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Business Insurance

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\$5

N.Y. investigating brokers

Contingent commissions under fire as attorney general issues subpoenas

By DOUGLAS McLEOD

NEW YORK—New York Attorney General Eliot Spitzer is launching an investigation into whether insurance brokers' contingent commission agreements with insurance companies represent a conflict of interest.

Mr. Spitzer's office has issued about a dozen subpoenas requesting information on the agreements, also known as placement service or market service agreements. Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings Ltd. all confirmed late last week that they have received subpoenas. All said they will cooperate. Under the agreements, brokers—already com-

pensated by clients for insurance placements—receive additional commissions from insurers based on volume of business produced or profitability.

In reporting the subpoenas last week, Aon and Willis both noted that such agreements are a "longstanding and common practice" in the insurance industry and that they disclose the payments to clients in contracts, invoices or on the brokers' Web sites.

"We have urged disclosure, disclosure, disclosure," a spokesman for the Washington-based Council of Insurance Agents & Brokers said. "That's the policy that our members operate See **SPITZER**/page 35



PHOTO: AP/WIDE WORLD

New York Attorney General Eliot Spitzer has issued about a dozen subpoenas requesting information on insurance brokers' contingent commissions.

Late News

ACE raises \$882 million in Assured Guaranty IPO

ACE Ltd. raised gross proceeds of at least \$882 million through the initial public offering of its financial guarantee operation. Assured Guaranty Ltd. ACE subsidiaries sold 49 million shares at \$18 per share in the IPO. Depending on the outcome of underwriters' 7.4 million-share over-allotment option, ACE will retain 25% to 35% of Assured Guaranty's outstanding common shares.

Am Re not withdrawing from U.S. casualty market

American Re-Insurance Co. will continue to write U.S. casualty business, despite rumors that it planned to exit that line, the company said. In a statement, John Phelan, chairman of Am Re said, "We are in this business to stay, and we want to assure our clients that we are." Speculation about Am Re's commitment to U.S. casualty business emerged last week after its parent, Munich Reinsurance Co., announced its objectives for 2004.



PHOTO: EPA/PETER FOLEY

A winter storm in January was one of five catastrophes that hit the U.S. in the first quarter.

Catastrophe losses down in first quarter: PCS

Catastrophes caused an estimated \$963 million in insured property losses in the United States during the first three months of 2004, down from around \$1.48 billion in the prior-year period, according to the Insurance Services Office Inc.'s Property Claim Services unit. PCS noted there were five catastrophes—events that cause at least \$25 million in insured damage and affect a significant number of policyholders and insurers—in the United States from January through March. The most significant of those was a winter storm that struck 10 New England See **LATE NEWS**/page 35

High-tech sabotage spurs coverage battle

Loss from test tampering disputed

By DOUGLAS McLEOD

NEW YORK—More than two years after filing a \$77 million property and business interruption claim, Hewlett-Packard Co. is suing Factory Mutual Insurance Co. to recover losses that it says resulted from the sabotage of one of its key products by a former employee.

Palo Alto, Calif.-based HP originally filed the claim against Factory Mutual in October 2001, after discovering that a former HP engineer, Hock-Beng Lim, had sabotaged tests designed to assess the speed of the HP 9000 Superdome Enterprise Server, a high-end computer marketed to large e-commerce businesses.

Factory Mutual, which does

business as FM Global, spent 16 months investigating the claim before denying it last year. Johnston, R.I.-based FM Global concluded the actual loss was within HP's \$10 million deductible, according to HP's lawsuit, filed in U.S. District Court in New York.

The suit seeks a ruling that FM Global is liable for the \$77 million claim and that a \$50 million policy sublimit on electronic data processing losses does not apply to business interruption claims.

A lawyer for HP referred questions about the suit to an HP spokeswoman, who declined to comment. A spokesman for FM Global said the insurer was unable to comment on the suit.

See **HP**/page 34

Asbestos reform stalls in Senate, but talks to go on

By MARK A. HOFMANN

WASHINGTON—Senate leaders will take one more shot at working out an asbestos litigation reform bill this year, following the failure last week of the latest effort.

The decision by Senate Majority Leader Bill Frist, R-Tenn., and Minority Leader Tom Daschle, D-S.D., to attempt to reconcile their differences came Thursday after the Senate failed to limit debate on a White House-backed reform bill. The Fairness in Asbestos Injury Resolution Act—S. 2290—would have replaced the current litigation-based system for compensating victims of asbestos-related diseases with a national trust fund. But supporters of the FAIR Act

mustered only 50 of the 60 votes needed to invoke cloture, a parliamentary procedure that limits debate and heads off filibusters. The bill, which had only one Democratic co-sponsor, was then removed from the Senate's agenda.

The measure would have created a \$114 billion trust fund, paid for by defendant companies and their insurers, to compensate victims of asbestos-related diseases who meet specific medical criteria. The amount of compensation would have depended on the nature of the disease, with victims of mesothelioma—a lung cancer associated with asbestos exposure—eligible for the maximum award of \$1 million.

The bill drew criticism from some

See **ASBESTOS**/page 34

Spotlight report

RIMS CONFERENCE REPORT

Begins on page 10



April 26, 2004

Interest in terrorism coverage rises during 2003, survey says

By MARK A. HOFMANN

Risk managers' appetite for terrorism coverage may be increasing, according to new research by Marsh Inc.

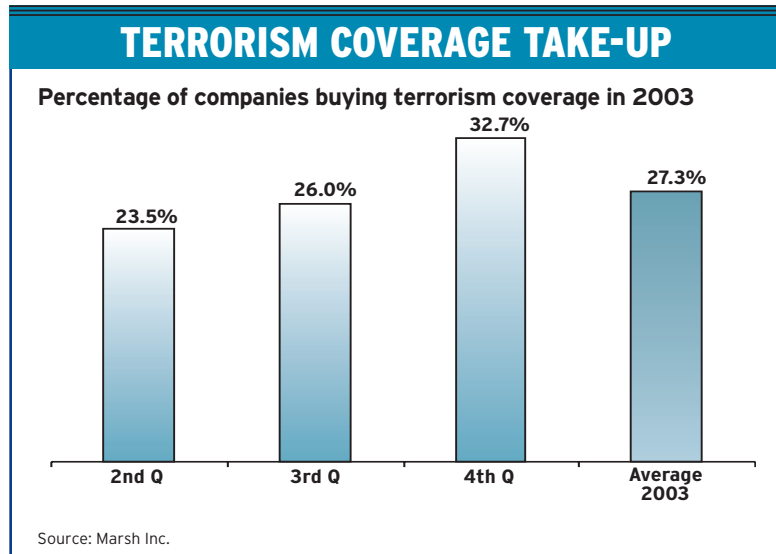
That appetite, however, still can't be called ravenous, even more than two years after the terrorist attacks of Sept. 11, 2001, made the availability of terrorism insurance coverage a paramount risk management

and political issue. In fact, Marsh's "Marketwatch: Property Terrorism Insurance 2004" found that over a nine-month period last year, only 27.3% of the total sample of 2,423 clients bought terrorism coverage. But the percentage of buyers taking up the coverage increased each quarter, from 23.5% in the second quarter of 2003 to 32.7% in the fourth quarter.

"A strong candidate as one potential reason for the notable upswing in terrorism purchasing in the fourth quarter may be the decline in terrorism rates over the same period of time," according to the report. The median rate for terrorism—which was determined by dividing the terrorism premium by total insured value—fell 42% between the second and fourth quarters of 2003, to 0.0045% from 0.0078%.

Jill Dalton, Marsh's North American property practice leader in New

See **TERRORISM**/page 32



Jury in WTC case asks judge to clarify instructions on form

By DOUGLAS McLEOD

NEW YORK—In its first day of deliberations last week, the jury in the World Trade Center coverage trial zeroed in on Swiss Reinsurance Co.'s July 2001 receipt of a Travelers Property Casualty Corp. policy form that WTC leaseholder Silverstein Properties Inc. says would treat the WTC's destruction as two events.

Broker Willis Group Holdings Ltd. e-mailed the form to a Swiss Re underwriter on July 23, 2001, days before the underwriter signed a revised binder for Swiss Re's share of the \$3.55 billion property program and several weeks before the Sept. 11, 2001, terrorist attacks.

Silverstein has cited the e-mail as

evidence that the program was shifted before the loss to a Travelers form from a Willis policy, known as Wilprop, that the broker originally submitted to insurers and that courts have ruled would treat the loss as a single event.

The Swiss Re underwriter, Daniel Bollier, denied ever being told of a form switch, though, and Swiss Re's lawyers pointed to the testimony of a London-based Willis executive, Paul Blackmore, that Mr. Bollier never expressly agreed to the Travelers form.

In a note to Judge Michael B. Mukasey last week, jurors asked, "Does just getting the form and remaining silent constitute agreement to the form?"

Jurors asked the judge to clarify

his earlier instruction on the legal requirement for finding an agreement to change forms.

In that instruction, provided before the jury began its deliberations, Judge Mukasey had told jurors that "if one party suggests changing to a different form, the binder does not change unless the other party agrees to use the different form. If the other party remains silent, then that party has not agreed to the change unless its silence would have a tendency to mislead the party that suggested the change."

At the jury's request, Judge Mukasey rewrote the instruction to clarify it.

After four days of deliberations the jury had not reached a verdict last week. It will reconvene April 27.



PHOTO: AP PHOTO/M. SPENCER GREEN

Near North Insurance Brokerage Inc. owner Michael Segal leaves the Dirksen Federal Building in Chicago on Tuesday, the first day of testimony in his federal fraud trial.

Premium trust used for expenses: Witness Ex-Near North CFO heard in Segal trial

By MEG FLETCHER

CHICAGO—The federal trial of Near North Insurance Brokerage Inc. owner Michael Segal for the alleged theft of more than \$20 million from the broker's premium trust fund account got under way last week as a prosecution witness testified that some of those monies were used for other purposes.

After a day and a half of jury selection, U.S. Attorney William R. Hogan Jr. called as his first witness Norman Pater, who was senior vp and chief financial officer of the privately held brokerage in the mid-1990s. Mr. Pater discussed several years of financial operations and testified of shortfalls in the premium trust account.

He also testified that he refused to sign a draft of a so-called "representation" letter in August 1996 from brokerage ex-

ecutives to auditors Deloitte & Touche L.L.P. concerning the broker's year-end 1995 audit. On Thursday, prosecutors introduced the draft letter, which bore Mr. Segal's signature.

Mr. Pater, referring to his own handwritten notes on the draft letter, had crossed out a paragraph stating that there were "no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the balance sheet or as a basis for recording a loss contingency." He noted instead: "Trust cash used for purposes other than premiums."

For example, Mr. Pater testified Thursday that some premium trust funds were transferred to Near North's California and New York offices to pay expenses, including payroll. Mr. Pater also wrote that there was a

See **SEGAL**/page 34

Inside Business Insurance

White Mountains merges reinsurance units

White Mountains Re, formed from its parent's reinsurance units, will have \$2 billion in premiums. **Page 4**

She can be a good mom and a good employee

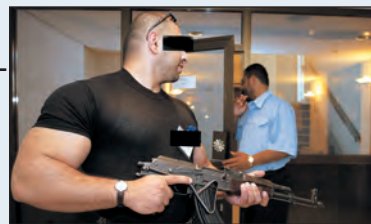
An employer that questions a young mother's devotion to her job can be found liable for gender discrimination, an appellate court has ruled. **Page 4**

Let's see how the best in the business do it

Paul Winston previews a recent survey of 30 individuals who've won Risk Manager of the Year or Risk Manager Honor Roll awards. **Page 6**

'Binder period' laxity leaves all in bind

The World Trade Center trial shows final policy terms need to be agreed on and issued in timely fashion. **Page 8**



Standards sought for private security firms

Coalition authorities in Iraq are working to develop regulations, including insurance requirements, to be applied to private security firms offering protection services to organizations in the country. **Page 29**

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.
- A new comprehensive archive of articles, court documents and information about the **World Trade Center coverage dispute** is now online.
- New **Opinion Poll** for readers: Comparing this year to 2003, how much has the amount of coverage you are purchasing at Lloyd's of London increased or decreased?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Employer's questioning of ability to balance work and life found discriminatory

Working mother wins gender bias ruling

By JUDY GREENWALD

NEW YORK—An employer that questions a young mother's devotion to her job can be found liable for gender discrimination, a federal appellate court panel has ruled.

The decision by the 2nd U.S. Circuit Court of Appeals panel will make it harder for employers to win summary judgment in comparable cases, attorneys say.

In *Elana Back vs. Hastings on Hudson Union Free School District*, the panel overturned a lower court's decision and unanimously held that gender discrimination claims made by a school psychologist against

two supervisors should be heard by a jury.

Attorneys said the April 7 decision by the highly regarded court is likely to be frequently cited by plaintiffs attorneys and could influence other courts as well, though it technically is binding only on federal courts in New York, Connecticut and Vermont.

The case was brought by Elana Back against Marilyn Wishnie, her school principal; Anne Brennan, the director of pupil personnel services for the district; the school superintendent; and the school district itself.

Ms. Back said she initially re-



ceived favorable job reports from Ms. Wishnie and Ms. Brennan. But Ms. Back said that after she took three months of maternity leave and as her tenure review approached, the two began to openly question her commitment to the job and her ability to balance her work and family duties. After she was denied tenure and terminated, she sued, charging gender discrimination.

The decision says Ms. Back's appeal "asks whether stereotyping about the qualities of mothers is a form of gender discrimination, and whether this can be determined in the absence of evidence about how

the employer in question treated fathers. We answer both questions in the affirmative."

Referring to comments allegedly made to Ms. Back, the decision says, it "takes no special training to discern stereotyping in the view that a woman cannot 'be a good mother' and have a job that requires long hours, or in the statement that a mother who received tenure 'would not show the same level of commitment (she) had shown because (she) had little ones at home.'"

The decision refers to last year's U.S. Supreme Court decision in *Nevada Department of Human Re-*

See BIAS/page 32



N.Y. LTC facilities to get new RRG

By JERRY GEISEL

NEW YORK—Long-term care facilities in New York soon will have another alternative to the commercial market for funding their professional liability exposures.

Next month, Henry Hudson LTC Risk Retention Group, which will be domiciled in Nevada, will provide care facilities in New York state with professional liability limits of up to \$1 million per claim and \$3 million annual aggregate.

The RRG's formation comes at a time of tough conditions for LTC facilities in New York, with fewer commercial insurers offering coverage and rates escalating, said Sanford Elsass, president and chief executive officer in New York for Atlanta-based Uni-Ter Underwriting Management Corp.

