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PBGC seeks best deal in proposed takeover of United plans / 3

May 2, 2005

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Gallagher earmarks $35 million

In absence of charges, brokerage sets aside funds to settle state probes

By SALLY ROBERTS

ITASCA, Ill.—Arthur J. Gallagher & Co.'s announcement last week that it has set aside $35 million to settle investigations related to its use of contingent commissions could be the last significant hit announced by a brokerage on the issue, some observers say.

Although other brokerages are being investigated by officials in several states, most of those brokerages are not of sufficient size to warrant a settlement close to the size of the top four brokerages, they say.

Still, smaller brokerages are not off the hook for their role in the compensation scandal that erupted last year and state attorneys general and insurance regulators likely will continue to work their way down the list of brokerages, they say.

In announcing its first-quarter results last week, Itasca, Ill.-based Gallagher said it is setting aside $35 million to resolve state insurance investigations.

Although Gallagher has not been charged with any wrongdoing to date, it has been the target of investigations by the New York State Department of Insurance, the Illinois Department of Insurance and attorneys general in Connecticut, Illinois and New York, among other state officials.

Executives said that the $35 million reserve is its "current best esti-

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More on brokers

- Willis makes cuts, prepares for additional settlements PAGE 3
- California legislators reject a broker disclosure measure. PAGE 4

J. Patrick Gallagher, president and CEO of Arthur J. Gallagher & Co.

Late News

Bill would remove Roth 401(k) option

A portion of a federal law that allows employers to offer a new type of tax-favored 401(k) plan would be repealed under pension legislation introduced in the House of Representatives. The measure, offered by Reps. Ben Cardin, D-Md., and Rob Portman, R-Ohio, would eliminate Roth 401(k) plans. Rep. Cardin and Rep. Portman, who resigned his position in Congress Friday to become the U.S. chief trade representative, describe Roth 401(k) plans as one more offering in a "swamped market" that will cost the Treasury Department a significant amount of lost revenue over time.

China suspends Willis unit from business

The China Insurance Regulatory Commission has suspended Willis Pudong Insurance Brokers Co. Ltd., from conducting business in the Chinese province of Guangdong after allegedly obstructing regulators from making an inspection. "It was an unfortunate misunderstanding that we anticipate will be resolved, hopefully as quickly as possible," a Willis spokesman said. Willis Group Holdings Ltd. purchased a 50% share in Shanghai Pudong Insurance Brokers Ltd. early last year and was issued a Chinese brokerage license in August.

Former HIH executive sentenced to jail

Terry Cassidy, formerly managing director of HIH Insurance Ltd., was jailed last week for his role in the insurer's 2001 collapse. Mr. Cassidy was sentenced to 15 months in prison by the New South Wales Supreme Court in Sydney, having pleaded guilty to three criminal charges related to his management of HIH between 1998 and 2000. Earlier last month, the

See LATE NEWS/page 43

PHOTO: CORBIS

Drug chain trying another dose of PBM business to compete

By JOANNE WOJCIK

CAMP HILL, Pa.—By re-entering the prescription benefit management business to retaliate against mandatory mail order, Rite Aid Corp. could stimulate competition in the PBM market and offer employers a viable alternative, industry experts say.

But some prescription benefit industry leaders are expressing skepticism that the Camp Hill, Pa.-based drugstore chain will be able to compete with the "Big 3"—Franklin Lakes, N.J.-based Medco Health Solutions Inc., Nashville-based Caremark Rx Inc. and St. Louis-based Express-Scripts Inc.—that control 80% to 90% of the PBM market.

Rite Aid, one of the nation's lead-

See RITE AID/page 43

States question AIG's accounting of comp premiums

Some risks booked as GL business

By ROBERTO CENICEROS

NEW YORK—Probes into American International Group Inc. widened last week as insurance commissioners in several states said that they would look in to whether the insurer illegally booked workers compensation premiums as general liability business.

The regulatory action comes after New York Attorney General Eliot Spitzer and the state's acting insurance superintendent, Howard Mills, said that they had found evidence that AIG had misreported workers comp premiums in New York.

As a result of the misclassification of workers comp premiums as general liability premiums, AIG avoided paying tens of millions of dollars into New York's workers compensation funds, the state officials allege.

The improper booking of premiums, which went on for more than a decade, may have occurred in other states, although evidence to that effect has not surfaced, a spokesman for the New York State Insurance Department said.

But insurance regulators in California, Florida, New Jersey, Texas and Pennsylvania said that, in light of the alleged practices by AIG in New York, they will now investigate whether AIG engaged in similar practices in their own states, according to their spokespeople.

Mr. Spitzer and Mr. Mills an-

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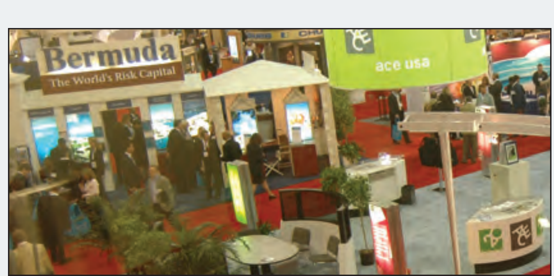
NEWSPAPER

Spotlight

RIMS 2005 Conference Review



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A California bill that would have imposed new disclosure requirements on brokers and agents failed to get out of legislative committee last week. Page 4

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Eight catastrophes will cost U.S. property/casualty insurers $2.14 billion in claims for the first quarter of 2005, Property Claim Services reports. Page 4

Broadened oversight must still respect rights

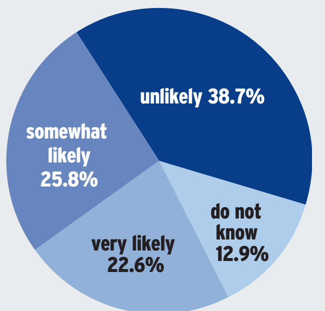
We must avoid knee-jerk reactions that violate due process rights in our efforts to strengthen regulatory oversight, one of this week's editorials says. Page 8

Lloyd's members revive court battle

A long-running dispute between Lloyd's of London and individual investors enters its latest chapter. Page 37

Online poll - [4/25 - 4/29]

How likely is Congress to enact legislation to shore up the PBGC's financial condition?



Participate in *BI*'s online polls at *www.businessinsurance.com.*

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Asbestos bill bogs down in markup efforts

After a contentious hearing and a slow start, work to resume May 12

By MARK A. HOFMANN

WASHINGTON—Following an unsuccessful markup bid last week, the Senate Judiciary Committee will wait until next week to resume consideration of a bill that would create a $140 billion no-fault trust fund to replace the litigation-based system for compensating victims of asbestos-related disease.

Senate Judiciary Committee Chairman Arlen Specter, R-Pa., had hoped to complete markup of the 306-page Fairness in Asbestos Injury Resolution Act—S.852—last Thursday. Doing so would have required a marathon session, because members of the committee had prepared more than 80 amendments to the measure by the time markup began.

In fact, after two hours of debate and statements, only one amendment had been disposed of, as committee members rejected a move by Sen. Edward Kennedy, D-Mass., to allow victims of certain lung cancers to seek compensation from the fund. Two hours into the hearing, an unidentified member initiated a parliamentary maneuver that forced the committee to recess temporarily. The committee resumed debate but adjourned until after this week's unusual early-May Senate recess, with May 12 being the most likely date for resumption of the markup.

> Members of the Senate Judiciary Committee had prepared more than 80 amendments to the Fairness in Asbestos Injury Resolution Act by the time markup began.

Despite the slow start, the committee approved a multipronged managers' amendment offered by Sen. Specter and the bill's other chief sponsor—Sen. Patrick Leahy, D-Vt.—in an effort to address a number of individual members' concerns. Among the provisions contained in the managers' amendment is one that gives insurers future credits for making payments to cover shortfalls from other insurers in the first five years of the fund's life. The managers' amendment also allows Equitas Ltd.—the runoff reinsurer for Lloyd's of London's pre-1993 long-tail liabilities—to seek so-called "hardship" adjustments to its required payments to the fund. An earlier version of the bill would have made

See ASBESTOS/page 40

United, PBGC reach deal on takeover of pension plans

By JERRY GEISEL

WASHINGTON—A proposed agreement between United Airlines and the Pension Benefit Guaranty Corp. to allow United to shed all four of its massively underfunded plans is in the best interest of the airline and the federal pension insurance agency, benefit attorneys say.

Under the agreement, which still must be approved by a federal bankruptcy judge, the PBGC would take over the four plans, which have about $6.6 billion in PBGC-guaranteed benefits and would drop all claims against United.

In turn, the PBGC would receive United-issued securities, including interest-bearing notes that would have an issued face value of $1 billion and 5 million shares of preferred stock that the PBGC can later convert into United common stock.

Through the termination of the plans, United will reap huge financial savings, which will be crucial to its ability to attract financing and emerge from bankruptcy, the airline says.

The agreement will save United $4.4 billion in federally required pension plan contributions over the next six years, including $1.3 billion in 2005 alone.

Indeed, United describes the PBGC agreement as one of its "linchpins" to obtain the roughly $2.5 billion in outside financing it needs to exit from bankruptcy.

"Implementation of the agreement will effectuate a fundamental and enduring shift in United's cost structure that will allow United to meet anticipated capital markets requirements, exit from bankruptcy and compete successfully over the long term," United said in its filing of the agreement with the U.S. Bankruptcy Court in Chicago.

"The agreement's importance cannot be overstated," United said.

In contrast to the huge cash drain United

See PBGC/page 40

PHOTO: MICHAEL MARCOTTE

Willis Group Holdings Ltd. Chairman and Chief Executive Officer Joe Plumeri described a 51.4% drop in his company's profits in the first quarter of 2005 as part of a "metamorphosis."

Willis reserves $20 million more for settlements, cuts 500 jobs

By SARAH VEYSEY

LONDON—Willis Group Holdings Ltd., which earlier this month paid $51 million to end probes into its business practices, said last week that it has cut 500 jobs and has set aside $20 million to resolve further potential legal claims.

The London-based brokerage said it has laid off about 500 individuals who were not "client-facing" employees, in an effort to cut costs. Willis said the expense-cutting drive stemmed from changes to its business model following its decision in October 2004 to cease collecting contingent commissions. The cuts represent about 4% of Willis' workforce, a spokesman said.

In a conference call with analysts, Joe Plumeri, chairman and chief executive officer of Willis, noted that the broker has recruited about 100 producers from other companies since October 2004.

Mr. Plumeri also said that, following a review of current legal proceedings, Willis decided to set aside $20 million to settle claims related to "issues in the placement process."

Willis last month paid $51 million to resolve probes into its business practices related to contingent commissions by attorneys general in New York and Minnesota (*BI*, April 11).

That settlement helped fuel a 51.4% drop in Willis' profits for the first quarter, which fell to $72 million.

Revenues for the first quarter increased 1% to $669 million, though, due to growth in new business. The increase came despite a 3% decline in organic revenue growth caused by the loss of contingent commissions.

Mr. Plumeri described the first quarter as a "metamorphosis" and said "we've gone from one world to another." He added that the broker would concentrate on growing its top line to make up for the loss of contingent commissions.

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California broker disclosure bill defeated

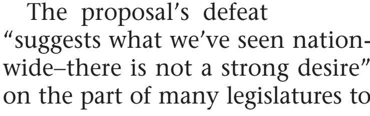
Stringent measure pushed by insurance department fails in committee vote

By JUDY GREENWALD

Mr. Garamendi

SACRAMENTO, Calif.—A California bill that would have gone further than proposed legislation in other states in regulating agents and brokers failed to get out of legislative committee last week.

The proposal's defeat "suggests what we've seen nationwide–there is not a strong desire" on the part of many legislatures to act on this issue, said Wes Bissett, senior vp, government affairs and state relations, for the Washington-based Independent Insurance Agents & Brokers of America.



Agents and brokers groups and other industry associations had strongly opposed the bill, which was sponsored by the California Insurance Department, led by Insurance Commissioner John Garamendi.

The bill, which was defeated 5-2 by the California Senate Banking, Finance and Insurance Committee, would have imposed statutory disclosure requirements on brokers and agents, including requiring producers to present buyers with detailed information on the markets they had approached and to indicate for each quote the form of compensation they would receive.

The committee voted on a more-limited bill than was originally introduced. The broader bill–sponsored by state Sen. Joseph Dunn, D-Santa Anna–would have created a variety of statutory obligations for commercial agents and brokers when acting on a client's behalf.

Mr. Bissett said several states are considering legislation based on a National Conference of Insurance Legislators model law that focuses on the disclosure of fees and commission to the buyer under specified circumstances. The California proposal, though, even in its amended form, "went much further than any other state has looked at," he said. In light of last week's vote, "at least for now, there is optimism California will not overreact to this issue," he said.

Brian Perkins, staff director of the state Senate Banking Committee, said, "There clearly was a great deal of concern and opposition, and it's difficult, no matter what the subject, when you have that level of concern and opposition to make progress," even when you are prepared to submit a compromise proposal.

See **CALIFORNIA** page 40

Hines Symposium to address industry's steps to rebuild trust

CHICAGO—In the aftermath of insurance industry investigations and settlements, many insurance buyers have questions about the practices of brokers and insurers. Those issues will form the basis of the 2005 Harold H. Hines Jr. Memorial Symposium in Chicago.

This year's symposium, "Rebuilding Trust: A Progress Report," will take place May 19 at the Union League Club of Chicago.

The annual event is held in honor of the late Harold H. Hines Jr., who at the time of his death in 1984 served as president and chief executive officer of Rollins Burdick Hunter Co., now part of Aon Corp. The event is co-sponsored by *Business Insurance*, the Chicago Chapter of the Risk & Insurance Management Society Inc. and the Insurance School of Chicago.

At this year's symposium, a panel of experts will discuss, among other topics, how the industry can become more transparent and what brokers and insurers are doing to restore clients' trust.

The panelists for this year's symposium are:

- Ernst Csiszar, president and CEO of the Property Casualty Insurers Assn. of America in Des Plaines, Ill.
- Ken A. Crerar, president of the Council of Insurance Agents & Brokers in Washington.
- R. David Turner, senior vp specializing in risk assessment and integrated risk strategies at Equity Office Properties Trust in Chicago.
- Paul Winston, editorial director of *Business Insurance*, will serve as moderator of the panel.

The symposium follows a question-and-answer format, and audience questions are encouraged throughout the program.

Registration for the event will be held from 2:30 p.m. to 3:00 p.m., and the program is scheduled for 3:00 p.m. to 4:30 p.m. A reception will follow. The Union League Club, located at 65 W. Jackson Blvd., requires business attire.

To receive a registration form by e-mail, please contact Carrie Peinado of *Business Insurance* at 312-649-5313 or *cpeinado@businessinsurance.com.*

D&O insurers to pay Saftey-Kleen fraud suit settlement costs

Judge imposes award on execs

By DAVE LENCKUS

COLUMBIA, S.C.—Directors and officers liability insurance will cover a $36 million settlement in the securities fraud litigation against bankrupt hazardous waste operator Safety-Kleen Corp.

However, insurers will not be on the hook for the $200 million of damages a federal court judge has ordered two top company officials to pay shareholders.

That judgment marked one of the few securities fraud cases that has gone to trial over the past decade.

The settlement and court award brings the plaintiffs' total recovery from Safety-Kleen's top executives and auditor to $284 million within the past few weeks. The plaintiffs, though, must return a small portion of the damages it collects from Safety-Kleen's executives to the auditor.

Nine former directors of the company on April 21 agreed to pay nearly three dozen class action and individual plaintiffs $36 million to settle their claims.

