Hodges earlier this month—include a provision that extends South Carolina's redomestication legislation for standard companies to the state's captive law. Previously, parents of captives moving to the state had to set up a shell company in South Carolina and merge it with the existing captive. Other amendments include allowing the formation of "special-purpose" captives. That provision will allow regulators to approve captives in the future that might not comply with current

definitions of captives under South Carolina law.

Munich Re forecasts further rate tightening

Munich Reinsurance Co.'s net income for 2001 fell more than 85%, to 250 million euros (\$222.9 million), the company announced Friday. The deterioration in earnings came mainly from 2.2 billion euros (\$1.96 billion) in claims from the Sept. 11 terrorist attacks, reserve strengthening and poorer investment returns. The Munich-based reinsurer's gross premium volume rose by 16%, to 36.1 billion euros (\$32.18 billion). Reinsurance, which accounts for 57% of Munich Re's written premiums, grew 21% last year to 22.2 billion euros. Hans-Juergen Schinzler, chairman of Munich Re's management board, warned that further tightening of rates and terms will be necessary.

ERC to combine P/C operations

General Electric Co.'s Employers Reinsurance Corp. is combining its property/casualty reinsurance operations in the Americas with those in Europe and Asia to form a new unit, called Global P&C Re. The new unit will comprise direct writer Employers Re and broker-market reinsurer GE Reinsurance Corp. in the United States and GE Frankona Re Group in Munich, Germany. Rick Smith, formerly president and chief executive officer of operations in the

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

Business groups predict efficient reviews, more choices

NAIC model rate and form law praised

By MEG FLETCHER

RENO, Nev.—Business and insurer groups strongly support the National Assn. of Insurance Commissioners' adoption of a new model rate and form law designed to streamline and speed the introduction of new products for commercial risks.

The model law, which has been in the works for years, applies to several types of property/casualty coverages for commercial risks, including fidelity, surety and guaranty bonds, as well as some fire, marine and inland marine coverages. It excludes certain reinsurance, accident/health insurance, aviation liability coverages and personal risks.

"This model law is aimed at improving the efficiency of rate and form review and standardizing state laws for commercial lines insurance

products," said Ohio Insurance Director Lee Covington, who chairs the NAIC's Improvements to State-Based Systems Working Group. Mr. Covington spoke at the regulators' spring meeting last week in Reno, Nev.

'Commercial policyholders now will have a range of choices unfiltered by the prism of prior government approval.'

*David Mair
Risk & Insurance Management
Society Inc.*

The model calls for a "use and file" system for most rates and a

"file and use system"—with a maximum 30-day waiting period—for most forms. State laws currently vary significantly in the degree of oversight they exercise on rates and forms for commercial risks.

The model law, however, "is not intended to be a stand-alone model. Its provisions are intended to replace comparable provisions in current state and policy form regulatory laws," the measure states. Even states that adopt portions of it are expected, though, to retain regulatory laws relating to provisions such as which employers are eligible for the relaxed requirements.

The condensed, nine-page model law assumes that competitive markets exist, unless a commissioner determines that is not the case.

Business and insurance industry groups have strongly supported the

Americas, will be president and CEO of Global P&C Re in Overland Park, Kan.

Germany seeking to extend aviation cover

Germany plans to seek approval from the European Commission for a 60-day extension of war risk coverage that the government is providing German airlines. A spokeswoman for Germany's Ministry of Transport, Building and Housing said that while Germany has the power to grant the extension when the present guarantee expires March 31, the government plans to first seek the approval of European Union transport ministers. With commercial insurers having withdrawn war risk coverage following the Sept. 11 terrorist attacks, the German government wants to help but not give German airlines an advantage over other European carriers, she added.

Briefly noted

The St. Paul Cos. Inc. has completed its acquisition of Toronto-based London Guarantee Insurance Co. from Great-West Lifeco Inc.'s London Insurance Group. St. Paul said the deal, valued at \$125 million Canadian (\$79.2 million), creates one of the largest surety and corporate risk insurers in Canada....**The Occupational Safety and Health Administration** has withdrawn proposed shipyard safety rules relating to areas that include scaffolding, welding, access and fall protection. OSHA said it had received few comments on the proposed standards and decided to focus instead on higher-priority shipyard safety matters....**Zurich Financial Services Group** on Thursday confirmed a previously estimated \$387 million loss for 2001, largely as a result of losses from the Sept. 11 terrorist attacks. Despite a 14.3% increase in gross premiums written, to \$34.8 billion, Chairman and CEO Rolf Hueppi said he "remains cautious in light of the uncertain risk environment and economic conditions."

model law.

Once states enact the measure, "commercial policyholders now will have a range of choices unfiltered by the prism of prior government approval," David Mair, president of the Risk & Insurance Management Society Inc., said. Mr. Mair also is the risk manager for the U.S. Olympic Committee in Colorado Springs, Colo.

The American Insurance Assn. said the model law removes "front-end regulatory impediments," while increasing product and price choices in a competitive market. Also, it shifts scarce regulatory resources "to critical back-end regulation," such as market conduct, the AIA said.

A broad range of other insurance industry trade groups generally support the measure. **See NAIC/page 19**

Pension savings seen in rate change

By JERRY GEISEL

WASHINGTON—Pension-funding provisions tucked in a hastily enacted economic stimulus bill will dramatically shave employers' pension plan contributions and improve corporate cash flow.

Those provisions, included in the Job Creation and Worker Assistance Act of 2002, which President Bush signed earlier this month, will allow employers to use higher interest rate assumptions—compared to prior law—to calculate pension liabilities that are the basis for plan contributions and for premiums paid to the Pension Benefit Guaranty Corp.

While the precise financial impact of

the interest rate assumption change is not known, experts say it will be considerable.

"This is money in the bank for many employers," said Bill Miner, a consultant in the Chicago office of Watson Wyatt Worldwide.

"This is going to save significant monies for pension plans, many of which are already well-funded," said Ethan Kra, chief actuary for William M. Mercer Inc. in New York.

The changes, though, are only temporary and will expire at the end of next year. In the interim, benefit experts hope, Congress will devise a new and more realistic way for employers to calculate pen-

sion liabilities.

"We do need a permanent fix. We should now have the time to settle on what should be an appropriate formula," said James Klein, president of the Washington-based American Benefits Council.

"Over the long term, we need something that is more reflective of what pension liabilities actually are," said Michael Johnston, a consultant with Hewitt Associates L.L.C. in Lincolnshire, Ill.

For now, though, the new law fixes temporarily what Chris Bone, chief actuary at Aon Consulting in Somerset, N.J., describes as a "broken funding mechanism."



PHOTO: REUTERS

President Bush signed the economic stimulus bill earlier this month.

See **STIMULUS**/page 22

Industry unfazed by soft-money ban



PHOTO: KRT

From left: Rep. Martin Meehan, Sen. Russ Feingold, Sen. John McCain and Rep. Christopher Shays celebrate the passage of a campaign finance reform bill.

By MARK A. HOFMANN

WASHINGTON—Campaign finance reform legislation that received final congressional approval last week will have minimal impact on how property/casualty insurance organizations go about their political business, say industry lobbyists.

The Bipartisan Campaign Reform Act of 2002 bans national political parties from raising unregulated so-called "soft money"—which is used for "party-building" activities—after this November's elections. But the measure doubles to \$2,000 the amount of regulated "hard money" an individual can give to a particular candidate.

The measure enjoyed the backing of consumer groups that claimed it would reduce the political influence of corporations, but it was opposed by business groups such as the U.S. Chamber of Commerce, which said it would violate constitutionally guaranteed free speech. Opponents have already vowed legal challenges, particularly regarding curbs on broadcast political advertising.

But despite the ongoing dispute over the measure's constitutionality, the battle has not been joined in any major way by the commercial property/casualty insurance industry.

According to data posted on www.opensecrets.org—the Web site of the

nonprofit, nonpartisan Center for Responsive Politics—the insurance industry as a whole ranked sixth among industries overall in terms of its political contributions from the 1990 election cycle to the current 2002 cycle. The industry—both insurers and brokers—gave a total of \$167.8 million, \$52.1 million of which was soft money. By comparison, lawyers and law firms—the largest givers—donated \$398.2 million during the same period, only \$49.2 million of which was soft money. Insurance interests favored Republicans by a 64% to 36% margin, while lawyers supported Democrats by a margin of 71% to 29%.

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Much discussion but few public/private deals so far

Government role seen in terrorism risk pools

By CAROLYN ALDRED
and MARK A. HOFMANN

Reinsurers are working with governments to develop terrorism coverage arrangements, but so far, few agreements have been reached.

European and U.S. reinsurers have stated that public/private partnerships such as government-backed reinsurance pools are the best way to cover terrorism risks, at least until the insurance market's appetite for underwriting such risks returns.

While terrorism risk pools already exist in the United Kingdom, France and Spain, similar pools are being discussed in other countries, including Austria, Belgium, Germany and the United States.

In France, a new government-backed pooling arrangement has been formed to provide property and business interruption coverage for insured risks valued at more than 6 million euros (\$5.3 million). Spain and the United Kingdom, which set up government-backed terrorism pools years ago, are considering expanding those pools' coverage.

Since the Sept. 11 terrorist attacks, reinsurers and insurers have changed their underwriting approaches, leaving some large commercial risks unable to secure coverage for terrorism exposures.

Public/private partnerships

Munich Reinsurance Co. and Swiss Reinsurance Co. both favor a government role in providing coverage against terrorism risks.

Munich Re is "in favor of a pool situation where the state is involved for claims over a certain dimension and plays a role as the reinsurer of last resort. We are convinced that the new risk dimension coming from terrorism can only be borne by all parties involved, i.e., insureds, insurance industry and the state," a spokeswoman for the German reinsurer said.

Swiss Re also believes that a public/private partnership that would pool losses is the most promising way to provide terrorism insurance. In a recent report, the Zurich-based reinsurer concluded that terrorism risks are insurable privately only on a "very limited basis."

Swiss Re has proposed a pool that would be reinsured beyond a given deductible by reinsurers, capital markets and governments, with the governments serving as the insurers of last resort.

France recently established such a system. Groupement d'Assurance et de Reassurance des Risques Attentats et Actes de

See **TERROR**/page 14

Corporate governance coming to the fore

U.S. risk managers could find broadened role

By RODD ZOLKOS

An increased focus on corporate governance resulting from the collapse of Enron Corp. and the related problems at Arthur Andersen L.L.P. are likely to have several implications for risk managers of U.S. companies.

Greater exposure to directors and officers liability is one possible outcome, as is a need to increase the disclosure of the risks companies face to their investors.

And the additional attention to corporate governance could bring a broadened role for the risk managers of U.S. companies, as new corporate governance requirements—mandated either by regulation or by market forces—prompt companies to take a more enterprisewide view of their exposures.

Such has been the case with some companies in Europe and Canada, where the corporate governance guidelines set out by major stock exchanges include such provisions as requirements that the boards of participating companies take responsibility for identifying and managing their companies' risks and disclose risks and risk management policies to investors.

A Toronto Stock Exchange guideline that boards assume responsibility for identifying the principal risks their companies face and ensure the implementation of appropriate risk management systems prompted Winnipeg, Manitoba-based United Grain Growers

Ltd. to embark on an enterprise risk management program shortly after that company went public in the mid-1990s.

Ultimately, the company developed a process for assessing risks across UGG's operations and entered into a three-year integrated risk program in 2000 that addresses one of UGG's primary operating risks: downturns in its grain-handling business (*BI*, Nov. 15, 1999).

Susan Meltzer, assistant vp-insurance and risk management at Sun Life Financial in Toronto, noted that, in the past, when she gave presentations on enterprise risk management, "I used to say there is more impetus in Europe and in Canada because there are more prescribed corporate governance guidelines."

"I'm not big on regulations, and I'm not big on government interference in the way a company manages itself and its risks, but we've just had more forces driving us that way," Ms. Meltzer said. "I really think there is such a strong tie between demonstrating corporate governance and good risk management."

Now, for U.S. companies, post-Enron developments present an opportunity to broaden the use of enterprise risk management techniques, she said.

"I think the worldwide trend toward corporate governance can only get stronger," Ms. Meltzer said. "The Enrons and the Andersens

See **GOVERNANCE** /page 6

P/C rate hikes could spur alternative market gains

By JUDY GREENWALD

How many more double-digit rate hikes will companies have to take?

That's the question some observers are asking as rate increases for commercial property/casualty business continue, with no immediate end in sight.

Although the increases are expected to lead to better earnings for insurers this year, some observers believe that, at some still-indeterminate point, companies hit by the hikes will turn in large numbers to the alternative market.

"The question that will arise...within this year or next, is when do you start seeing a kickback by employers on these price increases, which could cause employers to get out of the insurance market and get into the alternative market of self-insurance," said Matthew Coyle, director at Standard & Poor's Corp. in New York.

So far, "we haven't seen any substantial movement," but companies are not going to be willing "to bail out the insurance industry" indefinitely, said Mr. Coyle. "There is a point of no return, where employers will just kind of put up their hands and say, 'No more—we're going to self-insurance because it's cheaper for us to do it than it is to pay you guys,'" he said.

"I think it's a real issue, and it could happen soon," said John L. Ward, chairman of the Cincinnati-based Ward Financial Group. Movement toward the alternative market "could be a real trend we'll see in the short term."

Gregory Berg, head of enterprise risk at Hartford, Conn.-based Hartford Financial Services Group Inc., said: "It may be a little too early to tell what the pace will be, but the

direction seems clear. For the Jan. 1 renewals, many were faced with the prospect of paying premium increases without a lot of alternatives lined up just because of the timing of the 9/11 events."

"As of the July 1 renewals, I think we'll get a clearer picture of whether the larger accounts are taking larger retentions and deductibles," and whether middle-market accounts are moving to self-insured group programs, said Mr. Berg. "We're probably going to see some resurgence in alternative market activity."