Uni-Ter, a subsidiary of reinsurance broker U.S. Re Cos. Inc., is providing management, administrative services and reinsurance brokerage services to the new RRG.

The RRG's goal is to provide "affordable and predictable coverage for policyholders," Mr. Elsass said.

Additionally, the program will offer a risk management and loss control services, including fighting frivolous claims, Mr. Elsass said.

Although New York has a

captive statute, Mr. Elsass said Nevada was chosen as the RRG's domicile because of the quality and interest of that state's insurance department.

"They have hired good people who understand what they are doing. They were more friendly and responsive than other states," he said.

The RRG was capitalized with a \$750,000 surplus note contributed by Oneida Savings Bank of Oneida, N.Y., which also is providing premium financing services.

Policyholders will make equity contributions ranging from \$375 per bed for facilities in the five boroughs of New York City and Long Island, to \$175 per bed for LTC facilities elsewhere in the state.

Mr. Elsass said he wasn't yet sure how much premium the program would generate in its first full year, though he said it could attract LTC facilities with a combined 10,000 beds.

Uni-Ter currently manages an RRG for Florida LTC facilities, which, in an unusual arrangement, was capitalized last year with an interest-free surplus note from the state of Florida (*BI*, March 31, 2003).

It also manages a risk retention group, which was licensed earlier this year in Nevada, to provide coverage to long-term care facilities in 13 Midwestern and Western states.

EEOC approves rule exempting retiree health plans from ADEA

By JERRY GEISEL

WASHINGTON—The Equal Employment Opportunity Commission is one step closer to adopting a final rule that would remove a severe threat to employer-sponsored retiree health care plans.

Last week, the EEOC, on a 3-1 vote, approved a rule it proposed last year to exempt retiree health care plans from the Age Discrimination in Employment Act.

The practical effect of the EEOC rule, which still must be reviewed by several federal agencies before it can be finalized, is that employers can reduce or even eliminate health care coverage when retirees become eligible for Medicare at age 65 without concerns about age-bias claims from the EEOC.

The adoption of the rule almost brings to a close the threat to retiree

care plans that emerged in August 2000, when the 3rd U.S. Circuit Court of Appeals ruled that the plans are subject to the ADEA. Under the ruling in the so-called *Erie County* case, an employer, to prevent a charge of age discrimination,



would have to offer the same health care coverage to the two retiree groups or spend the same amount of money on health care benefits for both groups.

The potential impact on employers of the *Erie County* ruling was enormous. Virtually all plans would be in violation, as employers typically provide richer benefits to

younger retirees than to older retirees who are eligible for Medicare benefits.

Following the ruling, employers and others said that, to reduce the threat of litigation, they would be forced to either cut the benefits of younger retirees to equal the level provided to Medicare-eligible retirees or eliminate coverage altogether. Upgrading the benefits provided to older retirees was not a practical option because of the tremendous cost involved, employers said.

The EEOC, which had initially embraced the *Erie County* ruling, began to have second thoughts as employers warned of the ruling's consequences to retirees. Then, in 2001, the EEOC first suspended and subsequently withdrew enforcement of the *Erie County* ruling.

Last year, the EEOC proposed the

See EEOC/page 6

White Mountains combines its reinsurance operations

By JUDY GREENWALD

HAMILTON, Bermuda—White Mountains Insurance Group Ltd. of Bermuda is combining its reinsurance operations to create a reinsurance group with more than \$2 billion in gross premiums.

The company has set up White Mountains Re Group Ltd., a Hamilton, Bermuda-based holding company, to combine Folksamerica Re; Fund American Re; White Mountains Underwriting; and the Stockholm, Sweden-based Sirius Insurance Group, whose acquisition White Mountains completed April 16.

The combined reinsurance operations have about \$2 billion in capi-

tal and more than \$2 billion in gross premiums, according to White Mountains.

Steven Fass, Folksamerica Re's president and chief executive officer, has been named White Mountains Re's president and CEO. Edward Stanco, formerly Folksamerica Re's senior vp and chief domestic treaty officer, was named Folksamerica Re's president and CEO. Folksamerica Re will continue to operate as White Mountains Re's U.S. reinsurance arm.

White Mountains Insurance Group CEO Ray Barrette said in a statement, "With the Sirius acquisition, Steve has built a significant global business for White Mountains. As CEO of White Mountains

Re Group, Steve will make sure the operating companies continue the approach he developed at Folksamerica of conservative underwriting, careful capital management and opportunistic acquisitions."

Gerard Altonji, a senior financial analyst with Oldwick, N.J.-based A.M. Best Co., said, "It would just make things a little simpler" for White Mountains to combine its reinsurance operations. "It just brings all the pieces together," he said.

White Mountains Re Group has "very solid backing with White Mountains," which has a strong capital base and has proven its "ability to go to the capital markets

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EEOC: Retiree health care plans

Continued from page 4

rule adopted last week, which makes clear that employers can alter, amend or terminate health care coverage of Medicare-eligible retirees without violating the ADEA.

In approving the rule, EEOC commissioners said they were doing so to prevent further erosion of retiree coverage, which has already been battered by soaring costs.

Enforcement of the *Erie County* ruling would not be beneficial to retirees, said EEOC Vice Chair Naomi Earp. Given the alternatives of up-

grading older retirees' benefits or reducing or eliminating coverage for all, employers would choose the latter, Ms. Earp said.

"The sad reality is that most retirees would lose coverage," said EEOC Commissioner Leslie Silverman.

But EEOC Commissioner Stuart Ishimaru, who voted against the rule, said there was no evidence that such a scenario would develop. Mr. Ishimaru said that if the plans needed to be exempted from the ADEA, legislators—not regulators—should make the change.

Employer groups hailed the EEOC action as a victory for employers, retirees and employees.

"Today's action is an important victory for retirees—especially pre-Medicare-eligible retirees ages 50 to 64—and the employers who wish to continue to provide them with post-employment health care coverage," said Mark Ugoretz, president of the ERISA Industry Committee in Washington.

EEOC Chair Cari Dominguez said she didn't know how long it would take the other agencies to review the rule.

Reinsurer: Units consolidated

Continued from page 4

to raise capital as needed for acquisitions," Mr. Altonji said.

Jeffrey Berg, vp and senior analyst with Moody's Investors Service in New York, said, "We think that it's got the potential to be very positive for the organization because of the size. Total size is very important in the reinsurance marketplace."

Many reinsurance buyers "require kind of a minimal threshold of capital before they're willing to buy reinsurance from certain parties," he said.

John Ward, chairman of the Cincinnati-based Ward Group, said also, "It's a logical approach and structure in the sense that it helps to combine, pull together, better leverage its related reinsurance in-

vestments on a global basis, and it looks like a good strategic move to build a more global reinsurance capability."

Observers also point to White Mountains' acquisition activity. In

'Total size is very important in the reinsurance marketplace.'

Jeffrey Berg
Moody's Investors Service

addition to picking up Sirius, White Mountains' recent deals include its plans—with Omaha, Neb.-based Berkshire Hathaway Inc.—to acquire Seattle-based SAFECO Corp.'s

life and investment operations (*BI*, March 22).

Last month, White Mountains also completed two other acquisitions. It bought the Sierra Insurance Group companies from Las Vegas-based Sierra Health Services Inc. White Mountains also bought Atlantic Specialty Insurance Co., a subsidiary of New York-based Atlantic Mutual Insurance Co., as well as the renewal rights to Atlantic Mutual's commercial insurance business.

Brian Schneider, insurance director at the Fitch Investors Services rating agency in Chicago, said that White Mountains believed "the timing was right for these acquisitions" and has been able to do them without incurring additional debt.

Paul Winston

Risk managers blaze own trails

A recent survey attempts to quantify some of the characteristics of risk management quality.

Marsh Inc. and the Risk & Insurance Management Society surveyed 30 risk managers who have won the Risk Manager of the Year or Risk Management Honor Roll awards to find out what makes them tick. Although the sample is admittedly skewed to exemplary individuals, an informal audience survey conducted at the release of the research at last week's RIMS meeting should provide additional statistics that may better indicate an average for the profession.

One finding was that the majority stayed in their profession and their jobs for a long time. The award-winning risk managers, on average, had been in that role for 16 years, and at their current organization for 13 years, on average.

One interpretation of that result is that to truly understand an organization's risks well requires time. Another may be that some organizations recognize the importance of risk management and seek to keep these individuals satisfied and productive. One might also conclude that this provides evidence that risk management does not offer additional career opportunities, providing little opportunity to advance or change their roles within the organization.

Or it could mean none of the above. Note that the 2004 Risk Manager of the Year, Chris Mandel, has been in his current position with USAA for only four years but already is having a clear impact. Mr. Mandel was not part of the survey sample.

At the same time, such longevity in an individual risk manager can mean that an organization is not doing enough to train and promote others to this role. The survey of award-winning risk managers found that a majority, 16, have no succession plan should they leave the post, while nine had identified one to two possible successors and five said they had a greater number of possible successors. This is not the same as saying that these risk managers do not have qualified and talented support staff; simply that they have not groomed another to take their place. This is understandable in the sense of wanting to be irreplaceable, but as one of the surveyed risk managers commented, "I need to do this, because I do hope to retire eventually."

Of the 30 risk managers surveyed, not one said the risk

manager position was a rotational role within their organizations. This appeared to alarm the survey authors, who see that as a possible failure to better integrate risk management throughout the organization.

But I would interpret this result as an indication of risk management in practice. In other words, the job is not one that can be performed well by someone rotated into that position without the requisite training, skills and experience. At the same time, there is clearly an opportunity for individuals to be rotated into the risk management department, if not the risk manager's desk, to increase its exposure. Likewise, rotating risk

managers and staff into other areas of the organization can only enhance their understanding of its needs and may already be occurring.

The survey also found that award-winning risk managers are a well-educated group. As to their educational background, 27 hold undergraduate degrees, 21 hold

graduate degrees and 18 hold various professional designations. Nearly two-thirds, or 63%, have taken a continuing education class within the past three years.

That this is an intellectual bunch should come as no surprise. Education (not necessarily formal) and curiosity are critical to successfully identifying and analyzing the myriad risks facing an organization, and to devising innovative solutions for managing them. No doubt these risk managers are also good at solving puzzles, but that would require another study.

The study found that while these risk managers unanimously believe their firms listen to the risk management department, with 18 strongly agreeing with that statement and 11 agreeing, very few said their organizations also offered a productive career path in risk management. As a consequence, the survey authors noted, these award-winning risk managers have "blazed their own trails" to success in their organizations.

These findings will hopefully provide other risk managers with a trail to follow to success in the profession.

Editor Paul Winston can be reached at pwinston@businessinsurance.com. The full survey, "Excellence in Risk Management: A Qualitative Survey of Successful Risk Managers," is not yet available.



Paul Winston

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Editorial

Timely issuance of policies critical

AS THE WORLD TRADE Center coverage trial comes to a conclusion, the one lesson from the proceedings that most people should be able to agree on is that final policy terms need to be agreed on and issued in a timely manner.

The central issue of the trial has been which policy form was in effect at the time of the Sept. 11, 2001, tragedy—the so-called Wilprop form, which courts have ruled would treat the WTC's destruction as a single event; or the Travelers form, which the WTC's leaseholder says could be interpreted to treat the attack as two events.

Jurors were asked to decide whether the original Wilprop form

was still in place at the time of the attack—as insurers argue—or underwriters on the risk had been moved to the Travelers form, as WTC leaseholder Silverstein Properties Inc. maintains.

Given that the coverage for the WTC was bound in July 2001, most outsiders would likely consider it strange that the final details of the coverage had not been agreed on, formally drawn up, signed and issued, if not on the date the coverage was in force, at least shortly afterward.

Those more familiar with commercial insurance placements would, of course, realize that the WTC coverage saga is just an extreme example of what can go

wrong during the "binder period" between the inception of coverage and issuance of a final policy.

As details of the trial have revealed, arguments over which policy applied appear to hinge on underwriters' understanding of certain e-mail attachments they were sent, who said what in barroom conversations and whether certain underwriters had waived their right to agree to terms.

Given that \$3.55 billion in coverage is at stake, it is by no means certain that disputes would not have emerged even if a final policy had been issued. But at least if it had, the parties would have known which wording they were arguing over.

The starting point for addressing the problem of late policy issuance must, of course, be risk management departments themselves. If policyholders don't get information to brokers in time for them to market risks to insurers, they have no cause for complaint. However, if risk managers provide timely information, they should be allowed to apply measures that ensure contracts are issued on time.

Financial penalties that are of sufficient size to ensure that brokers and underwriters get their jobs done on time should be part of the placement agreements. Then, maybe some sense of urgency would be instilled in multibillion-dollar coverage negotiations.

End threat to retiree health plans

IF EVER THERE WERE an example of how employer input can make a difference, the Equal Employment Opportunity Commission's turnaround on retiree health care coverage is it.

Nearly four years ago, the EEOC began to enforce a ruling by the 3rd U.S. Circuit Court of Appeals that said retiree health care plans are subject to the federal Age Discrimination in Employment Act.

Under that ruling, to prevent a charge of age discrimination, employers with retiree health care plans would have to either provide the same health care benefits to all retirees or spend the same amount of money on all retirees' coverage.

In the real world of retiree health

care plan design, equality of benefits or costs simply does not exist, and the reason has nothing to do with age discrimination.

The reason is the federal Medicare program, which provides comprehensive health coverage to retirees age 65 or older.

Given the availability of Medicare, employers quite naturally do not provide the same level of coverage to older retirees as they do to younger ones.

Also, in the real world of soaring health care costs, if employers had to provide the same benefits or spend the same amount of money on health care coverage for the two groups of retirees, can there be any doubt about what those employers

would do?

They would do just what Erie County, Pa., the employer involved in the appeals court ruling, did—that is, cut benefits for younger retirees—or they would eliminate retiree health care coverage altogether.

No one, it is safe to say, would upgrade benefits for Medicare-eligible retirees. The cost simply would be too great.

The EEOC, after many meetings with employer groups, came to recognize the wholly negative result on retirees of enforcement of the Erie County decision.

And as we report on page 4, the EEOC last week proposed a final rule that makes clear that employ-

ees may provide less generous health care benefits to Medicare-eligible retirees than to younger retirees—or even terminate coverage when retirees reach age 65—without fear of being sued for age bias by the EEOC.

EEOC Vice Chair Naomi Earp summed up it perfectly when she said the last thing that should be done is to discourage employers from offering coverage. The Erie County ruling, she said, was the problem, not the solution.