American International Group Inc. led the coverage for the directors, according to lead class action plaintiffs' attorney Stuart M. Grant, a partner at Grant & Eisenhofer P.A. of Wilmington, Del. Insurers on the risk included American Home Assurance Co., National Union Fire Insurance Co. of Pittsburgh, Pa., and Starr Excess Liability Insurance International Ltd., which are AIG subsidiaries; and Reliance Insurance Co., which is in liquidation.

Under the settlement terms, National Union will be responsible for any interest that the Reliance estate incurs if it does not forward Reliance's portion of the settlement by May 6.

In addition, the defendants will not be held responsible if any insurer does not meet its payment obligation.

Safety-Kleen, which went public in April 1997, filed for bankruptcy in June 2000 after restating its 1997, 1998 and 1999 financial statements by more than $500 million. Institutional investors, which had purchased Safety-Kleen's high-yield debt, sued the company's directors and officers and auditor PricewaterhouseCoopers L.L.P., alleging that they filed false registration and financial statements and engaged in fraudulent activities.

A day after the settlement, a U.S. district court judge in Columbia, S.C., took the plaintiffs' fraud case against two former top Safety-Kleen executives out of the jury's hands and entered a $200 million judgment against the defendants. That judicial action, called a judgment as a matter of law, is taken when a judge believes that no reasonable jury could reach any other decision.

Most D&O policies do not cover court awards.

Neither defendant, Kenneth Winger, Safety-Kleen's former chief executive officer, and Paul Humphreys, the former chief financial officer, personally appeared in court during the case, according to Mr. Winger's attorney, Peter L. Murphy of Columbia, S.C. Mr. Murphy said no decision has been made about whether to appeal.

In March, PricewaterhouseCoopers reached a $48 million settlement with the plaintiffs. Under that settlement, though, the plaintiffs agreed to return to the auditor 25% of their total court awards and settlements in excess of $40 million. But the auditor's maximum recovery is capped at $6.5 million.

That provision would bring the plaintiffs' total settlement and court award proceeds to $277.5 million.

Insured catastrophe losses rose during first quarter, PCS says

By JUDY GREENWALD

NEW YORK—U.S. property/casualty insurers are expected to pay businesses and homeowners about $2.14 billion for insured property loss claims from eight catastrophes in the first quarter, compared with $1.04 billion for the comparable period a year ago, according to ISO's Property Claim Services unit.

The $2.14 billion, which is a preliminary estimate, is the second highest total since 1996's first quarter, when the industry paid $2.56 billion in losses from 11 catastrophes. There were five catastrophes during 2004's first quarter.

The Jersey City, N.J.-based PCS unit estimates that the first quarter's eight catastrophes will generate 535,000 claims from policyholders in 28 states, of which 14% are commercial property, 25% vehicle and 61% personal property claims.

The costliest catastrophe was late-March thunderstorms that hit the south and East Coast for an estimated $655 million in losses. Texas, at $565 million, was the most severely affected state, followed by California at $275 million.

The PCS unit defines a catastrophe as an event that causes at least $25 million in insured property losses and affects a significant number of property/casualty policyholders and insurers.

Errors & omissions

Due to a production error, a chart illustrating commercial insurance rate decreases that appeared in the April 25 edition of *Business Insurance* contained incomplete information. The corrected graph can be seen on page 36.

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Accident-year loss ratios for 2004 decline in California

State to probe whether insurers pass along savings

By ROBERTO CENICEROS

SAN FRANCISCO—Insurer loss ratios in California dropped to 45%, on average, for accident year 2004, according to a projection released last week by the Workers' Compensation Insurance Rating Bureau of California.

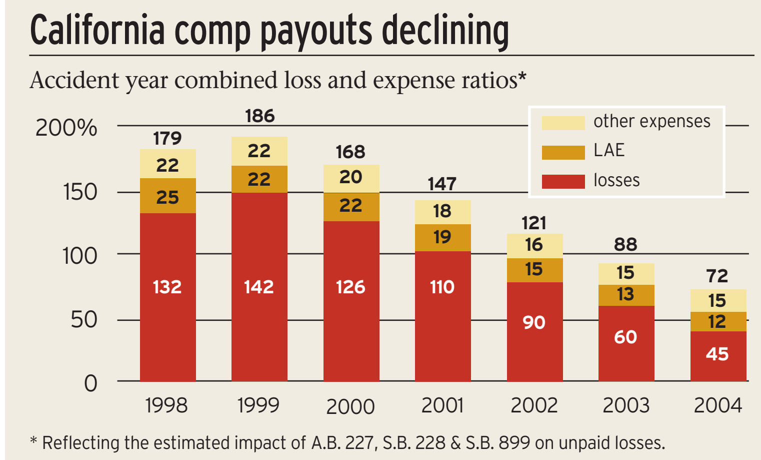
Loss ratios have fallen steadily since 1999, when the accident-year ratio reached 142%, according to the WCIRB data. The insurer 2004 calendar-year loss ratio, meanwhile, dropped to 60%, the lowest since 1995 and 19 points below 2003's calendar-year loss ratio.

Accident-year data is based on accidents occurring in a 12-month period, whereas calendar-year data shows accounting information from many policy years with claim activity impacting one calendar year.

The WCIRB estimates that insurers experienced a combined ratio of 72% for accident-year 2004. But that does not include the impact of a 16.5% reduction in average rates that occurred from the last six months of 2003 to the last six months of 2004. The average statewide rate paid by employers stood at $5.32 per $100 of payroll for policies written in the last six months of 2004.

California comp payouts declining

Accident year combined loss and expense ratios*



* Reflecting the estimated impact of A.B. 227, S.B. 228 & S.B. 899 on unpaid losses.

Source: WCIRB California

Meanwhile, written premiums, gross of deductible credits, rose to $23.7 billion in 2004, or 11% above written premiums for 2003.

The drop in loss ratios combined with the increase in written premiums raises "very disturbing" questions about whether insurers are adequately passing savings on to employers that stem from reforms California adopted over the past couple of years, Insurance Commissioner John Garamendi said last week. The commissioner vowed to investigate the issue and look to see whether injured employees were being denied care.

Since January 2004, the commissioner has recommended that insurers drop their rates 24%, and the WCIRB currently is recommending another 10.4% reduction for policies incepting in July.

Meanwhile, California employers last week hailed the state Senate's confirmation of Andrea Hoch as administrative director of California's Division of Workers' Compensation. Employers and insurers have praised Gov. Arnold Schwarzenegger's appointee for implementing reforms, but labor and claims attorneys sought to have her rejected from the post.

PAUL WINSTON

Editorial Director

Risk managers must speak out

During the annual Risk & Insurance Management Society conference last month in Philadelphia, it was apparent there still is a fair amount of uncertainty over what changes will result from investigations into the insurance industry. Buyers may be shell-shocked at how many allegations of wrongdoing have exploded among brokers and insurers in recent months. It remains unclear how widespread these practices might be, making it difficult for buyers to ascertain how and if they have been hurt, or will be in the future.

While the industry investigations have yet to run their course-and, indeed, seem to be spinning off in new directions almost daily-it should be clear to risk managers what they do and do not want. And now is the time-not months or years from now, when the dust settles-that buyers, individually and as a group, must make their desires heard by the industry, regulators and lawmakers.

That point was driven home by Ellen Vinck, the new president of RIMS. The society can do only so much to advocate in the interest of buyers on industry issues, Ms. Vinck said. Ultimately, she urged, risk managers must speak out for themselves and lobby for issues of importance to them.

RIMS does its best to represent risk managers and push for changes in their interest. But it is hampered by the diversity of its membership on a variety of issues. On some issues, such as efforts to win reauthorization of the Terrorism Risk Insurance Act, its membership is divided.

RIMS should face no such divisiveness when it comes to demanding changes in broker compensation practices. It is in all buyers' interests to have their brokers working solely on their behalf and compensated for that work in a fair and transparent manner. That is as true for the small public entity in Maine that belongs to RIMS as it is for the large multinational in Mexico.

But, as Ms. Vinck stressed, buyers cannot sit back and hope that RIMS will do it alone, or that bad practices will disappear of their own accord. At the moment, the industry's future is being shaped by well-intentioned regulators, largely from outside the industry. If a solution is to meet the needs of this industry's customers, they must stand up and be heard.

"We, the risk managers, are RIMS," Ms. Vinck said during the conference. "RIMS cannot go out and do this for you; you cannot sit back and expect it to be done. You've got to get out there and get involved in this issue."

How can risk managers get involved? No doubt RIMS would love to have influential risk managers lend their support as it lobbies for changes. In this, RIMS' diversity is an asset, not a hindrance, as policyholders of all stripes tell the industry, lawmakers and regulators what reforms are desirable. Every RIMS industry group ought to band together and lobby as a group.

Risk managers also should go on the offensive within their own organizations. To date, I suspect their internal communications on this issue have been largely defensive, answering queries from senior management and directors on what the industry's very public problems might mean for them.

Given that many risk managers may not be empowered to lobby on behalf of their organizations, they should use this opportunity to get their companies and organizations behind this effort. Educate senior management and government affairs representatives why this is more than a picayune insurance matter and instead is one deserving of their influence. Make clear that this is an issue that does not simply affect how the risk manager performs his or her job, but instead determines how well the entire organization is protected and what it pays for that protection.

Risk managers who do not have close ties to their organizations' benefits managers should reach out to them as well, because the problem of murky self-dealing also extends into the life and health arena.

With determination and resolve, risk managers individually and as a group can make a difference in how the industry meets their needs now and in the future. But unless the policyholders stand up and make their wishes known, they will not get what they want. In that case, they get what they deserve, no matter how unpalatable it may be.

Editorial Director Paul Winston's commentary appears fortnightly. He can be reached at pwinston@businessinsurance.com.

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Editorial

United deal is making the best of a tragedy

READING THROUGH a proposed agreement between United Airlines and the Pension Benefit Guaranty Corp. in which the PBGC would take over United's massively underfunded pension plans and then receive United securities potentially worth $1.5 billion, we are convinced the settlement is a necessary and fair one for both sides.

United makes a good case as to why it has no choice but to jettison the four plans. If the plans are terminated, United will save $4.4 billion in cash contributions over the next six years, including $1.3 billion for 2005.

The agreement—allowing United to shed billions in pension contributions—is a "linchpin," United says, in its effort to get the financing it needs to exit bankruptcy.

As for the PBGC, we think it had no alternative but to settle. Had the PBGC, which earlier said United could afford to fund two of its four pension plans, continued a legal tussle, United would have been unable to get financing and likely would have had to liquidate.

If that had happened, the likelihood of the PBGC, as an unsecured creditor, receiving any compensation for the $6.6 billion in guaranteed benefits it will have to pay United's 120,000 pension plan participants, would have been very low.

That said, we think the failure of United's plans is a tragedy. Not only will participants no longer have defined benefit plan coverage but many will see their expected benefits slashed, due to federal limitations on the maximum benefits the PBGC guarantees.

We fear similar tragedies may now be in the making. In an intensely competitive industry, other old-line airlines will be assessing how they can afford to contribute to their plans now that a major competitor no longer will have that same cost burden.

Creative solutions are needed to reduce the likelihood of such tragedies. One idea, recently proposed by Sens. John D. Rockefeller IV, D-W.Va., and Johnny Isakson, R-Ga., would allow airlines to stretch out pension contributions over 25 years—compared to three to five years under current law. If United, for example, had more time to meet its pension obligations, perhaps plan termination could have been avoided.

Above all, though, legislators need to examine what can be done to stop companies from promising greater benefits than they can afford, which is, after all, the root cause of the airline industry's pension problems.

Schillerstrom

Broadened oversight must still respect rights

WE SUPPORT EFFORTS to strengthen regulatory oversight, but states should analyze them carefully to avoid knee-jerk reactions that could cause more problems than they solve.

A preliminary proposal by New York Acting Superintendent of Insurance Howard Mills to seek broader authority to summarily suspend or revoke insurance licenses is a prime example. Before New York legislators give the superintendent a bigger stick, they ought to look carefully at whether the new authority he seeks would violate due process.

We wholeheartedly agree that wrongdoing by insurers, brokers and agents should be promptly investigated by regulators and punished. But we also think a rush to judgment could harm innocent parties and leave the accused without much recourse.

Mr. Mills wants the New York Legislature to:

- Grant him additional authority to immediately suspend the license or limit the amount of premiums that a financially overextended insurer could write in New York, without the current notice and hearing requirements.
- Broaden the criteria under which the superintendent could summarily suspend producers' licenses.

Current, stringent restrictions require a finding that "public health, safety or welfare imperatively requires emergency actions," which result in such suspensions being invoked less than once a year, according to a department spokesman.

Even so, New York law provides avenues for relief within specified time limits. For example, a producer whose license has been summarily suspended is entitled to departmental hearings and can seek judicial review.

Currently, the state insurance department is engaged in a restructuring Mr. Mills says will improve its ability to handle in-house some of the investigations and litigation now being conducted with help from the staff of New York Attorney General Eliot Spitzer.

We support Mr. Mills' plan to create a departmental corporate practices unit, which would be staffed primarily by new attorneys. That should increase the department's ability to oversee practices related to market conduct, which we think has been lacking, given the contingent compensation scandals.

But, when drafting specifics of his proposed plan, Mr. Mills needs to make sure the expanded authority he seeks doesn't go too far. It makes sense, for example, to broaden the criteria for seizing a producer's license so that the Insurance Department would not have to first hold a hearing before it could revoke the licenses of an individual who had already pleaded guilty to felonies in a political corruption case, as happened recently.

If that reality test is met, critics will be less likely to view Mr. Mills' request as a desire to increase his turf or to impose broader sanctions punitively.

In addition, when legislators consider expanding his authority, they must review all related laws to ensure that defendants' constitutional rights to due process are preserved.

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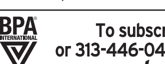

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Spotlight

RIMS 2005 Conference Review

AOL takes a proactive approach to ergonomics / page 12

Catastrophe coverage options continue to grow / page 16

Risk managers face new challenges as companies enter China / page 19

Buyers want better cover for directors

Settlements spur search for personal asset protection

By DAVE LENCKUS

PHILADELPHIA—Securities class action lawsuit settlements in which Enron Corp. and WorldCom Inc. officials agreed to contribute a portion of their personal assets have triggered a search for better protection for board members across corporate America.

Risk managers and insurance market executives attending the Risk & Insurance Management Society Inc.'s annual conference and exhibition in Philadelphia last month said buyers are increasingly researching ideas on how to better protect their corporate board members.

Risk management experts at the RIMS conference proffered ideas that ranged from aiding executives in understanding the changing regulatory environment, to adding or increasing directors and officers Side A coverage, to investigating alternative risk financing measures.

Side A coverage protects directors when their company is barred from indemnifying them for a loss. Side B coverage reimburses a company that has indemnified its executives for a loss. Side C coverage insures the corporate entity for its responsibility for a loss.

Most experts agree, though, that little comfort is available to directors and officers if a securities case has advanced to the point that settling it with a combination of personal assets and insurance proceeds looms as the defendants' safest option.

Agreeing to contribute personal assets to extricate oneself from a securities class action suit of that nature is "a personal decision" by a corporate executive that the insurance industry cannot respond to, said Carol Zacharias, senior vp and underwriting counsel for ACE U.S.A. in New York.

"To be honest, there's no product that, with absolute certainty… you're going to have absolute protection if everyone is demanding your personal assets," said insurer executive John Keogh during a ses-

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PHOTO: MICHAEL MARCOTTE

The Risk & Insurance Management Society Inc. 2005 Annual Conference & Exhibition attracted thousands of attendees to Philadelphia.

Latin American risk management expands

By GLORIA GONZALEZ

PHILADELPHIA—When Monterrey, Mexico-based Grupo IMSA began expanding its operations into the United States and other countries, its officials came face to face with one of the key risk management challenges for companies based in Latin America.