"It's hard to suggest the trigger point" for the movement toward alternative markets, said Michael Smith, an analyst with Bear Stearns & Co. in New York. "There is a balance that corporate risk managers have to maintain, and that balance is the impact on their own earnings from higher insurance costs vs. the impact on their company's stock valuations that comes from increased volatility to earnings that's generated by a larger self-insurance program."

"But throwing a monkey wrench into the whole equation is the absence or the contraction of reinsurance support for captive programs," said Mr. Smith. That means, he said, it is not easy to simply tell the underwriter, "I'm going to go self-insured."

Cliff Gallant, an analyst with Keefe, Bruyette & Woods in New York, said, "This cycle turn has been somewhat more controlled than previous turns." Quality insurers—large, well-capitalized companies—he said, are "probably going to benefit from the same things the alternative market is benefiting from, and that is clients turning away from less attractive names in buying

insurance."

Meanwhile, the rate hikes continue. "I think the commercial insurance industry is certainly going to face a significant amount of rate increases, certainly more than they've seen in over a decade," said Michael Paisan, an analyst with Williams Capital Group in New York. Although the percentage of increase will vary by line of business, "I would say, in the aggregate, they're probably looking somewhere in the mid-20%" range, he said.

Largely because of the rate hikes, the outlook for the commercial

'I think 2002 is going to be a decent year. It should be easy to do better than 2001. Most economists believe the economy is recovering and will be chugging along by mid- to late 2002.'

John L. Ward
Ward Financial Group

property/casualty industry is brightening after a difficult year marred by the World Trade Center attacks, observers say.

This year, "you're going to begin to see the beginnings of earnings momentum for the group, particularly the higher-quality companies that don't have a lot of sins of the past that they have to make up for," said Mr. Paisan.

But the rate hikes "could be somewhat offset by some potential surprises, in terms of loss-cost inflation, so you won't get the same amount of margin expansion in

2002 as you might get in 2003," Mr. Paisan said. He noted that the earnings momentum may "begin to peak out" in 2003 and 2004.

"This year, we expect a further continuation of rate firming across most of the major lines of business" in the commercial area, Mr. Coyle added. "That should really help a lot of companies start to turn the corner in terms of earnings and cash flow being positive and growing," he said, noting that S&P may change its industry outlook from negative to stable this year.

Mr. Coyle added, though, that "the thing that concerns us all is the issue of reserve adequacy. We think there's still room there to improve, and it's something that could potentially offset the favorable pricing progress we see currently in the market."

"I think 2002 is going to be a decent year," said Mr. Ward. "It should be easy to do better than 2001. Most economists believe the economy is recovering and will be chugging along at a good clip by mid- to late 2002. The focus on underwriting fundamentals has never been stronger because of the tough times the industry has been through, and so I'm optimistic balance sheets will be looked at, scrutinized more closely." Although that may lead to some pessimistic headlines, "in general, I'm upbeat about how I believe the industry will bounce back from a dismal 2001," said Mr. Ward.

Meanwhile, insurers are eager to put 2001 behind them. The 15 major property/casualty insurers surveyed by *Business Insurance* that report this data had a 71.6% decline in net income, to \$3.60 billion.

Other results from the *BI* survey of 16 property/casualty insurers in-

clude:

- Net premiums written increased 9.7%, to \$90.85 billion.
- The combined ratio deteriorated, to 113.2% from 105.3% in 2000.
- The policyholder surplus of the 15 insurers that reported this data fell 7.8%, to \$52.45 billion.

Not participating in this survey is Kemper Insurance Cos., whose consolidated results are not yet available, and Fremont Compensation Insurance Group, which has delayed filing its statutory results because parent Fremont General Corp. is negotiating the sale of its workers comp business.

Mr. Paisan said, "I would characterize the fourth quarter as, basically, a kitchen-sink quarter, where all the sins of the past were made up for." Everybody "seemed to take a hit to earnings for reserve issues" and other factors because it was recognized it was going to be a bad year anyway, he said. "It was really kind of a 'who cares' quarter," as insurers sought to position themselves for this year and next, he said.

Analysts disagree as to how well insurers stocks are likely to perform this year. Mr. Smith said, "I think it should be a big year for the stocks, because the stock market tends to zero in on written premiums as a quick and dirty proxy for the outlook for future revenues and earnings expectations, and I suspect what we're going to see in written premiums this year will be considerably stronger than what most investors are anticipating."

But Mr. Ward said, "Wall Street likes certainty, and we're probably in one of the most uncertain times in the industry we've seen in a while. And so I would expect it'll be a tough year for insurance stocks on Wall Street."

PROPERTY/CASUALTY INSURERS' 2001 YEAR-END RESULTS

Ranked by change in net income. All amounts in thousands of dollars.

	Corporate					Property /casualty operations			
	Net income	Percent increase (decrease) 2001-2000	Consolidated 2001 revenues	Combined 2001 ratio ¹	Combined 2000 ratio ¹	Premiums 2001 Written	Percent increase 2001-2000 (decrease)	Policyholder 2001 surplus	Percent increase 2001-2000 (decrease)
Ohio Casualty Corp.	\$98,580	124.4 %	\$1,902,003	115.3 ²	119.2 ²	\$1,472,184 ²	(2.2) %	\$767,503	(5.5) %
Argonaut Group Inc.	2,890	103.5	301,607	130.8	255.8	219,572	34.0	447,415	(10.7)
American Financial Group	(14,800)	73.6	3,923,800	108.8	108.0	2,582,200	(2.1)	1,669,700	(5.3)
Cincinnati Financial Corp.	193,307	63.3	2,560,812	103.6 ²	111.6 ²	2,188,453 ²	13.1	2,530,251	(20.2)
Old Republic Int'l	346,972	16.6	2,373,451	102.0	106.0	1,078,541	21.9	1,516,911	7.5
RLI Corp.	31,047	8.2	309,354	97.2	94.8	315,213	20.8	291,690	(5.9)
Travelers P/C Corp.	1,065,000	(18.8)	12,231,000	108.0 ²	102.1 ²	9,846,000 ²	11.3	7,687,000	11.3
American International Group	5,326,800	(19.2)	62,402,200	100.7 ²	96.7 ²	20,100,900 ²	14.7	N/A	N/A
Hartford Financial Services Group Inc.	507,000	(48.0)	15,147,000	112.4	102.4	7,660,000	10.1	5,771,000	1.8
Chubb Corp.	111,500	(84.4)	7,754,000	113.4	100.4	6,961,500	9.9	3,770,000	8.2
ACE Ltd.	(146,414)	(127.0)	6,644,687	111.7	95.5	5,955,924	22.1	6,106,707	12.7
Royal & SunAlliance USA	(204,000)	(204.5)	N/A	125.6	107.7	3,185,000	5.4	2,802,000	(14.0)
The St. Paul Cos.	(1,088,000)	(209.6)	8,943,000	130.6	104.8	7,763,000	31.9	5,014,000	(26.1)
CNA Financial Corp.	(1,640,000)	(235.5)	13,200,000	116.1 ²	114.9 ²	8,070,000 ²	(8.2)	6,030,000	(28.0)
SAFECO Corp.	(989,200)	(963.2)	6,866,900	118.7	111.4	4,439,200	(2.2)	2,266,900	(3.3)
Liberty Mutual Ins. Co. ²	N/A	N/A	N/A	128.3	116.3	9,012,000	3.9	5,780,000	(19.1)
Cumulative	\$3,600,682	(71.6) %	\$135,616,814	113.2 %	105.3 %	\$90,849,687	9.7 %	\$52,451,077	(7.8) %

¹ After dividends ² Statutory N/A - Company did not provide data
Source: BI survey

Governance: Now to the fore

Continued from page 3

are putting it more on the front burner. But risk managers have to understand what an opportunity that is to build an early-warning system to warn boards when there is a problem."

P. Richard Hackenburg is the president and chief executive officer of Willis of Missouri Inc. in St. Louis and, like Ms. Meltzer, a former president of the Risk & Insurance Management Society Inc. Mr. Hackenburg said he thinks the Enron situation will have several effects on U.S. companies and their risk managers.

"I think the impact is going to be significant, particularly not only as it relates to corporate governance internally and processes that are going to be regulated but also from the issue of liability of directors and officers and management liability," Mr. Hackenburg said.

The changing role of company compliance officers, counsels, boards and boards' audit committees all must be considered, Mr. Hackenburg said, and the risk manager should play a role in that process.

"It's far more than just risk management," he said. "It's got implications for risk management, to be certain, but it's got implications beyond risk management."

Brian M. Kawamoto, executive vp and managing director at The Lockton Cos. Inc. in Kansas City, Mo., also expects an impact on U.S. risk managers.

"I suspect it's like anything, that an event will usually trigger a reac-

tion," Mr. Kawamoto said. "And I have to believe that the results of legislation will have some impact."

'I've always found that those industries that are the most regulated in terms of risk ... tend to have a more proactive approach to risk management.'

*Brian M. Kawamoto
The Lockton Cos. Inc.*

Though Mr. Kawamoto said he's not sure that risk disclosure and other corporate governance guidelines will go as far in the United States as they have elsewhere, he noted, "I've always found that those industries that are the most regulated in terms of risk...tend to have a more proactive approach to risk management."

Consequently, to the extent that new U.S. laws or regulations require more disclosure of risk, "I think you will see an upgrade of corporations' risk management," he said.

President George W. Bush and Senate Democrats recently have proposed measures in response to corporate governance concerns arising from Enron's collapse. Mr. Bush's proposal called for "corporate responsibility" but offered little in the way of increased regulatory enforcement or investor redress.

Senate Democrats, meanwhile, offered measures that would facili-

tate securities fraud prosecutions and ease certain restrictions on investor securities fraud suits.

While the Enron situation is pushing corporate governance concerns to the fore in the United States, Susanne Murray, national D&O practice leader at Willis Global Financial & Executive Risk in New York, contends that the matter was already receiving considerable attention.

Many companies already had been probing their activities and asking questions about possible exposures, Ms. Murray said, adding, "I think what you'll find is a lot more companies are aggressively and publicly doing that. Anybody that makes that happen more and more, that's all for the good."

Errors & Omissions

- The March 11 Comings & Goings column incorrectly identified Randi Cigelnik. Ms. Cigelnik was recently appointed general counsel for ACE Europe and ACE Global Markets. She previously was general counsel to ACE Bermuda, ACE Tempest Reinsurance Ltd. and ACE Financial Solutions International. She is based in Hamilton, Bermuda.
- An item in the March 11 issue incorrectly listed the title of Christopher E. Mandel. He is assistant vp-enterprise risk management at USAA Group in San Antonio.

Commentary

Work is needed on patients' rights

In an old country ditty, a singer laments, "If it weren't for bad luck, I'd have no luck at all...." That lyric could have been sung recently about many health care players.

Consumers saw Congress reconsider basic patients' rights last year, but that effort stalled when lawmakers could not agree on whether health plan participants should be allowed to recover up to \$3 million or \$5 million of damages from plans that wrongfully deny coverage.

Democrats say the higher penalty would be fair and controlled. Republicans say it would drive up health care costs too much when plans pass along those costs through higher rates. Both sides are right. So Congress, being Congress, does nothing.

Meanwhile, against the urging of the Bush administration, the U.S. Supreme Court has decided to determine whether states may require health insurers to submit to independent reviews when plan participants dispute coverage decisions. That issue would be resolved in a patients' rights law, because Democrats and Republicans support mandating such reviews for plans.

Unlike Congress, the Supreme Court will make a decision, but no one can predict how the court will rule. Consider the court's decision in *Great-West Life & Annuity Insurance Co. et al. vs. Janette Knudson and Eric Knudson*. Ironically, the court's conservative majority in that case created financial difficulties for health plans, as well as other problems. The ruling is a blueprint on how claimants can avoid reimbursing their plans after recovering damages from third parties responsible for their injuries (*BI*, Feb. 11).

Critics of the decision complain the court split a legal hair over the form of relief that federal law allows insurers to recover from plan participants. How odd that this court would pick a nit so. Remember, these are the same justices who could not find a reason to ensure that votes were fairly counted in a pivotal state in a close presidential election.

The *Great-West* ruling is unfair to health plans and likely will harm plan participants and medical providers. Benefits experts say one likely fallout will be that health plans will delay covering some patients' medical costs for years—until those patients recover and then exhaust damages from third parties. Is there any question how medical providers will respond to a multiyear delay in reimbursement for their services?

Congress can change everybody's luck by breaking the impasse over the patients' rights bill. But how?

By being pragmatic. Republicans already have compromised on the issue of damages for wrongful coverage denials. Democrats are not doing patients any good by standing firm and allowing the legislation to languish.

But, whatever liability lawmakers agree on, let's not allow insurers to factor those penalties into future rates. Likewise, hold liable only the parties that make coverage decisions for self-insured plans—not employers—and bar those parties from passing along their penalty costs. Why should anyone but those decision makers be penalized for

their mistakes? If they cannot bear the resulting financial strain, then they are the market's weakest links. Goodbye.

Overall, though, I think we would see wiser coverage decisions.

Prospective rate hikes that anticipate penalties are possible in the first year of such a system, but health insurers and

vendors with confidence in their claims-handling operations would have a market advantage by rejecting that tactic.

Let's also consider other ways to avoid coverage disputes in addition to independent reviews of coverage denials.

Experimental treatments often are focal points of coverage disputes, because they represent the last hope for the seriously ill. If patients are willing to submit to those treatments, and the outcomes would help prove the treatments' effectiveness, health plans should pitch in. Plans should pay for experimental treatments up to the cost of the standard treatment that they would cover anyway. That still may leave patients responsible for some treatment costs, but the coverage could give these patients the opportunity to get the treatment while arranging financing to pay their share of the costs.

Let's also restore basic fairness to the system for health plans. Give them back the right to subrogate against plan members who recover damages from third parties.