We couldn't agree more, and we hope that other federal agencies quickly sign off on the EEOC rule. It's time that this threat to retiree health care plan coverage is removed once and for all.

Schillerstrom



Letters to the Editor

HSA embedded deductible concerns overstated

To the editor: Somewhere the train is well off the track in talking about so-called "embedded deductibles" within new HSA plans, as in your article, "HSA Deductible Rules May Lessen Plans' Appeal," in the April 12 issue.

Plan deductibles have always been "individual deductibles." The so-called family deductible is really a "family deductible maximum," a specified limiting amount that the totality of all deductibles for individuals within a family shall not exceed. It is usually specified as a "sugar bowl" amount of money that is some integer multiple of the individual deductible, e.g., two or three times the individual amount. It can also be specified as a head count; i.e., after so many individuals within the family meet their individual deductibles, there are no further deductibles required of anyone within

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RIMS 2004 Conference Report

Society says 'Si' to adding foreign chapter

By JOANNE WOJCIK

SAN DIEGO—The Risk & Insurance Management Society Inc.'s reach is extending south of the border.

The national flag of Mexico joined those of the United States, Japan and Canada on stage at the opening of this year's RIMS conference last week to announce the addition of the society's latest international chapter.

"RIMS has expanded its reach throughout North America and would like to welcome its newest chapter—RIMS' Mexico chapter, headquartered in Monterrey," said outgoing RIMS President Lance Ewing in welcoming Jorge Escalera, risk manager at Axtel S.A. de C.V. in San Pedro Garza Garcia, and the new chapter's president, to the organization.

This year's conference in San Diego had more of an international flavor overall as RIMS welcomed more than 500 registrants from outside the United States.

"It's the largest group we've ever had in international representation," Mr. Ewing said during his heartfelt farewell address, after which he handed over the reins to an equally emotional Nancy Chambers, who was installed as RIMS' 2004-2005 president.

Ms. Chambers, risk manager for the Waterloo Region Municipalities Insurance Pool in Kitchener, Ontario, was elected president at the House of Delegates meeting on April 18 and begins her term May 1.

During her acceptance speech, Ms. Chambers emphasized RIMS' commitment to elevating the profile of the risk management profession globally.

"We are building a relationship with risk management associations around the world," she said. "For the past three years, Susan Meltzer, past president of RIMS, has represented RIMS in the International Federation of Risk Management Assns., or IFRIMA. Susan has been nominated as (IFRIMA's) next president."

Ms. Chambers also pledged to direct the Executive Council to continue to build on the strong foundation laid by RIMS' previous leadership by implementing a knowledge-based governance strategy.

"In this regard, we are increasing our efforts to gather knowledge from risk managers for risk managers," she said.

"Looking back over the last decade, risk managers have been facing many formidable challenges in the ever-changing world in

See **FUTURE**/page 16



PHOTO: MICHAEL MARCOTTE



Incoming RIMS President Nancy Chambers, above left and in inset, emphasized elevating the profile of the risk management profession globally in her opening speech at the conference. Announcing the addition of a Monterrey, Mexico, chapter to RIMS, above, were, left to right, Ms. Chambers; RIMS Executive Director Jack Hampton; the new chapter's president, Jorge Escalera; and outgoing RIMS President Lance Ewing.

Fears of costly suits drive push for tort reform

By MICHAEL BRADFORD

SAN DIEGO—Risk managers' fears of punishing jury awards and spiraling defense costs continue to drive their zeal for tort reform.

The long battle for meaningful reforms has not waned in recent years. In fact, efforts by the Risk & Insurance Management Society Inc. appear to be gaining some momentum, as evidenced by the record turnout at the society's most recent annual RIMS on the Hill lobbying event in Washington. Forty-five attended the March 10-11 affair, which gave insurance buyers a chance to voice their concerns to lawmakers.

Risk managers who attended RIMS' annual conference in San Diego last week talked about the

chances of reforms they say could lower their cost of risk and make their loss control efforts somewhat more predictable.

"My biggie has always been class action reform," said Christopher E. Mandel, assistant vp-enterprise risk management at United Services Automobile Assn. in San Antonio. "Reform that does get federal jurisdiction" in class actions is "sorely needed," Mr. Mandel said, because "people tend to file in jurisdictions where juries act more irrationally."

Even though USAA, an insurer, isn't facing such potential losses, "we are concerned about the possibility," he said. And that possibility has an impact on rates that his company is charged for coverage, particularly for errors and omissions insurance, noted Mr. Mandel.

Ellen Vinck, recently named RIMS' first vp, said it is just the potential for jury awards that keeps defense costs high at United States

have yet to pay out a dime in an actual third-party settlement for an asbestos-related illness," she noted, "but we are clobbered by the cost of

Ms. Vinck said. When the company has to use outside attorneys to defend asbestos-related charges, the cost runs from \$25,000 to \$75,000 before the case is dismissed, she said.

And "it's not only asbestos," she warned. Another emerging threat is silicosis and the growing number of lawsuits related to that illness from claimants who allege injuries from the sand used in sandblasting, Ms. Vinck said.

RIMS has made some progress in educating lawmakers with regard to reform issues, Ms. Vinck said, as the group's reception in Washington proved. "People at least knew what we were talking about," she said.

The economic impact of big awards has gotten the attention of

See **TORT REFORM**/page 12



'We have yet to pay out a dime in an actual third-party settlement for an asbestos-related illness, but we are clobbered by the cost of defense.'

Ellen Vinck
United States Marine Repair Inc.

Marine Repair Inc. in San Diego, where she is vp of risk management.

"Pending asbestos litigation is huge for us," Ms. Vinck said. "We

defense."

And it is frustrating to see so much taxpayer money used to defend the defense contractor against claims that inevitably are dismissed,

Inside:

Rating downgrades put buyer focus on insurer financial security
page 14

Quest for quality may bring revival of buyer scorecards to rate broker, insurer services
page 26

RIMS honors call attention to the profession's best
page 26

In keynote, Zurich CEO says more moderate insurance cycle can be achieved
page 28

Tort reform: Cost fears drive push for limits on suits

Continued from page 10

some in Washington, Ms. Vinck said, and many realize that "something has to be done."

Republicans were particularly receptive to RIMS' concerns, she said, but Democrats, too, have begun to understand that reform movements are not simply an effort to take benefits away from sick people, as opponents charge.

Such charges are a favorite accusation of plaintiffs attorneys and are one of the biggest hurdles for tort reform advocates, said Gary A. Baxter, assistant treasurer and director of insurance at Weyerhaeuser Co.

in Federal Way, Wash. Lawyers who oppose reforms try to sway public opinion by claiming tort changes are a way to limit injured parties' opportunities to recover damages, Mr. Baxter said.

Risk managers have pinpointed the areas where they would most like to see change and are pushing for lawmakers to act.

"It's always tough to gauge what Congress is going to do," said Janice Ochenkowski, vp-external affairs on RIMS' executive council and senior vp-risk management at Jones Lang LaSalle, a Chicago-based real estate company. RIMS is "very

hopeful, because congressional leaders seem to be trying to put these issues up on the board during



'In just about every job that I've ever had,' workers comp problems in California and Texas 'have been the bane of my existence.'

*Christopher E. Mandel
United Services Automobile Assn.*

this term," Ms. Ochenkowski said. "We're hopeful that meaningful

tort reform can be passed."

USAA's Mr. Mandel said, though, that the "likelihood of significant

tort reform is limited" at the moment. With terrorism such an over-

riding issue in Washington, other matters have been overshadowed, he noted.

In its bid for meaningful change, RIMS last month released a statement of principles regarding tort reform. It urged Congress to pass legislation that would:

- Set limits and higher standards for punitive damage awards.
- Eliminate joint liability for noneconomic damages.
- Establish tougher sanctions for frivolous lawsuits.
- Set stricter statutes of limitations and repose.
- Allow federal court hearings for interstate class action cases.
- Allow certification of class action suits only when there has been material injury.
- Require consideration of administrative remedies where appropriate.
- Permit interlocutory appeals of class action certifications.

At the state level, risk managers in California last week got some long-awaited relief when lawmakers approved changes to the state's workers compensation system. Employers have long complained about the need for reforms in the state, where workers comp costs have driven some to leave for lower-cost, more predictable jurisdictions.

"Workers comp in California is killing my franchisees," said Bob Boik, national director of risk management at Domino's Pizza L.L.C. in Ann Arbor, Mich. The expense of the coverage "has no relationship to their exposures," Mr. Boik said just before the passage of the recent reforms.

Among the changes in California are provisions that will modify the process of awarding permanent partial disability benefits and allow employers to direct workers to physician networks (*BI*, April 19).

Mr. Mandel said Texas is another state in need of workers comp reform. "In just about every job that I've ever had," workers comp problems in California and Texas "have been the bane of my existence," he said.

"We're certainly watching workers comp issues very closely, because that's critical to our members," said RIMS' Ms. Ochenkowski.

Mr. Baxter said many businesses have not done enough to help with tort reform efforts, because much of their energy has been spent on staying competitive in a tough economic environment.

Most employers "could not afford to significantly participate in public opinion campaigns and tort reform measures," he said. "Their own agendas always take priority."

There's a big opportunity for risk managers to "get more involved in the process" of promoting reforms, Mr. Mandel said. "Unless the risk manager is helping drive government affairs in the company, I think they're missing the boat."

The big turnout at the RIMS on the Hill function was a "nice indicator that that's starting to happen," said Mr. Mandel, but he added there still is much to do.



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Buyers focused on examining security of coverage

By **RODD ZOLKOS**

SAN DIEGO—The financial security of insurers and reinsurers is of critical importance to coverage buyers, and getting a clear picture of security requires a broad examination of the companies.

"As a risk manager, you're always concerned about getting insurance coverage from a company that may not be there to pay claims," said Sheila L. Small, assistant treasurer-risk management and insurance at New York-based Verizon Communications Inc.

Moderating a session on insurer solvency issues last week at the Risk & Insurance Management Society Inc.'s annual conference in San Diego, Ms. Small said, "What we've learned over the last 12 to 18 months is that many of the tools that risk managers have traditionally used to make sure that our insurers would be there may not be enough."

Session panelist John Q. Doyle, president of American International Group Inc. unit American Home Assurance Co., said, "Finding good quality capacity out there is not an easy thing, especially for large insureds."

Mr. Doyle noted that insurer security was risk managers' top concern in the 2003 Benchmark Survey conducted for RIMS by New York-based Advisen Ltd. The survey of about 1,000 risk managers, which was conducted through the third quarter of 2003, found that buyers' concerns over insurer security stemmed largely from "a seemingly endless barrage of downgrades on insurers."

Underscoring the emphasis buyers are placing on insurer ratings in the current environment, James J. Schiro, chief executive of Zurich Financial Services Group, said regaining an AA rating for his company was one of his major goals. Especially as the market softens, Mr. Schiro said, buyers need to be sure that their insurers will be around to pay any claims.

But in fact, buyers' focus on insurer and reinsurer ratings isn't sufficient in trying to assess their strength and whether they're likely to be there when it comes time to pay claims, American Home's Mr. Doyle said.

Beyond the ratings

"So many people in the industry have a pass/fail approach to this issue," Mr. Doyle said in an interview. "Somebody above the line they trust is acceptable, and somebody below the line is unacceptable."

It's necessary for buyers to look beyond the ratings, Mr. Doyle and others say, assessing other qualities of insurers and reinsurers in trying to gauge their strength. One area buyers can consider, Mr. Doyle said, is insurers' and reinsurers' credit ratings, and how they're viewed by the credit markets.

"I find it incredible...given the long-tail nature of our business, that due diligence isn't at an entirely different level than it appears to be,"

Mr. Doyle said. "Most companies have very strict investment requirements," he said. Yet, "some companies are buying insurance from

companies (when) they wouldn't buy that company's bonds." Reinsurance recoverables are another significant concern, Mr.

Doyle said, suggesting that buyers dealing with companies that are "very reinsurance dependent" should also scrutinize those companies' reinsurer relationships.

"In this business, what you're selling is a promise. For property, it's a short-term promise; for casualty, it's a long-term promise," said Anthony J. Kuczinski, president of Munich-American Risk Partners in Princeton, N.J. "I would think any astute buyer would be concerned about buying a long-term promise."

"So I think buyers do have to be astute about whom they're buying

from," he said. "That's been a pretty consistent theme of discussion these past few days, so it seems to be front and center on the minds of risk managers and their brokers. And it should be," Mr. Kuczinski said in an interview during last week's RIMS conference.

Additional factors

Other factors fueling concern over the security of risk transfer relationships are pressure from shareholders and corporate governance

Continued on next page



'You're always concerned about getting insurance coverage from a company that may not be there to pay claims.'

Sheila L. Small
Verizon Communications Inc.



Life is ambiguous

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Continued from previous page issues, such as those presented by the Sarbanes-Oxley Act, said Brian M. O'Hara, president and chief executive officer of Hamilton, Bermuda-based XL Capital Ltd.

"Especially in the risk management area, there's greater scrutiny and light shed on everything," Mr. O'Hara said. "Transparency is the order of the day."

"Sarbanes-Oxley is really interwoven into all of this," said James A. Swanke Jr., principal at Tillinghast-Towers Perrin in Minneapolis.

"Our clients are very concerned about the financial security of insurers today," Mr. Swanke said. "People not only want to choose a carrier today that's in good financial standing, but they're looking for some-

body who's going to be there in the long term."

John B. Stites, vp-national accounts, commercial lines, at St. Paul Travelers Cos. in Hartford, Conn.,

"Our leadership is clearly of the view that having scale in the financial services industry is a good thing," Mr. Stites said. "It is scale in earnings, maybe, that is most help-

ing point of view, we're in great shape," Mr. Stites said. "But we all believe that if things happen that are unexpected, we'll be better positioned to deal with them."

The concerns about solvency and strength apply not only to buyers of primary insurance, but to reinsurance buyers as well.

"We only have 24 reinsurers on our approved list right now," said James MacDonald, executive vp and chief underwriting officer-corporate underwriting for ACE USA in Philadelphia.

"So concerns with reinsurer security are very different right now," Mr. MacDonald said. "In the past, we might have had 100 or 200" approved reinsurers, he said.

"We try to look at the intangi-

bles," Mr. MacDonald said, noting that approach is also used for examining the new capacity that has come into the market since 2001. The new Bermuda companies may have significant capital and balance sheets that are free of the liabilities posted by older companies, but they also lack the track record of those established firms, Mr. MacDonald and others say.

As a result, it's important to examine companies' management teams and consider what their plans might be in the years to come as markets soften, many suggest.