Risk managers of Latin American companies with international operations must familiarize themselves with the insurance regulations and operational challenges of each of the countries in which they operate and formulate a risk management strategy that takes all that into account.

In the case of Grupo IMSA, the key challenge was to develop a comprehensive risk management program that coordinated coverage across all operations and unified the criteria for loss control.

> "Companies in Latin America are facing the same issues that companies are facing in other regions of the world."
>
> **Thomaz Menenzes**
> **Marsh Inc.**

Jesus Rodriguez, international risk manager for Grupo IMSA and vp of the Mexico chapter of the Risk & Insurance Management Society Inc., said his company decided to hold an international risk management conference, inviting all personnel responsible for risks in the various countries in which the company had operations. They discussed key issues such as the company's globalization strategy, its local and worldwide insurance programs and risk prevention programs.

Mr. Rodriguez's experience, which he described to attendees at the RIMS conference in Philadelphia last month, is indicative of a key challenge for Latin American risk managers.

"They have to ensure that they keep up with their peers in Europe and the United States, especially if they are risk managers for companies that compete internationally," said Luc Albert, executive vp and head of Latin America for Armonk, N.Y.-based Swiss Reinsurance America Corp. "They have to maintain the same mindset, the same attitude, speak the same language."

In terms of risk management, international companies based in Latin America are at least as advanced as companies based in industrialized countries, Mr. Albert said. Companies in Mexico, Brazil and Chile have the most developed risk management programs in the region, because they have significant exports to other countries and their concentration of international companies is larger than their regional neighbors, he said.

Another key challenge for Latin American risk managers is integrating risk management practices into the entire operation of their businesses, said Carlos Burkle, risk manager for Monterrey-based Grupo

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Check out insurers' financial red flags

By RODD ZOLKOS

PHILADELPHIA—With an insurance policy only as good as the insurer's ability and willingness to pay when a claim is made, evaluating insurers' financial stability is a critical element of any insurance purchase.

But the analysis of regulators and rating agencies can't always be relied upon to give all the needed information, according to a panel that discussed the subject of evaluating insurers' financial strength at the annual conference of the Risk & Insurance Management Society Inc., held last month in Philadelphia.

"If you place an insurance program and then a few years down the road the carrier isn't there to pay the claim, really, what have you bought?" asked Sheila Small, assistant treasurer-risk management and insurance at New York-based Verizon Communications Inc., the session's moderator.

Adam Klauber, managing director-equity research at Cochran, Caronia Securities L.L.C., said the issue of insurer solvency has taken on greater importance with stock analysts in recent years. In terms of their financial stability, insurers typically face a "cliff situation," Mr. Klauber said. "Once an insurer goes over the cliff, it's very difficult to come back," he said.

In that context, when analyzing insurers, many companies' financial data look strong right up until they go under, he said.

"I think the state (insurance) departments just don't have the resources, at the end of the day, to stay on top of the companies from a solvency perspective," Mr. Klauber said. "They jump in when it's too late."

At the same time, rating agencies face a dilemma, he said. "They don't want to be the factor that drives a company out of business," Mr. Klauber said, so they often tend

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COVERAGE OF RIMS CONFERENCE CONTINUES ON PAGE 12

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AOL outlines successes of ergonomic strategy

By SARAH VEYSEY

PHILADELPHIA—Ensuring that employees are aware of ergonomic issues and encouraging them to address those issue are key ingredients in a successful ergonomics policy, said Nancy Perkins, senior manager, risk strategies at America Online Inc.

By introducing policies designed to spur employees to be proactive in their approach to ergonomic issues, Dulles, Va.-based AOL has managed to keep a cap on workers compensation claims, Ms. Perkins explained during a session at the Risk & Insurance Management Society Inc.'s annual conference in Philadelphia last month.

As part of that strategy, AOL encourages employees to sign up for ergonomic evaluations, she said.

During 2004, Ms. Perkins said, 740 ergonomics assessments were conducted at AOL's Dulles office. Of those, 45% were proactive evaluations and 55% were conducted because the employee had reported some discomfort.

Ms. Perkins said that the strategy was useful in keeping certain types of workers compensation claims to a minimum.

She credits the program for helping AOL keep carpal tunnel-related claims at a low level.

In 2004, of 200 workers compensation claims filed, only 12 were for carpal tunnel, repetitive motion or repetitive strain injuries, Ms. Perkins said. This, she said, was particularly pleasing since most of AOL's employees make extensive use of keyboards, which is an activity that is often associated with carpal tunnel claims.

AOL promotes its ergonomics program with employees when they join the company, said Zack Koutsandreas, a vp at Gaithersburg, Md.-based Ergoworks Consulting L.L.C., who works on ergonomics issues for AOL at its Dulles office.

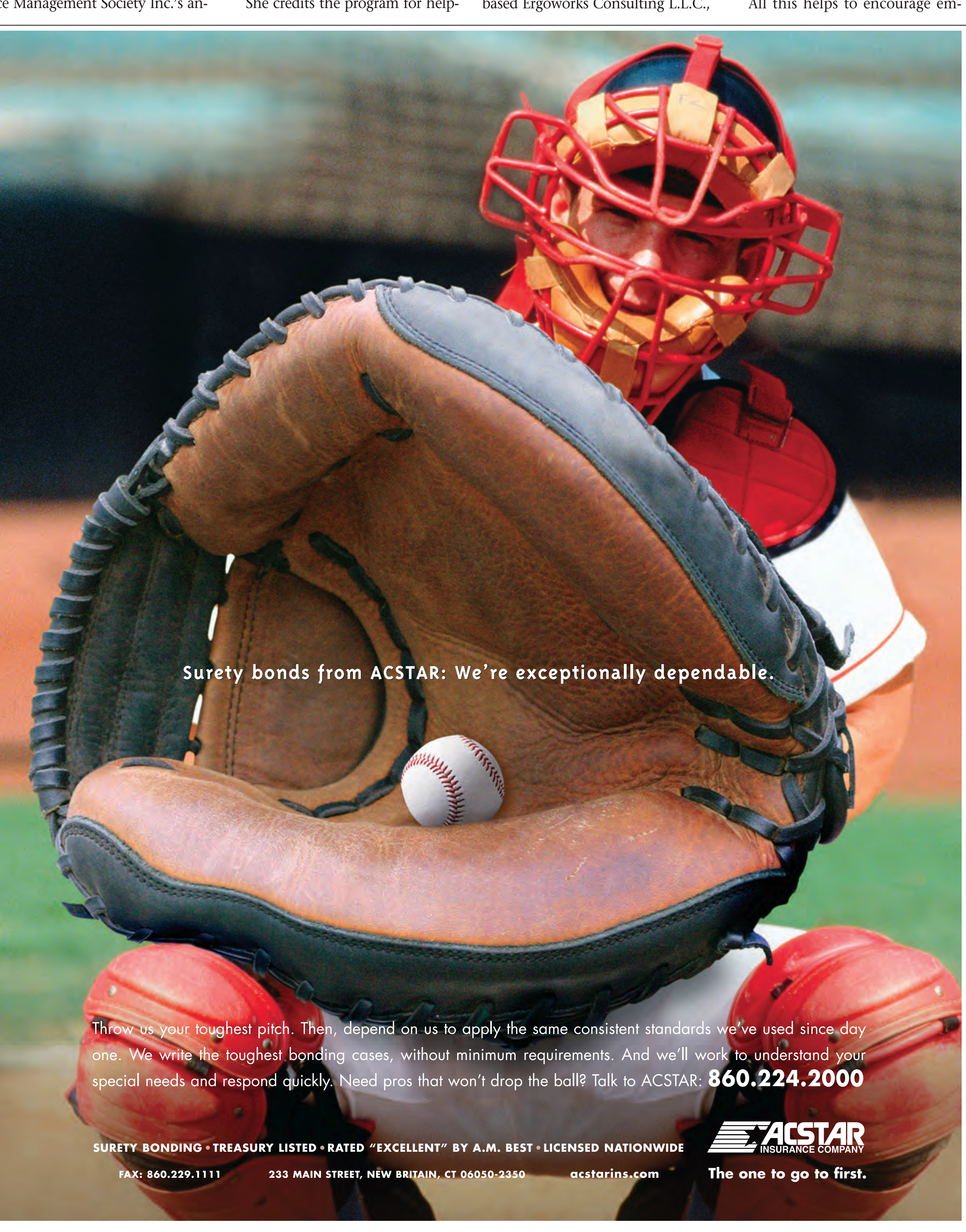
All new employees are informed about the ergonomics program during their employee orientation. The company also posts information about the program on its intranet, he said.

In addition, said Ms. Perkins, there is ergonomics center at the Dulles office where employees can view ergonomics equipment and obtain information, and the existence of the program is highlighted in corporate brochures and newsletters.

All this helps to encourage employees to come forward and ask for ergonomics assessments before experiencing any problems, the speakers said.

In addition to being well promoted, the program has to be adaptable for it to be successfully implemented, Mr. Koutsandreas said.

In particular, allowances need to be made for employees that are not of average size, he said. For example, most tables are a standard 29 inches high, but this is not suitable for tall or short people. So risk managers need to consider how to deal with the needs of the nonaverage employee, he said.



Solvency: Evaluating insurer stability

Continued from page 11

to be reactive rather than forward looking in their analysis.

Consequently, insurers can't rely solely on regulators and rating agencies when they're assessing insurers' financial stability in making their purchasing decisions, the analyst said.

He suggested that insurers' reserves are one of the key factors he looks at in evaluating insurers' strength, though he noted that, because of an absence of overall data, it's still difficult for an outsider to assess reserve adequacy.

"Not surprisingly, the best forward indicator for industry fundamentals is actually cash flow," Mr. Klauber said.

> "In 2007, we think there will be some companies in trouble."
>
> **Adam Klauber**
> **Cochran, Caronia Securities L.L.C.**

"Paid losses are really the biggest driver of cash flow and are the biggest driver of earnings which, by the way, are the biggest driver of capital," he said.

Based on his analysis of industry cash flow, "in 2007, we think there will be some companies in trouble," Mr. Klauber said. "The challenge is, how can you tell which companies are going to deteriorate and which are going to remain strong?"

He suggested buyers should look at operating cash flows and the gap between companies' reported earnings and past earnings as ways to help make that determination.

Greg J. Flood, executive vp and chief operating officer of the National Union Fire Insurance Co. of Pittsburgh, Pa. in New York, also suggested buyers examine insurers' reinsurance use. "Any time there's a huge reinsurance dependency by a carrier, I always try to caution people," he said.

As a buyer, it's important to understand what's going on with the company with which you're doing business, Ms. Small said. "Price isn't always the ultimate determining factor," she said.

Latin America: Region seeing an expanding role for risk management

Continued from page 11
Maseca Worldwide. Risk management needs to be viewed not as an additional task to a company but as an integral part of its structure, he said.

Latin American companies must have an integrated approach to risk management, dealing not only with technical exposures but also with financial and political risks and liability issues, Mr. Albert said. "That's perhaps one of the main challenges I see for Latin American companies," he said.

These challenges, though, are similar to the challenges faced by risk managers in the United States and other developed countries, observers say.

"I think companies operating in Latin America are facing more and more of the same issues that companies are facing in other regions of the world," said Thomaz Menenzes, Sao Paulo, Brazil-based head of the Latin America/Caribbean region for Marsh Inc. "Operating in Latin America, there's very little difference than operating in other parts of the world," Mr. Menenzes said.

Risk managers in Latin America need to examine and analyze all risks—financial and political as well as operational—inherent to their company's operations and decide which are insurable, he said.

For those risks that are insurable, risk managers in Latin America have plenty of options, because sufficient capacity is generally available in the region, Mr. Menenzes said. There is significant capacity within local markets in Mexico and Brazil, and all the major international insurers and reinsurers operate in the region, he said.

"I think Latin America and the Caribbean have made tremendous progress in the last couple of years with respect to the insurance market as a whole," Mr. Menenzes said. "The insurance market is growing now. We see a demand for more services with respect to risk management. Clients are looking at the issue of risks in a much broader way than they did before."

Mr. Menenzes noted that there is no one specific line of insurance that is more problematic to purchase in Latin America than in other parts of the world. For example, catastrophe insurance for natural perils—which are still seen as the biggest exposures for many companies in the region—is difficult to acquire, but not more difficult than for other countries, he said.

Kidnapping remains a chief con-

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Topics target international risk managers

PHILADELPHIA—In an effort to reach out to its international membership, the Risk & Insurance Management Society Inc. held several sessions designed specifically for risk managers from Latin America, Japan, China and Africa during its annual conference, held in Philadelphia last month.

And this year, for the first time, sessions were offered in Spanish, with English translation.

RIMS leadership has made an effort in recent years to reformat its conference agenda to meet the needs of its foreign members, said Janet Barnes, RIMS vp-conference and risk manager and security administrator for Snohomish County Public Utility District No. 1 in Washington state.

In particular, there has been an emphasis on recognizing how active Latin American risk managers have become in the industry, said Carolyn Snow, vice chair of the committee and director of insurance and risk management for Louisville, Ky.-based Humana Inc.

The conference programming committee had a strong group of submissions for international sessions to choose from for this year's conference, she said. "We, as a committee, diligently looked at good international sessions," Ms. Snow said. "We've really looked for sessions that are not just for the Americans and Canadians."

Risk managers who participated in the sessions were pleased with the attendance and feedback they received.

Carlos Burkle, risk manager for Grupo Maseca Worldwide based in Monterey, Mexico, spoke at a session called "Challenges of the Latin American Risk Manager" and said he has received phone calls and e-mails from risk managers from various countries praising the session and seeking to continue discussing the topics covered.

"I think it would be very good and important to continue these sessions for international risk managers," Mr. Burkle said.

RIMS plans on building on its efforts to reach out to its foreign membership by having Jorge Luzzi, risk manager, Latin America, for Buenos Aires, Argentina-based Grupo Pirelli, join the programming committee, which will meet in a few months to develop the agenda for the 2006 conference in Honolulu.

In 2002, Mr. Luzzi won the Harry and Dorothy Goodell Award, the highest honor bestowed by RIMS, in part for his efforts in advancing the role of risk managers in Latin America.

—By Gloria Gonzalez

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Cat coverage alternatives flooding the market

Buyers advised to analyze exposures to obtain best risk transfer deals

By MICHAEL BRADFORD

PHILADELPHIA—Property owners looking for alternatives for covering their catastrophe exposures have to do some legwork to determine the appropriate way to cover those risks.

Insurance buyers can shop a diverse market of products that includes catastrophe bonds, alternative market arrangements and evolving coverages that are offered by traditional insurers, according to a panel of experts at the annual conference of the Risk & Insurance Management Society Inc., held in Philadelphia last month.

"What is really important and really exciting is that more alternatives are coming to market every-day," said Allen Monroe, chief executive officer of RiskINFO, a Larkspur, Calif.-based risk consultant.

For example, insurance companies are beginning to write "hybrid" products "that perform a lot like cat bonds in private placements," Mr. Monroe said.

With more products to choose from, risk managers need to approach the market with some information in tow.

"First of all, we need to know what our objectives are," said Mr. Monroe. "Our objective is not simply, 'what is the cheapest alternative?'" he remarked. "What you want to know is, how much bang can I get for the buck? How much risk can I transfer at what cost?"

Joe Downey, senior vp at Willis Group Holdings Ltd. in Bethesda, Md., also emphasized that good information is vital when putting together a catastrophic coverage program.

"It's the old expression, 'Garbage in, garbage out,'" remarked Mr. Downey. "If you do not start with high-quality information," putting together proper coverage is going to be very difficult, he said.