It's past the time for Congress to get back to work on these problems. Our good luck, as Emerson wrote, is tenacity of purpose.

Senior Editor Dave Lenckus' commentary appears periodically and on www.businessinsurance.com. He can be reached by e-mail, at dlenckus@crain.com.



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Editorial

Satisfaction requires action

USE IT OR LOSE IT. That concept is often cited in connection with the right to vote and the responsibility that citizens have in a representative democracy to exercise that right. It could just as readily apply to the appeals mechanisms that many health plan participants have at their disposal for challenging unfavorable coverage decisions. Just as citizens who do not vote can hardly complain about the government they get, health plan participants who do not avail themselves of appeal/review mechanisms should not complain about the fairness of plan decisions.

Yet complain they do, and that has drawn the attention of lawmakers, regulators and the courts, all of which are looking at ways to address unfair coverage decisions and introduce mandatory systems for reviewing coverage decisions. Although we support independent review procedures—which many health plans already have in place and which the majority of states offer—new research calls into question whether such mechanisms will really make a difference in the satisfaction of health plan participants. That’s because taking advantage of these systems requires the dissatisfied plan participant to act, and the research calls into question whether that would happen.

The research by the Kaiser Family Foundation finds that external review systems already in place in 41 states and the District of Columbia are seldom used by plan participants. This is despite the fact that Kaiser found that nearly half of the decisions appealed, on average, are

overturned, which means participants have almost a 50-50 shot at getting a more favorable decision.

The low use of these mechanisms is surprising and disturbing, because it suggests that dissatisfied plan participants would rather complain about their claims than take steps to obtain a satisfactory outcome. In that light, we question the efficacy of proposed federal review requirements, as contained in patient rights legislation introduced in both the House and Senate. A centerpiece of both proposals would create a right to independent external review of health plan coverage decisions. The Senate bill would take existing state appeal systems into account, while establishing minimum standards and calling for greater uniformity in how they operate. The House bill, by contrast, would pre-empt existing state appeal systems, which does not make sense if the problem is the utilization of existing mechanisms.

Would these federal solutions truly make plan participants more satisfied with their health care plans and claims outcomes, or simply make lawmakers feel satisfied that they have done something?

The Kaiser research found that out of millions of claims filed annually, only about 4,000 appeals were submitted to state external review systems. In New York, for example, in fiscal 2000, the study found that only 902 cases were appealed, out of an estimated 8.4 million residents subject to the state law. That’s about 0.01%.

The researchers suggest several reasons that the use of these programs may be low, including that a plan’s own internal appeals

must be exhausted before a participant can turn to state review systems, minimum claim-size requirements and the fact that employees in self-insured plans are not subject to state review programs.

But just as voter apathy is blamed for low turnout at the polls, inertia is most likely to blame for the low incidence of appeals.

Clearly, research is needed to explain why more participants do not appeal unfavorable decisions. But if this survey is any indication, then creating more review mechanisms is not going to solve the problem.

Instead, perhaps more should be done to ensure that existing review systems are effective. Rather than introduce a new review system, federal lawmakers should create requirements that plans have their own independent review mechanisms, which are already in place at most plans, and clarify that even ERISA plan participants should be able to avail themselves of state review systems if internal review fails to satisfy. The Senate proposal to make the state systems more uniform and to set minimum operating criteria is worthwhile.

But lawmakers alone are not going to solve the problem of low utilization of appeals mechanisms. More needs to be done by state regulators, health plans and benefit executives to make participants more aware of the review mechanisms that are available to them and to educate them in how to take advantage of the state systems that were the focus of this study.

Getting people to exercise their rights is the most important step to making sure they are satisfied with the outcome.

Schillerstrom



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Online Commentary

In an online commentary, Dr. George L. Head argues that insurers should view writing coverage for terrorism risks as an opportunity to serve their policyholders and the nation, while earning underwriting profits.

Read Dr. Head's comments in the Commentary area of www.businessinsurance.com.

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Disasters can lead to improvements in crisis planning, response

By David C. Harvey

Since last Sept. 11, our country and our lives have been forever changed. We have had to confront a spectrum of emotions, including horror, disbelief, anger, anguish, the admiration of heroic efforts and a profound sense of national pride.

We are no longer naive in our thinking that "it can't happen here." If history teaches us anything, it is that, as F. Scott Fitzgerald put it, "vitality shows in not only the ability to persist but the ability to start over."



The indefatigability of the human spirit will hasten our country toward a renewed, if not restored, state of normalcy.

Sometimes, disasters prove to be the impetus for invention, a development that may prove true following Sept. 11.

For example, the Oil Pollution Act of 1990, or OPA 90, was intended to solve the type of problems brought to light by the Exxon Valdez oil spill. The act streamlined and

strengthened the Environmental Protection Agency's ability to prevent and respond to catastrophic oil spills. A trust fund financed by a tax on oil became available to clean up spills when the responsible party is unable or unwilling to do so.

OPA 90 requires oil storage facilities and vessels to submit plans to the U.S. government that detail how they would respond to large discharges. These signed agreements with contractors illustrate remediation plans in specific detail, ensuring an immediate response that could prevent an environmental catastrophe. The EPA has established regulations for above-ground storage facilities; the Coast Guard has done so for oil tankers.

OPA 90 also requires the development of contingency plans that would prepare and plan for the response to an oil spill on a regional scale. The act compels responsible parties—such as oil production companies and those involved in the storage and transport of oil—to have on hand qualified contractors capable of responding to worst-case scenarios.

OPA 90 leaves no margin for error. This fact is especially pertinent as it relates to the conditions that emergency responders must adhere to with regard to their business operations. In addition to demonstrating its preparedness, the responder must exhibit the ability to mobilize specifically trained personnel with proven expertise in the varied

disciplines of hazardous materials containment.

OPA 90 sets a precedent for the physical inspection of the response readiness of emergency contractors. It is not unusual, on any given day, for the Coast Guard strike team to examine a contractor's response resources, especially its equipment and the abilities of its personnel. Something as minor as a broken taillight could eliminate a trailer

Given the potential for business interruption after a disaster, companies face the daunting task of designing—and, if necessary, implementing—an effective and precise business-recovery plan.

from being considered an eligible piece of equipment. This infraction could, in turn, jeopardize the designation of the responder as qualified.

In essence, there is no exclusion in the roles that both the oil production company and its contracted emergency responder must have in the design and management of their remediation plan. The core responsibility is with the contractor to select an emergency responder that is qualified, licensed, and

capable of adhering to the rigors of inspections of personnel and equipment.

Emergency response also is critical to plans for recovering from an act of terrorism or a natural disaster.

Given the potential for business interruption after a disaster, companies face the daunting task of designing—and, if necessary, implementing—an effective and precise business-recovery plan.

The insurance industry is considering the value of those clients that have the foresight to align their businesses with responsive partners before disaster strikes. Having a presigned emergency response agreement with a designated and qualified resource assuredly minimizes downtime and operational losses, assists in restoring personnel confidences and, inevitably, hastens the company's return to business as usual.

The parallels between the environmental catastrophe of the Exxon Valdez oil spill giving way to the legislation of OPA 90 and the inevitable scrutiny of emergency responders resulting from the aftermath of Sept. 11 remind risk managers that they need only revisit the historical cause-and-effect relationship to make intelligent decisions for their remediation plans.

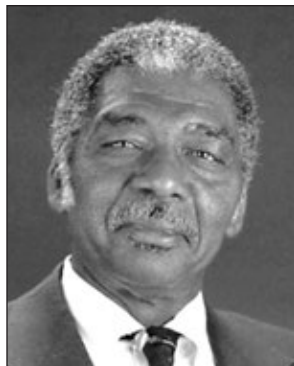
David C. Harvey is a vp at Trade-Winds Environmental Restoration in Bay Shore, N.Y.

Sept. 11 increases cost, complexity of travel accident coverage

By Harry Ennevor

Buying travel accident insurance used to be simple, but recently it has gotten a lot more complex and expensive.

Since the Sept. 11 attacks, the price of the coverage has increased because of limitations on reinsurance capacity and because insurers writing the line realize the demand has now outstripped supply.



Additionally, insurers have placed war risk exclusions on travel to countries such as Afghanistan, Algeria, Iran, Iraq, Libya, North Korea and Pakistan. Risk managers who need to

buy back war risk in those countries are paying high premiums for it.

Before Sept. 11, travel accident policies were fairly liberal in covering acts of war for all countries, except for the superpowers of the world, as defined by each insurer. Companies could routinely purchase war risk coverage for employees on an audit basis. A deposit premium was charged at the start of the policy period, and the insurer would

audit on an agreed basis—quarterly, semiannually or annually. At the end of the policy year, the insurance company would negotiate a new premium based on the amount of company travel to war risk zones during the prior year.

Now, because of the restrictions forced on primary insurers by reinsurers, an employee must inform the insurer *before* leaving on a trip to any of the war risk countries listed by that insurer.

This has created a huge problem for risk managers, who now must keep tabs on which employee is traveling where and when. And even when the risk manager knows where U.S.-based employees are going, he or she may not be aware where company employees based in, say, Moscow or Singapore are traveling.

Additionally, risk managers, employee benefits managers and their staffs are now besieged by employees asking, "Am I covered?"

Corporate buyers of accident insurance are finding other restrictions on renewal. Terrorism coverage, both on and off premises, has been restricted or, in some cases, canceled.

Capacity has shrunk, because insurers no longer provide high individual principal sums, and large aggregates once taken for granted are now fiercely negotiated.

The good news is that travel policies still provide broad coverage. Risk managers,

assisted by their brokers, need to take a closer look at their plans to make sure that there are no gaps and that they are getting the broadest coverage possible.

There are two basic types of accident policies. The broader type provides 24-hour coverage for business and pleasure. With this

Since the Sept. 11 attacks, the price of travel accident coverage has increased because of limitations on reinsurance capacity and because insurers writing the line realize the demand has now outstripped supply.

type, you can buy coverage for almost every type of accident in which an employee might be involved. Coverage can be extended both on and off the job, 24 hours a day, 365 days a year, anywhere in the world, with certain limitations.

The other type, which is less expensive, is the 24-hour business-only policy. This provides coverage only while the employee is on business for the company. Coverage begins when the employee starts on his or her journey and remains in force until his or her return to the home or office, usually

whichever occurs first.

While all policies provide a death benefit should an employee be killed while traveling, that isn't the only benefit. Both types of policies can include many other coverages, such as permanent and temporary disability, accidental medical and repatriation. Some policies will pay a given amount to an employee's survivor for professional financial planning assistance; some will cover college tuition for those children of a deceased employee who were full-time students at the time of the death.

Evacuation is another valuable coverage. For instance, in April 2001, a policy written by a unit of American International Group Inc. covered the evacuation of an ailing doctor from the South Pole. AIG reimbursed the doctor's employer more than \$400,000, which was the U.S. government's charge for flying the doctor home before the Antarctic winter set in completely.

Travel accident insurance is a valuable and necessary employee benefit, and one that is still relatively inexpensive. Its purchase has become more complicated—and more crucial—since Sept. 11. And it now takes more research and expert assistance to get the best program.

Harry Ennevor is executive vp and chief operating officer of E.G. Bowman Co. Inc., a New York-based brokerage.

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Taking stock

Industry plumbing its problems in '02

By Myron M. Picoult

In our last column, we discussed the prospect of the 2001 fourth-quarter earnings becoming a "kitchen sink" for insurers (*BI*, Feb. 4). That's exactly what occurred, with more than \$5.0 billion in various write-offs and charges bouncing through the financials.



This event seems to have provided a new business opportunity, albeit somewhat short-term, for an enterprising management team in the area of "specialty plumbing fixtures." Given that so many kitchen sinks were thrown out, there should be a run on new sinks, unless this now falls under the guise of cost-cutting.

Likewise, the prospect of a "royal flush" for some companies in 2002—as their financials come under sharper scrutiny from regulators, rating agencies and perhaps industry observers for their use in recent years of various forms of financial engineering—could result in increased demand for other fixtures as well.

In recent years, as they sought to buoy flagging operating results and satisfy the demands of industry observers, investors and

rating agencies, some insurers have made use of various forms of financial engineering. This encompassed tinkering with loss reserves, stretching on the investment side of the equation and using reinsurance facilities to enhance reported results.

Finite risk and other financial reinsurance contracts have come under regulatory scrutiny in both the United Kingdom and Australia, as officials assess whether such products permitted insurers to mask their financial problems. If such mechanisms become unacceptable to industry observers, notwithstanding their legitimacy, insurers' operating results will become more volatile, as reported numbers more closely mirror actual results, until new "smoothing techniques" arrive on the scene. It should be stressed that we are not questioning the legitimacy of such transactions. Rather, we are raising a question about full and appropriate disclosure.

It should also be noted that some new accounting rules will soon come into play with respect to the accounting for goodwill. To be sure, there are insurance companies that have acquired entities over the years with some goodwill involved. In some instances, adjustments probably have to be made to that figure. It will be interesting to see if those involved in this area will address the problem at the end of the 2002 first quarter or wait until the middle of the year, which could lead to some restatement of first-quarter results. We also question the quality of reinsurance recoverables on many balance sheets and won-

der when this figure will be subjected to closer scrutiny.

Industry executives continue to articulate the need for rate relief to be sustained for an extended period as insurers attempt to extricate themselves from the prolonged period of soft pricing and giveaways via enhanced terms and conditions. Indeed, such comments seem to imply that the rate relief garnered to date may not be enough to produce an acceptable return on equity. All of this underscores how deep a hole the industry dug for itself and the fact that we continue to believe that the profit outlook—at least 2002 estimates—is still too optimistic.

Our caution is based on the continuing need to clean up past balance sheet mistakes exacerbated by sluggish investment income numbers, depressed cash flows for 2002 and, in some instances, guaranty pool assessments that are nettlesome burdens. Clearly, through the current cycle, if not for the next decade, the bulk of the industry's profitability is likely to come the hard way, via the underwriting route. The industry will not be able to look for the net investment income account to be its salvation for a while.