In general, "one of the lessons that we've learned in recent years is that you really have to look at their business practices in the market, as well as their recent financials," Mr. MacDonald said. "You really have to look at the whole organization: What are they doing, where are they doing it, what are some of their exposures?"

Munich-American Risk Partners' Mr. Kuczinski offered a similar view. "The letter rating might be there, but what are management's intentions? Where are they going to be five years from now? If (the company) changes hands, what happens then?" Mr. Kuczinski said.

"It's not a given where anybody's going to be in five years," said Mr. O'Hara. "But if you already have veteran staff, solid relationships, the greater staying power you're going to have."

Getting help

In terms of buyers' efforts to deal with issues of insurer financial strength, Mr. Kuczinski said: "If buyers are buying insurance directly from a carrier, they have a whole lot more work to do. If they use an intermediary or a broker, they can use their services. But the buyer should still question the strength of the promise to pay."

Tillinghast's Mr. Swanke suggested that buyers "do a little bit of research, find out what kind of business (their insurers or reinsurers) are involved in, do a little bit of research on their tail issues. Also, get professionals involved, like your insurance brokers."

"We're recommending even in this softening market that people get out and meet their underwriters," the Tillinghast consultant said. "There's no reason why in an underwriting meeting that a buyer can't ask how an insurer is doing financially."

Mr. Swanke said he's also seeing insurer security concerns reflected in the structure of insurance programs in some cases. In some directors and officers programs, for example, buyers are assembling multi-layered programs with provisions that allow insurers to drop down from higher layers to fill gaps in the programs if other insurers should go out of business, he said.

Joseph Lewis, insurance and claim manager for Minneapolis-based Nash Finch Co., said his company does rely on its brokers to help it deal with insurer security issues.

"Honestly, (insurer security) should be a concern," he said. "But we rely on our broker."

"We always want a quality insurer," Mr. Lewis said.



'In the risk management area, there's greater scrutiny and light shed on everything. Transparency is the order of the day.'

Brian M. O'Hara
XL Capital Ltd.

said he thinks companies' scale is a factor that buyers might want to consider.

ful in the environment that we're in today."

"We all believe that from a reserv-



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Future: Responding to evolving needs

Continued from page 10

which we live: war, terrorism, hardening markets, natural disasters, power failures, blackouts, stock market declines, mergers, acquisitions and the list goes on," Ms. Chambers said.

"However, looking back over those same years, we also see how risk management has evolved to meet these challenges. Organizations are now beginning to recognize that they have an obvious candidate to be the primary person managing the risk management process. The qualified risk manager is perfectly positioned to advocate risk mitigation across the entire enterprise, to coordinate the management of risks that interact with each other and to communicate successes and weaknesses to senior management and the board," she continued.

'Organizations are now beginning to recognize that they have an obvious candidate to be the primary person managing the risk management process.'

*Nancy Chambers
Incoming RIMS President*

"RIMS has contributed to this evolution with the development and delivery of many quality programs and services. RIMS will continue to be responsive to the ever-evolving needs of our members, with all efforts focused on the four key strategic areas—education, conference, technology and membership," she said.

In addition to electing Ms. Chambers to RIMS' highest post, the society named Ellen Vinck, who is vp of risk management and benefits at United States Marine Repair Inc. in San Diego, as RIMS' first vp, the traditional stepping-stone to the presidency.

RIMS also elected eight other vps to serve on the organization's Executive Council for the 2004-2005 term. They are:

- Janet E. Barnes, risk manager and security administrator for the Public Utility District No. 1 of Snohomish County, Wash., RIMS' vp-conference.

- Sanford M. Bragman, senior adviser-risk management at Tenet HealthSystem in Dallas, vp-communications and technology.

- Mr. Ewing, vp-risk management at Caesars Entertainment Inc. in Las Vegas, vp-former president.

- Daniel H. Kugler, assistant treasurer, corporate risk management, at Snap-On Inc. in Kenosha, Wis., vp-membership.

- Michael Liebowitz, director of risk management and safety at Bridgeport Hospital & Healthcare Services Inc. in Bridgeport, Conn.,

vp-treasurer.

- Deborah M. Luthi, director, risk management services, at the University of California-Davis, vp-professional development.

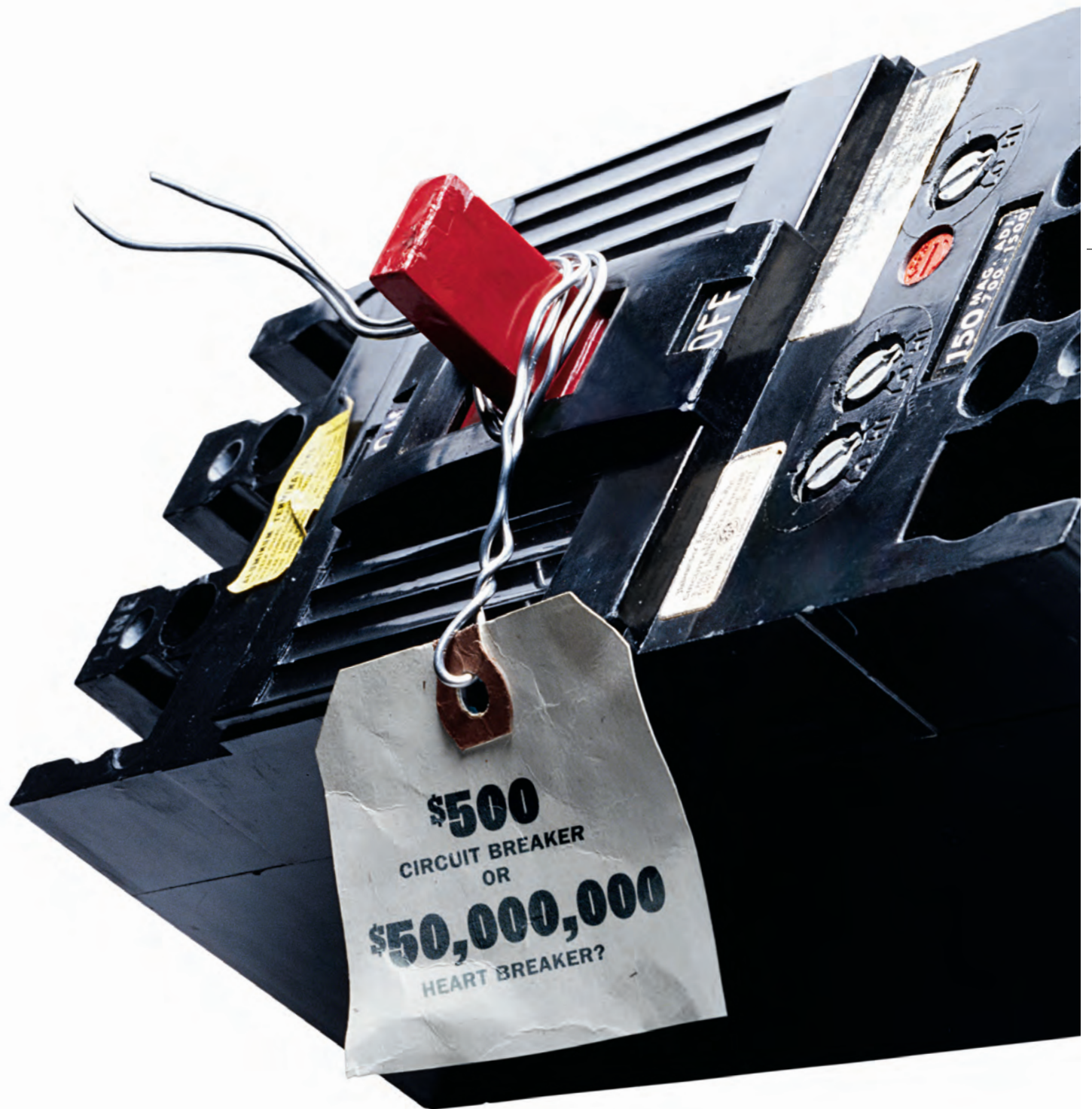
- Janice Ochenkowski, senior vp-risk management of Jones Lang LaSalle Inc. in Chicago, vp-external affairs.

- Joseph A. Restoule, senior risk consultant at NOVA Chemicals Corp. in Calgary, Alberta, vp-chief risk officer and secretary.



PHOTO: MICHAEL MARCOTTE

RIMS' annual conference in San Diego attracted more than 500 registrants from outside the United States.



Companies advised to protect critical digital assets

By **ROBERTO CENICEROS**

SAN DIEGO—In the digital age, corporate assets are no longer limited to physical goods, property and personnel.

For example, casinos now have the technology to record every card dealt, chip wagered and die rolled. In addition, they can even track the drinking habits of specific customers, said Brian Babineau, an analyst for Enterprise Strategy Group in Milford, Mass., who spoke at a session during the Risk & Insurance Management Society Inc. conference last week in San Diego.

And while that digital information is a valuable asset, Mr. Babineau said, it's also vulnerable, creating a need to protect the privacy of such information on customers.

Furthermore, companies are storing and transmitting more and more digital data, from sensitive personnel records to information on business processes, and even employees' personal e-mail.

Therefore, determining what data should be deemed "critical" is an important step in managing and safeguarding the company's digital assets, said another speaker, Hart

Rossman, assistant vp and deputy chief technology officer for Science Applications International Corp.'s Enterprise Security Solutions operation in San Diego.

Organizations should focus on securing only critical assets, rather than attempting to safeguard the entire universe of information they collect in digital format, Mr. Rossman advised conference attendees.

A common rule of thumb many companies apply is to label just 20% of their data as "critical," he said. In truth, Mr. Rossman said, they probably regard only 5% of their information as truly critical;

the rest they can probably survive without.

But companies find it difficult to determine precisely which information should make it into the 5% category, Mr. Rossman said, so 20% is considered a good benchmark.

"Beware of folks—program managers, chief executive officers, project managers and help-desk folks—who tell you that more than 20% of their stuff is critical," he advised.

Protecting critical digital assets is becoming more urgent because the number of technology systems through which each company

stores and transmits information is multiplying, Mr. Rossman said.

At the same time, hackers are having an easier time tapping into corporate data. Such breaches are becoming simpler to perform in part because hackers increasingly are sharing their resources, he said.

"They are coordinated. They are talking. They are having actual conferences," Mr. Rossman said.

But hackers aren't the only challenge. Mishaps within a corporation could cause digital assets to disappear, said Per Sjöfors, executive vp-strategy and business development for the Global Society for Asset Management in Los Angeles.

Hackers 'are coordinated. They are talking. They are having actual conferences.'

*Hart Rossman
Enterprise Security Solutions*

Or, employees could accidentally transmit critical information to the wrong recipients. Pricing data, for example, might fall into a competitor's hands if it is not managed properly, said Mr. Sjöfors. His non-profit industry association is an advocate for effective digital asset management.

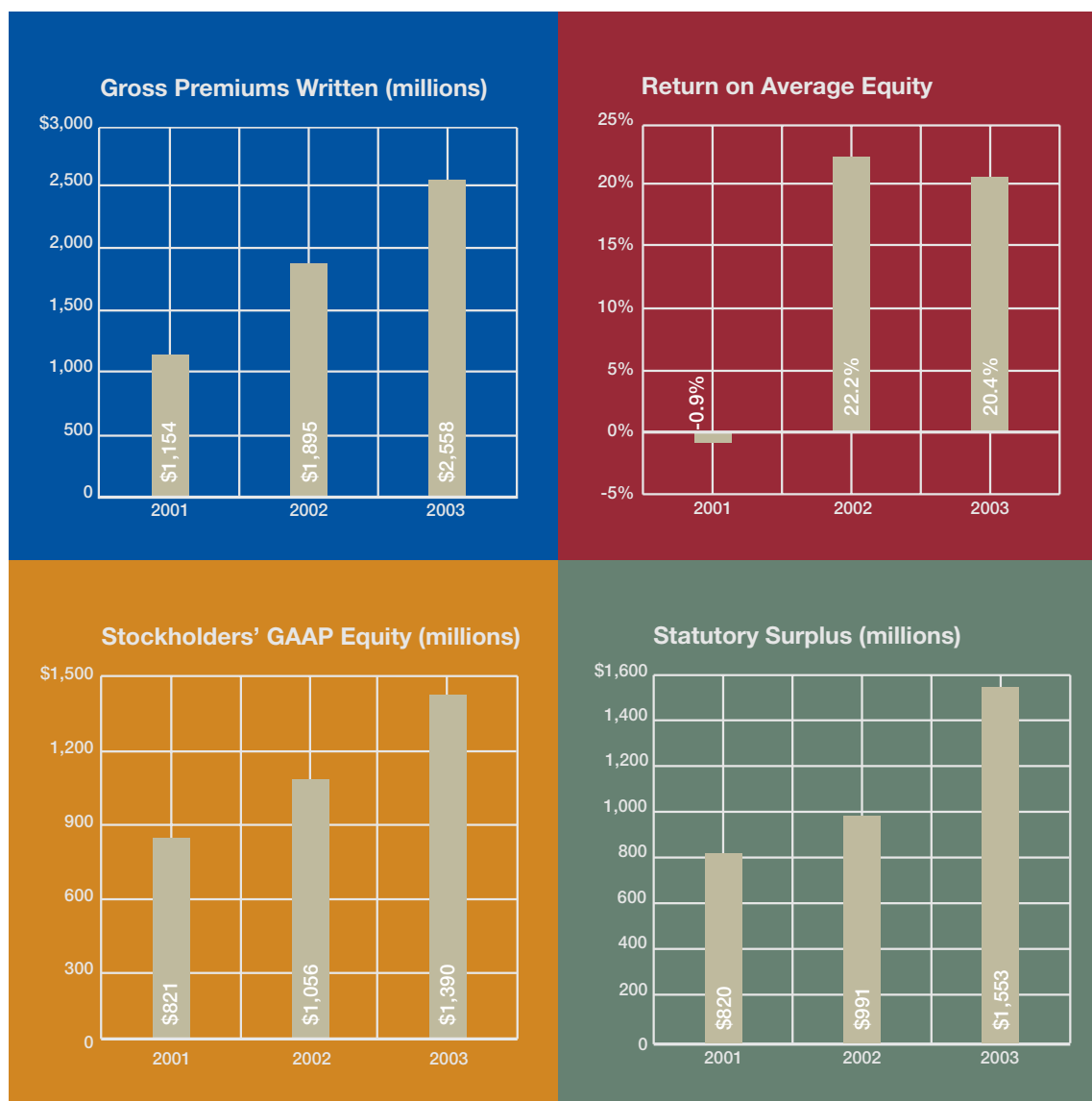
But the good news for managing digital asset risks "is you don't have to come up with a whole strategy on your own," said Tom Srail, vp and information risk practice leader for Marsh USA Inc. in Cleveland.