Mr. Monroe advised insurance buyers to take several steps when compiling information before they buy a catastrophe insurance product. He said a risk manager should:

- Organize location and exposure data.
- Perform a preliminary evaluation and model expected loss expectancy probabilities using catastrophe modeling services.
- Identify areas of the business that would be best served by an alternative approach.
- Identify, calibrate and quantify the costs and payoffs of the various catastrophe products suited to the risk.
- Compare the coverage alternatives identified as suitable for the risk.

Mr. Downey said brokers can help with the legwork in making sure risk data is accurate. "Ask them to use whatever tools they have to analyze and verify your data," he advised.

Brokers can, for example, use something called "flood zone correction" to compare policyholder locations with flood maps to make sure the risk of flood has been properly analyzed, Mr. Downey pointed out.

> "Our objective is not simply, 'what is the cheapest alternative?'" It is "how much risk can I transfer at what cost?"
>
> **Allen Monroe**
> **RiskINFO**

Catastrophe modeling as part of the approach has proved to be fairly reliable, according to Kenneth A. Travers, Wilmington, Del.-based senior vp at EQECAT Inc.

Modeling services did pretty well predicting damage from the four Florida hurricanes last summer, Mr. Travers said. The services were accurate to within 5% to 7% of what the costs are now expected to total for two of the storms and to within 10% to 12% for the two others, he pointed out.

"I would say that modeling has gotten to the point now," Mr. Travers said, where it can generally pinpoint losses within 10% to 15% of the actual costs. "Which, in our minds, is pretty good, given all the uncertainty involved," he said.

Mr. Travers explained that uncertainties arise, for example, because insurers sometimes pay for damages they are not legally obligated to cover. That has happened in hurricanes, for instance, in which insurers paid uncovered claims rather than face disputes and bad public relations regardless of their obligations, Mr. Travers said.

Also on the panel was Michael Leybov, senior vp with Willis Re Inc. in New York.

The discussion was moderated by Chris Yeakey, risk manager for Duke Realty Corp. in Indianapolis.

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Contingent losses require careful management

Supplier losses can lead to thorny business interruption claim disputes

By GLORIA GONZALEZ

PHILADELPHIA—Risk managers need to pay careful attention to their contingent business interruption practices and policies to ensure they have adequate coverage when they need it the most.

Contingent business interruption insurance is triggered by a physical loss or damage—otherwise insurable had it occurred at the insured's site—at a direct supplier's or customer's site. The event must interrupt the conduct of the insured's business or cause the insured to incur extra costs to remain in business before the coverage is invoked.

Craig Miller, corporate risk manager for Des Plaines, Ill.-based UOP L.L.C., described his experience with a contingent business interruption claim during a session at the Risk & Insurance Management Society Inc.'s annual conference, held in Philadelphia last month.

UOP, which provides products to oil refineries and petrochemical companies, had purchased contingent business interruption and extra-expense coverage as part of its insurance program. In July 1999, an explosion at a vendor's plant terminated that vendor's production for almost 18 months. UOP's operating personnel, not realizing that the company had insurance that might respond, made arrangements to obtain raw material from another source to continue the production of its own goods. In fact, Mr. Miller was not notified of the event until more than two years later.

> Educate key management personnel about the insurance portfolio before a loss occurs and "teach them that, when in doubt, call risk management."
>
> **Craig Miller**
> **UOP L.L.C.**

Upon hearing about the disaster for the first time in September 2001, Mr. Miller wondered if his company could invoke its CBI/EE policy. A week after becoming aware of the incident and gathering sufficient information, UOP's brokers reported the incident to the insurer.

The good news for UOP, Mr. Miller said, was that the policy said a loss or damage claim should be reported to the insurer "as soon as practicable" after the insured's insurance department was informed of the event.

He noted, though, that the underwriters still had several objections to the claim because of the time delay in reporting the event, including whether UOP reported the loss as soon as its risk manager learned about it.

Mr. Miller said that, although operating personnel had acted as "prudent uninsureds," the underwriters also questioned whether everything possible was done to mitigate the loss, because they had not been present "holding our hands" following the loss. The insurers expressed concern that their rights may have been prejudiced by the delay and continued to dispute the claim until a settlement was reached in February 2004.

The company learned valuable lessons from that experience, Mr. Miller said. For example, he said, the time delay in reporting the event to the risk manager demonstrated the need to educate all key management personnel about the company's insurance portfolio before a loss occurs. "Teach them that, when in doubt, call risk management," Mr. Miller said.

Risk managers also need to check their policy wordings to see if they contain a time limit on reporting a claim, because some policies require an event to be reported within a few months, he said. If the policy contains such wording, it should be negotiated out of the policy, he said.

Risk managers need to examine and re-examine potential bottlenecks in the supply chain to assess their own susceptibility to contingent business interruption events, he said.

After a loss, risk managers need to gather the facts about the event, ascertain what the company is doing to mitigate the loss and determine an initial "guess-estimate" of the magnitude of the loss, Mr. Miller said.

After any loss, risk managers should examine how they handled the experience and learn from it, he said. Key follow-up questions need to be asked, including whether the event was caused by an identifiable exposure, whether any alternative actions could have been identified and implemented, and whether the risk transfer program was structured adequately.

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Mark W. Baker, director of risk management for TRW Automotive Holdings Corp., speaks at a RIMS session on doing business in China.

China poses unique opportunities, risks

By RUPAL PAREKH

PHILADELPHIA—While China can be a land of opportunity for companies looking to expand operations, certain unique risks can potentially plague a firm that decides to establish operations there.

Though the country offers growing companies a number of advantages relating to labor and land, among other things, risk managers should be aware of exposures to their businesses, particularly those stemming from China's legal system, according to a panel of experts at the recent Risk & Insurance Management Society Inc. conference in Philadelphia.

The Chinese market began to open up to foreign business during the late 1970's, and, since the early 1990s, has been a significant host of foreign direct investment.

Among the factors making China an attractive location for international firms are: a massive consumer market comprised of a population of 1.3 billion; a labor supply that is plentiful and relatively inexpensive; and land prices that are generally reasonable, particularly outside of cities and in the Western region of the country, according to Howard H.K. Tsang, chief operating officer of Willis Pudong Insurance Brokers Co. Ltd. in Shanghai, China, a division of London-based Willis Group Holdings Ltd.

The Chinese market as a result is growing more competitive, with foreign-invested enterprises expected to increase between 5% and 10% within the next 10 years, he said.

Yet, foreign companies are faced with a multitude of risks on a daily basis, the speakers said, including financial, strategic, operational and hazard risks. But one of the foremost sources of risk for firms in China is its legal system, they said.

"The legal system itself in China is not very sophisticated and is relatively premature," said Mr. Tsang. For example, China's Civil Code, enacted in 1986, does not follow a "common law" or "case precedent" approach for trying cases, unlike the U.S. judicial system.

China is, however, moving toward a system of insurance that resembles that of the United States, said Mark W. Baker, director of risk management for Livonia, Mich.-based TRW Automotive Holdings Corp., which has operations in 46 countries, including 16 facilities in China. Under Chinese insurance regulations, it will become mandatory to purchase insurance policies from domestic insurers, with the exception of excess policies and reinsurance, which companies will be able to obtain from foreign insurers.

Risk managers should therefore be aware that most insurance products offered in China currently are "off-the-shelf" and are not typically geared towards providing legal protections, Mr. Tsang said.

There is a trend in China of laws placing a greater responsibility on corporations relating to injury or damage to third parties, as well as for employees' work-related injuries, Messrs. Tsang and Baker said.

Compulsory insurance in China—which can only be written by domestic insurers—includes automotive third-party liability, with limits averaging between $6,000 and $12,000, and fairly strict workers compensation policies, mandating the creation of safety management departments for employers with more than 300 employees, among other things.

Companies operating in China should also be aware that they might be found liable for claims that they would not normally expect in other countries, Mr. Tsang said. For example, under a Chinese Supreme Court provision, corporations can under some circumstance be held responsible for damages caused by natural disasters that occur in an area adjacent to the companies operations. Civil liability may be exempted, however, if someone from the firm took "proper emergency action" against the danger, the provision states.

Additionally, there are some country risks posed by doing business in China, such as those relating to infrastructure and transportation, the panelists said.

But for TRW, "The opportunities much outweigh the political risks," at this point, said Mr. Baker.

"You need to partner with someone who will provide you with advice and counsel," if you are planning to embark on a business venture in China, Mr. Baker said.

One way to improve chances of a successful enterprise, Mr. Tsang said, is to continually strengthen "guanxi" or relationships.

Cultivating and leveraging business relationships through meetings and social outings can improve a company's chances of maintaining good partners and contacts in the Chinese market, and thus minimize risks to a foreign employer, according to Mr. Tsang.

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Plaintiff's mindset key to winning coverage disputes

By MARK A. HOFMANN

PHILADELPHIA—Risk managers need to change from a defendant's mindset to a plaintiff's mindset when they are involved in coverage disputes, policyholder attorneys say.

While large corporations often have more courtroom experience as the target of lawsuits than as the initiators, they must switch tactics and adopt a different strategy when they are battling insurers, the attorneys say.

For example, when they are suing for coverage, instead of implementing delaying tactics, risk managers should avoid discovery disputes and seek to keep the process moving, said John B. Berringer, an attorney and shareholder in the New York law firm of Anderson Kill & Olick P.C.

"The surest way to settle a case against an insurance company is to get a trial date," he said.

In addition, policyholders should ensure that they are as well prepared with documentary evidence as the insurers they face, Mr. Berringer said.

A physical copy of an insurance policy will not necessarily prevent an insurer from rejecting a claim in court, he said.

In most jurisdictions, secondary evidence, such as correspondence or bills, particularly if they indicate such matters as policy limits and policy period, may be used to show coverage, said Mr. Berringer during a session about how to try complex insurance coverage cases at the Risk & Insurance Management Society's annual conference, held in Philadelphia last month.

In addition, risk managers should make digital copies of old insurance policies, said William Passannante, another Anderson Kill attorney and shareholder. Insurance companies often destroy their copies of issued policies after a set amount of time, he said.

Other documents can also be helpful to policyholders in disputes with their insurers, Mr. Passannante said.

There are, for example, insurance company advertisements. "Insurers say the darndest things," he said. Other documentation that can be helpful includes loss control documents, claims and underwriting manuals, and information gleaned from insurance company annual reports and Web sites, he said.

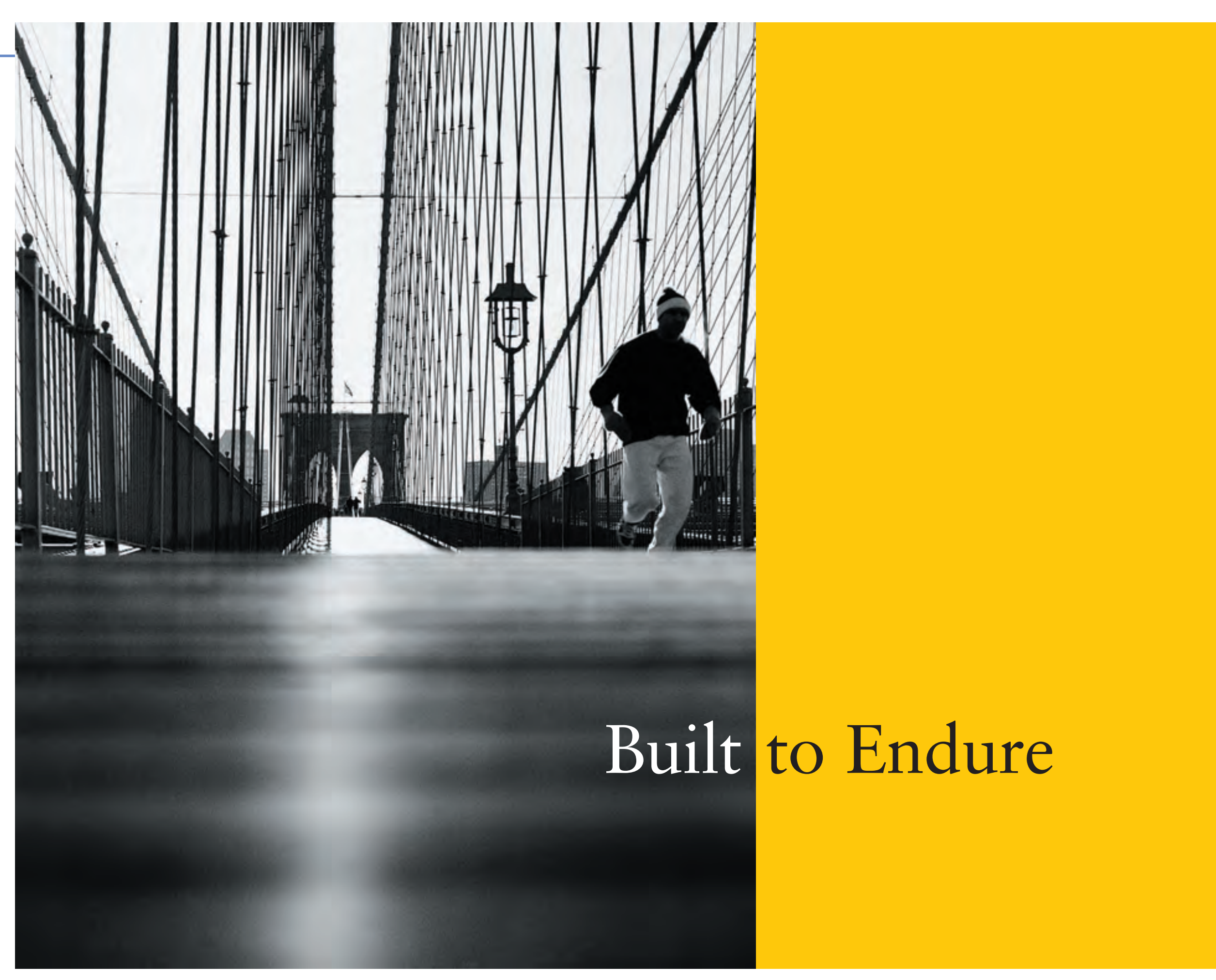
Jurisdictions should also be reviewed, Mr. Berringer said. Outside counsel should ensure that a chosen jurisdiction isn't known for glaring anti-policyholder legal interpretations, he said.

In addition, "our almost universal recommendation is to request a jury" trial, said Mr. Passannante. Juries tend to be more sympathetic to policyholders than they are to insurers, he said.

George Ward, senior director-risk management and office services for Irving, Texas-based VHA Inc., said that, "many times, the degree of cooperation" from an insurer is inversely proportional to the amount of money at stake in the claim.

Mr. Passannante noted that it is sometimes easier to work out a settlement involving 25 insurance companies than it is to settle a dispute between a policyholder and a single insurer. With multiple insurers, each is responsible for paying only a portion of the settlement, he said.

Mr. Passannante added that, in some cases, "a bad settlement may actually be better than a good trial."



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Latin America: Expanding risk analysis

Continued from page 14

cern of Latin American risk managers, particularly in Mexico and Colombia. Jorge Escalera, Monterrey-based risk manager of Axtel S.A. de C.V. and president of RIMS' Mexico chapter, said that while kidnapping is a concern, his company does not purchase kidnap and ransom insurance. "That would be like placing our executives in a showcase to be kidnapped," Mr. Escalera said.

One insurance product growing in popularity in the region is directors and officers liability insurance.

Some Latin American companies are traded on the U.S. exchanges, requiring them to adhere to corporate governance standards and acquire adequate D&O cover, Mr. Menenzes noted. While liability insurance is not as big a concern in Latin America as it is in the United States, Marsh has seen a growth in appetite for D&O cover from companies in the region, he said.