As noted earlier, pricing is on the upswing. However, rates in general are not emulating the sharp spikes shown after the 1984 underwriting debacle. The increases are, however, more broad-based and should rise at least into 2003 as underwriters react to rising loss costs and low interest rates.

The next six months is going to be a critical

period for the insurance industry. Clearly, monies raised for some of the newer companies have not been fully put to work, and it will be interesting to see how the funds are deployed.

Specifically, do they go into the venues for which they were raised, or does the money find its way into other lines, given the difficulties in finding seasoned underwriters and pulling together needed infrastructures?

Furthermore, while reinsurers have tightened their underwriting standards, we do not sense that they have drawn as deep a line in the sand as was expected. Finally, rumblings that one of the new Bermuda entities has offered to write three-year contracts is clearly disquieting at this stage of the game.

All of the above reinforces our longstanding cautionary perspective and leads to the query as to whether the road to nirvana that many industry observers now believe we are on is paved with fool's gold. Hopefully, it is only the ramp that may be filled with make-believe glitter, while the road itself will be paved with the real stuff.

Myron Picoult is senior adviser, Financial Institutions Group at Dresdner Kleinwort Wasserstein in New York. He is a past president of the Assn. of Insurance & Financial Analysts and a member of the New York Society of Security Analysts. An archive of Mr. Picoult's columns for Business Insurance can be viewed online at www.businessinsurance.com.

Seizure-caused work accident ruled compensable

Injuries sustained in a vehicle accident caused by an employee's diabetic seizure arose out of his employment, entitling the employee to workers compensation benefits, according to the Court of Appeals of Michigan.

In January 1991, Jack Hill, an employee of Faircloth Manufacturing Co., was assigned to transport parts to a facility located about two miles from the employer's location. Mr. Hill, an insulin-dependent diabetic, left the plant alone, driving a company truck. En route to the facility, he collided with another vehicle. Witnesses reported to police that Mr. Hill appeared to be convulsing from a seizure just before the accident. Mr. Hill, who could not remember the collision, sustained injuries in the accident that prevented him from performing his job at Faircloth. Mr. Hill applied for workers comp benefits, but his claim was denied. The Workers' Compensation Appellate Commission affirmed this decision.

The appellate court, however, said that if Mr. Hill was driving the vehicle for a job-related purpose and if having a diabetic seizure while driving aggravated or otherwise increased his injuries, then those aggravated injuries are compensable under workers comp law.

According to the court, many "everyday" activities done in the course of employment may result in a compensable injury, even if the accident is triggered by an idiopathic condition—a disease or infirmity that is strictly personal to the claimant and is unrelated to his or her employment. Thus, the court held that Mr. Hill's injuries arose out of his employment, entitling him to workers comp benefits.

Hill vs. Faircloth Manufacturing Co., Court of Appeals of Michigan, July 10, 2001 (BI/01/A.-\$10)

Legal Briefs

Company owner an employee for ERISA purposes

A disability insurance plan qualified as an Employee Retirement Income Security Act "plan, fund or program" where a corporation paid premiums, shareholders were beneficiaries and procedures for receiving disability benefits were reasonably established, according to the 7th U.S. Circuit Court of Appeals.

In 1993, Randy Simpa acquired 49% of Bob's Excavating & Snow Removal Inc.; the other 51% was owned by Bob Byron. The company employed four other employees. In March 1993, Massachusetts Casualty Insurance Co. issued individual disability insurance policies to Mr. Simpa and Mr. Byron. Bob's Excavating paid the premiums on both policies, which covered only Messrs. Simpa and Byron. A separate health insurance policy covered Messrs. Simpa and Byron as well as any employee who had worked for the company for at least six months.

In 1996, Mr. Simpa was injured and claimed disability benefits. In 1997, Massachusetts Casualty terminated Mr. Simpa's benefits. He sued the insurer in federal court, alleging breach of contract and bad faith under state law. The trial court concluded that ERISA applied to the disability insurance policy and, therefore, Mr. Simpa's state law claims were pre-empted by the federal law. The trial court ruled for the insurer, and Mr. Simpa appealed.

On appeal, Mr. Simpa argued that ERISA did not apply because no employees were

covered by the disability insurance policy. However, the court found that Mr. Simpa was a shareholder in Bob's Excavating, not an employer. Furthermore, the court said that Mr. Simpa was an "employee" of the company for ERISA purposes. He received a regular salary from the company, the court noted, for at least three consecutive years. In addition, the court said that the record showed that Mr. Simpa supervised other employees. The court held that Mr. Simpa's disability insurance plan was an ERISA plan and, thus, his state law claims were pre-empted. The trial court decision was affirmed.

Simpa vs. Massachusetts Casualty Insurance Co., 7th U.S. Circuit Court of Appeals, July 17, 2001 (BI/04/D.-\$10)

LTD settlement doesn't bar claim under new plan

A release that an insured employee had executed in connection with benefits obtained under another employer's Employee Retirement Income Security Act benefits plan did not bar her claim for long-term disability benefits under her current employer's plan, according to the 4th U.S. Circuit Court of Appeals.

Nancy Barron was diagnosed with multiple sclerosis in 1974, at a time when she was employed by Advanced Computer Techniques in New York. She began receiving long-term disability benefits under Advanced's employee benefits plan through insurance issued by UNUM Life Insurance Co. of America. UNUM was also the administrator of the plan.

Under the Advanced plan, if she remained totally disabled, Ms. Barron was entitled to payments until Aug. 11, 2008. In May 1993, Ms. Barron and UNUM settled for a lump

sum of \$36,000 for all future liability under that plan, and Ms. Barron executed a release to that effect. Ms. Barron's MS later went into remission.

In September 1997, she began working for Comcast Television of Delmarva Inc. and became a participant in the Comcast employee benefits plan that included both short-term and long-term disability benefits. This plan, coincidentally, was also written by UNUM. In February 1998, Ms. Barron suffered a "flare up" of her MS symptoms, and she applied for long-term benefits. UNUM denied her any benefits because of the September 1993 settlement and release. Ms. Barron sued UNUM but lost in the trial court.

The appellate court concluded that, in connection with each plan, UNUM was acting independently as a fiduciary for the plan and not on its own behalf. Thus, the court said that the release obtained in connection with Ms. Barron's claim against the Advanced Computer Plan could not be used to bar a claim made by her against the Comcast Plan.

Permitting a denial of benefits "would serve only UNUM and amount to a breach of its fiduciary duties to both the Advanced Computer Plan and the Comcast Plan," the court said. The trial court decision was reversed.

Barron vs. UNUM Life Insurance Co. of America, 4th U.S. Circuit Court of Appeals, Aug. 6, 2001 (BI/01/D.-\$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 each opinion ordered.

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Terror: Few public/private deals reached so far

Continued from page 3

Terrorisme, or GAREAT, is a pool supported by property insurers in France and backed by the government.

GAREAT covers property and business interruption losses with an insured value of more than 6 million euros. The first 250 million euros (\$220 million) in aggregate annual losses is covered by insurers writing property insurance in France. Capacity for annual aggregate losses totaling 750 million euros (\$660 million) excess of 250 million euros is provided by a group of reinsurers, including SCOR S.A., Hannover Re Group, Swiss Re, Munich Re and Partner Re Ltd.

If aggregate annual losses exceed 1 billion euros (\$880 million), the pool's participants will cover a further 500 million euros through a government-backed financial contract. Above 1.5 billion euros (\$1.32 billion), the French government provides unlimited stop-loss coverage through Caisse Centrale de Reassurance, the state-owned reinsurer.

GAREAT expects to receive annual premiums of about 200 million euros (\$176 million), which will be split among participants on the various layers, said Pierre-Denis Champvillard, group executive vp of SCOR.

France has been forced to act quickly to set up a pool because the government, following a spate of terrorist bombings, in 1986 required that all property policies include terrorism coverage, Mr. Champvillard said.

As a result, French insurers and reinsurers "were very concerned about their exposures" after Sept. 11, he said, and late last year AXA S.A. stated that it would no longer automatically renew large risks (*BI*, Dec. 3, 2001).

In the United Kingdom earlier this month, the Treasury met with the Assn. of British Insurers, the Assn. of Insurance & Risk Management, The Retail Consortium, the Confederation of British Industries and other trade groups to determine whether, and to what extent, terrorism coverage provided by state-backed Pool Reinsurance Co.

Ltd. should be expanded.

Pool Re was established in the early 1990s to provide some terrorism property and business interruption reinsurance for large commercial risks, following a series of bombings by the Irish Republican Army. Since Sept. 11, though, risk managers and insurers have called for Pool Re's coverage to be expanded (*BI*, Jan. 14). Although insurers and the U.K. government had hoped to reach an agreement by March, an ABI spokesman said further work is needed.

'In the minds of risk managers, federal involvement while private capacity recovers is the central theme.'

David Mair
U.S. Olympic Committee

Earlier this month, AIRMIC criticized the insurance industry and government for tardiness in agreeing to a solution. "Six months on from the terrible events of Sept. 11 which caused this crisis over loss of cover, our members still face the prospect of being unable to insure their operations fully," said AIRMIC Executive Director David Gamble.

SCOR's Mr. Champvillard also noted that, while talks were underway in several other European countries to provide government-backed arrangements, few decisions had yet been made.

Spain also is considering extending the terrorism coverage offered by its state-backed pool, Consorcio de Compensacion de Seguros, to include loss of profit, Mr. Champvillard said.

Pools, meanwhile, are being discussed in Germany, Austria and Belgium, he said.

Last month, Allianz A.G. Holding announced that it was looking for partners to establish a mutual in Luxembourg to provide Europewide terrorism insurance for property and casualty risks, excluding business interruption losses. Zurich Financial Services Group and Swiss Re reacted positively to the idea, but Munich Re is postponing a decision

until talks about a German government-backed arrangement are concluded.

Munich Re acknowledges the difficulty for large risks in obtaining full coverage but stresses that the industry needed to change its underwriting. "Sept. 11 has changed the insurance world entirely. Claims reached new dimensions which had never been regarded as probable. For the reinsurers, the nature and dimension of the claims after the events of (Sept. 11) showed the need to give more attention to risk management," Munich Re said in a statement.

The company said its requirements for underwriting terrorism risks include "more transparency of the risks, limitation of liability, extra premium for terrorism cover and possibility of cancellation at short notice." The reinsurer said it also is looking closely at "possible accumulations of risks and newly emerged correlations between lines of business."

According to Munich Re, "reinsurance can, at most, only cover the first wave of such loss events."

Munich Re advised its ceding insurers shortly after Sept. 11 that it was implementing these new underwriting conditions for large industrial risks, though it is continuing to provide unchanged coverage for small and medium-sized risks.

U.S. conditions worsen

In the United States, observers say what little appetite insurers and reinsurers have for terrorism-related risks may be shrinking.

"It's getting worse, from a private-market standpoint, rather than better," said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

Insurers are growing increasingly concerned about workers compensation exposures where there are large concentrations of people, Mr. Wood said. "There's a brewing availability crisis."

"At this point, there is nobody that's writing very much, if anything," said David Mair, president of the Risk & Insurance Manage-

ment Society Inc. That lack of interest underscores the need for a short-term federal guarantee of coverage, said Mr. Mair, who is also risk manager for the U.S. Olympic Committee in Colorado Springs, Colo.

"In the United States, the market has always been creative enough over time to address the needs of consumers," he said. Mr. Mair said he is confident that private capacity eventually will return, but it will, he said, take time.

"RIMS believes the federal government should be involved in a period in the three- to five-year range, and we believe the political sentiment is for a period that is much shorter than that," Mr. Mair said. "In the minds of risk managers, federal involvement while private capacity recovers is the critical theme."

"Everybody is still waiting to see if the federal government is going to act," said Julie Rochman, a senior vp with the American Insurance Assn. in Washington.

Every major U.S. property/casualty insurance trade group lined up last October behind a plan for a federally backed terrorism reinsurance pool, modeled after Pool Re in the United Kingdom, that would give a private market time to emerge (*BI*, Oct. 15, 2001). But the idea received a cool reception in Washington, Ms. Rochman noted.

"It still would have been a really good idea, but, at the time, the administration did not have any inter-

est in getting that far into the business of insurance. We had told them we thought the market could come back, given time and data," she said.

It will take a good deal of time for the market to come back, said Alice D. Schroeder, senior U.S. nonlife equity insurance analyst at New York-based Morgan Stanley Dean Witter & Co., in testimony before the House Financial Services Committee on Feb. 27.

The terrorism risk simply can't be underwritten yet, Ms. Schroeder said. "In general, we believe that insurers may be, in the aggregate, underestimating risks from locations other than so-called 'target' properties. While the individual odds of an attack on other properties may be low, in total, those odds may be much higher," she testified.

"To date, terrorists have not behaved predictably, and no study we have seen suggests that they will do so. We do not believe insurers have a reasonable basis for underwriting the risk at this time. At best, they can limit the amount of capital they expose to the risk," her statement read.

Ms. Schroeder cited a recent address by former Central Intelligence Agency Director Robert Gates in which he predicted that insurers may need at least five years before the level of risk falls and the level of experience rises to the point that terrorism can be adequately underwritten.

MIIX to end some malpractice sales

By NEIL VERSEL

LAWRENCEVILLE, N.J.—Facing mounting losses in medical professional liability business, the MIIX Group Inc. is planning to stop writing medical malpractice liability coverage in five states.

As part of a work-in-progress recovery plan, the Lawrenceville, N.J., insurer said late last month that it will seek regulatory approval to shut down its Lawrenceville Property & Casualty Co. unit and stop writing malpractice policies in Illinois, Massachusetts, Ohio, Texas and Virginia, the five states in which the subsidiary operates.