"You don't have to design an entire methodology from start to finish," Mr. Srail said. "It already exists."

Establishing good processes for managing digital asset risks typically requires appointing someone to lead a policy-development team, Mr. Srail said. Those leaders often come from the corporate security or information technology departments.

But risk managers also are a good choice to lead a policy development team and often do so in partnership with information technology specialists, he said.

Mr. Srail stressed the importance of identifying and ranking assets according to their value and then determining the potential impact from a loss of each. He acknowledged that it may be difficult to place a dollar value on specific assets, but he suggested that they be compared against each other. Or, Mr. Srail advised, a subjective numbering system—say, from one to five—could be used to help rank how valuable an asset may be.



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RIMS officials Michael Liebowitz, left, and Bonnie J. Chambers, far right, congratulated Risk Management Honor Roll member Joan Conner and Risk Manager of the Year Christopher E. Mandel last week at a luncheon honoring the award-winning risk managers.

Corporate governance issues open door for risk managers

By GLORIA GONZALEZ

SAN DIEGO—Increased attention to corporate governance issues can give risk managers an opportunity to develop enhanced risk management programs within their organizations.

Three years ago, corporate governance was not even on most corporate agendas, but recent accounting scandals and provisions in the Sarbanes-Oxley Act of 2002

have made governance a major concern for many corporations, said Corey Gooch, senior consultant-enterprise risk management in Chicago for IRMG, a unit of Aon Corp.

The current regulatory environment is forcing companies to adopt enhanced corporate governance strategies, Mr. Gooch said. For example, New York Stock Exchange listing rules require that company audit committees per-

form risk assessments of their organizations, and risk managers should be involved in that process, he said.

"You really have to have a corporate governance system in place," Mr. Gooch said. "Risk management has a chance to step up and play a role," he said, speaking at a session at the Risk & Insurance Management Society Inc.'s Annual Conference & Exhibition last week in San Diego.

Richard Machold, vp and chief risk officer for Alpharetta, Ga.-based Certegy Inc., developed a plan for overhauling his company's risk management program that included taking responsibility for compliance with Section 404 of Sarbanes-Oxley. That section of the law requires that companies evaluate their internal controls and procedures for financial reporting.

"Sarbanes-Oxley could be a blessing or a curse," he said. "The

'Risk assessment is common sense, but it is not common practice.'

*Richard Machold
Certegy Inc.*

question is, are we going to get something out of that that has lasting value?"

Mr. Machold said he had several goals in establishing a risk management program to comply with the law. He sought to increase accountability for risk within the operations of the business and to improve awareness of and focus on the most critical risks in the business. In addition, he wanted to reduce earnings volatility and to obtain a better view of risk across the entire business. "Risk assessment is common sense, but it is not common practice," Mr. Machold said.

In order to comply with Sarbanes-Oxley, Genentech Inc. recently did a thorough assessment of its top 20 risks, which was then presented to senior management, said Laura Langone, assistant treasurer for the San Francisco-based biotech company.

Part of the assessment included a case study of a sole-sourcing risk, whereby the company is exposed to an interruption in delivery from its only supplier of a key raw material.

Through this analysis, company officials realized that they could assume the risk relating to a delivery interruption of up to three months. However, they decided they would be unwilling to assume any loss greater than six months, due to the economic ramifications.

"We use Sarbanes-Oxley as an opportunity for us," she said. "You really need to understand how to sell and how to speak the language to senior management."

Mr. Gooch moderated the session.

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Insurance market still showing highs, lows: Ewing

By MICHAEL BRADFORD

SAN DIEGO—Despite a lot of good news about improving insurance market conditions, things aren't entirely rosy for buyers, a group of industry professionals said.

"The fact is, we're still in a very fragile insurance state," said Lance J. Ewing, vp-risk management at Caesars Entertainment Inc. in Las Vegas. "We still live in an age of risk," he said, and insurance buyers continue to "walk on eggshells."

Mr. Ewing, the outgoing president of the Risk & Insurance Management Society Inc., made his remarks last week during a panel discussion that was sponsored by Aon Corp. and was not part of the formal RIMS conference.

Some of the speakers' comments centered on what many feel is good news about price breaks and greater coverage availability. But Mr. Ewing said some speakers painted "somewhat of a rosy picture, and my job, quite frankly, is to bring it back a little bit to reality."

The peaks and valleys that insurance buyers experience have not disappeared, they just no longer affect the entire market at the same time, Mr. Ewing said.

Those highs and lows will depend "on which industry you are in," he noted. For example, oil and

gas risk managers might not be enjoying the same price relief for property coverage as those in other industries, he said.

Gary Marchitello, managing director of Aon Risk Services Inc.'s national property syndication practice in New York, said there is good news for many of his company's clients with regard to property prices. Some saw reductions of as much as 50% last year, and prices continued to fall during this year's first quarter, he said. "We expect that trend to continue."

Available property limits continue to gradually increase, Mr. Marchitello said, with around \$3 billion in property limits now available. That limit had shrunk to around \$500 million "almost overnight" after the terrorist attacks, he said.

Improvements began to pick up steam in 2003, according to Robert Needle, managing principal with Aon Risk Services in Chicago.

He called 2003 "a year where we began to see more stability in our marketplace. It was much more predictable. The results of the industry improved, aided by the investment turnaround. It was the first year in three years that the industry added surplus."

Capacity expanded across most lines of business, Mr. Needle said, and brokers began to be able to help

buyers predict their insurance costs. New players aided the improvement by introducing some rate competition last year, he noted.

But, he acknowledged, problems remain.

Ratings downgrades have become much more common than

2003 was 'a year where we began to see more stability in our marketplace. It was much more predictable.'

*Robert Needle
Aon Risk Services Inc.*

upgrades, Mr. Needle said.

And insurers increasingly have strengthened reserves to account not just for potential asbestos liabilities, but for others such as those related to workers compensation and excess liability risks, he said. Indications are that there may yet be another \$50 billion in reserves to be recognized, Mr. Needle said.

Mr. Ewing said risk managers and their brokers have a responsibility to make sure that insurers on their accounts are financially sound.

"I can tell you from my own experience that not only do I put my broker on the line" to make sure

that insurance companies are sound, "but I ask for the annual reports from every one of my carriers," Mr. Ewing said.

On the casualty excess and umbrella side, risk managers are finding more markets, according to Mark D. Dugle, a senior vp with Chubb & Son Inc. in Whitehouse Station, N.J., who spoke at the discussion.

While only three markets were writing umbrella coverages in 2001, today there are around six domestic markets and others in Europe and Bermuda.

He pointed out, though, that "there are fewer umbrella markets than there used to be writing risk management-sized umbrellas, but there is still reasonably readily available capacity for excess layers for those same types of risks."

Encouraging news for buyers—but with one caveat—also came from a representative of the marine market.

There has been "significant market consolidation" among marine insurers, but that has not yet led to a "reduction in capacity by any means," said David Webster, vp and regional executive for the North Atlantic Region with Fireman's Fund McGee Marine Underwriters in New York. "But the jury is out on that," he added.

Ocean cargo rates have "clearly leveled over the past year," Mr. Webster said. And another interesting trend is that large cargo clients are "taking a very deliberate risk management approach" by implementing such measures as higher retentions and "in many instances utilizing captives" to fund portions of their risks, which encourages traditional market insurers to become more competitive, he said.

Paul Bassett, executive director with Aon Ltd. in London, said prices are holding steady for political risk coverages in most countries. "But what we are seeing is concern on the part of political risk underwriters of the effect of the war on terrorism that coalition forces are carrying out around the world."

Insurers have expressed fears that "international relations and trade with some countries that previously have been good could be adversely affected if that war on terrorism continues and spreads wider," Mr. Bassett noted.

"Although we are seeing prices holding steady, there is that concern," he said.

Also speaking at the press conference was Mitch Mitchell, vp of public policy and communications for the San Diego Regional Chamber of Commerce.

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Quality insurer, broker service still a rarity: Buyers

By **DAVE LENCKUS**

SAN DIEGO—Timely coverage quotes. Quick policy issuance. Accurate policies. Proactive account management.

Those are some of the key factors by which many risk managers at large and midsize companies say they measure the quality of their insurers and brokers.

For the most part, though, the risk managers say their insurers and brokers have not measured up.

The critical remarks by risk managers interviewed last week at the

Risk & Insurance Management Society Inc.'s conference in San Diego generated little difference of opinion from insurer and broker executives about the state of the industry in general. But most of the executives say their own organizations embarked on quality improvement programs a few years ago to improve their performance.

At the same time, many risk managers do not understand that they bear some of the responsibility for their insurers' and brokers' performance, say some industry executives and risk managers.

Buyer concerns

Policy-related problems are a major concern for many risk managers.

Phil Grewar, director of the risk management branch and government security office of British Columbia in Victoria, complained about "11th-hour quotes" for coverage from insurers.

"They do it just in time," Mr. Grewar criticized. "It's worse now than it ever was."

Timely delivery of policies that have been bound "is the big one today," said Dan Kugler, assistant

treasurer, corporate risk management at Snap-on Inc. of Pleasant Prairie, Wis.

"The World Trade Center highlighted the issue to me and other risk managers," Mr. Kugler said. He was referring to the fact that no final policy was ever issued to WTC leaseholder Silverstein Properties Inc. prior to the Sept. 11, 2001, attacks, even though the coverage was bound weeks earlier. If the policy had been delivered before the attacks, Mr. Kugler speculated, the coverage limits issue at the center of the litigation might have been dis-

covered and resolved.

Sherry Pixler, risk manager for Storage Technology Corp. of Louisville, Colo., agreed with Mr. Kugler. "We all knew it was a problem, but until the World Trade Center, we didn't understand what the magnitude could be."

Ms. Pixler also complained about insurers' lack of technical ability to accept coverage submissions and issue policies electronically.

Brokers also took some shots from risk managers.

Kim Parker, strategy and pro-

Continued on next page

Awards honor shining efforts

By **SALLY ROBERTS**

SAN DIEGO—William Mather, retired director of risk management at the Gillette Co., has been awarded the 2004 Harry and Dorothy Goodell Award, the highest honor bestowed by the Risk & Insurance Management Society Inc.

Mr. Mather accepted the award at the society's annual membership meeting last week in San Diego.

The Goodell Award recognizes an individual who has furthered the goals of risk management and RIMS. It is named after Mr. Goodell, the society's first president, and his wife.

Mr. Mather joined Gillette in Boston in 1963 to run the employee benefit department. Shortly thereafter he was instrumental in the creation of a risk management department, including establishing a global corporate security function for the company. He remained with Gillette throughout his career, expanding the department, developing policy, and encouraging the company's participation in risk management activities, including RIMS. In 1973 and 1974, Mr. Mather served as president of the Massachusetts RIMS chapter and served as president of the society in 1986 and 1987. He was named the *Business Insurance*

Risk Manager of the Year in 1988.

RIMS presented several other awards during the membership meeting.

The Ron Judd Heart of RIMS Award was presented to John Pinner, retired assistant treasurer of Mattel Inc. in El Segundo, Calif. The award is given to an individual for outstanding performance on behalf of his or her chapter.

Christopher E. Mandel, assistant vp-enterprise risk management at United Services Automobile Assn. in San Antonio, was honored as the 2004 Risk Manager of the Year, which was co-sponsored by *BI* and RIMS. Joan Conner, director of risk management services for the Maine Municipal Assn. in Augusta, Maine, was named to the 2004 Risk Management Honor Roll.

The Electronic Accountability System, developed and implemented by Bechtel Parsons Brinckerhoff and AIG Consultants Inc., was awarded the Arthur Quern Quality Award. The system was designed for use in case of emergency evacuation during the construction of Boston's central artery and tunnel project. The award recognizes significant contributions within the field of risk management that raises the quality of products, processes, programs, sys-

tems and/or services.

RIMS also recognized several individuals for educational achievement.

Barbara West, insurance administrator for Appleton Papers Inc., in Appleton, Wis., won the Cristy Award, which is presented to the individual with the highest cumulative average in the three examinations leading to the Associate in Risk Management designation.

The Fred H. Bosson Award, which recognizes the highest academic average in Canadian Risk Management courses, was presented at the 2003 Canadian RIMS Conference to Steven Pottle, risk analyst for York University in Toronto.

Among the many chapter awards presented during the meeting, the Greater Quad Cities, San Diego, Houston and South Texas chapters won overall chapter excellence awards.

The Northern Alberta, Ontario, Oregon and San Diego chapters won outstanding chapter programming awards. The Houston, Palm Beach, South Texas and Washington chapters won awards for advancing the risk management profession. And the Greater Quad Cities, Oregon, San Diego and Houston chapters won outstanding member service awards.



Ms. Chambers and Mr. Ewing are joined by Paul D. Winston, far right, editor of *Business Insurance*, to honor as the 2004 Risk Manager of the Year Christopher E. Mandel, assistant vp-enterprise risk management at United Services Automobile Assn.



John Pinner, center, retired assistant treasurer of Mattel Inc., receives the Ron Judd Heart of RIMS Award from Ms. Chambers and Mr. Ewing.



Charles Roundtree, left, of Bechtel Parsons Brinckerhoff, and John Carey of AIG Consultants Inc., share the Arthur Quern Quality Award.

PHOTOS: MICHAEL MARCOTTE



Incoming RIMS President Nancy Chambers and outgoing RIMS President Lance Ewing present RIMS' highest honor, the Harry and Dorothy Goodell Award, to William Mather, center, retired director of risk management at the Gillette Co.

Continued from previous page

grams manager-human resources for The Raymond Corp. of Greene, N.Y., noted that she was so displeased with her property/casualty broker that she changed brokers in January.

The previous broker's lack of communication with her resulted in coverage breakdowns, said Ms. Parker, who splits her time between risk management and benefits management.

Those problems were exacerbated by slow policy issuance, she noted.

Shirley A. Galioto, vp and corporate insurance claims manager with HSBC Bank USA of Buffalo, N.Y., complained that brokers become complacent and their service diminishes after they've been on the account for several years.

For example, one broker did not begin gathering the information it needed to market a program until the renewal date was very close, and then the broker told risk management "you know what I need" to prepare the submission, Ms. Galioto said.

Apparently, risk management did not know everything: The broker submitted a last-minute request for additional information, Ms. Galioto said.

In addition, Ms. Parker and Ms. Galioto complained that either their account executives or various members of their brokers' account teams in the past have not been well informed about their organiza-

tions' newest products. That often meant that the account teams were not proactive in addressing their clients' risk management issues, the two risk management officials said.