Some Latin American risk managers are using captives to handle some of their insurance requirements, although that number is still relatively small. Mr. Burkle said his company has a captive and determines its level of retention according to the strength of its financials and political and economic realities.

But the demand for alternative risk transfer facilities in the region is limited, Mr. Menenzes noted. "There are still some incentives to use the traditional means of risk transfer," he said.

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Fiduciary risks can be tackled despite uncertainty

By DAVE LENCKUS

PHILADELPHIA—Risk managers can act now to mitigate their board directors' fiduciary liability exposures related to employee savings plans despite the uncertainty surrounding the issue, a panel of experts said.

Although courts and lawmakers have not yet given clear directions on when board members can be held liable for savings plans losses, carefully considering whether to include an employer's own stock in a plan should be a first step in managing the risk, they said.

The inclusion of a benefit plan sponsor's own stock as an investment vehicle in an employee savings plan creates greater risk for plan fiduciaries and is a factor driving the hardening fiduciary liability insurance market, the panelists noted at a session during the Risk & Insurance Management Society Inc. annual conference and exhibition, held last month in Philadelphia.

The insurance market, though, is not trying to influence plan design or force plan sponsors to scuttle employee stock ownership plans, panelists stressed.

"We saw some draconian responses from some underwriters with respect to companies' stock" and fiduciary liability insurance pricing, said Rhonda Prussack, senior vp and product manager of fiduciary liability for New York-based National Union Fire Insurance Co. of Pittsburgh, Pa., a subsidiary of American International Group Inc.

Despite a hardening fiduciary liability insurance market, though, overall premiums "are still quite low," especially considering recent losses, Ms. Prussack said.

"Once we start seeing a consistent pattern" of court judgments or laws that establish the circumstances under which plan fiduciaries will and will not be held liable for damages, "you'll start seeing a consistent response from insurers" on pricing, Ms. Prussack said.

In the meantime, a variety of measures would likely mitigate plan fiduciaries' risk, and risk managers should be alerting plan sponsors about them, the panelists said.

Although the Employee Retirement Income Security Act of 1974 governs only private industry plans, public entities face nearly identical fiduciary rules under state laws, which strip sovereign immunity protection from boards that oversee savings plans for public entity employees, the panelists noted.

A fundamental but key point in understanding fiduciary liability is that directors and management will be considered plan fiduciaries even if their job titles do not confer that responsibility, said insurer executive Jennifer L. Proce.

ERISA defines a fiduciary by an individual's function, rather than by job title, noted Ms. Proce, a New York-based vp and retail manager of financial institutions and executive protection for Chubb & Son, a unit of Chubb Corp.

Ms. Proce stressed that offering a savings plan that does not include the plan sponsor's own stock as an investment vehicle greatly reduces risk for plan fiduciaries. Organizations should consider carefully why their stock is part of their employees' savings plans, she said.

Ms. Proce noted, though, that some plan sponsors have good reasons for including their stock. For example, in many cases, the stock serves as an incentive to employees, she noted.

> "Once we start seeing a consistent pattern of judgments and laws...you'll start seeing a consistent response from insurers."
>
> **Rhonda Prussack**
> **National Union Fire Insurance Co. of Pittsburgh, Pa.**

Even if plan sponsors include their own stock in employees' savings plans, they can take measures to minimize plan fiduciaries' risk, the panelists said. For example, the sponsor should conduct periodic reviews to assess whether the stock continues to be an appropriate element of the plan.

But removing a plan sponsor's stock from an employees savings plan can be risky, too, noted Cathy Cummins, a senior vp with New York-based Marsh Inc. Plan participants could fault plan fiduciaries for preventing them from recouping losses on a battered stock that is removed but subsequently performs well, she said.

Ms. Cummins also noted that some plans allow participants to divest their employer stock whenever they choose, rather than requiring participants to retain the stock for a minimum period.

The plan sponsor also should avoid appointing to plan committees senior officers who have access to nonpublic company information, Ms. Proce said. Plaintiffs attorneys may argue that those fiduciaries had the necessary knowledge to protect plan participants.

Ms. Proce noted that chief financial officers are beginning to have "very robust discussions" with management about leaving such committees.

Dante A. Petrizzo, risk manager of AXA Equitable Life Insurance Co. in New York, moderated the session.

Future scenarios key to consider for smart buys

Panelists review tips for evaluating insurers in a shifting environment

By MARK A. HOFMANN

PHILADELPHIA—A changing marketplace means that buying insurance isn't always the biggest part of a risk manager's job.

In fact, "the smallest part of our job in my company is buying insurance," said Amy E. Wagner, vp-risk management for Miami-based Ryder Systems Inc. Instead, the biggest part of her job is understanding the nature of the risks her company faces, explained Ms. Wagner during a discussion of "buying smarter in a changing market" at the Risk & Insurance Management Society Inc.'s annual conference, held in Philadelphia last month.

Understanding risk means talking to the company's individual business units on a regular basis, Ms. Wagner said. It also means communicating with the board of directors and explaining how the risk manager is handling directors and officers liability insurance issues, she said.

For example, Ms. Wagner said during a question-and-answer period that she advised Ryder's board to get its own lawyer to negotiate the terms of a D&O policy with the company's broker and insurer. The attorney was able to look at the pluses and minuses of each portion of the policy and negotiate better terms. The result was a policy that ranks among the top 5% in the country, said Ms. Wagner.

Also during the question-and-answer period, Ms. Wagner said that when evaluating insurers, she checks their 10-Q quarterly reports on a regular basis. "There are a lot of little pieces of information" in the reports that could signal problems ahead, she said.

Buying smarter also means looking behind insurers to consider such matters as the stability of the reinsurance market, said Edward T. Lynch, a managing director at Marsh Inc. in New York. Mr. Lynch pointed out that 16 reinsurers have received at least one financial downgrade since the terrorist attacks of Sept. 11, 2001.

Mr. Lynch pointed to developments in Europe as another cause for concern. Those nations are beginning to see asbestos liability legal decisions similar to those in the United States, he said, noting that the underwriters in Europe didn't price coverage in anticipation of such liability.

Such a constantly shifting environment means that risk managers must ask themselves as they buy coverage now what the situation of a particular insurer might be five or seven years in the future, he said.

"We're talking about a marketplace that had a very good year last year," said Mr. Lynch. In fact, the property/casualty insurance industry posted its first underwriting profit in more than 25 years (*BI*, April 15). But "we're still seeing rate decreases," he noted. The longer the cycle and the greater the decreases, the harder it will be for weaker players to remain in business, he said.

> "We need to buy with a longer perspective."
>
> **Amy E. Wagner**
> **Ryder Systems Inc.**

Ms. Wagner also stressed the importance of taking a protracted view in approaching risk management. "We need to buy with a longer perspective," she said, by thinking about what one's own company will be doing three or five years ahead.

The panel's third speaker listed the considerations that mark the traditional process by which a risk manager chooses an insurer. These include such factors as financial stability, the depth and breadth of coverage and service issues, according to Karen V. Sothern, senior vp and regional executive officer for ACE USA in Boston.

Ms. Sothern stressed that while she was not trying to minimize such factors—they are, in fact, the "foundation" of the process, she said–she pointed out other considerations that should be taken into account by the smart buyer. Chief among these is the insurer's commitment to continue to earn the risk manager's business.

The better the insurer knows the risk manager and the risk manger's company's management, and the better the risk manager knows the same aspects of the insurer, the better it is for both parties, she said. But communication among the risk manager, his or her broker, and the insurer has to be open and constant, said Ms. Sothern. It can't be an annual event, she stressed.

"You need to be working as a three-way team," said Ryder's Ms. Wagner.

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Chris Brisbee, ARM
Partner
Woodruff-Sawyer
Portland, Ore.

Chris Brisbee trusts this officer's ability to apprehend a hidden perpetrator with the help of a FLIR Scout hand-held infrared imaging device. He's also secure in knowing his agency won a bid to provide directors & officers liability coverage for FLIR, but only if a certain insurer was involved.

"RLI had already provided an excess layer for FLIR Systems' D&O coverage," Brisbee said. "Our willingness to bring RLI to the forefront for the coverage is what differentiated us from the competition."

RLI earned the respect of Woodruff-Sawyer. "I've dealt with RLI for about eight years," Brisbee continued, "specifically with Blake Rea, and I've always been impressed by his integrity — vital for this kind of coverage. Integrity works hand in hand with his respect for us and for our customer. Blake goes the extra mile to understand what everyone's needs are and he maintains an open line of communication. It's no wonder that my company's relationship with RLI is one built on great mutual respect."

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D&O: Buyers seek to cover directors' personal assets

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sion at RIMS. Mr. Keogh is president and chief executive officer at New York-based National Union Fire Insurance Co. of Pittsburgh, Pa., a subsidiary of American International Group Inc.

Some observers noted that the WorldCom and Enron settlements represent a small fraction of the securities cases that plaintiffs have settled with directors and officers, and they stressed that the cases involved egregious wrongdoing by corporate executives.

But executives are wise not to take too much comfort in those factors, said corporate defense attorney Michael R. Young during the same session at which Mr. Keogh spoke.

A changing regulatory environment, in which yesterday's lawful actions form the basis of today's securities fraud cases, exposes even the best-intentioned corporate executive to greater risk, asserted Mr. Young, a partner at Willkie Farr & Gallagher L.L.P. in New York.

Figures from White Plains, N.Y.-based NERA Economic Consulting, a unit of Marsh & McLennan Cos. Inc., show that while individual companies faced a 2% risk of being sued last year, that risk was 23% greater than in 1995.

From stricter reporting requirements to the increased aggressiveness of plaintiffs' attorneys to the burgeoning size of settlements in securities class action lawsuits, "everything is heading in the wrong direction," Mr. Young warned.

Companies face tougher financial reporting regulations not only in the United States but also in the United Kingdom, the rest of Europe and Australia, noted Gary Dubois, chief underwriting officer at New York-based Liberty International Underwriters, a unit of Liberty Mutual Group Inc.

Securities litigation is dominated by several fundamental factors of financial reporting, Mr. Young asserted. Among them:

- Many companies continue to have financial reporting problems, despite new reporting rules. Those problems are embedded in companies' reporting processes and cultures and will not be fixed immediately just "because Congress passes a law, " Mr. Young said. And sometimes, what is lawful and what is not "is not easy to answer," he said.
- All financial reporting problems have to be self-reported to securities regulators and thoroughly investigated. Cooperation with government authorities could mean waiving the attorney/client privilege, Mr. Young said. At the same time, independent auditors are going to be far more diligent in rooting around for problems, he said.

No absolute protection

Even as they investigate how to better protect corporate executives, risk managers say they understand that they will not be able to arrange financial protection for directors who ultimately face demands for a contribution of their personal assets to settle securities class action cases.

"If you have the formal allegations against a director like those in Enron and WorldCom, and if the plaintiff insists on a personal contribution, they'll probably make it happen no matter what the company arranges" for D&O protection, said James D. Hinton, vp-risk and insurance for Nashville, Tenn.-based HCA Inc.

Mr. Hinton, the *Business Insurance* 2005 Risk Manager of the Year, said one of his goals at the RIMS conference was to research questions from HCA's board about the adequacy of the company's D&O limits and how they compare to the amount purchased by organizations of similar size.

HCA just renewed its D&O program, Mr. Hinton said. Above the $100 million of traditional coverage it purchases, HCA increased its Side A tower of coverage by $50 million to $150 million of limits.

Even the risk manager at a privately held Canadian company with no history of D&O claims was researching market capacity. Joe Giannini, director, risk management, for electronics distributor Future Electronics of Pointe Claire, Quebec, said his company's D&O program has been "pretty steady" but that the extent of available limits "is something we're always looking at."

During a short booth presentation in the RIMS exhibition hall, Lou Ann Layton, a managing director and the national D&O practice leader for Marsh, told her audience that directors increasingly are evaluating the necessity of Side A coverage.

According to D&O coverage benchmark figures from Marsh, fewer than half of the brokerage's 117 Fortune 500 clients purchase excess Side A coverage, and fewer than 10% purchase only Side A coverage (see box).

But interest in Side A coverage is growing, Liberty Mutual's Mr. Dubois said.

Jim Nestheide, vp-field operations in the Financial & Professional Services division of the St. Paul Travelers Cos. Inc. in Crescent Springs, Ky., agreed.

The Marsh study also showed that Fortune 100 companies purchased $235 million of limits with a $19 million retention, on average, while the rest of the Fortune 500 purchased $108 million of limits with a $10 million retention.

Megasettlements of hundreds of millions of dollars have ballooned the average size of D&O losses in recent years to $23.6 million for the 2002-04 period from $13.5 million in 1996, according to NERA.

But observers note that the directors of a bankrupt company risk losing all of their traditional D&O insurance if the bankruptcy court freezes the traditional coverage in an effort to protect the Side C coverage as a corporate asset.

D&O coverage buying habits

Percentage of Marsh's 117 Fortune 500 clients that:

Purchase	Percentage
Purchase only Side A coverage	12%
Purchase excess Side A coverage	48%
Purchase traditional Side A, Side B and some form of Side C coverage.	88%

Source: Marsh Inc.

PHOTO: MICHAEL MARCOTTE

Directors and officers liability coverage was one of many topics that risk managers and other attendees discussed last month at the Risk & Insurance Management Society Inc.'s 2005 Annual Conference in Philadelphia.

How much is enough?

While there is no absolute protection available to shield an executive from taking a personal hit to his or her assets, Side A coverage is looking increasingly attractive for ensuring that executives have sufficient coverage available when a loss is insurable, market executives say.

But when asked by conference attendees how much coverage is adequate now, the RIMS session panelists said they had trouble offering a recommendation, given the growing number of D&O settlements exceeding $100 million.

Elsewhere at the conference, risk management consultant Gabriel L. Lugo, senior vp of Taylor Risk Consulting of Addison, Texas, suggested basing the Side A purchase decision on how financially strong the company would be "if everything goes wrong." Traditional Side A coverage could be sufficient for directors at financially sound companies, he said. A separate tower of Side A coverage may be necessary to protect directors at weaker companies, he said.

> "There's no product that, with absolute certainty...you're going to have absolute protection if everyone is demanding your personal assets."
>
> **John Keogh**
> **National Union Fire Insurance Co. of Pittsburgh, Pa.**

On average, risk managers purchase Side A tower limits equal to about 50% of their traditional D&O limits, Liberty Mutual's Mr. Dubois said.

How much Side A coverage to purchase is not the only factor in risk managers' purchase decisions. For example, risk managers have to weigh the cost impact of purchasing difference-in-conditions Side A tower coverage rather than excess coverage.

The DIC coverage drops down to fill gaps in traditional coverage and could provide first-dollar coverage if a bankruptcy court were to freeze the traditional program, noted St. Paul Travelers' Mr. Nestheide. But, depending on the risk, the DIC coverage could be 10% to 20% more expensive, he said.

Offshore trust option

An alternative D&O risk financing idea that has been floated recently is an offshore trust, noted Liberty Mutual's Mr. Dubois. Conceivably, setting up the trust offshore would guard the funds more effectively from bankruptcy courts if the company were to fail, he explained.

Mr. Dubois said risk managers have not turned to such trusts yet, because questions remain about whether they would be shielded from bankruptcy courts.

One risk manager who did not want to be identified raised another concern about D&O trusts.

The risk manager expressed concerns that shareholders would prefer to see the capital returned to them as dividends or reinvested in the company. The risk manager also said that shareholders might become upset if the company could not reclaim the trust assets at a later date if D&O liability insurance market and litigation conditions were to improve.

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Pension proposal does little to promote defined benefit plans

By William J. Miner

Q: What impact will the Bush administration's proposed pension funding reform have on my company's defined benefit pension programs?