MIIX Group will shut down all offices in those states to focus on the New Jersey physician market and will attempt to sell "non-core assets," according to a company statement.

Earlier in 2001, MIIX Group began not renewing medical malpractice business in Pennsylvania, Maryland and elsewhere, and it withdrew from Kentucky. The insurer also has begun shifting renewal dates on existing business to spread policy anniversaries more evenly

throughout the year, rather than renewing all policies on Jan. 1.

In the statement, the company said that it "may continue operations in other mid-Atlantic states where profitability and a strong strategic fit are established." MIIX Group officials did not respond to requests for comment.

The insurer reported a 2001 net loss of \$157.6 million, compared with a net loss of \$36.5 million the year before. Last year's loss reflected an increase in reserves of more than \$104 million. Gross premiums written increased about 2.6%, to \$231.9 million last year.

The insurer's combined ratio for 2001 worsened to 202.9% from 172.7% in 2000.

MIIX Group "is really under a lot of stress and wanted to shut down some of their operations that were not close to their home base," Nick Pirsos, an equity analyst at New York-based Sandler O'Neill & Partners, said.

"It's clearly a cost issue. It's 'circle the wagons,'" he said.

Neil Versel is a reporter at *Modern Physician*, a sister publication of *Business Insurance*.

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International

15

Employers' liability expanded

French court shifts responsibility for worker ailments to employers

By **EDWIN UNSWORTH**

PARIS—Employers that do not eliminate known hazards from the workplace must compensate employees for any resulting illnesses or injuries, France's highest court has ruled.

The ruling by the Cour de Cassation in Paris expands employer liability for worker illnesses and injuries, which previously were the responsibility of the French social security system except where employer misconduct was proved.

Employers and insurers warn that the ruling broadens the definition of misconduct, holds employers to an unfair standard and could lead to a surge in lawsuits and higher insurance costs.

The decision came in a dispute over a group of companies' responsibility for employees' asbestos-related ailments. The employees argued that the companies, not the government, should compensate them because the companies had negligently continued to use asbestos or asbestos products long after its health hazards were known.

The defendants said they should not be liable because they were not guilty of misconduct. They argued that not only had they taken steps to minimize workplace exposure to asbestos but the French government did not restrict the use of asbestos until 1997.

The court disagreed. In its Feb. 28 decision, the

Cour de Cassation found the defendant companies—which ranged from manufacturers of auto parts to makers of telecommunications equipment—engaged in “inexcusable misconduct” for failing to protect employees from asbestosis-related ailments.

The court found the employers violated the French Social Security Code in two key ways, according to Myriam Delawari, a lawyer specializing in employment issues for the Paris law firm Bureau Francis Lefebvre. Those breaches included being conscious of a danger posed by manufacturing or using asbestos and then failing to take actions to eliminated the danger, she explained.

See **ASBESTOS**/page 19

World Updates

Lower limit sought on asbestos exposure

The European Parliament is seeking a significantly lower workplace asbestos-exposure limit than that recently put forward by the European Commission. The EC has proposed updating the current directive on the protection of workers against asbestos-related risks. In particular, it is proposing a limit of 0.1 fibers per cubic centimeter for an eight-hour period for high-risk sectors, including demolition, repair and maintenance. The European Council of Ministers has already endorsed this proposal. Last week, though, the Parliament's Employment Committee voted that this exposure limit should be for a four-hour period—effectively halving the exposure permitted. Any such change proposed by the Parliament must be discussed with the governments of E.U. member countries.

Index-linked reinsurance bought

Generali France Assurances, a unit of Trieste, Italy-based Assicurazioni Generali S.p.A., has purchased an index-linked reinsurance treaty with 17 million euros (\$15.0 million) in limits that will protect the Paris-based insurance company against French windstorm risks. The product, one of the first in France to be based on an index of wind speeds, was developed and placed by Benfield Greig Paris, a unit of the London-based reinsurance intermediary Benfield Group P.L.C.

U.K. extends airline war risk cover

The U.K. government has announced it will extend its airline insurance aid package until March 31. The government-backed coverage had been due to expire March 20. Similar plans in other European Union countries also are set to expire at the end of this month. A decision by E.U. finance ministers on whether to extend these aid packages is expected by March 26. Since last September, the U.K. government has provided \$1 billion of excess coverage for airlines' war-risk liability.

Converium sees increased losses

Converium Holdings Ltd. reported a net loss of \$367.4 million for 2001, compared with a \$29.3 million loss in 2000. The reinsurer, formerly known as Zurich Re, incurred \$289.2 million in losses related to the Sept. 11 terrorist attacks and \$67 million in losses related to the collapse of Enron Corp.

See **WORLD NEWS** /page 19

**International Air Transport Assn.
Airline Insurance Rendezvous 2002**

Aviation rate hikes forecast

By **SARAH VEYSEY**

LONDON—Further rate increases are needed to achieve stability in the aviation insurance market, despite the rate hikes and coverage restrictions that have been imposed over the past six months, insurance and reinsurance executives said.

Rate increases and a return to profitability would help ensure an adequate market to take on the aviation industry's risks, they said.



But increased prices are not the answer to all of the aviation insurers' problems, an airline risk manager added. Insurers need a fundamental review of pricing techniques to stop the current practice of good risks subsidizing bad ones, he said.

The panel was speaking at the IATA Airline Insurance Rendezvous 2002 in London last week.

“It is only if the (aviation insurance) market is profitable that airlines will be able to buy the limits they want or get stability,” said Jacques-Emmanuel Mercier, chief executive officer of Paris-based Assurance France Aviation. “Despite what may appear to be significant rate increases, the market will only begin to restore some form of stability by 2003,” he said.

The Sept. 11 terrorist attacks forced underwriters to review all aspects of their business, said Peter Butler, underwriting executive at London-based Global Aerospace Underwriting Managers Ltd. “It is time for a fundamental review of airline rates,” he said, adding that “our capital providers would never understand or forgive us if we emerge from this period without giving them some sort of profit.”

“The only way to achieve profit is realistic pricing,” he added.

See **AFTERMATH**/next page

Gerling seeking suitor to steer new course

Buyers fear sale could reduce market capacity

By **EDWIN UNSWORTH**

COLOGNE, Germany—A key concern for commercial insurance buyers regarding the future of Gerling Versicherungs-Beteiligungs A.G. is likely to be whether the company will be bought by another insurer or reinsurer, leading to a reduction in capacity and diminished choice in the market, or an investor that would keep Gerling independent.

Earlier this month, Cologne-based Gerling—one of Germany's leading commercial insurers, as well as the world's sixth-largest reinsurer and the second-largest credit insurer—said that it is seeking a buyer for a controlling stake in the company to help it “embark on a new strategic course.”

So far, no buyer has emerged, and Gerling declined to comment on any possible suitors. Gerling Chief Executive Officer Henrich Focke will head a group to deal with potential buyers.

Some insurance buyers are concerned about the possibility of further consolidation in the European market.

“This is a matter of concern for us, because we are seeing a decreasing number of true industrial insurers in Germany and on the European level,” said Hautrecht von Schenck, managing director of in-house insurance brokering for

ThyssenKrupp A.G., a German conglomerate.

Mr. von Schenck, who is also vp of the German risk manager association Bundesverband Firmenverbundener Versicherungsvermittler Und-Gesellschaften e.V., said that, in Germany, Gerling is considered an “excellent” industrial insurer and has traditionally been one of the leading choices for German buyers.

In 2000, Gerling wrote gross premiums of 9.55 billion euros (\$9.0 billion), of which 2.90 billion euros (\$2.73 billion) was in property/casualty business and 5.20 billion euros (\$4.9 billion) in reinsurance.

A controlling stake, or possibly the commercial property/casualty insurance business, could be sold to another insurer or reinsurer, “and this leads, quite automatically, to a loss of capacity,” Mr. von Schenck said.

Christian Dinesen, insurance analyst with Standard & Poor's Corp. in London, said the impact of the proposed sale on large commercial insurance buyers—for which Gerling is a major provider—depends entirely on whether the buyer is already part of the insurance/reinsurance marketplace or is a new entrant.

Mr. Dinesen said that if the buyer is an existing player, the consolidation could further harden the market.

Another concern, Mr. von Schenck said, is that

See **GERLING**/page 19



Gerling Chief Executive Officer Henrich Focke is heading a committee that will deal with potential suitors.

GERLING GROUP BY THE NUMBERS

2000 results of major business segments, in millions of euros



GERLING

	Reinsurance	Property/Casualty	Life	Credit
Gross premiums written	5,195.5	2,900.5	1,749.9	592.0
Net income	99.6	27.8	72.1	39.2

Source: Gerling annual report

Aftermath: Aviation rate hikes forecast

Continued from previous page

Michael Rohr, underwriter aviation and associate director of Swiss Reinsurance Co. in Zurich, in an interview outside the conference sessions, said that "in a way, we, as an industry, 'subsidized' the airline industry for a long while—things were very good on price (for the aviation industry). And now it is a completely different world." Mr. Rohr said price increases are necessary to bring back some stability to the market.

Currently, the aviation insurance marketplace is "in bad shape" and unattractive to capital providers, said Thomas Thomsen, head of the aviation department at Munich, Germany-based Munich Reinsurance Co.

The business is highly volatile and has enormous exposure to catastrophes, Mr. Thomsen said. "It is chronically unprofitable—so why would capital providers want to be involved?" he asked.

And aviation reinsurers are also suffering from large, low-layer losses, Mr. Thomsen said. "Aviation reinsurance capacity was provided in an unprofitable way for years. Instead of exiting the business, direct underwriters transferred almost of all the retentions to the reinsurance industry," he said. "This only works for a while—as Sept. 11 showed."

"The ground level of the aviation insurance house is on fire," Mr. Thomsen said. Reinsurers that had provided excess-of-loss aviation coverage need to make back mon-

ey, he said. In the future, the aviation reinsurance marketplace will see a decline in the number of customers as there are "further casualties among the direct insurers," he predicted.

'Munich Re, as an excess-of-loss reinsurer, is not prepared to insure terrorism above \$50 million.'

Thomas Thomsen
Munich Reinsurance Co.

"The appetite to allocate capital to aviation excess-of-loss reinsurance will shrink, regardless of the

premium that can be charged," because reinsurers have not profited from that business, Mr. Thomsen suggested. "Reinsurers will be much more alert in the next few years as to how much of the direct insurers' acceptances they are prepared to underwrite," he added.

"For 2003, direct insurers will have to get used to taking large net retentions because below certain levels—\$300 million (for example)—reinsurance will not be economical," he said.

And there will be limited coverage for terrorism risks, Mr. Thomsen said.

"Munich Re, as an excess-of-loss reinsurer, is not prepared to insure terrorism above \$50 million," he said.

War and terrorism risks remain a problem for airlines seeking coverage, said Reiner Siebert, group risk insurance manager at Virgin Airways Ltd.

"Some six months on (from Sept. 11), the issue of third-party war risks cover remains unresolved for many," Mr. Siebert said.

But coverage for terrorism risks is not the only problem faced by airline risk managers and their insurers, he said.

Aviation insurers must change to cope with the new challenges airlines face, Mr. Siebert said. "The current principle seems to be 'the good risks pay for the bad ones,'" he said. "That principle has been abandoned in other parts of the (insurance) industry 100 years ago."

International Air Transport Assn. Airline Insurance Rendezvous 2002

Risk managers, brokers decry lack of insurer aid

By SARAH VEYSEY

LONDON—The cancellation of many aviation insurance policies in the immediate aftermath of the Sept. 11 attacks threatened to ground entire fleets, airline risk managers and brokers said at the International Air Transport Assn. Airline Insurance Rendezvous 2002, held in London earlier this month.

During one session, Felicitia Kagwanja, manager of insurance services at Kenya Airways Ltd., described how her company had been just 24 hours from grounding its fleet when the

Kenyan government stepped in with aid.

Ms. Kagwanja said that the crisis in the aviation insurance industry after Sept. 11 prompted her colleagues at Kenya Airways to think about insurance "for the very first time" as the cancellation of coverage alerted them to the importance of insurance for the livelihood of the entire company.

Kenya Airways had to convince the government that state aid was necessary to keep the fleet flying, she said, adding that this was a difficult task since the

Kenyan economy had been experiencing difficulties before Sept. 11. "We said, 'This is not just about one airline wanting to survive, this is about a national asset,'" Ms. Kagwanja said. She explained that the airline had sought to convince the government that grounding the fleet would have far-reaching consequences for tourism and other sectors of Kenya's economy.

"As soon as we were able to get cover from the commercial market, we did so," added Ms. Kagwanja. Kenya Airways reverted to commercial coverage on Sept. 28, she said.

Christopher Duncan, vp-finance and chief risk officer at Atlanta-based Delta Air Lines Inc., said that, even for a large company such as his, the cancellation of coverage and steep rate hikes had proved a threat to its survival. "The cost of war risk liability (coverage) isn't viable for us; we are in a fight for our survival," he said. "And the insurance industry is not helping at this point."

"The federal government had to intervene to keep us flying," he said. But, he said, "what the federal government did post-Sept. 11 was a subsidy for the insurance industry more than for the airline industry." The United States and the United Kingdom were among the governments that stepped in to provide temporary emergency war risk liability coverage for airlines (*BI*, Oct. 1, 2001).

Mr. Duncan argued that the extra cost of airline insurance cannot be passed along to the passenger by commercial airlines. Because price



The IATA rendezvous was held at the Hotel Inter-Continental London.

sensitivity is so great in the airline industry, raising ticket prices to fund insurance costs is not a viable option, he said.

Mr. Duncan, whose company has been involved in discussions on forming a U.S. risk retention group for aviation insurance (*BI*, Feb. 11), said that he would favor an international pooling arrangement. But he said that the probable need for congressional approval, among other things, might make such a plan difficult to achieve within a short space of time.