Not all risk managers were unhappy with their service providers, however.

Craig P. O'Connor, senior treasury manager-risk management at Lucent Technologies Inc. of Murray

Industry executives at the RIMS conference did not dispute the quality concerns that risk managers raised, though they asserted that their own organizations already have addressed those problems or are in the process of doing so.

Hill, N.J., gave high marks to Lucent's brokers and insurers.

"Our service providers have done a good job for us," Mr. O'Connor said. "It hasn't been easy being Lucent the last couple years," he observed, referring to its legal troubles and falling stock price in recent years.

Industry executives at the RIMS conference did not dispute the quality concerns that risk managers raised, though they asserted that

their own organizations already have addressed those problems or are in the process of doing so.

The findings of its own client survey last summer showed Marsh USA Inc. that risk managers give good marks to the broker's account teams, pointed out Lloyd C. Reid Jr., a managing director and the chief quality officer for Marsh in Dallas.

The survey results highlighted that risk managers in large part base their perception of quality on the broker's renewal strategy, Mr. Reid said. To ensure that the broker continues to consistently satisfy its clients, Marsh late last year standardized and documented its approach to renewals, including how it communicates with its clients, he said.

American International Group Inc. of New York has been focusing for several years on its backroom operations, said Mark T. Willis, AIG executive vp.

Its performance-management program enables the insurer to catch policy errors ranging from mistakes in addresses to inaccurate coverage limits. AIG also can measure the quality of its performance in several ways, including tracking the percentage of policies it issues within 30 days of binding coverage, Mr. Willis said.

Noting that most of the insurer's feedback is from brokers, Mr. Willis said, "Today, we're getting nothing but accolades on how we're per-

forming."

Allianz Global Risks U.S. Insurance Co. is working to improve quality in a variety of areas, according to Chicago-based Eric H. Joost, senior vp-business management. The insurer is rebuilding its service infrastructure so that high-quality performance is "repeatable" and performance measurement is routine, Mr. Joost said.

Mr. Joost agreed that the insurance industry lags behind others in its use of technology to operate more efficiently and provide better service, but he maintained that "understanding your business processes" is more important.

"Businesses that don't understand their business processes won't be able to implement technology well," he said.

Measuring quality

Some risk managers advocate resurrecting the RIMS quality scorecard to rate insurers, brokers and other vendors on their performance. When RIMS unveiled the less-than-flattering results of the scorecard several years ago, industry executives harshly criticized the effort.

Richard G.M. Marko, senior vp-national market administration for Boston-based Liberty Mutual Group, said that producing another scorecard likely would not yield meaningful results.

"It's difficult to get an apples-to-

apples comparison" of insurers, for example, because of the different mixes of coverage they write and the size of businesses they cover, he said.

Mr. Marko said the better approach is the one RIMS is taking as part of its Quality Improvement Process. At its conference, RIMS unveiled a tool that risk managers can use to measure the quality of their vendors.

RIMS has developed guidelines that can be implemented through a template that can be used to measure the quality of various vendors. The tool can be downloaded from the RIMS Web site, www.rims.org/quality.

In a session at the conference, a group of risk managers outlined the new RIMS tool and their own vendor quality-performance tools. All strongly emphasized the need for risk managers to state at the outset of their vendor relationships what they expect their vendors to deliver and then either reward or penalize those vendors based on their performance.

"The beauty of the RIMS QIP process is that it puts the burden on the risk manager to put up front to the vendor, 'These are the things that matter to me,'" said Mr. Marko, stressing that the list should be a manageable size of five to 10 items.

"What it really comes down to is that you're trying to manage people," he said.

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International

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U.K. employer faulted in stress case

By CAROLYN ALDRED

LONDON—A U.K. police department is liable for a stress-induced injury to a police officer that stemmed from faulty equipment supplied by the department, the U.K. Court of Appeal has ruled.

David Donachie, an officer with the Greater Manchester Police, suffered a stroke after a 1997 operation in which he repeatedly attempted to attach a tracking device to a car used by a group of suspects.

During the operation, the vehicle was parked outside a bar where the suspects, whom authorities considered dangerous, were drinking. Due to problems with the equipment, Mr. Donachie had to return to the car nine times to complete his task.

Two days after the operation, which other police described as one

of the most stressful they had worked on, Mr. Donachie, then 42, suffered a stroke. The stroke resulted in the partial paralysis of his limbs, and he subsequently left his job and sought compensation from the police department.

In overturning a lower court ruling, the Court of Appeal determined that Mr. Donachie's risk of being caught by the suspects increased each time he returned to the car, causing extreme stress and aggravating his hypertension.

Lord Justice Robin Auld ruled that the high level of stress had led to the stroke and that the use of faulty equipment, which was known by Greater Manchester Police to be unreliable, had increased the stress Mr. Donachie experienced.

Thus, the three Court of Appeals



judges ruled that Mr. Donachie was a victim of negligence and breach of duty by the Greater Manchester Police. Although the department was not aware of Mr. Donachie's hypertension, his injuries were "reasonably foreseeable" under the law, Lord Justice Auld ruled.

A spokesman for the Greater Manchester Police confirmed that the "two parties in the case will now seek to agree (on) damages."

"This wasn't an occupational stress case. It was a case that concerned the failure of equipment provided to Mr. Donachie. As a result of the equipment failing, he was placed in a position where it was foreseeable that he could be physically harmed," said Geraldine O'Donnell, Mr. Donachie's lawyer, who is with Manchester, England-based Betesh Fox & Co.

World Updates

Aon's German unit buys brokerage

Aon Jauch & Huebener GmbH has acquired German broker ATS Assekuranz Treuhand Stuttgart GmbH, which has offices in Stuttgart and Leipzig, and its subsidiary ATS Risk GmbH. Terms of the deal were not disclosed. Aon said the acquisition would strengthen its market position in the Baden-Wuerttemberg area of Germany.

U.K. changes pension rules

The U.K. government has introduced changes to the order in which participants in terminated occupational pension plans receive benefits. The changes will apply to plans terminated after May 10 and are intended as a stop-gap until the Pension Protection Fund, a mechanism similar to the U.S. Pension Benefit Guaranty Corp., is introduced in 2005, the government announced. Under the Occupational Pension Scheme (Winding Up) (Amendment) Regulations 2004, retirees will continue to have priority over other members of occupational pension plans. But future increases in the value of their pensions will rank below the benefits of deferred members, or those not yet drawing benefits, the government said.

Fire is top claim for U.K. companies

Businesses in the United Kingdom recorded losses of £1.1 billion (\$1.97 billion) as a result of fire, theft, weather damage to property and business interruption, according to statistics published by the Assn. of British Insurers. Fire damage accounted for 60% of commercial insurance claims in 2003, according to the London-based ABI, while theft accounted for 17%, weather damage 14% and business interruption 8%.

IPC profits rise by 9%

IPC Holdings Ltd. reported profits of \$73.6 million for the first quarter of 2004, a 9% increase over the same period in 2003. Gross premiums written at the Pembroke, Bermuda-based reinsurer increased 9.5%, to \$210.2 million. The results reflect several factors, including "satisfactory pricing levels in a generally healthy market," Jim Bryce, president and chief executive officer, said in a statement. IPC's combined ratio was up slightly in the first quarter, to 33.9%, from 31.3% in the prior-year period.

Among top U.K. companies, average contribution up 95%

Deficits force higher payments to DB plans

By SARAH VEYSEY

Many employers in the United Kingdom have been increasing contributions—in some cases, substantially—to their defined benefit pension plans to make up for deficits created by reduced investment returns and bond yields.

A study conducted by Watson Wyatt Worldwide estimated that FTSE 100 companies—the 100 largest companies on the London Stock Exchange—increased contributions to their defined benefit pension plans by an average of 95% in 2003.

The consultant, in examining

the publicly available balance sheets of 40 FTSE 100 companies, determined that three-quarters of

A combination of investment-market gains and cash 'is going to help make good that deficit situation.'

*Raj Mody
Hewitt Bacon & Woodrow*

those companies had increased their contributions to defined benefit plans—often known as fi-

nal-salary schemes in the United Kingdom—last year.

Chinu Patel, a partner at Watson Wyatt in Surrey, England, explained that while some companies studied had not increased defined benefit plan contributions and some had even reduced contributions, others had greatly increased their contributions—in some cases by as much as three or four times over the previous year.

Paul McGlone, a principal and actuary at Aon Consulting in London, said that many employers had increased their defined benefit pension contributions—by about 50% to 60%, on average,

over the prior year. "There has been a big increase in contributions," Mr. McGlone said.

Raj Mody, a consultant at Hewitt Bacon & Woodrow in Leeds, England, said, "It is not entirely surprising that companies still operating final-salary plans...are having to increase their contributions."

Most defined benefit plans "would be in deficit, and it is going to be a combination of investment-market gains and cash which is going to help make good that deficit situation," he said. "In many cases, (employers) are going

See PENSIONS/next page

Standards sought for Iraq security firms

By CAROLYN ALDRED

BAGHDAD, Iraq—Coalition authorities in Iraq are working with security companies to develop regulations, including insurance requirements, that will be applied to security firms offering protection services to organizations in the country.

Growing concern over the lack of insurance coverage for some of the private security guards working in Iraq and an inability to evaluate individual security firms is driving the push for tighter regulations, sources say.

Currently, personal accident insurance is not mandatory and many of the security guards now in Iraq likely have no such insurance, sources agree.

As a result, the Coalition Provisional Authority is working with certain security companies to establish regulations that will include codes of conduct, insurance requirements and other operating

rules, security executives say.

"The CPA recognizes that it needs to put in place common standards for security in Iraq. It needs to be able to vet security companies and ensure they are performing security services properly and have adequate codes of conduct in place," said Christopher Beese, chief administrative officer and director of ArmorGroup International Ltd. in London.

ArmorGroup has 800 people in Iraq and has its own code of conduct for employees. The company insures its business and personnel with American International Group Inc. and Lloyd's of London, Mr. Beese said.

"We have 20 years' experience and have gone into Iraq with our eyes open, but there are plenty of new companies who are cutting their teeth in Iraq," he said.

Charlie Andrews, a director with Global Risk Strategies Ltd. in London, agreed that the private security arrangements in Iraq need to be

regulated.

"Inexperienced security companies are not only endangering their own personnel but they are endangering the clients they are supposed to be protecting and bringing down

the reputation of the security industry," said Mr. Andrews.

Global Risk Strategies currently has 1,000 employees in Iraq.

Insurers offering personal acci-

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The entrance to the offices of a major U.S. television network in Baghdad is guarded by a private security firm employee. Security firms in the region working for the five major U.S. networks, normally competitors, are sharing information on safety threats.

PHOTO: AFP

Pensions: Top U.K. companies boost contributions

Continued from previous page

to have to accept that you cannot just rely on one of those solutions."

Watson Wyatt estimated that all of the FTSE 100 companies had a combined deficit of about £60 billion (\$107.05 billion) at the end of last year. That figure remained roughly stable at the end of March 2004, Watson Wyatt estimated, and is approximately the same as the deficit at the end of 2002.

A study by investment bank Dresdner Kleinwort Wasserstein in London, published in March, estimated that 93 of the United Kingdom's largest companies had a combined defined benefit pension deficit of about £35 billion (\$62.45 billion) at the end of last year.

Mr. Patel at Watson Wyatt explained that although equity markets have improved and many companies increased their pension con-

tributions in 2003, other factors, including a reduction in bond yields, held back the reduction of that overall deficit.

When equity markets began to fall in 2000, many observers initially believed that they would return to their previously high levels relatively quickly, Mr. Patel said.

But there is now a sense that the equity markets may take longer to fully recover, Mr. McGlone said.

"And, given that the only way out of a pensions deficit is through investment returns or contributions, if you don't think you're going to get there through investment returns, the only thing you can do is make contributions," he said.

Companies tend to address pension deficits over a long period, typically 10 to 15 years, he said. "So, yes, people will continue to increase their contributions, but they won't

do so year-on-year," he said.

And it will take some time before the large deficits of defined benefit pension funds are entirely wiped out, barring a significant improvement in equity markets, Mr. Patel said.

More information on Watson Wyatt's study is available at www.watsonwyatt.com/news/press.asp?ID=12386.

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MUTUAL REINSURANCE COMPANY LIMITED
(together "THE KWELM COMPANIES")

NOTICE UNDER THE SCHEME

NOTICE IS HEREBY GIVEN that following approval of an Amending Scheme of Arrangement dated 5th December 2003 (the "Scheme") by the requisite majorities of the KWELM Companies' Scheme Creditors under Section 425 of the Companies Act 1985 of Great Britain and, in respect of Mutual Reinsurance Company Limited only, Section 99 of the Companies Act 1981 of Bermuda, sanction by the English and Bermudian Courts and the making of permanent injunction orders ("Section 304 Orders") under Section 304 of the United States Bankruptcy Code by the US Bankruptcy Court, the provisions of the Scheme became effective on 2nd April 2004 (the "Amending Scheme Effective Date").

The Bar Date for the purposes of the Scheme is 11:59 pm Greenwich Mean Time on 29th September 2004. Unless they have agreed the quantum of their claim with the Scheme Administrators under Part 2 of the Scheme before the Bar Date, Scheme Creditors MUST submit a Claim Form and full Supporting Information to the Scheme Administrators in accordance with Part 9 of the Scheme, so as to be received by them before the Bar Date. Scheme Creditors who do not make such a submission before the Bar Date will not be entitled to receive any payments under the Scheme in respect of Scheme Claims which are not already established at the Amending Scheme Effective Date.

The rates of interest to be used by the Scheme Administrators in determining the net present value of future Scheme Claims (including outstanding losses and IBNR) in accordance with the Estimation Methodology, based on the US Treasury bond yields published in the Financial Times on 2nd April 2004, range from 1.0% to 5.3% for claims which would become payable in 2004 and 2022 (or later years) respectively. A schedule of the rates of interest applicable to each year from 2004 to 2022 and beyond is available in the "Documents" tab of the KWELM website www.kwel.com or in hard copy from the KWELM Creditor Helpdesk at John Stow House, 18 Bevis Marks, London, EC3A 7JB, United Kingdom or by email from creditor.helpdesk@kwel.com.

If you are a Scheme Creditor or believe yourself to be a Scheme Creditor of any of the KWELM Companies and have not received by 7th May a letter dated 20th April 2004, including a notice in the form of this advertisement please contact the Scheme Administrators as soon as possible by email at scheme.administrator@kwel.com or in writing to the Scheme Administrators at John Stow House, 18 Bevis Marks, London, EC3A 7JB, United Kingdom.