A: The new year in Washington began with a buzz surrounding defined benefit pension funding reform.

In January, Labor Secretary Elaine Chao delivered a speech outlining the Bush administration proposal. The speech outlined three principles: strengthen the funding rules; strengthen the U.S. Pension Benefit Guaranty Corp. by increasing the premiums it receives and limiting the growth of benefit liabilities for certain "at-risk" organizations; and increase disclosures regarding plan funding.

Since that presentation, more details have been issued by the administration, and congressional committees have started discussing the finer points of the proposal. At the time this article was written, no legislation had been introduced in Congress.

Many of the reforms included in the proposal are needed in order to ensure that pension plans deliver the benefits promised to workers. But the proposal seems to ignore one important fact about defined benefit plan sponsorship: that it is entirely voluntary.

While we agree that the funding rules need to be strengthened, the proposal at several points provides incentives for employers not to sponsor defined benefit plans.

The proposal does nothing to encourage employers to continue sponsoring defined benefit plans, much less to establish new defined benefit programs. Without additional incentives for plan sponsorship, the number of plans will continue to decline.

This decline has been alarming. According to the PBGC's Pension Insurance Data Book 2003, the number of single-employer defined benefit plans insured by the government agency dropped from an all-time high of 112,000 plans in 1985 to 29,500 plans in 2003, a decline of 74%.

The administration's proposal covers a broad spectrum of pension management details, but this article will focus on the changes that provide disincentives for plan sponsorship and suggest some potential incentives to encourage plan sponsorship.

First, the administration has proposed accelerated funding requirements based on companies' financial health. The administration's proposal would distinguish financially healthy companies from unhealthy ones, based on the credit rating of their senior unsecured debt.

> The proposal seems to ignore one important fact about defined benefit plan sponsorship: that it is entirely voluntary.

While the proposal would require all plan sponsors to fund 100% of their funding target, the target for unhealthy companies would be determined based on a different set of actuarial assumptions. The assumptions used for unhealthy companies would be designed to better reflect how participants would retire and elect benefits if the sponsor were to go into bankruptcy.

These unhealthy company assumptions would produce a greater funding target than that of a healthy company. Funding requirements would increase if a company's credit rating were to move from investment grade to noninvestment grade. While this makes sense for protecting the solvency of the PBGC, it would provide a strong disincentive for plan sponsorship by any organization that has anything less than pristine credit quality.

Second, under the administration's proposal, three notable changes would introduce added contribution requirement volatility for plan sponsors:

- **The elimination of asset smoothing.** The proposal would permit only the use of the market value of assets in determining funding requirements. While this change would follow the direction of international and U.S. changes being adopted for financial statements, a number of plan sponsors smooth gains and losses over several years—five years is common—to ride the out crests and valleys of the financial markets.
- **The use of a less-stable yield curve.** The interest rate used to determine the funding target would be based on a 90-business-day average yield curve for high-quality corporate bonds. The interest assumption for the current law is based on a four-year average corporate bond rate. The shorter averaging period would create greater volatility in the interest assumption, and consequently, in funding requirements. The proposal calls for a two-year phase-in of the yield curve approach, but that would offer scant relief to plan sponsors.
- **The elimination of the use of credit balances to offset future requirements.** Current law allows a plan sponsor to contribute more than the minimum required to its defined benefit plan. Sponsors who do so create a credit balance that can be used at a later date to meet minimum requirements. Similar to a "rainy day" fund, if a sponsor contributes more than is necessary when times are good, it can use the rainy day fund when times are bad. The administration's proposal would eliminate the credit balance, removing the ability of sponsors to smooth out upward spikes in contribution requirements.

Most chief financial officers place a priority on the predictability of their pension contributions. The increased contribution volatility caused by these changes would create incentives for sponsors to terminate their programs.

Many sticks, no carrots

The administration proposal could be improved by providing incentives for plan sponsorship. We suggest consideration be given to the following:

- **Provide a tax credit for plan funding.** One approach might be to provide a credit for funding the plan beyond the minimum requirement.
- **Provide an additional tax credit for new defined benefit plan formation.** The sponsor of a new plan might receive additional credits for any funding that occurs in the initial years of the plan's existence.
- **Simplify the labyrinth of pension law and regulation.** The elephant in the room that no one in the pension industry talks about is that no defined benefit plan in the United States is in compliance with all laws and regulations. And in most instances, the noncompliance is not for lack of effort or resources. Rather, the laws and regulations are out of control. Real simplification will begin with Congress ending the duplicative regulation and oversight of defined benefit plans by both the Treasury and Labor departments. A review of the rules on the books needs to follow shortly thereafter.

More corporate welfare?

It's reasonable to question whether employers need another tax break from the federal government. But when viewed in the context of our faltering Social Security system, these incentives are good public policy, not corporate welfare.

Over the last several decades, American workers have been increasingly exposed to the vicissitudes of market returns in their 401(k) plan retirement savings. Given the financial state of Social Security, it's safe to say that its defined benefit promise is going to shrink.

The Bush administration proposal would serve only to reduce the safety net for American workers through the continued shrinkage of the defined benefit system. We are moving down the road toward having all retirement savings subject to market returns. We question whether that is good public policy and suggest that legislation that provides incentives for the creation and maintenance of defined benefit plans is in the best interests of the American worker.

Our experience suggests that those in Washington are influenced by the voices of plan sponsors who share their experiences and concerns. If your organization feels compelled to speak up about how this proposal would affect your company, it should do so as quickly as possible. Both the House and Senate held hearings in March, and momentum is building to introduce meaningful legislation in both houses.

Without the involvement of the plan sponsor community, we'll bear witness to the continued erosion in defined benefit plan sponsorship, and we don't think that's where this funding reform proposal was intended to take us.

Would you like advice from an experienced colleague on a risk management, benefits management or actuarial problem? Four regular features in the Perspectives section of Business Insurance can give you some answers.

Ask A Casualty Actuary, Ask A Benefit Actuary, Ask A Benefit Manager and Ask A Risk Manager answer written questions from readers on risk and benefits management issues and actuarial problems.

This month's column on actuarial questions in the benefits field is written by William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago. Mr. Miner was assisted in the preparation of this column by Valerie Lopez-Zinzer, a consultant in Watson Wyatt's Chicago office. Address your questions to ASK, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Lloyd's sees interest in standalone terror coverage

By SARAH VEYSEY

PHILADELPHIA—The uncertainty about whether the Terrorism Risk Insurance Act will be renewed at the end of the year is prompting interest in standalone terrorism cover, according to a panel of Lloyd's of London underwriters.

The group of underwriters was gathered for a panel discussion at the Risk & Insurance Management Society Inc.'s conference .

Tina Kirby, underwriter for specialty lines at Beazley Group P.L.C. in London, said that some buyers whose policies have an April renewal, are considering purchasing standalone terrorism policies for the three months of 2006 that they may be uncovered for terrorism if TRIA is not renewed.

This poses risk managers a conundrum, however, she noted, because if the act is renewed they have bought cover they may not need, but if TRIA is not renewed then they would likely have bought cover at a less expensive rate than will be offered next year if the act is not renewed and demand for cover therefore increases.

For risks with little terrorism exposure—"the potato farm in Idaho-type risks"—prices for standalone terrorism cover are decreasing, noted Ms. Kirby.

But for properties in areas such as Manhattan or Chicago, prices are still firm as underwriters try to manage their aggregates, noted Ms. Kirby.

For some other lines of business rates are decreasing, the panel said.

Prices are decreasing for large, risk-managed property accounts, except for some accounts which have Florida exposure, according to Conor Finn, managing director of the nonmarine property division of Markel International, the London-based unit of Markel Corp.

In the technology, media and telecommunications risks sector, prices are coming under pressure, noted Mr. Bolton.

For some marine risks, prices are increasing, according to David Foreman, chief underwriting officer of Wellington Underwriting P.L.C. in London.

This is particularly true for marine energy risks, he noted, because many underwriters suffered large losses from Hurricane Ivan last year.

Wendy Baker, president of Lloyd's America Inc., moderated the panel discussion.

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Spitzer's tactics on unethical acts questionable

By Myron M. Picoult

If Rip Van Winkle, an aficionado of the property/casualty insurance industry who fell asleep about two years ago, were to suddenly awaken, I suspect he would exclaim, "What the hell happened?"

I have been unflagging in my belief that the property/casualty industry model needed reform. While I have no problem with New York State Attorney General Eliot Spitzer's crusade against unethical behavior among corporate executives and boards, I think the process he and his colleagues are using to achieve their goals is at best not good.

Using a nationally televised program to accuse an individual and an entity of wrongdoing is inappropriate. I also find it curious that Mr. Spitzer used a sledgehammer to go after Marsh & McLennan Cos. Inc., appears to be using the same implement against American International Group Inc., apparently used a fly swatter on Aon Corp. and handled Chubb Corp. and General Reinsurance Corp. with kid gloves. While one can recognize Mr. Spitzer's political ambitions and the fact that he and his colleagues/followers are on one side of the tort fence, the sledgehammer, fly swatter and kid glove approaches have to be reconciled.

From my perspective, Mr. Spitzer and his band of Merrymakers are eviscerating the concept of materiality. If they do not like something, it is deemed as being wrong. They are clearly hung up on the concept of "managing earnings." There indeed may have been abuses with finite insurance, but regulatory guidelines and clarity have been murky for an extended time frame. All of a sudden, what had been vetted and accepted by regulators, accountants, actuaries, the Securities and Exchange Commission, the National Assn. of Insurance Commissioners and rating agencies has been thrown out the window.

Reinsurance is used by both primary insurers and reinsurance entities to protect against unusual shock losses. If one were to construe this as earnings management, so be it. However, when an airline uses hedging techniques to protect itself against the shock of higher fuel prices, isn't that a form of earnings management? Do finite covers have an effect on the buyer's earnings? Sure. But so does traditional insurance, and, likewise, business interruption insurance has a smoothing element.

The P/C industry has an inherent element of earnings volatility. Interestingly, no one in the industry has had the intestinal fortitude to publicly address what could happen if the ability to "smooth earnings" were eliminated or curtailed.

Clearly, there would be greater earnings volatility, price/earnings multiples would likely erode, and the industry's ability to raise capital could get more difficult, or at least the cost of capital would rise. Rating agencies would want more capital placed into these entities, which would put additional pressure on the ability of most insurance entities to meet already elusive ROE targets. There could also be an aura created where, several years into a down cycle, if an insurer were materially outperforming its peers, one could hear the cries of some market players: "They may be playing with the numbers!" There is sufficient blame to be spread among all the industry watchdogs, who for a long time failed to provide clear and enforceable standards for reinsurance transactions.

What comes out of this mess is the clear need for insurers to go to extra lengths to underscore the legitimacy of their accounting and underwriting. Simply put, the business model has to change.

The marketing approach has to become more focused and, where applicable, "value added" has to be eloquently articulated. Insurers have to become "smarter" underwriters and stop hiding behind the fact that they got swept up in a rising tide of pricing. With few exceptions, the expense side of the equation for this industry is totally out of sync with reality. Industry efforts to pare this ratio over the years have not been very successful. Disclosure/transparency in today's new world of corporate governance should be forthrightly addressed by all industry participants. Clearly, the industry's obtuse accounting and unusual nomenclature do not help the situation.

Finally, the key to what could really differentiate insurers is technology. This is an industry of haves and don't wants! Relatively speaking, the industry is operating in the Dark Ages compared to other financial companies. This must change.

The bottom line is the industry has an opportunity to separate itself from the rest of the pack. This industry has to think out of the box and discard initiatives to further buttress the protective moat around the castle. By the way, the drought in profitability has been drying the moat!

Myron Picoult is an independent insurance consultant in New York. He is a past president of the Assn. of Insurance & Financial Analysts and was a member of the New York Society of Security Analysts. He can be reached at mpicoult@aol.com. An archive of his columns for BI can be viewed at www.businessinsurance.com.

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PHOTO: COURTESY SPENCER EDUCATIONAL FOUNDATION

Leaders of the Spencer Educational Foundation and New York RIMS Chapter pose with Gayle Regan, center, to announce the Thomas Regan Scholarship. From left: Scott French, P. Richard Hackenburg, Jeanne Braun, Audrey Rampinelli, Andrew Walpole, Ms. Regan, Dante Petrizzo, Brendan Cahalan and Zakia Campbell.

Spencer gets funds to establish scholarship honoring 9/11 victim

By REGIS COCCIA

PHILADELPHIA—The Spencer Educational Foundation Inc. raised nearly $200,000 during the Risk & Insurance Management Society Inc. Annual Conference & Exhibition, the foundation's outgoing chairman said.

Also announced during RIMS was a donation of $100,000 from the New York chapter of RIMS to establish a scholarship in memory of Thomas Regan, a former chapter president who was killed in the Sept. 11, 2001, terrorist attack on the World Trade Center, said P. Richard Hackenburg, who recently stepped down as the Spencer chairman.

Jeanne H. Braun succeeded Mr. Hackenburg as the foundation's chair. Ms. Braun is senior vp of hospitals and special programs at Physicians' Reciprocal Insurers in Manhasset, N.Y.

"Tom was a wonderful individual who was well regarded and respected, a good human being," Mr. Hackenburg said. "He was a loved individual and family man who lost his life on Sept. 11."

Mr. Hackenburg said he was "honored that Spencer was chosen as the vehicle to establish the memorial for Tom Regan. Through the years, we will fulfill the pledge and our commitment to Tom's memory."

The RIMS chapter wanted to recognize Mr. Regan, who was a risk manager for Becton-Dickinson Co. before joining Aon Corp. in New York, for his service and commitment to education, said Ira Cohen, manager of corporate risk financing at TIAA-CREF Individual & Institutional Services L.L.C. in New York, who is vp and secretary of the chapter.

The scholarship program will annually award scholarships of $5,000 to undergraduate students from the New York metropolitan area, including Connecticut and New Jersey, Mr. Hackenburg said.

In other fund-raising developments, Spencer's John T. "Jack" Lockton III Memorial Scholarship program (*BI*, April 4) now exceeds half a million dollars, he said. The scholarship, in memory of the founder of the Kansas City, Mo.-based brokerage firm Lockton Cos., focuses on aid to undergraduate students who are not just in insurance but also in business administration and who have a "passion for business and a burning desire to make a difference in the business world," Mr. Hackenburg said.

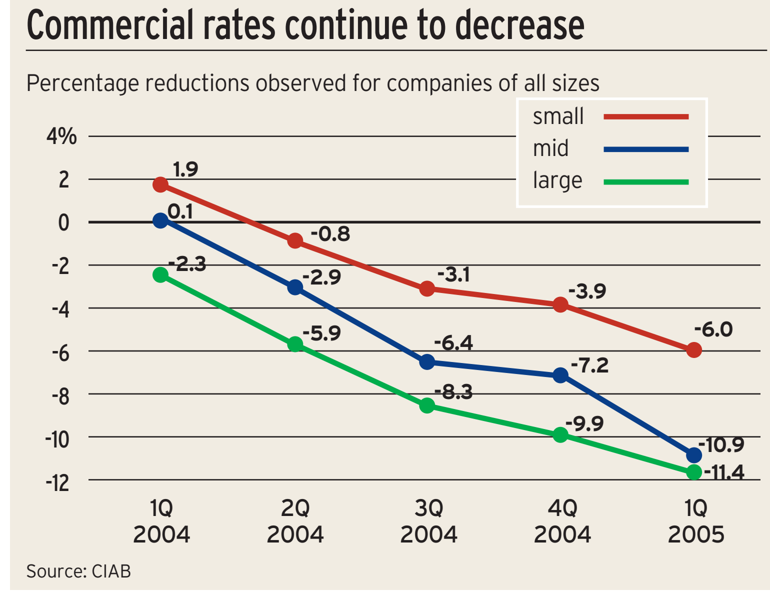
The 14th annual Spencer/Gallagher Golf Tournament, held April 17, raised about $76,000 for the foundation, according to tournament organizer Butler Bourgeois of Arthur J. Gallagher & Co. Final tallies from the other Spencer sporting events were not immediately available.