"Equitime is no cake-walk," he said, referring to the proposed RRG. "We are going after our own self-help solutions because the insurance industry is unable or unwilling to help us."

Martin Hedley, chairman of the aerospace division at Willis Group Ltd. and moderator of the session, said he had great sympathy with airlines whose coverage was with-

drawn in the wake of the attacks. "The greatest frustration that we, the brokers, have found is the seven-day cancellation period (common to most aviation policies). It is simply not a feasible way for these very large operations to do business," he said.

Dennis Mahoney, chairman and chief executive officer of Aon Ltd. in London, and one of the architects of an aviation excess insurance program plan assembled last year by a group of major brokers, agreed. "I think it is totally unacceptable for any of our clients to be faced with a seven-day cancellation," he said.

Aviation underwriters should differentiate more between airlines that employ strong risk management principles and those that do not, suggested Mr. Hedley. "I find it slightly strange that underwriters don't make a distinction between airlines who spend a lot on risk management and those who don't," he said.

Mr. Mahoney warned attendees that underwriters had been set to face a difficult year even before Sept. 11. "Virtually all insurers and reinsurers had a terrible year last year, excluding WTC," he said. "The industry itself is in a period of structural change—I don't think that it's cyclical; it's structural. The insurance industry is in a parlous state and cannot be a safety net for society. It just isn't possible."

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International

Business Insurance / 19

Asbestos: Employers strictly liable for work hazards

Continued from page 15

Even in the absence of any regulations, the court found that there was evidence at least as long ago as 1977 that asbestos was a danger to health, Ms. Delawari said. The employers' claim that they had taken action to minimize exposure was not sufficient because they failed to eliminate the problem.

The court called the defendants' failure to eliminate asbestos hazards an "inexcusable fault" and a failure to meet their "obligation of security."

The French Social Security Code stipulates compensation that employers must provide, Ms. Delawari said. These include compensation for: a claimant's diminished capacity or inability to work; any reduction in quality of life; increasing their pensions; and compensating relatives of victims. Employers are not required to reimburse the social security system, she said.

If the court had not upheld the suit, the employees would have received government payments for medical costs and unemployment benefits.

Risk managers and insurers were critical of the decision.

Luc Laurens, head of insurance at

La Post in Paris, the French postal service, said the ruling "will cost a lot" as other employees believing they have a job-related illness sue their employers.

The problem will be exacerbated by the fact that French law does not allow for class-action lawsuits, meaning employers could face a multitude of separate legal actions, Mr. Laurens said.

Mr. Laurens, who is vice chairman of the Assn. pour le Management des Risques et des Assurances de l'Entreprise, the French risk management association, said that most French companies, though, should have tackled the asbestos problem long ago. For those exposed to new claims, he said they were likely to find their insurance in place at the time would not cover such claims, though they might be able to purchase coverage to cover defense costs.

The Movement des Entreprises de France, the French employers' federation, said in a statement that the consequences of the ruling for businesses are "very serious" as it means it will no longer be necessary to prove, as it was previously, that an employer committed "a fault of exceptional seriousness, derived from

an act of voluntary omission, with a knowledge of the danger involved."

The ruling "introduces an obligation of safety without equivalent in the developed world," maintains the Federation Francaise des Societes d'Assurances, the French insurer

The ruling means it will no longer be enough for an employer to say it has taken action to protect its employees to avoid responsibility for compensation.

*Pierre Bechmann
Clifford Chance*

er association.

In a statement on the ruling, the association warned French employers to closely examine their existing insurance contracts, which it said might not provide coverage for these expanded liabilities, though some employers may have specialty coverage for such liabilities.

The FFSA warned that the decision is likely to prompt more employees to sue their employers. The

ruling "widens the indemnification of victims of work-related accident and illnesses at a price that will result in an increase in the number of cases" brought against employers, the association said.

Jean-Philippe Thierry, chairman of Paris-based insurer Assurance Generales de France S.A., was alarmed by the decision, saying it effectively made new law. He agreed that it could lead employers and their insurers to face a rush of new claims for asbestos and other work-related illnesses.

Clement Jourdain, deputy general manager responsible for underwriting at Le Mans Re, a unit of XL Capital Ltd. in Le Mans, France, said that while his firm does not specialize in liability coverage, "We are concerned, as is any insurer or reinsurer."

He said that in the past for a party to be considered liable under French law there had to be an element of fault. But the Cour de Cassation decision now means that even if an employer had done its best to protect employees it is liable for compensation, rather than the government.

The court's ruling means that it will no longer be enough for an em-

ployer to say it has taken action to protect its employees to avoid responsibility for compensation, agreed Pierre Bechmann, a partner in the Paris branch of international law firm Clifford Chance.

The ruling means the employer must take action that "resolves the problem" or face liability for any injuries and illnesses.

Mr. Bechmann noted that legislation in France has been evolving to put more responsibility on users of dangerous substances. In October 2001, the Court of Appeal in Marseilles found the French government guilty of failing to take appropriate action and legislating on the use of asbestos, saying evidence has existed since 1950 that asbestos posed a serious health threat.

As a result, Mr. Bechmann said he has little sympathy for employers that maintain the Cour de Cassation ruling on asbestos comes as a surprise or makes new law. But he acknowledged that the finding that employers "have an obligation of result rather than an obligation of precaution is certainly a harder turn of the screw."

None of the employer defendants in the Cour de Cassation would comment.

World Updates

Continued from page 15

Briefly noted

French export and credit insurer **Coface Group's** net profits fell 16%, to 48.3 billion euros (\$42.62 billion euros) for 2001. The Paris-based group said it wrote insurance premiums of 667 million euros (\$588.6 million) in 2001, up 9% over the previous year....The London-based **Assn. of Insurance Intermediaries & Brokers** and the **British Insurance Brokers' Assn.** have announced they will merge. AIB members will officially become BIBA members April 12....Jean-Marie Nessi has resigned as chief executive officer of **AXA Corporate Solutions**, the reinsurance and global risk arm of Paris-based AXA

S.A. He will be replaced by Philippe Donnet, formerly senior executive vp at AXA's Italian operation, who has been acting head of AXA Corporate Solutions since late January....The High Court in London has ruled that liquidators of the collapsed Barings P.L.C. can bring a negligence claim against the bank's auditors, Singapore-based **Deloitte Touche Tohmatsu**. Barings collapsed in 1995, after unauthorized trading led to a loss of £864 million (\$1.34 billion). In the case, set to begin in May, Barings' liquidators will seek to claim £200 million (\$284.8 million) in damages. A spokeswoman for Deloitte said that the company has professional liability coverage, but she would not provide details.

Gerling: Insurer on the block

Continued from page 15

there could be a lengthy transition while Gerling and its new owner merge their operations.

"If they don't fit into each other properly, there will be transition period of many years when nobody knows the outcome, and the quality of service might suffer," Mr. von Schenck said.

After Gerling disclosed that it was looking for a major investor, Standard & Poor's affirmed its A+ long-term counterparty credit and financial strength ratings on Gerling's core insurance subsidiaries, although it revised the outlook of the ratings to "developing" from "stable."

Standard & Poor's said that the proposed sale "creates a significant degree of uncertainty regarding the

Gerling group's future ownership structure and strategic direction." The New York-based rating agency also said it likely would take several months for Gerling to find a strategic partner and finalize the new structure.

A.M. Best Co., meanwhile, lowered its financial strength rating of Gerling's core operating subsidiaries to A- from A.

The Oldwick, N.J.-based rating agency said the action reflects "a significant deterioration in the operating performance of Gerling Global Re, the largest operating company in the group; changes in senior management; and a substantial erosion of the group's capital base," despite a recent capital injection of 300 million euros (\$264.8 million).

German investment bank Deutsche Bank earlier this month made that capital injection, increasing its stake in Gerling to 34.5%.

In December 2000, Gerling had received a capital boost of 408 million euros (\$363.7 million) from Deutsche Bank and Gerling's other owner, Rolf Gerling. The capital was added to enable the insurance company to take advantage of improving conditions in the insurance market, Gerling said.

Just days prior to announcing its possible sale, Gerling reported that its struggling reinsurance operations, Gerling Global Reinsurance Group, would post a loss of 500 million euros (\$448.4 million) for 2001 and that Gerling Global Re's chairman, Norbert Strohschen, had resigned.

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NAIC: Model rate and form law draws praise

Continued from page 2

ported the model law, including the Alliance of American Insurers, the Council of Insurance Agents & Brokers, the Independent Insurance Agents of America Inc., the National Assn. of Independent Insurers and the National Assn. of Mutual Insurance Cos.

Dissenters included a few state regulators, including California Commissioner Harry Low, who said that such model provisions would not be compatible with his state's existing laws.

In addition, some consumer groups opposed the measure.

J. Robert Hunter Jr., the insurance director for the Consumer Federa-

tion of America and a former Texas regulator, complained in a letter that the model act "inappropriately lowers" regulatory controls without improving market conduct oversight. He contends in a statement that the model would allow "bad products" to enter the insurance market.

The next step is for states to adopt these rate and form measures. Currently, several states have taken or are taking steps to do so.

In another move to help speed products to market, the NAIC at its meeting unveiled a proposal to create a new interstate compact that would help streamline the national introduction of group and individu-

al life- and annuity-related products.

Having state legislatures join a compact that sets national rules would help eliminate the problem of state regulators deviating from the existing standards put forth by the NAIC's Coordinated Advertising, Rate and Form Review Authority—or CARFRA—program, said Frank Fitzgerald, the Michigan insurance commissioner.

The new Interstate Compact Working Group is "on a fast time line" that the working group hopes would allow states to enact a measure in 2003, said Mr. Fitzgerald. He and Texas Commissioner Jose Montemayor will chair the group.

Mr. Fitzgerald is a longtime supporter of the interstate compact approach: Michigan is one of three states that make up the Interstate Insurance Receivership Commission. Although the states' regulators were considering disbanding the commission, they decided at the meeting to keep it operating, because of encouraging statements from several state legislators and other supporters.

In addition, four states—Missouri, New Jersey, New York and Texas—plan to consider compact-related legislation in their next sessions, according to representatives of the National Conference of Insurance Legislators.

Comings & Goings

Insurers:

Coregis Insurance Co., a unit of GE Employers Reinsurance Corp. in Chicago, has named **Lynn Boyle** and **Jason Mostofsky** underwriting leaders responsible for the East and West regions of the country, respectively. Previously, Ms. Boyle was large-accounts manager for Coregis and Mr. Mostofsky was property facultative underwriting leader at ERC.

Endurance Specialty Insurance Ltd. of Bermuda, property/casualty insurance and reinsurance company, has made two executive appointments: **Mark Boucher** was named executive vp, international operations; and **David Cash** was named chief actuary and chief risk officer. Mr.

Boucher previously was director of London specialist business at Royal & SunAlliance Insurance Group P.L.C., overseeing the company's London-based commercial operations. Mr. Cash was vp at Centre Solutions (Bermuda) Ltd., a unit of Zurich Financial Services Group, where he was responsible for the creation of Centre Solutions' senior settlement financing company, Centre Life Financial.

Several appointments were made at affiliates of Zurich Financial Services Group:

• **Kerras W. Campbell** was named senior vp-global relations manager at Zurich Corporate Solutions-America. Mr. Campbell, who is based in West Simsbury, Conn., previously was the executive vp and chief



Mr. Campbell

regional vp of the unit's Northeast and Mid-Atlantic regions.

• **John McCartney** was named chief financial officer of Zurich North America. Mr. McCartney had served as chief executive officer of Empire Fire & Marine, a business unit of Zurich North America in Schaumburg, Ill.

• **Steve Rand** was promoted to CEO of Empire Fire & Marine. Mr. Rand was senior

operating officer of GE-Industrial Risk Insurers.

• **William C. Harris** was named director of distribution strategy for Zurich North America's middle markets business unit, based in Parsippany, N.J. He previously was

vp and general manager of Empire's special operations division.

Two executive appointments were made at Combined Specialty Corp., an underwriting unit of Chicago-based broker Aon Corp. that is slated to be spun off to shareholders later this year: **Gregory Springer** was named chief underwriting officer, and **Steven J. Bensinger** was named chief financial officer. Mr. Springer formerly was an executive vp and casualty executive at ACE Ltd.; Mr. Bensinger previously was an executive at Trenwick Group.

Reinsurers:

Robert McFadden has joined American Re-Insurance Co. in Princeton, N.J., as senior vp of American Re's broker-market division, responsible for that division's casualty department. Mr. McFadden was previously vp and team leader for casualty treaty underwriting at XL Re America.

Study : Insurers misreading buyers on tolerance

Continued from page 1

receptor with Mactavish who worked on the market analysis, noted that "there is a huge momentum taking place right now toward substitutions, either in retaining risk in-house or using an alternative product. I think the size of that momentum...will have a big impact on preventing the magnitude of rate increases" such as those being imposed in 2002, he said.

The UBS/Mactavish market study

why it is paying more, the customer "definitely has the ability to do other things."

"I think (buyers) understand and are tolerating the rate increases, in the sense there are buyers buying the coverage," said Rodger Lawson, president of the Alliance of American Insurers in Downers Grove, Ill. However, "it's one thing to say that I understand that intelligently and it's another to say I understand it and am glad to pay a higher price.

Those are two separate thoughts," he said.

"I don't think people are saying, 'I will pay higher price because I feel sorry for you,'" he added.

David L. Mair
U.S. Olympic Committee

'I think the insurance marketplace has grossly overestimated the level of tolerance of risk managers.'



comprises three phases. The first is based on 22 in-depth consultations with brokers, insurers and reinsurers in the United States, Bermuda and Europe. The second is based on 50 in-depth consultations with U.S. and European insurance and reinsurance buyers. Mactavish is now completing the third phase, which considers strategic issues that arose in the first two phases.