By the Section 304 Orders, the Scheme has full force and effect under United States law and is binding on and enforceable against all Scheme Creditors in the United States that have claims against the KWELM Companies, which claims are covered by, or afforded treatment under the Scheme. Specifically, pursuant to the Section 304 Orders, Scheme Creditors are restrained from taking actions against the KWELM Companies, and parties are enjoined from relinquishing or disposing of property of the KWELM Companies, except as explicitly provided in the Scheme. You are hereby given notice of these Orders, copies of which are available from www.kwel.com.

For communication purposes, the Scheme permits the Scheme Administrators to treat those acting on behalf of Scheme Creditors in the ordinary course ("Representatives") as being fully authorised to represent the Scheme Creditor concerned. Accordingly, unless informed by the relevant Scheme Creditor in writing to the contrary, where the Scheme Administrators have previously been authorised by a Scheme Creditor to make payments to Representatives or others they intend to correspond with and make payments under the Scheme to those other parties.

If you have any queries in connection with this Notice please contact the KWELM Creditor Helpdesk at the above address. Copies of the documents referred to above are also available from www.kwel.com.

CHRISTOPHER JOHN HUGHES
IAN DOUGLAS BARKER BOND
Scheme Administrators of the KWELM Companies
20th April 2004

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Director of Sales Operations

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REQUEST FOR PROPOSALS

Captive Manager

The City of New York ("the City") is in the process of forming a captive insurance company ("the Captive") that will cover certain liabilities of the City and its private contractors and subcontractors arising from their post-September 11, 2001 debris removal activities at the World Trade Center site. The Captive is to be licensed in the State of New York and capitalized through a grant from the Federal government of slightly less than \$1 billion. In connection with this effort, the City, on behalf of the Captive, is seeking proposals for a Captive Manager from qualified professional firms to manage the Captive. However, since the Captive will be an independent entity it alone (not the City) will select the Captive Manager. In addition to other prerequisite qualifications for consideration, each candidate must currently serve as captive manager for a minimum of two U.S. domiciled single parent or group captive insurers with capitalization or surplus in excess of \$50 million. Participation in a mandatory pre-bid conference on May 11, 2004 is also required.

Potentially qualified applicants may request an RFP by emailing William.J.Kelly@us.pwc.com. The deadline for completed proposals (unless extended or changed pursuant to the RFP) is May 21, 2004.

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Security: Standards advised for firms

Continued from page 29

panies are wary of some firms, said Tim Prifti, accident and health underwriter for Lloyd's syndicate 510, managed by R.J. Kiln & Co. Ltd.

"More and more security companies are setting up in Iraq. We are getting enquiries from companies we have never heard of before. Underwriters would be very wary of a new security company," he said.

And some of the companies likely do not purchase insurance coverage for their personnel, Mr. Prifti said.

"I am sure some companies have decided that the insurance rates are too expensive to buy and are operating without personal accident insurance," he said.

Premiums are reviewed on a weekly basis and have increased significantly in recent weeks, Mr. Prifti noted.

Mr. Andrews of Global Risk Strategies confirmed that personal accident insurance is a huge expense for his company and likely will grow.

Still, security is a burgeoning business in Iraq, and sources estimate that more than 10,000 private security guards operate in the coun-

try, working for more than two dozen security companies.

Many of these companies employ former soldiers and other military personnel.

Despite the security personnel available, though, some companies with operations in Iraq have suspended or reduced their operations in the country in recent weeks due to security concerns, sources say.

Insurers would welcome any moves to introduce regulations for the security companies, said Tony Ratliff, a partner at London-based JLT Risk Solutions Ltd.

Mr. Ratliff noted, though, that underwriters already consider the experience and reputation of security companies when they underwrite personal accident risks.

Mr. Prifti of Kiln said he examines a security company's experience, reputation and business plan before agreeing to underwrite such risks.

"We would welcome a minimum standard being adopted by the industry, but the Lloyd's market already is writing a large number of these risks and takes into account the qualities of a company in establishing premiums," he said.

Comings & Goings

Reinsurance:

GE Employers Reinsurance Corp., based in Overland Park, Kan., has made two senior-level appointments:

- **Dan Cathcart** has been named product leader for long-term care, with responsibility for the LTC reinsurance portfolio, including customer and third-party supplier relationships. Previously, Mr. Cathcart was pricing leader for LTC reinsurance.

- **Rohit Shenoy** has been named critical illness product leader and will also have responsibility for the personal accident portfolio. Previously, Mr. Shenoy was a business development associate.

Insurers:

Joachim Wessling has been named chief executive officer of Allianz Fire & Marine Insurance Japan Ltd., succeeding Alexander Ankel, who has taken another position with Allianz. Before his promotion, Mr. Wessling was regional general manager of Allianz A.G. Holding's Dubai branch.

Allmerica Financial Corp., based in Worcester, Mass., has named **Marita Zuraitis** president of

Allmerica's property/casualty companies, including Citizens Insurance Co. of America and The Hanover Insurance Co. Before joining Allmerica, she was president and CEO of the commercial lines division of The St. Paul Cos. Inc.

Philadelphia-based ACE USA, a division of Bermuda-based ACE Ltd., has made several senior-level appointments:

- **John Lupica**, president of ACE Professional Risk, has been named to the additional position of president of ACE USA regional operations.

- **Ed Zaccaria** has been named president of ACE Specialty Products, a new unit that will focus on specialty lines such as airports, satellites, global weather, terrorism and kidnap and ransom. Mr. Zaccaria will continue in his role as president of ACE US International.

- **Mark Lima** has been named executive vp and chief operating officer of ACE US International. Previously, Mr. Lima was executive vp-underwriting of ACE Financial Solutions International.

- **James W. Macdonald** has been named executive vp and chief underwriting officer-ACE USA. Before his promotion, Mr. Macdonald was senior vp-underwriting.

Brokers:

New York-based Marsh Inc. has



Mr. Jones

GE ERC.

named **Robert B. Jones** as head of strategy. Previously, Mr. Jones was leader-global business development and services for

Other providers:

Rob Kopp has been promoted to chief information officer at Dublin, Ohio-based Frank Gates Cos. Inc. Previously, he was senior vp of information technology.

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

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THE BENEFITS OF BETTER COVERAGE.

Terrorism: Interest in coverage

Continued from page 3

York, said the report was prepared to assist clients.

"We really did this to help our clients make decisions," she said. "They all want benchmarking data. They all want to see what others are doing."

The Terrorism Risk Insurance Act "was one of the most important pieces of legislation to impact the insurance industry for a long time," said Ms. Dalton. Marsh decided "it was a good time to take a snapshot of the market and address all the issues that were out there," she said.

President Bush signed TRIA into law in November 2002 after Congress had wrangled over its details for a year. The act creates a federal financial backstop for insurers facing losses from a future catastrophic terrorist attack. Insurers that wish to participate must offer terrorism coverage to clients, though TRIA does not say how they should price it. The backstop, however, is slated to expire at the end of 2005 unless Congress reauthorizes TRIA or otherwise provides a financial guarantee against future terrorist losses.

The report is the most inclusive to date concerning the terrorism insurance market. The Treasury Department, which is charged with overseeing implementation of TRIA, has also been surveying risk managers and underwriters about the terrorism insurance market, but the Treasury survey's results haven't been released yet.

Among the report's findings:

- Companies with total insured values of between \$500 million and

\$1 billion were the most likely to buy terrorism coverage, with a rate of 39.7% of companies in the category purchasing the coverage. Those with total insured values of less than \$100 million were the least likely to buy terrorism coverage, with only 18.2% reporting doing so.

- Out of 15 industries, energy companies were the most likely industry to buy terrorism coverage, with 40.5% reporting having done so. Construction companies were the least likely, with only 12.2% reporting have bought the coverage.

- The Northeast appears to have the greatest demand for terrorism insurance, with a take-up rate of 30.3% and the West the least, with a take-up rate of 18.6%. The report cautions, though, that the analysis was based on the location of the Marsh office that brokered the account rather than the location of the property itself, noting for example that a Utah client could have a major location in New York but have the placement made by a West Coast office.

"That said, placements for most companies are generally made in the region where they are based, or have their heaviest concentration of assets," according to the report. The Northeast's rank "must reflect, to some unquantifiable degree, the fact that the Sept. 11 attacks took place in New York City and Washington, D.C."

The report also discusses the market for stand-alone terrorism insurance, which until the Sept. 11, 2001, attacks had been an issue mostly in countries where terrorism

was a significant problem. "Post-TRIA, the stand-alone market continues to provide cover in competition with TRIA and for those companies whose needs are not met by TRIA," according to the report. The report lists numerous examples of the stand-alone market.

The Marsh report also examines issues surrounding TRIA that could affect its ultimate fate. The report notes, for example, that TRIA was not intended to be a long-term program when it passed.

"The aim was to get the federal government out of the reinsurance business as soon as possible and allow insurance markets to gradually assume, and learn to price, a risk that had previously been covered for no cost," according to the report. Noting that some insurance and noninsurance groups alike have begun discussing potential problems in a post-TRIA world, the report also noted "When TRIA comes up for possible extension, the experience of 2002 may well serve as a harbinger: difficulty lies ahead."

Ms. Dalton said that the Council of Insurance Agents & Brokers, of which Marsh is a member, will share the report with the Senate Banking, Housing and Urban Affairs Committee and the House Financial Services Committee, both of which have jurisdiction over TRIA.

Ms. Dalton said that risk managers interested in further information about the report should contact a local Marsh office. A list of Marsh offices is available at www.marsh.com.

Letters to the Editor

Continued from page 8

the family. Again, the head count number is often specified as two or three individuals within the family.

No matter how the HSA legislation may read, I have to question whether the framers intended to change this fundamental way in which plan deductibles have functioned for now many decades. What the framers certainly had in mind was to require a "high deductible" of \$1,000 at the individual level and that in the family setting, involving multiple such deductibles, the family deductible maximum has to be at least a factor of two, i.e., at least \$2,000.

I'm sure that we are doing things with words here that were never intended by the framers of the HSA legislation. I also think that some analysts may be grasping at seman-

tics in an attempt to throw cold water on what is an otherwise very sensible concept and reasonable step in attempting to seize some control of runaway medical benefits costs.

Jerone N. Deverman
Consultant
Medical Data Systems
Albuquerque, N.M.

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

We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to: Letters to the Editor, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: pwinston@businessinsurance.com.

Bias: Mother wins gender bias ruling

Continued from page 4

sources vs. William Hibbs, in which the court ruled that the Constitution does not shield states from lawsuits alleging violations of the Family and Medical Leave Act (*BI*, June 2, 2003).

The appellate decision says, "The defendants argue that stereotypes about pregnant women or mothers are not based upon gender but rather 'gender plus parenthood,' thereby implying that such stereotypes cannot, without comparative evidence of what was said about fathers, be presumed to be 'on the basis of sex.'"

The *Hibbs* decision makes clear, though, that, "at least where stereotypes are considered, the notions that mothers are insufficiently devoted to work and that work and motherhood are incompatible, are properly considered to be, themselves, gender-based," the panel ruled.

The appellate court panel remanded the case against the two supervisors for trial, but the judges upheld the lower court's summary judgment dismissing the plaintiff's case against the superintendent and school district.

The ruling is "quite influential and significant," said Phillip Berkowitz, an employer attorney with Nixon Peabody in New York.

The 2nd Circuit Court may be the leading federal circuit court in the country, and "it certainly can—and will—be cited as precedent throughout the country," said Mr. Berkowitz.

"This case makes it clear that any kind of a statement that a woman who is planning on a family, or has a family, is therefore disqualified from holding a job is, per se, illegal," said Mr. Berkowitz. "It's a very clear wake-up call and a very clear warning that that's what the law is now."

The decision "contains extremely favorable language for plaintiffs seeking to overcome summary judgment," said Gerald L. Maatman Jr., an employer attorney with Seyfarth Shaw in Chicago. While it remains to be seen how influential the decision will be with other circuits, "I think it will be a very popular opinion" with plaintiffs who are trying to fight off summary judgment, Mr. Maatman said.

Joan C. Williams, director of the WorkLife Law program at the American University Washington College of Law, said the case is important "because it says clearly that women often experience discrimination not simply because they're women but because they're mothers, and it shows that women who are mothers are experiencing quite different forms of stereotyping and discrimination than women do in general," Ms. Williams said.

"It also clearly names as gender bias one of the most common forms of stereotyping that women experience after they become mothers, namely that...they are less committed to their job and less serious about their work," said Ms. Williams.

Elana Back vs. Hastings on Hudson Union Free School District, John J. Russell, Anne Brennan, Marilyn Wishnie; 2nd U.S. Circuit Court of Appeals, No. 03-7058.

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HP: High-tech sabotage spurs battle between HP, FM Global

Continued from page 1

The Superdome is a high-speed server that HP has sold to an array of businesses, ranging from airlines to insurance companies, that needs to process online transactions using very large databases, according to HP and court filings.

The computer giant's ability to market the systems depends partly on their performance in benchmark tests developed by the Transaction Processing Performance Council, a computer industry group.

In early 2001, Superdome servers began experiencing unexplained "failures" during benchmark testing. Computer disks failed for no apparent reason, servers appeared to reset themselves spontaneously and systems crashed with mysterious errors, HP court filings say.

The company launched an effort to identify and fix the problem, but after several months and more than \$1 million of employee time and resources, HP couldn't find the source of the trouble.

It then moved the testing program to another location and limited access to the servers to a small group of engineers. The failures suddenly stopped, HP court filings say. When the company was later forced to widen access to the test equipment, though, the failures just as quickly resumed.

By August 2001, HP had found that the failures coincided with Mr. Lim's access to the servers, and soon after discovered him reading a co-worker's e-mail.

The company immediately moved to block Mr. Lim's access to HP computers, but not before he

was able to log onto company systems and delete evidence of the suspected sabotage, HP court filings allege.

In later interviews with company management and security personnel, though, Mr. Lim admitted that he had altered disks used in the Superdome testing, cut cables to a computer involved in the program and used his home and office computers to send commands that dis-

Hewlett-Packard calculated its total loss from the sabotage—including property damage, extra expense and business interruption—at \$87 million.

rupted the tests, HP has alleged.

The company fired Mr. Lim in October 2001 and sued him for computer fraud in federal court in San Jose, Calif. In late 2002, Mr. Lim agreed to pay HP \$200,000 to settle the action.

According to its suit against FM Global, filed earlier this month in New York, Hewlett-Packard notified the insurer of the sabotage loss in October 2001 and filed a formal proof of loss about two months later.