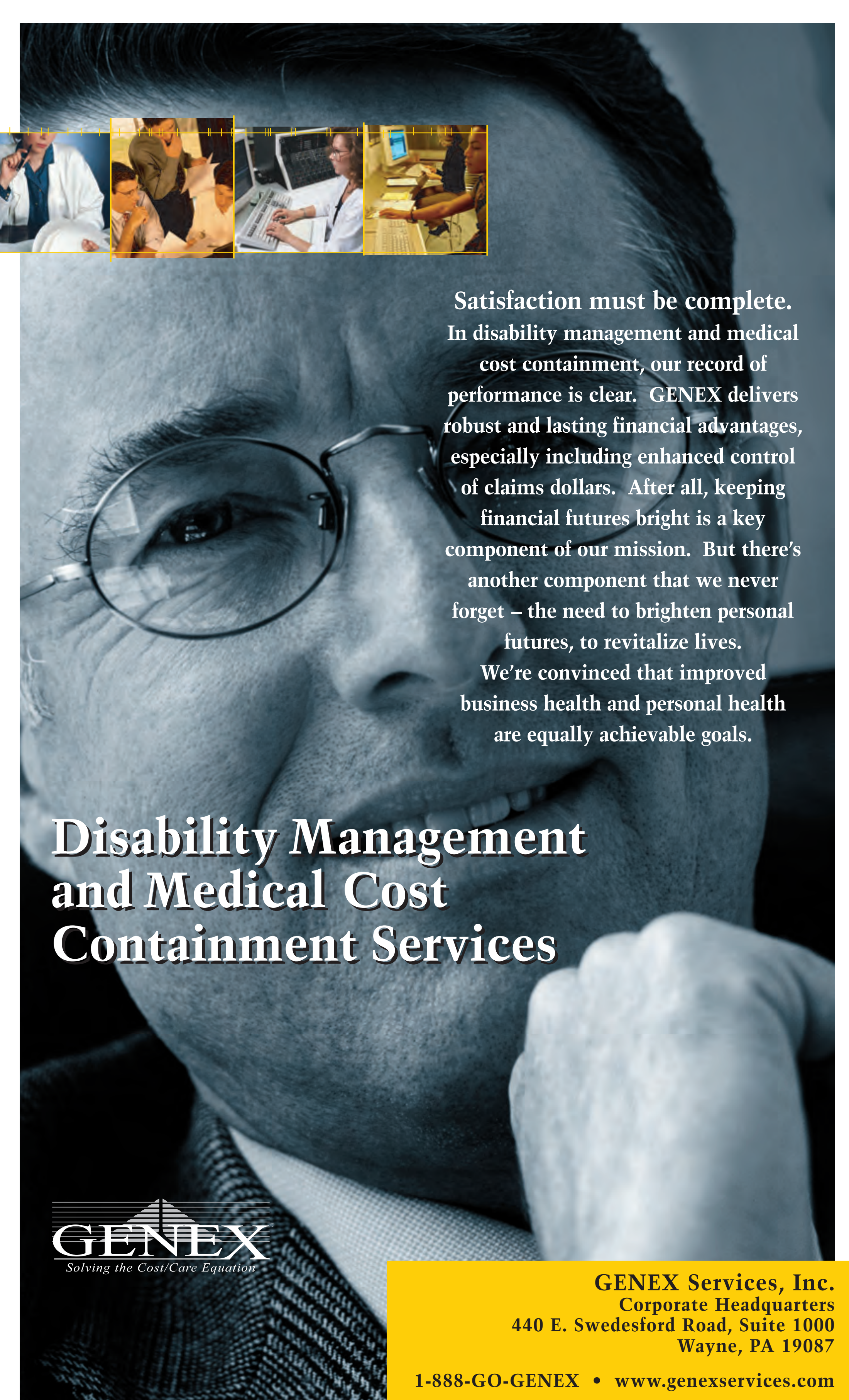
While Spencer raised a large amount in a few days, it has also made numerous grants and scholarship awards over the past year, Mr. Hackenburg said. "We've given out in excess of $230,000 to over 30 deserving students," he said. "And we spent an additional $80,000 to $100,000 in sponsoring the Risk Manager in Residence program, internship programs and the Anita Benedetti Scholarship at RIMS," he said.

Information on the Spencer Educational Foundation and its programs is available at *www.rims.org*.

Errors & omissions

A chart in the April 25 issue omitted information identifying commercial lines rate reductions as average percentages. The correct chart is reprinted below.





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Between the Lines

Compiled by Joanne Wojcik

Chairman of the board game

When you play the new Berkshire Hathaway Diamond Edition Monopoly Game, you'd expect payday to be a little more lucrative, given the fact that the company's stock trades at more than $80,000 a share.

But USAopoly, which licenses customized editions of the venerable board game, requires that standard Monopoly money be used, in their traditional denominations—with no bills larger than $500. And passing "Go" still nets only $200. That means it could take years—which is how long the game sometimes seems to last—to accumulate enough cash to buy even a sliver of Berkshire stock.

The Berkshire Hathaway Diamond Edition Monopoly game can be ordered online at *www.borsheims.com.*

The game, released April 25 by Omaha-based Borsheim's Fine Jewelry & Gifts in conjunction with Berkshire's annual shareholder meeting, has proved to be so popular that it sold out in only a few hours. But Borsheim's, which is owned by Berkshire, is taking future orders on its Web site, *www.borsheims.com.*

It also has held back several games to sell at the annual board meeting this week, according to Adri Geppert in Borsheim's marketing department.

Ms. Geppert explained that every year Borsheim's corporate gift team comes up with about 10 Berkshire memorabilia items—such as logo pens and stadium blankets—to produce and sell during the annual meeting. A couple of years ago, a corporate gift sales associate suggested a Berkshire Monopoly game. When they found out it would take several months to create, they tabled the idea for a year. It is now ready for release, Ms. Geppert said.

In place of the traditional Monopoly game pieces, such as the race car and thimble, the Warren Buffett/Berkshire version uses tokens that represent its member companies: An ice cream cone for Dairy Queen, a cowboy boot for Justin Brands and, of course, a gecko for GEICO Auto Insurance.

Insurance companies have taken the place of the railroads: National Indemnity, GEICO, U.S. Liability and General Reinsurance. Among the renamed properties are Borsheim's as Boardwalk and the Nebraska Furniture Mart as Park Place. In addition, the Community Chest and Chance cards—including the coveted "Get Out of Jail Free" card—feature the likenesses of Mr. Buffett and Berkshire Vice Chairman Charlie Munger.

"Warren loved the idea and actually reviewed much of the content," Ms. Geppert said.

Uninsured may get compacted cars

While drivers in the United States may face the possibility of losing their licenses if they get caught driving without insurance, uninsured motorists in the United Kingdom could potentially face a more crushing penalty: Their cars will be destroyed.

Legislation scheduled to be introduced by the Labour Party in the next Parliament, which begins this month, would give British police the power to seize and destroy the vehicles of uninsured drivers.

Britain's Assn. of Chief Police Officers welcomes the proposal, citing studies that show uninsured motorists are 10 times more likely to be alcohol-impaired and six times more likely to be operating unsafe vehicles.

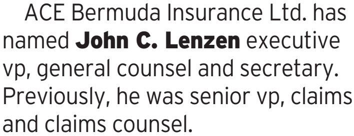
Having insurance against third-party liabilities is a legal requirement under Britain's 1988 Road Traffic Act. The British government estimates, though, that as many as 5% of U.K. drivers are uninsured, compared with just 1% of drivers in other European Union member countries.

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

COMINGS & GOINGS

Mr. Lanier

Mr. Ivey



Ms. Lessin

Brokers:

West Point, Ga.-based J. Smith Lanier & Co. has named **D. Gaines Lanie**r chairman. Mr. Lanier will continue as chief executive officer.

Gary Ivey, who has been chief operating officer of Lanier since 2000, also will serve as president.

Steve Hearn has been named chairman of London-based Glencairn Ltd., in addition to serving as chief executive.

Also at Glencairn, **Angus Simpson** has been appointed managing director. Previously, he led the specialty risk division.

Tim Ronda has been named senior vp of casualty solutions for the Benfield Group. Mr. Ronda, who will be based in New York, was a senior vp at Guy Carpenter & Co. Inc.

Martin Bewsey has joined the property portfolio division of London-based Heath Lambert Group as deputy chairman. Previously, he was group insurance manager for Rodamco N.V.

Also at Heath Lambert, **Lee Warner**, previously managing director of Heath Lambert Asia Pacific Ltd., has been named managing director of the newly formed Heath Lambert Far East in Kuala Lumpur, Malaysia.

Other providers:

TC3 Health L.L.C. has appointed **Pamela Bower** director of business development in Dallas. Previously, Ms. Bower was a regional sales director for GTESS Corp.

Leboeuf, Lamb, Greene & MacRae L.L.P. has named **James R. Dwyer** a partner in the firm's Chicago office. Previously, he was a leader of the reinsurance practice group of Lord, Bissell & Brook L.L.P.

Barry D. Bloom has joined Memphis, Tenn.-based Sedgwick Claims Management Services Inc. as senior vp and director of integrated services. Previously, Mr. Bloom was a principal for Aon Risk Consultants.

ChapterHouse L.L.C. has named **Eileen O'Shea Auen** a managing partner. Before joining the Chicago-based health care consulting firm, Ms. Auen was president of HealthNet of the Northeast.

Joseph Ruggiero has been promoted to partner of Garden City, N.Y.-based Chernoff Diamond & Co. L.L.C., an employee benefits consulting company. Previously, he was executive vp of the retirement plans division.

Insurers:

Philadelphia-based ACE USA has named **David J. Brosnan** president of ACE Casualty Risk. Previously, Mr. Brosnan was senior vp and zone underwriting officer for Chubb Commercial Insurance.

Also at ACE, **James Robinson Huber** has been named senior vp and regional executive, Southeast region, in Atlanta. Previously, he was vp in the commercial risk management group of Wachovia Insurance Services.

And **Larry Goanos** is the new senior vp and financial services industry practice leader of ACE USA in New York. Previously, Mr. Goanos was senior vp for ACE Professional Risk Management & Professional Liability Group.

ACE Bermuda Insurance Ltd. has named **John C. Lenzen** executive vp, general counsel and secretary. Previously, he was senior vp, claims and claims counsel.

Mike Miller is the new COO of OneBeacon Insurance Group in Boston. Before joining OneBeacon, Mr. Miller was co-COO of St. Paul Travelers Cos. Inc.

Maggie Lopez is the new senior vp-marketing for Uni-Ter Underwriting Management Corp. in Atlanta. Previously, she was a health care practice leader for Marsh & McLennan Cos. Inc.

Kansas City, Mo.-based GE Insurance Solutions has named **Patrick O'Brien** business leader for its accident and health division. Previously, he was senior vp and COO for property insurance and services.

Also at GE, **Tim Madden** has been named leader of the company's brokered reinsurance business in Barrington, Ill. Previously, he was a managing partner at IAT Reinsurance Group.

Managed care:

Karen Lessin has been promoted to senior vp, internal auditor and corporate compliance officer at Philadelphia-based Independence Blue Cross. Previously, Ms. Lessin was vp of audit and corporate compliance.

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Lloyd's members revive court battle

Names say market leaders were guilty of "misfeance in public office"

By CAROLYN ALDRED

LONDON—Judgment will be handed down soon in the latest chapter of a long-running legal dispute between Lloyd's of London and individual investors.

A group of 84 such investors–known as "names"–applied to London's High Court last month to amend pleadings to include a claim of "misfeasance in public office" in an action first brought against Lloyd's in 1996.

The case, originally known as *Jaffray vs. Lloyd's*, centers on allegations that senior figures at Lloyd's had, between 1978 and 1988, knowingly concealed the extent of asbestos-related losses about to hit the market.

The names charged that many had been duped into joining Lloyd's as part of a "recruit to dilute" policy, under which new capital was hastily brought into the market to soak up impending asbestos-related losses (*BI*, Nov. 6, 2000).

The Court of Appeal threw out allegations of fraud against Lloyd's in July 2002, but the names are now seeking to amend the pleadings to include a claim of "misfeasance in public office."

The tort of misfeasance in public office is a developing area of law relating to the lack of good faith by officials, legal source say.

London's High Court ruled last month, in the case of *James Ashley Jr. and Others vs. Chief Constable of Sussex Police*, that in order to establish a misfeasance in public office, an excess or abuse of power needs to be shown or, in cases of omission, a deliberate omission involving an actual decision not to act.

An application to amend the lawsuit was held before Justice Andrew Smith last month, and a ruling is ex-

See NAMES/page 39

PHOTO: NEWSCAST

Mr. Hay Davison

PHOTO: AFP

Rescue workers remove injured passengers from the site of a train crash in Amagasaki, Japan, last week. Liability coverage for the railroad was led in the Japanese market by Tokio Marine & Nichido Fire, sources say.

Train crash in Japan claims at least 100

AMAGASAKI, Japan—Liability insurance coverage to respond to the fatal derailment of a Japanese commuter train was written in the Japanese market, sources said.

Authorities are still trying to determine why the West Japan Railway Co. train derailed last Monday, killing at least 100—including the driver—and injuring more than 400 others. The seven-car commuter train, which was carrying 580 passengers, left the tracks near Amagasaki, a suburb of Osaka, and slammed into an apartment building, trapping riders and heavily damaging the building.

The railroad's liability coverage was written in the Japanese market and led by The Tokio Marine & Nichido Fire Insurance Co. Ltd., according to sources. The Tokyo-based insurer could not be reached for comment. The cover was co-insured in Japan, sources said.

Police raided the railway's office shortly after the crash. Koji Takayama, assistant manager of international affairs with West Japan Railway, would not say whether authorities took documents or questioned workers. No charges have so far been filed.

As for property damage, "it is very difficult to calculate," said Mr. Takayama.

—By Sarah Veysey and Michael Bradford

London market must unite to offer contract certainty

Market execs offer plan for clarity

By SARAH VEYSEY

LONDON—London market underwriters, brokers and insurance buyers must work together to meet a 2006 deadline to achieve contract certainty, market executives say.

Last week, the joint Market Reform Group, comprising Lloyd's of London and the London company market, set out a blueprint to help companies comply with a U.K. Financial Services Authority deadline for delivering contract certainty to insurance buyers by the end of 2006.

On Thursday, Nick Prettejohn, chief executive officer of Lloyd's and the chairman of the Market Reform Group, wrote to the chief executives of companies operating in the London market, setting out the group's plan to ensure they meet the FSA deadline.

"Contract certainty is crucial if the London market is to remain competitive, control its risks and deliver the service our customers demand," Mr. Prettejohn said in a statement outlining the blueprint.

And Tony Medniuk, chairman of the International Underwriting Assn., which represents London market insurers, said that "the benefits (of contract certainty) in terms of increased efficiency, greater clarity and improved customer service are overwhelming."

"A market solution is infinitely preferable to one imposed by a regulator," said Mr. Prettejohn in the statement. "The FSA has set us a tight deadline, and the clock is ticking," he noted.

The London-based FSA is the U.K. insurance regulator; it took over the regulation of insurance brokers in January.

In December 2004, John Tiner, chief executive of the FSA, said that, as part of the regulator's approach to broker regulation, it would expect the insurance industry to find a solution to the question of contract certainty.