According to the first phase of the analysis, in the majority of cases, insurers believed that buyers viewed price increases to date as "tolerable." They held that buyers understood that the insurance market is cyclical in nature, that the World Trade Center loss was significant and that several years of underpricing requires repayment.

Insurer representatives generally agreed with that assessment.

"It's a competitive world out there, and while there may be some instances of miscommunication among companies and their customers, a company's customer is generally going to understand, if properly explained, why prices have to go up," said a spokesman for the American Insurance Assn. in Washington.

He noted that if insurers don't properly explain rate increases and the customer doesn't understand

"Most of what I hear, (buyers) are not happy about it, but they at least are understanding and tolerant," agreed Don Griffin, assistant vp-business and personal lines for the National Assn. of Independent Insurers, based in Des Plaines, Ill.

While buyers may not have budgeted for rate hikes as large as those that followed Sept. 11, "the industry didn't figure this was going to happen either," Mr. Griffin said.

"We didn't really have a lot of alternatives lined up. Otherwise, we wouldn't have been lobbying Congress so hard to try to pass some kind of federal backstop," he said. "The fact that we were losing money prior to that only adds fuel to the fire. We're not done seeing the rates increase."

According to the market report, large buyers—defined as companies with more than \$3 billion in revenues—said they were tolerant of higher rates only because they had no competitive alternatives that could be made available quickly enough. Accepting higher rates, they said, had nothing to do with acknowledging years of insurer underpricing or recognizing a relationship between their loss history and the loss of the World Trade Center.

"I think the insurance marketplace has grossly overestimated the

level of tolerance of risk managers," said David L. Mair, associate director of risk management for the U.S. Olympic Committee in Colorado Springs, Colo.

"Insurance companies knew they had to do something, particularly in light of the nature of the market in general even before Sept. 11. One of the places they misjudged, however, was risk managers' reactions to the extreme pricing corrections for what insurers characterize as necessary to get to the right price," said Mr. Mair, who is also the president of the New York-based Risk & Insurance Management Society Inc.

The USOC was hit with a 350% rate increase and an 80% reduction in limits on its general liability renewal in February, he said. "That wasn't tolerance; that was the lack of any other option," he said.

"I'm back in the marketplace, looking at all kinds of options. We own a captive, and we're going to take a look at it," he said.

If insurers underpriced the market, then "shame on you," Mr. Mair said. But insurers, he said, shouldn't try to get healthy "at my expense and expect our relationship to sustain a triple-digit rate increase."

Other risk managers surveyed for the analysis had similar views.

"I completely blame the underwriters for any historic underpricing," said one U.S. risk manager who was surveyed. "I never held a gun to their head, and, if they got a little too competitive, then that's not my fault. I don't feel obliged to repay them for this all in one hit."

Another large U.S. risk manager interviewed said: "Rate increases have not been justified, especially in the case of D&O. We never had a claim, or even a hint of a claim, but rates have dramatically increased nevertheless."

Insurer representatives counter that price hikes are part of the cyclical nature of the insurance market.

"That's, in a sense, like going to the grocery store and asking why do I have to pay more for raspberries this year because there was a late storm that destroyed the raspberry crop?" the Alliance's Mr. Lawson said. "It's simply the market dynamic. And the market dynamic

right now is that there is a tremendous shortage of capital, investment income is not at levels we've enjoyed historically and the market is adjusting to those factors and prices have gone up," he said.

The NAI's Mr. Griffin agreed. "This is a very cyclical business, and most people dealing with the cycle have never seen a hard market before."

Cycle or no cycle, buyers' discontent with pricing is resulting in an exodus from the standard market.

"Any effective risk manager is now evaluating his or her options for the future," RIMS' Mr. Mair said. "To the extent that alternative risk

This is because about half of this market has yet to be hit by abnormally large rate hikes, Mr. Hepburn said. The reason for this, he explained, in part is that underwriting practices "have not been sufficiently rigorous" across all sizes of clients, and smaller commercial clients representing lower premium volumes may not have drawn the same scrutiny as larger buyers.

At the same time, while some of the more sophisticated buyers in this segment are turning to alternative vehicles, others are inexperienced in such risk financing alternatives. As a result, they do not have the leverage to make a serious

threat about leaving the market.

These buyers "can expect to take a substantial hit" on their 2003 renewals, Mr. Hepburn said.

'It's one thing to say I understand that...and it's another to say I understand it and am glad to pay a higher price.'

Rodger Lawson
Alliance of American Insurers



transfer...can be brought to the process, they're out there doing it right now."

Mactavish's Mr. Hepburn said that every large buyer he talked to for the report "is seriously pushing through plans to increase deductibles, retain all lower layers or ramping up inactive vehicles."

This strong momentum toward alternative risk financing will pressure insurers to curtail rate increases, Mr. Hepburn predicts.

"We expect, over the next 12 months, that large corporate buyers will make substantial threats to make substitutions so the insurance industry will take them seriously, which will lead to a rate increase of about 10% next year," he said.

Although this may be welcome news for large buyers, it's a different story for small and midmarket buyers, according to the analysis.

Midmarket buyers—defined as companies with between \$500 million and \$3 billion in revenues—and small buyers—those with less than \$500 million in revenues—will see rates rise another 20% to 30% in 2003, the report predicts.

He predicts, though, that the magnitude of those rate increases will begin to decline significantly for 2004 renewals, as discontent among midmarket and small buyers grows and the use of alternative risk transfer methods increases.

Copies of the report can be obtained by e-mailing mail@mactavish.co.uk.

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Class: D&O lawsuit costs rising

Continued from page 1

creasing, new research shows. Despite the enactment of federal legislation in 1995 designed to curb shareholder litigation, the number of securities class-action fraud suits and the size of settlements have grown, according to a recent study by Stanford University researchers.

The involvement of institutional investors such as pension funds may be a factor in that growth.

Because pension plans have a fiduciary obligation to their plan members, and because their involvement in class-action lawsuits often draws public attention, they often demand larger amounts to settle a lawsuit than do attorneys representing individual shareholders, brokers and insurers say.

"The ramification on corporations is that the claim is not going to go away so easily," said Susanne Murray, senior vp and national D&O practice leader for Willis in New York. "It's going to be much more difficult to settle that claim."

Several factors are driving institutional investor involvement. They include legal changes mandated by the federal Private Securities Litigation Reform Act of 1995, institutional investors' obligation to their pension plan participants, their financial sophistication and the magnitude of their investments.

The University of California, for example, claims its pension fund investments in Enron stock caused it to lose \$144.9 million, or 0.3% of its total funds under management.

So Oakland-based UC, which comprises the statewide university system, joined a highly publicized lawsuit alleging securities fraud against Houston-based Enron and Enron's auditor, Chicago-based Arthur Andersen L.L.P.

UC announced in February that the U.S. District Court for the Southern District of Texas in Houston had appointed its attorneys to represent all class members in the lawsuit.

"Our losses were significant," a UC spokesman said. "We wanted to ensure that the recovery effort was vigorous, and we felt we had the resources and reputation to best pursue that strategy."

The pending lawsuit alleges Enron and Andersen executives defrauded investors by disseminating false financial statements, which artificially inflated the price of Enron securities and allowed the defendants to engage in illegal insider trading.

"Slowly but surely, there is an inexorable tide of increasing participation by institutional investors," said Bill Lerach, a partner in the San Diego office of Milberg Weiss Ber-

shad Hynes & Lerach L.L.P. "We certainly are experiencing that in our practice."

Mr. Lerach says that institutional investor involvement does add credibility and "throw weight" to his cases.

'Companies are just as exposed, if not more so, than they were pre-reform act.'

Kevin LaCroix
Genesis Professional
Liability Managers

"You are sitting there negotiating and you have the general counsel of a multibillion-dollar fund sitting beside you who probably has suffered a multimillion-dollar loss," he said. "That simply changes the dynamics of the negotiations in a way that is favorable to the plaintiff class."

The trend toward greater institutional investor involvement began after implementation of the reform act. Among other things, the federal law gave preference to large investors to serve as lead plaintiffs.

It took institutional investors about two years after the reform law was enacted in 1995 before a few grew comfortable taking on the role of lead plaintiffs. Now, though,

more are willing to assume that role.

Institutional investors previously felt that suing for negligence reflected poorly on their investment decisions, said Tony Galban, vp and D&O underwriting manager for Chubb Specialty Insurance in Simsbury, Conn. Consequently, D&O underwriters did not believe they faced a large exposure to lawsuits from large, institutional investors. That is no longer true, he said.

In spite of the law, the reforms did not reduce the risk corporations face because the number of lawsuits filed remains high and they are being settled for larger sums, said Kevin LaCroix, president of Genesis Professional Liability Managers, an underwriting manager in Cleveland.

"Companies are just as exposed, if not more so, than they were pre-reform act," he said.

The Stanford research shows that the litigation reform act has not slowed the filing of stockholder class-action lawsuits.

According to researchers at the Stanford Law School Securities Class Action Clearinghouse, plaintiffs filed 327 federal securities class action lawsuits during 2001. That figure, which does not include 138 lawsuits alleging fraud in the underwriting process only, is up 60% over the previous year.

While dotcom failures and the stock market downturn may be partly to blame for that jump, the

overall trend shows that the number of lawsuits filed has crept up since the reform act.

The size of settlements has also increased. Stanford found that following the reform act, securities litigation settlements average nearly \$25 million, up from \$8 million before the reform act.

"Plaintiffs continue to have powerful economic incentives to sue many companies for large sums of money," said Joseph Grundfest, a Stanford business and law professor and a former commissioner for the Securities and Exchange Commission. "Whether these claims have merit is an entirely different issue, but the incentive to sue is alive and well."

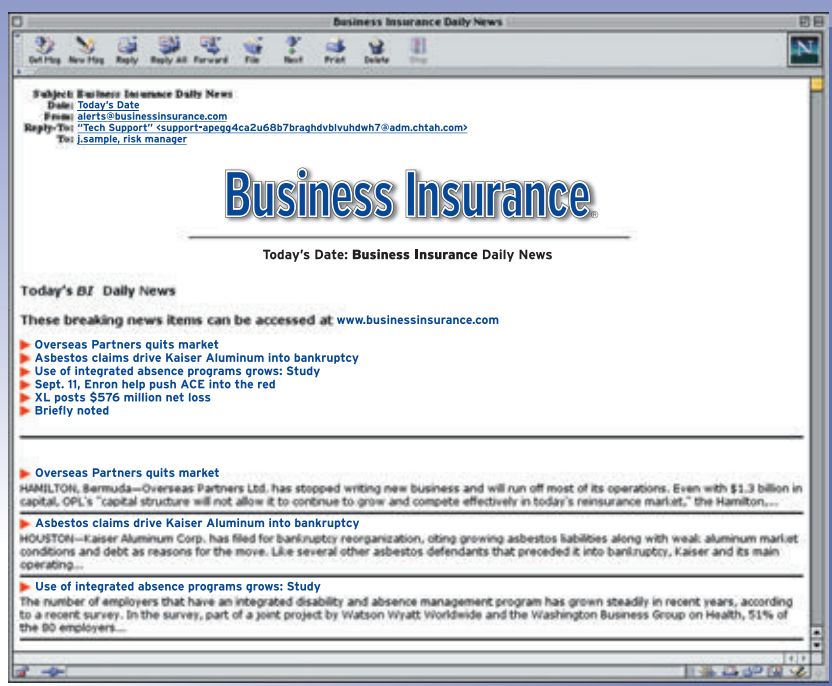
Not everyone believes that the involvement of larger, sophisticated investors is a primary reason that settlement costs are rising.

A more significant factor is that plaintiffs today more frequently allege losses stemming from corporations restating their financial positions, which expands the scope of allegations, said Jon Rewinski, a securities defense attorney at Heller Ehrman White & McAuliffe in Los Angeles. Other factors, he said, include plaintiffs naming multiple defendants, such as a corporation's accounting firm, and increased stock valuations today compared with 1995 and earlier.

For information about the Stanford study, go to <http://securities.stanford.edu>

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401(k): Congressional impasse on reform likely

Continued from page 1
year caused the company's 401(k) plan participants collectively to lose more than \$1 billion.
The financial blow of Enron's collapse was so severe on its 401(k) participants because the company matched employees' salary deferrals only in company stock and because Enron barred employees from selling the company-provided shares until they had reached age 50. In addition, many Enron employees voluntarily invested much of their own 401(k) plan contributions in Enron stock.
Although 401(k) reform measures are rapidly moving through Congress, last week's committee votes suggest that a legislative impasse could be down the road.

Unlike the Ways and Means Committee's vote, which was bipartisan, the HELP and Education and Workforce panel votes were intensely partisan. All 10 Republican members of the HELP committee voted against the measure, while the 10 Democratic members, as well as Vermont Independent James Jeffords, all backed it.
That situation was reversed in the Education and Workforce Committee vote, with all 26 Republican members voting for the measure, proposed by Committee Chairman John Boehner, R-Ohio. Seventeen of the panel's 19 Democrats voted against the bill.
In fact, legislators were warning last week that a failure to cross party lines would doom the reform effort.

"If this becomes a partisan issue, it will not be done. Hopefully, we can find some common ground," said Sen. Chris Dodd, D-Conn.

'Compromise can be achieved, but I would bet against it right now.'