FM Global provided all-risk property coverage to the computer company from 1999 to 2002. The policy included a \$10 million per occur-

rence deductible and electronic data processing coverage with a \$50 million sublimit.

In addition to Mr. Lim's destruction of a database used in the benchmark testing—a covered property loss under the policy—the sabotage damaged the Superdome's performance in tests that "are critical to a potential customer's purchasing decision," the complaint says.

An "extended period of indemnity" clause in the business interruption section of HP's policy covers "reduction in sales...directly resulting from the interruption of business" during the period required to restore operations to conditions that would have existed had no loss occurred, the suit notes.

HP calculated its total loss from the sabotage—including property damage, extra expense and business interruption—at \$87 million, resulting in a \$77 million claim net of the deductible. HP representatives would not say how much of the claim represents business interruption losses, though the lawsuit describes the losses as "substantial."

FM Global investigated the claim from February 2002 until June 2003 then denied coverage, arguing that the actual loss did not exceed the deductible, the suit says.

The computer maker's complaint seeks a ruling that FM Global must pay the claim and that the \$50 million EDP sublimit does not apply to business interruption losses. The suit also seeks damages for alleged breach of contract.

FM Global has not yet answered the complaint.

Segal: Trial opens for broker's owner

Continued from page 3

"need to disclose in footnote the estimated shortfall in fiduciary cash of \$10 million."

In addition, the draft letter said that company monies were used to pay for services or provide loans to two political heavyweights.

Specifically, \$50,000 was paid to Chicago-based consulting firm Dan Ross Associates Inc. "in exchange for promotional consulting services

The former CFO testified that some premium trust funds were transferred to Near North's California and New York offices to pay expenses, including payroll.

provided by Mr. Dan Rostenkowski." Mr. Rostenkowski, the former U.S. House Ways and Means Committee chairman, became a consultant after serving a sentence for a 1996 federal mail-fraud conviction.

The draft letter also mentions loans made to Chicago Alderman Burton Natarus that were "personal, unsecured loans and were not political contributions requiring reporting." It said that Near North Insurance Brokerage "will continue to pursue collection" of those loans—which prosecutors had previously estimated at almost \$140,000.

Mr. Pater's notes written on the letter said that he had "no knowledge of these items."

In response to the auditing firm's request for his signature on the draft letter, Mr. Pater said he sent copies of state regulations to a Deloitte & Touche partner.

Mr. Hogan reviewed those laws which Mr. Pater said clearly stated the "very stringent" limits for use of those funds, which include paying premiums to insurers as well as credits to policyholders who changed their coverage arrangements. Under state law, the funds could not be commingled or used to pay for other company operations, Mr. Pater said.

Mr. Segal, who is represented by Daniel E. Reidy of Jones Day, has repeatedly denied wrongdoing, calling himself the victim of poor accounting practices. In addition, he is suing other former employees in a separate lawsuit (BI, April 5; June 16, 2002).

Near North Corp., which is also a defendant in the current case, is represented by two law firms from Scranton, Pa.: Foley, Cognito, Comerford, Cimini & Cummins and Myers, Brier & Kelly L.L.P.

On a related issue, U.S. District Court Judge Ruben Castillo rejected defendants' request that trial exhibits not be made public once the exhibits are presented in open court. Sal Cognito Jr. briefly argued about the need to protect jurors from other outside influences, such as a Web site supporting Mr. Segal.

The trial will resume April 28, with the defense continuing its cross-examination of Mr. Pater.

Asbestos: Another attempt at tort reform legislation

Continued from page 1

insurers and employers for leaving open the possibility that cases would revert to the courts if the fund were depleted. Organized labor also opposed the measure, arguing it would not provide adequate compensation for victims. An earlier version of the bill approved by the Senate Judiciary Committee last July drew similar criticism.

The White House did not formally endorse the bill until three days before the cloture vote and then did so with "concerns" about unspecified provisions.

After the cloture vote failed, Sens. Frist and Daschle announced that they would begin outside mediation this week to see if they could resolve outstanding differences. According to Sen. Daschle, retired U.S. Judge Edward R. Becker, a recognized expert in asbestos litigation, will oversee the mediation. Judge Becker, who had served as chief judge of the 3rd U.S. Circuit Court of Appeals in Philadelphia, has been working with Sen. Arlen Specter, R-Pa., and others in attempting to resolve differences over provisions in the FAIR Act.

Sen. Frist told the Senate that the mediation would initially focus on

"the major issues," notably, funding. "If we can make progress on this front, I strongly believe we can resolve the others," he said. Sen. Daschle agreed, adding, "if we can't get a fair funding level that provides just compensation to victims and

'If we can't get a fair funding level that provides just compensation to victims and certainty to business, then we won't be able to resolve the other interlocking issues.'

Sen. Tom Daschle,
D-S.D.

certainty to businesses, then we won't be able to resolve the other interlocking issues."

But funding—in particular, the allocation of financial responsibility among defendant companies and their insurers—has been one of the most contentious issues. For their

part, insurers have said repeatedly that they will not pay more than \$46.025 billion into a trust fund for asbestos-injury claimants. In addition, some insurers and businesses have rejected the trust fund concept entirely as it was presented in the bill.

Insurers welcomed Senate leaders' decision to continue negotiations.

"We commend the leaders for their efforts in view of the urgent need to find a solution to the asbestos litigation crisis that is causing harm for asbestos victims and the economy," said Charles Taylor, assistant vp-federal government relations for the Property Casualty Insurers Assn. of America in Washington.

"I commend Sens. Daschle and Frist for their efforts to bring some constructive closure to the asbestos litigation reform efforts. It remains to be seen whether the parties that have had trouble reaching agreement over the course of the last year can, in one week, find a breakthrough," said Franklin W. Nutter, president of the Reinsurance Assn. of America in Washington.

A spokesman for the American Insurance Assn. in Washington wel-

comed the senators' decision to keep talking, but he noted that a large gulf remains between the parties.

"It's good that the prospects of reform are not dead, but it's pretty obvious that, despite bipartisan acknowledgment that we need reform, Republicans and Democrats seem sharply divided about many aspects of the trust fund," the spokesman said. "We're not sure that there can be a positive outcome, but we're going to be supportive of this process and see how it plays out," he added.

The president of an employer group that had opposed S. 2290 because of the trust fund concept said that the failure of the cloture motion came as "no surprise." But Dirk Van Dongen, president of the Washington-based National Assn. of Wholesaler-Distributors, said in a statement that NAW "looks forward" to working with lawmakers and others "to arrive at a bill we can all support." He warned, however, that "if the coming process fails to address and adequately resolve the serious equity concerns we have expressed with regard to S. 2290 and its predecessor, NAW will not hesi-

tate to oppose any asbestos litigation reform bill that will adversely affect our member companies."

The House of Representatives has declined to consider asbestos reform legislation until the Senate passes a measure.

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Late News

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and mid-Atlantic states Jan. 9-12, causing an estimated \$413 million in insured losses, PCS said.

Appeals court OKs CIGNA settlement with docs

A federal appeals court has dismissed challenges to a proposed \$540 million settlement between



CIGNA HealthCare and about 700,000 physicians around the country who alleged the health insurer cheated them on claims payments. A federal judge in Miami

approved the settlement in February, but a small group of physicians opposed it. The dismissal of their appeal this week by the 11th U.S. Circuit Court of Appeals in Atlanta clears the way for the implementation of the settlement, CIGNA said.

Oklahoma governor vetoes captive measure

Oklahoma Gov. Brad Henry has vetoed legislation, H.B. 2142, that would have established special rules to encourage the formation of captive insurance



Gov. Henry

companies in the state. In his veto message, Gov. Henry said the measure would have represented a significant change in Oklahoma law as it relates to

insurance companies and that further study was necessary. The measure, among other things, would have created liberal capital and surplus requirements for captives.

Lawmakers urge extension of provision in TRIA

House Financial Services Committee Chairman Mike Oxley, R-Ohio, and 17 other committee members have sent

a letter to Treasury Secretary John Snow requesting that the "make available" provision of the Terrorism Risk Insurance Act be



Rep. Oxley

extended beyond its Dec. 31, 2004, expiration. The act's "make available" provision requires insurers that participate in the backstop program to make terrorism coverage available to their policyholders with terms, amounts and other factors that do not differ materially from those applying to other types of losses.

WellChoice, Oxford abandon takeover talks

WellChoice Inc. has terminated negotiations to buy rival managed care company Oxford Health Plans Inc. The announcement comes nearly three weeks after rumors emerged that a deal was in the works. Previously, neither company had commented publicly on the takeover rumors. WellChoice issued a statement saying it "has terminated discussions with Oxford Health Plans regarding a potential acquisition of Oxford." WellChoice said it issued the statement to "dispel any speculation." No further explanation was given.



PHOTO: AP/WIDE WORLD

An injured passenger wearing a neck brace sits on a Long Island Rail Road train following a collision at Pennsylvania Station last Monday.

Amtrak self-insured for collision

Amtrak is self-insured for claims arising from an accident in New York last week that injured more than 100 people. A slow-moving Amtrak train, empty except for a small crew, collided with a Long Island Rail Road

commuter train in New York's Pennsylvania Station during the morning rush hour. About 130 people suffered injuries, primarily to the back and neck. An Amtrak spokesman said Amtrak is largely self-insured and buys commercial insurance above its retention. A spokesman for the LIRR had no comment on its insurance coverage.

Property, liability prices drop in quarter: Study

Rates for two major commercial insurance lines fell in the first quarter of 2004, according to the RIMS Benchmark Survey. General liability premiums fell 1.4% in the first quarter, while property premiums declined by 1.5%, according to the survey, sponsored by the Risk & Insurance Management Society Inc. and conducted by Advisen Ltd. The reduction marks the first time in four years that prices for the two major lines of commercial insurance have fallen in the same quarter, according to RIMS.

HSA plan proposals from group insurers sought

The nation's biggest group health insurance program expects to offer health savings accounts to employees next year. The Office of Personnel Management, the administrator of the health insurance program the federal government offers to nearly 9 million federal employees, dependents and retirees, notified insurers participating in the program that it wants them to submit HSA proposals for the program.

Putnam settlement shaves MMC profits

New York-based Marsh & McLennan Cos. Inc. reported gross revenues of \$3.21 billion for the first quarter of 2004, a 12.6% increase over the same period in 2003. The company reported profits of \$446 million for the quarter, which is less than a 1% increase over the year-earlier period. Profits were reduced by the \$110 million settlement that MMC made with securities regulators and state officials over alleged improper market-timing practices by certain mutual fund managers at Putnam Investments Inc., MMC's mutual fund management subsidiary. Of the settlement amount, \$100 million is included in MMC's first-quarter results.

House OKs 401(k) break for reservists' withdrawals

The House of Representatives approved legislation that would allow employees called up from the reserves or National Guard for active military duty to make penalty-free withdrawals from their 401(k) and other savings plans. H.R. 1779, which was approved on a 415-0 vote, would apply to those called up for military duty after Sept. 11, 2001, and before Sept. 12, 2005. The penalty-free withdrawals would be allowed for those whose active military duty is at least 179 days.

Two fellowships created to honor Ewing's service

The National Alliance for Insurance Education & Research has founded two fellowships for its certified risk managers program in honor of outgoing Risk & Insurance Management Society Inc. President Lance Ewing. The Lance J. Ewing RIMS and CRM Fellowship will be available only to members of the Risk & Insurance Management Society Inc. Mr. Ewing is vp-risk management for Caesars Entertainment Inc. and a faculty member for the CRM program.

Briefly noted

Bradley Belt, a former Senate committee staffer and general counsel to Sen. John McCain, R-Ariz., was named by the Bush administration to be executive director of the Pension Benefit Guaranty Corp. Mr. Belt also has served as executive director of the National Commission on Retirement Policy....Bucking a national trend of benefit cuts, the state of Oklahoma will pay 100% of public school teachers' health insurance premiums, effective July 1. Currently, the state pays 58% of premiums, while school districts pick up 17% and teachers pay the remaining 25%. The change was mandated under a bill signed this week by Gov. Brad Henry.

Check out BusinessInsurance.com

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Online Poll

[4/19 - 4/23]

Has the recent East Coast snowstorm led your organization to consider purchasing weather insurance?



Very likely	10.8%
Somewhat likely	23.1%
Somewhat unlikely	24.6%
Highly unlikely	41.5%

BI Stock Index

[4/19 - 4/23]

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

Percentage change of BI Stock Index vs. key indicators

BI Stock Index	2330.48	-0.55
Dow Jones	10472.80	0.20
S&P 500	1140.60	0.53

Largest gains

WellChoice Inc.	8.57%
Zenith National Insurance	8.27%
PacificCare Health Systems	7.22%
Wellpoint Health Networks	5.72%
ACE Ltd.	5.18%

Largest losses

Trenwick Group Ltd.	-33.33%
Gainsco Inc.	-6.25%
Willis Group Holdings Ltd.	-5.48%
Oxford Health Plans	-5.09%
RLI Corp.	-3.99%

Weekly change by market segment

Brokers	-1.66%
Insurers/Reinsurers	-1.09%
Managed Care Organizations	3.26%

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

Spitzer: Contingent commissions examined

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under."

Since the late 1990s, though, risk managers and others have periodically expressed concern that the payments create potential conflicts for brokers, especially as consolidation has concentrated business in the hands of a few large brokers.

Marsh adopted its policy of reporting commission information to clients who request it in 1999, after the Risk & Insurance Management Society Inc. complained

about the lack of disclosure and pushed for greater transparency.

In late 2000, Marsh, Aon and Willis were all named in a complaint filed by policyholder law firm Anderson, Kill & Olick in a California state court, seeking return of contingent commissions. RIMS did not support the suit.

And earlier this year, the District of Columbia-based Washington Legal Foundation wrote to Mr. Spitzer and California Attorney General Bill Lockyer, urging them to investigate commission agree-

ments. Even disclosure, the letters charged, does not resolve the concern that brokers' recommendations to clients could be influenced by the commissions.

Mr. Spitzer opened a preliminary inquiry after receiving information about the "allegedly improper fees" from several sources, one person familiar with the inquiry said.

A spokeswoman for Mr. Spitzer declined to comment.

Policyholders' awareness of contingent commissions may be the

crucial question in the inquiry, an industry observer said.

"The biggest risk is to what extent can he show policyholders are ignorant?" he said.

Mr. Spitzer last year led an inquiry into abuses in the mutual fund industry that included an investigation of Marsh subsidiary Putnam Investments Inc. Boston-based Putnam paid \$110 million in fines and restitution in separate settlements last year with the U.S. Securities and Exchange Commission and Massachusetts regulators.