James Delaplane
American Benefits Council

Benefit lobbyists say the odds currently do not favor a middle-ground agreement. "Compromise can be achieved, but I would bet against it right now," said James Delaplane, vp-retirement policy at the American Benefits Council in

Washington.
Still, legislators aren't ruling out an agreement. "I hope, eventually, we can find a bipartisan compromise," said Sen. Susan Collins, R-Maine.
Others also say a deal is possible but don't expect one to emerge any time soon. "This will take some time to play out," Sen. Jeffords said.
Indeed, at last week's HELP markup of the legislation proposed by Committee Chairman Edward Kennedy, D-Mass., the rhetoric often was heated.
Republican members objected to a provision in the legislation under which employers sponsoring only 401(k) plans could offer employer stock as a 401(k) plan match or as an investment option, but not both.
Sen. Judd Gregg, R-N.H., ranking committee minority member, said that if such a provision had been in place years ago, employees in highly successful companies such as Microsoft Corp. would not have been able to share in that success to the extent that they have.
"We are letting the government dictate what employees' choices should be," said Sen. Tim Hutchinson, R-Ark.
But Sen. Kennedy said the provision was prompted by the "real world," where employees, to their possible financial detriment, are pressured by their employers to buy company stock.
Sen. Kennedy rejected the criticism that his proposal would intrude on employees' investments decisions, noting that employees still would be free to purchase as much company stock as they like, just not through a 401(k) plan.
Republicans also slammed a provision in the Kennedy bill that would require employee representa-

tion on 401(k) plan boards of trustees.
That provision, said Sen. Christopher Bond, R-Mo., revives a "previously rejected idea that has nothing to do with Enron," a reference to a proposal made in the late 1980s by Rep. Peter Visclosky, D-Ind., which the House at the time overwhelmingly rejected.
The bill passed by the Education and Workforce Committee strongly resembles one put forth by the Bush administration.
But the committee broadened a provision that would limit the maximum amount of time employers could require 401(k) plan participants to hold company stock contributed as a match.
As amended, employers would have three choices. Under one option, plan participants could sell company stock three years after they joined the plan. Alternatively, plan participants could be given the right to sell company stock three years after they were hired.
Under the third option, referred to as "rolling diversification," participants could sell company stock three years after they acquired the shares.
In effect, every time employees received company shares as a match, a new-three year holding period would start for the new batch of shares.
That rolling diversification option was inserted at the behest of business groups, which argued that it would help companies retain employees. But some benefit experts say such a provision would be unwieldy to administer and difficult to communicate.
"It would be a real communications challenge," said Marilyn Scalia, a vp at Mellon HR Solutions in Fort Lee, N.J.

401(k) PROTECTION MEASURES			
Provision	Senate Health, Education, Labor and Pensions Committee	House Ways and Means Committee	House Education and Workforce Committee
Investment diversity	Employees could sell company stock contributed as a match after three years in the plan	Similar	Employer choice: Employees could sell company stock after three years of service, three years in the plan or three years after receiving the stock
Limit on investments in employer stock	Employers could offer company stock as a matching contribution or as an investment option, but not both.	No provision	No provision
Blackout periods	30-day notice prior to blackout or lockdown periods	Same	Similar, except senior executives could not sell company stock during blackout periods
Tax treatment of investment advice	No provision	No provision	Employees could purchase investment advice on a pretax basis
Employee representation	Employee representation on 401(k) board of trustees	No provision	No provision

Court nullifies DOL extension of FMLA time off

Employer failure to notify worker that leave counts against entitlement does not require grant of 12 more weeks

By JERRY GEISEL
WASHINGTON—Employers are not required to provide more than 12 weeks of leave under the Family and Medical Leave Act, even if they failed to notify employees that any leave they took would be counted against their FMLA entitlement, the U.S. Supreme Court ruled.
The justices' 5-4 decision, handed down last week, nullifies a 1995 U.S. Department of Labor rule that penalized employers—particularly those whose leave programs are more generous than the FMLA requires—by requiring them to provide additional leave.
Under the Labor Department rule, if an employee takes leave and the employer does not designate the leave as FMLA leave, the leave cannot be counted against an employee's entitlement to 12 weeks of FMLA leave. The clock on employees' entitlement can begin to run only after leave is formally designated as FMLA.
But that provision improperly

amends "the FMLA's most fundamental substantive guarantee: the employee's entitlement" to a maximum of 12 weeks of FMLA leave in a year, Justice Anthony Kennedy wrote for the majority.
The ruling affects thousands of employers that provide leave programs more generous than those mandated by the FMLA, which was enacted in 1993. Under the FMLA, employers with at least 50 employees are required to provide workers with up to 12 weeks of unpaid job-protected leave annually for their own illnesses or to take care of various family situations, such as the birth, adoption or illness of a child. During FMLA leave, employers have to continue employees' health insurance coverage on the same basis as prior to the leave.
While the law sets a 12-week requirement, more than 20% of employers provide longer leave periods, according to a Labor Department survey. As long as employers' leave policies meet FMLA requirements, leave taken may be counted

by employers toward the 12 weeks guaranteed by the FMLA.
One employer with a more generous plan was Wolverine World Wide Inc. It gave employee Tracy Ragsdale 30 weeks of leave in 1996

The 12-week limit on FMLA leave, Justice Kennedy wrote, was the result of congressional compromise. That period was intended to be long enough to meet the needs of families without placing an undue burden on employers, he wrote.

while she was being treated for cancer. Worldwide protected her job and paid her health insurance premiums while Ms. Ragsdale was absent. Wolverine, though, did not notify her that 12 weeks of her ab-

sence would count as FMLA leave.
When Ms. Ragsdale sought a 30-day extension of her leave, Wolverine told her she had exhausted the maximum leave available under the plan.
Ms. Ragsdale filed suit, citing the Labor Department regulation that says if an employer does not designate leave as FMLA leave, then leave does not count against FMLA entitlement.
In affirming lower court rulings, the Supreme Court said there was no evidence that Wolverine's failure to inform Ms. Ragsdale of her FMLA entitlement had harmed her.
"The FMLA guaranteed Ragsdale 12—not 42—weeks of leave in 1996," Justice Kennedy wrote.
The 12-week limit on FMLA leave, Justice Kennedy wrote, was the result of congressional compromise. That period was intended to be long enough to meet the needs of families without placing an undue burden on employers, he wrote.
But the Labor Department's

penalty "subverts the careful balance, for it gives certain employees a right to more than 12 weeks of FMLA-compliant leave," according to the decision.

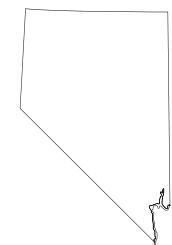
Ragsdale et al. vs. Wolverine World Wide Inc., U.S. Supreme Court; No. 00-6029.

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

Nevada comp insurer seeking Fremont book

Employers Insurance Co. of Nevada is in negotiations to purchase the workers compensation business of Santa Monica, Calif.-based Fremont General Corp. If the deal goes through, it would allow the Reno-based mutual to enter the California



workers comp market and would nearly double the insurer's size. EIC currently holds about 30% of the Nevada workers comp market, with premiums of nearly \$125 million. Fremont's workers comp business generates around \$120 million in annual premiums.

Two Bermuda companies look to increase capital

Two Hamilton, Bermuda-based insurance/reinsurance companies have announced plans to raise capital. Arch Capital Group Ltd. is planning a public offering of 6.5 million shares of common stock, which would raise about \$170 million. Arch currently has about \$1 billion in capital. Meanwhile, ACE Ltd. announced it has agreed to sell \$500 million in five-year senior notes. Net proceeds from the note sale will be used to repay outstanding debt and for general corporate purposes, an ACE statement said.

Cost-cutting moves paying off, CalPERS says

The California Public Employees Retirement System reported last week that a tiered pharmaceutical benefit structure and increased



employee copayments appear to be boosting reserves for its self-insured plans. At the end of 2000, CalPERS' two self-funded preferred provider organizations had a combined contingency reserve deficit of \$9 million. To improve the plans' financial position, Sacramento-based CalPERS implemented a tiered pharmacy plan with one copay for generic drugs, a second for brand-name drugs and a third for drugs not in the formulary. CalPERS also raised the copay for a doctor visit to \$10 from \$5. As of Dec. 31, 2001, CalPERS saw its contingency reserves increase to \$22.4 million. In addition, its total fund balance was \$124 million.



XL takes stake in credit risk venture

XL Capital Ltd. has taken a 43% stake in Primus Guaranty Ltd., a new venture providing credit risk

protection, for \$72.8 million. Primus plans to provide credit risk protection to companies through credit default swaps, a financial instrument used to hedge credit risks. "The market for credit risk protection, as measured by the credit default swap market, has expanded exponentially over the past couple of years. Primus is a new entrant with large financial capacity and the highest counterparty ratings," said Robert Lusardi, CEO of XL's financial products and services division.

External review programs not used often: Study

State-sponsored external review programs for resolving disputes between health plans and consumers are used infrequently, with only about 4,000 documented appeals filed annually, a study sponsored by the Kaiser Family Foundation of Menlo Park, Calif., has found. Consumers who file appeals with state review systems are granted relief almost half the time, on



average, according to the study. The rate at which external reviewers overturn health plan denials ranged from a low of 21% in Arizona, where 282 cases were reviewed in 2000, to a high of 72% in Connecticut, where 29 cases were reviewed that year. Health plan denials were overturned an average of 45% across all states. The Kaiser Foundation is not affiliated with Kaiser Permanente.

Humana program offers wide choice of plans

Responding to employers' growing need for health plan choices, Humana Inc. has launched a health



care insurance package that offers a variety of options. The product, called SmartSuite, allows employers to choose one of four bundles of plans, each containing six different plan options. The bundles differ with regard to the percentage of premium that employees pay and the copayment levels used. Plan options include a health maintenance organization, several preferred provider organizations with various deductible and copayment levels, and a consumer-driven option.

Briefly noted

Massachusetts Gov. Jane Swift has

named **Julianne Bowler** as the commonwealth's next commissioner of insurance. Ms. Bowler, who has served as first deputy commissioner since 1998, will assume the post in April. She replaces Linda Ruthardt, who retired....Pennsylvania Gov. Mark Schweiker has signed **medical malpractice reform legislation**. The law, which takes effect immediately, reduces the amount of medical malpractice liability coverage physicians and hospitals must carry, and it lowers the surcharge providers pay into the state's catastrophe fund. The law also caps punitive damages in medical malpractice suits at twice compensatory damages....The **MIIX Group Inc.**, a Lawrenceville, N.J.-based medical malpractice liability insurer, has engaged investment bank Fox-Pitt, Kelton Inc. to "explore strategic alternatives for the company," MIIX said in a statement. The insurer posted a \$152.4 million loss for 2001, excluding the effects of an accounting change. Rating agency A.M. Best Co. on Friday downgraded MIIX's financial strength rating to C+ from B-.

Online Poll [3/18 - 3/22]

Should Congress reconsider legislation that would reduce claims litigation and accelerate compensation to sick former asbestos workers?

Yes 73.0% **No 20.3%**
No opinion 6.7%

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Reform: Industry unfazed

Continued from page 3

One property/casualty industry lobbyist said that the impact would be greater on the employer community as a whole than it would be on the insurance industry or any other individual sector.

"I don't think it disproportionately hurts us, but I do think that it is significant for the business community," said Leigh Ann Pusey, senior vp-federal affairs for the American Insurance Assn. "A major ability to have a voice in the political process will be severely restricted."

"The current legislation would probably have little impact on the political activities of most interest groups in terms of day-to-day lobbying," said David Farmer, senior vp-federal affairs in the Alliance of American Insurers' Washington office.

In addition, the insurance industry "itself is regulated on an operational basis by the states" said Mr. Farmer. "From the perspective of the P/C industry, the passage or nonpassage of campaign finance reform will not be a real significant development," he said.

In fact, the property/casualty industry may even benefit somewhat from the changes, some observers say.

'If you eliminate soft money at the federal level, it puts a premium on hard dollars and grass-roots lobbying.'

*Carl Parks
National Assn.
of Independent Insurers*

"If you eliminate soft money at the federal level, it puts a premium on hard dollars and grass-roots lobbying," said Carl Parks, senior vp-government relations in the Washington office of the National Assn. of Independent Insurers. "With regard to NAII, our grass roots—really shoe-leather politics—is what we specialize in, with a broad-based membership across the country," Mr. Parks said.

"Our association has never had a soft-dollar budget, so, in one sense, we should relatively benefit from

enactment of reform," said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

"The bill is likely to democratize political activity among the corporate community, in that companies and industries that have not been able to compete on the soft-dollar side are all now reliant on the same base: employees' personal contributions instead of corporate contributions," said Francis D. Bouchard, senior vp-federal affairs for Zurich Financial Services Group in Washington.

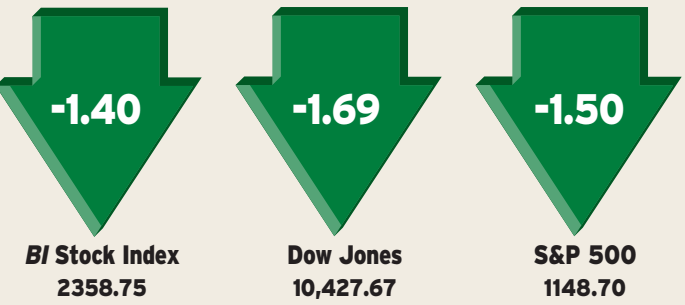
Mr. Bouchard said that the real beneficiaries of the reform will be the industries that rely on personal contributions, such as the trial bar and the entertainment industry.

"My guess is that if soft money goes away, it's only going to increase the pressures for hard money, and members of Congress are going to be spending more time—not less—sitting in cubicles calling guys like me asking for a PAC contribution or seeking the individual contributions of our broker members," said the CIAB's Mr. Wood.

BI Stock Index [3/18 - 3/22]

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

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



Largest gains

Mutual Risk Mgmt. Ltd.
Sierra Health Services
Seibels Bruce Group
Trenwick Group Ltd.
Navigators Group

51.85%
19.81%
10.71%
8.66%
8.09%

Largest losses

MBIA Insurance Group
SCPIE Holdings Inc.
Ambac Financial Group
Tokio Marine & Fire
The St. Paul Cos.

-8.13%
-7.00%
-6.90%
-5.36%
-5.22%

Weekly change by market segment

Brokers	1.85%
Insurers/Reinsurers	0.40%
Managed Care Organizations	1.32%

Source: CNET Investor (investor.cnet.com)



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