In his letter, Mr. Prettejohn said that the Market Reform Group has adopted the following working definition of contract certainty: "Contract certainty is achieved by the complete and final agreements of all terms…between the insured and insurers before inception."

Mr. Prettejohn said that by March 2006, he hopes that 99% of the slips placed in the London market will be compliant with standards set out by the London Market Principles project that require that certain information about the risk being underwritten is clearly included on all slips.

"The 99% target is a first and es-

See CONTRACT/page 39

> "Contract certainty is crucial if the London market is to remain competitive, control its risks and deliver the service our customers demand."
>
> **Nick Prettejohn**
> **Lloyd's of London**

Updates

Munich Re, Converium receive subpoenas

Reinsurers Munich Reinsurance Co. and Converium Holding Ltd. said last week they had received subpoenas from New York Attorney General Eliot Spitzer and the U.S. Securities & Exchange Commission about their reinsurance contracts with New York-based bond insurer MBIA Inc. Munich, Germany-based Munich Re and Zug, Switzerland-based Converium said they would cooperate fully with the authorities but declined to give any further details of the probe. Earlier this month, AXA Re, the reinsurance arm of Paris-based AXA S.A., said it had received a similar request for information about reinsurance deals with MBIA from U.S. authorities.

Atrium profits up 75% over 2003

Atrium Underwriting P.L.C. posted profits of £33.0 million ($63.2 million) for 2004, up 75% over 2003. London-based Atrium, which operates Lloyd's of London managing agency Atrium Underwriters Ltd., recorded gross written premiums of £142.5 million ($273.0 million) for 2004, a 10.9% increase over 2003. Atrium attributed the higher profits to favorable underwriting conditions, profits from 2003 that were not accounted for until 2004 and increased commissions from its managing agency. Atrium said it recorded a net loss of £9.2 million ($17.63 million) from the hurricanes that hit the United States during the second half of 2004.

FSA appoints Cole enforcement director

Margaret Cole has been appointed director of enforcement at the London-based Financial Services Authority. Ms. Cole, currently a partner in the London office of the law firm of White & Case L.L.P., will take up her new role in July. She succeeds Andrew Proctor, who has been appointed regional head of compliance for Deutsche Bank. The FSA is the United Kingdom's insurance regulator; it took over the regulation of insurance brokers in January.

Moody's upgrades Hannover Re

Moody's Investors Service in London has upgraded its ratings of Hannover Reinsurance Co. to A3 from Baa1. The rating agency said the ratings upgrade reflected the company's reduction in gross written premiums and an increase in its shareholders' equity, among other factors.

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REQUEST FOR PROPOSALS

Dallas Area Rapid Transit is seeking competitive sealed proposals from firms qualified to offer group basic life, accidental death and dismemberment, supplemental life, retiree life, supplemental accidental death and dismemberment and dependent life.

Solicitation information is provided as follows: Solicitation Number P-1009340; Issue date - April 21, 2005; Pre-proposal conference - April 28, 2005, 9AM. Proposal due date - May 12, 2005, 2:00 PM. Plan effective date - January 1, 2006.

DART reserves the right to reject any or all offers and to waive any or all informalities. For copies of the solicitation and additional information contact Lenee Goyette at **lenee_l_goyette@aon.com**, fax (817) 339-2016 or Andrea Silva at **andrea_s_silva@aon.com**, fax (817) 339-2016.

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF BOARD OF DIRECTORS OF **CAVELL INSURANCE COMPANY LIMITED**, DEBTOR IN FOREIGN PROCEEDINGS
CASE NO. 04-B-17990 (SMB)

NOTICE IS HEREBY GIVEN THAT ON APRIL 21, 2005, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") PURSUANT TO 11 U.S.C. § 304. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING TO CONSIDER WHETHER THE BANKRUPTCY COURT WILL (I) ISSUE A PERMANENT INJUNCTION ORDER, PURSUANT TO SECTION 304 OF THE BANKRUPTCY CODE, PROVIDING FOR, AMONG OTHER THINGS, RECOGNITION OF THE SCHEME OF ARRANGEMENT, SUBSTANTIALLY IN THE FORM SET FORTH IN THE AMENDED EXHIBIT "A" FILED WITH THE BANKRUPTCY COURT ON JANUARY 12, 2005, IN THE UNITED STATES AND/OR (II) CONTINUATION OF THE ORDER, WHICH HEARING IS SCHEDULED TO BE HELD BEFORE THE HONORABLE STUART M. BERNSTEIN, CHIEF UNITED STATES BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT, ONE BOWLING GREEN, NEW YORK, NEW YORK ON JUNE 7, 2005 AT 10:00 A.M.

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Proposed Solvent Scheme of Arrangement for Lion City Run-Off Private Limited ("the Company")
The following is an extract from a letter sent to known creditors of the Company.

The Company is proposing to implement a solvent scheme of arrangement pursuant to Section 210 of the Companies Act, Chapter 50 of Singapore and Section 425 of the Companies Act 1985 of England and Wales ("the Scheme"). It is proposed that the Scheme will apply in relation to all of the Company's insurance business which was formerly the Offshore Insurance Fund Portfolio of The Insurance Corporation of Singapore Limited.

For the Scheme to be implemented is must be approved by a majority in number, representing not less than 75% in value, of those creditors who vote at the creditors's meeting. Where creditors have rights which are so different as to make it impossible for them to consult together with a view to their common interest, then they must be split into separate classes and a separate meeting must be held for each class. Since all Scheme Creditors have the same rights and are to be treated in the same way under the Scheme, the Company is of the opinion that it is possible for them to vote in the same meeting. The Company therefore intends to convene only one meeting of Scheme Creditors for the purposes of considering and, if the Scheme Creditors think fit, approving the Scheme.

If you consider you may be a policyholder and would like to be sent a full version of this letter, please email Andrew Campbell at LionCityRun-Off@omniwhittington.com

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF BOARD OF DIRECTORS OF **UNIONE ITALIANA (UK) REINSURANCE COMPANY LIMITED**, DEBTOR IN FOREIGN PROCEEDINGS
CASE NO. 04-B-17989 (SMB)

NOTICE IS HEREBY GIVEN THAT ON APRIL 21, 2005, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") PURSUANT TO 11 U.S.C. § 304. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING TO CONSIDER WHETHER THE BANKRUPTCY COURT WILL (I) ISSUE A PERMANENT INJUNCTION ORDER, PURSUANT TO SECTION 304 OF THE BANKRUPTCY CODE, PROVIDING FOR, AMONG OTHER THINGS, RECOGNITION OF THE SCHEME OF ARRANGEMENT, SUBSTANTIALLY IN THE FORM SET FORTH IN THE AMENDED EXHIBIT "A" FILED WITH THE BANKRUPTCY COURT ON JANUARY 12, 2005, IN THE UNITED STATES AND/OR (II) CONTINUATION OF THE ORDER, WHICH HEARING IS SCHEDULED TO BE HELD BEFORE THE HONORABLE STUART M. BERNSTEIN, CHIEF UNITED STATES BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT, ONE BOWLING GREEN, NEW YORK, NEW YORK ON JUNE 7, 2005 AT 10:00 A.M.

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

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MG Rover pension plans seek protection

Two defined benefit plans would be among the first to apply to U.K. fund

BY SARAH VEYSEY

LONDON—The trustee of two defined benefit pension plans of failed auto manufacturer MG Rover Group Ltd. said it will seek to enter the plans into the U.K.'s newly formed Pension Protection Fund.

Independent Trustee Services Ltd., a unit of London-based broker Jardine Lloyd Thompson Group P.L.C., was appointed as trustee to MG Rover's two defined benefit pension plans in early April after the Birmingham, England-based company went into administration.

ITS said last week that it aims for each plan to enter the Pension Protection Fund, which is based loosely on the U.S. Pension Benefit Guaranty Corp. If they are taken over by the guaranty fund, the MG Rover plans will be among the first corporate pension plans to be supported by the Pension Protection Fund, which began operations on April 6.

The Pension Protection Fund has been set up to safeguard the pensions of defined benefit plan members at companies that fail and leave their pension plans underfunded. It is financed by a levy on employers.

Under the terms of fund, employees who have reached retirement age at the time of an insolvency receive 100% of their benefits, but employees below that age receive 90% of promised benefits.

Currently no pension plans are drawing on the fund, a spokesman for the Pension Protection Fund said. But, in addition to MG Rover, four other companies have applied to have their claim for eligibility for the fund validated, he said. The validation process takes 28 days.

A spokeswoman for ITS declined to comment on the size of the liabilities of the two MG Rover plans.

"Based on initial actuarial advice received by ITS, both schemes are underfunded and the level of benefits available from the Pension Protection Fund at normal scheme pension age (65) are likely to be greater, for the vast majority of members, than the benefits available if the schemes had to wind up by purchasing annuity policies with an insurance company," Chris Martin, managing director of ITS, said in a statement.

John Ralfe, an independent pensions consultant, said in a research note that the larger of the two plans, the MG Rover Group Pension Scheme, likely has a deficit of about £50 million ($95.2 million). That plan has about 7,000 members, according to ITS.

The second defined benefit plan, the MG Rover Group Senior Pension Scheme, has about 100 members, ITS said.

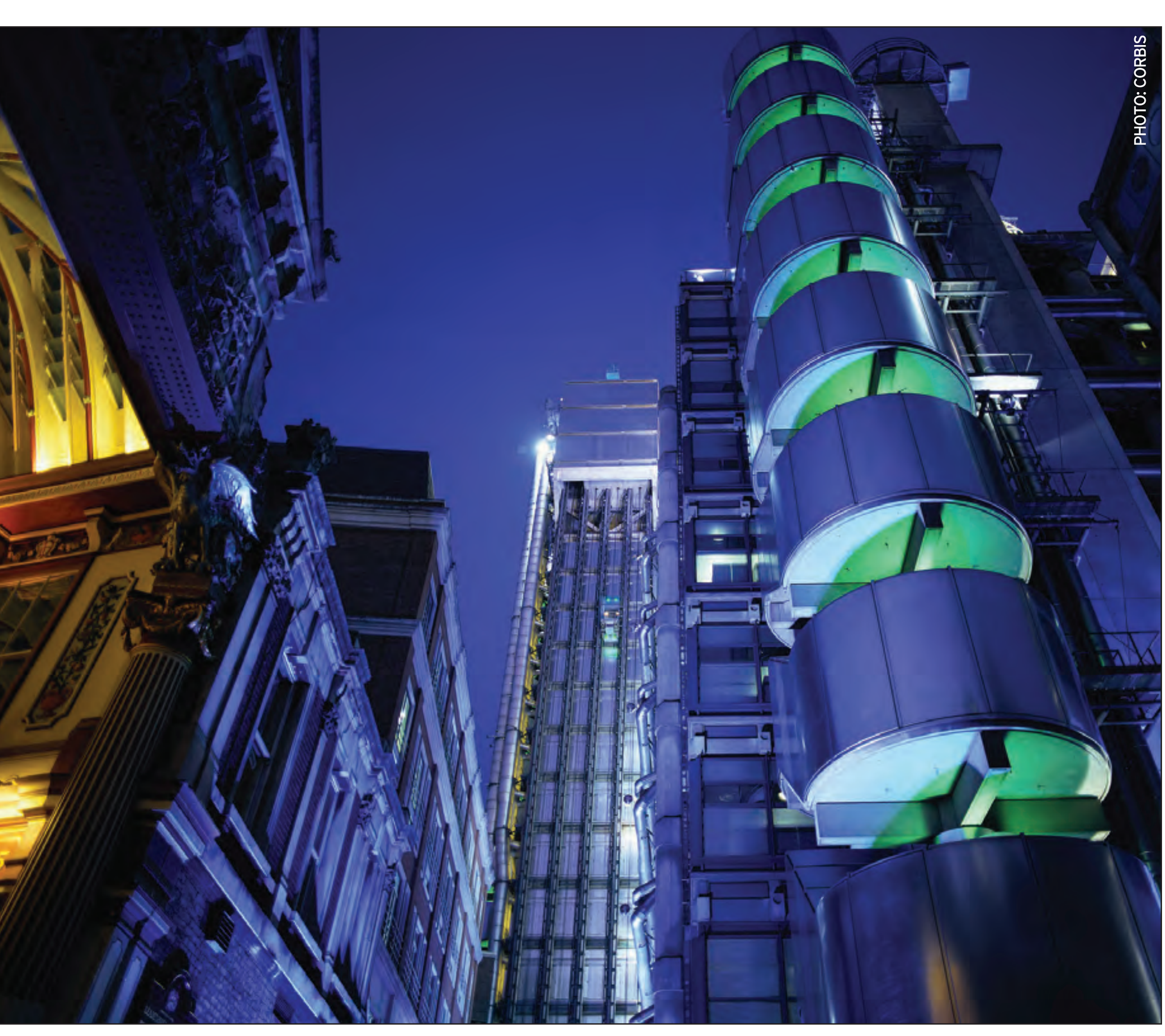
PHOTO: CORBIS

A long-running legal dispute between Lloyd's of London and individual investors that centers on allegations that Lloyd's executives hid the extent of asbestos liabilities, should be ruled on soon.

Names: Lloyd's members revive court battle

Continued from page 37

pected imminently, according to Michael Freeman, a partner in the London law firm of Grower Freeman, which is representing the names.

Among the evidence provided to the judge by the Lloyd's names was a witness statement from former Lloyd's Chief Executive Ian Hay Davison, Mr. Freeman confirmed.

Mr. Hay Davison, managing partner of Arthur Andersen & Co.'s London office from 1973 to 1982, was asked by the governor of the Bank of England to take on the job of chief executive of Lloyd's. He was Lloyd's chief executive and deputy chairman from 1983 to 1986.

Mr. Hay Davison is a late but powerful ally to the names' cause.

> "The names were unsuccessful in their original pleaded case in which they claimed fraud against Lloyd's."
>
> **Lloyd's of London**

He never appeared as a witness for Lloyd's in previous hearings and although asked to appear for the names, he had declined believing that his book on Lloyd's—"A View of The Room," published in 1997—told everything he knew, said lawyer Mr. Freeman.

Mr. Freeman said, though, that subsequent events and the realization that his book could not be used as evidence, persuaded Mr. Hay Davison to act as a witness for the names.

A spokeswoman for Lloyd's confirmed that a ruling is expected soon, noting that "the names were unsuccessful in their original pleaded case in which they claimed fraud against Lloyd's and in their subsequent application to amend to bring a claim of negligent misrepresentation against Lloyd's."

Meanwhile, many of the original 210 Jaffray names no longer are supporting the latest round of litigation. Many of these names, led by Sir William Jaffray, now are seeking a political solution by working with British members of Parliament.

Canadian pensions' funding levels reach record low levels

BY GLORIA GONZALEZ

TORONTO—The financial health of Canadian pension plans continues to deteriorate, reaching its lowest level in the first quarter of 2005, according to a pension index released by Mercer Human Resource Consulting.

The index shows the ratio of pension assets to liabilities of Canadian plans at 80% at the end of the first quarter, just below the record lows seen in 2003.

In addition to the usual culprit of declining long-term interest rates, most Canadian pension plans were negatively affected in the first quarter by new rules for determining the lump-sum value of pension entitlements that became effective in February, said Paul Purcell, retirement leader at Mercer based in Toronto.

"It had a pretty big impact on Canadian pension plans," Mr. Purcell said.

Without the new methodology, which was updated to reflect longer life expectancies and to align pension plan interest rates with actual rates in the marketplace, Canadian pension plans "would have declined, but not by nearly as much," Mr. Purcell said.

The continued weakness of Canadian pension plans means employers will have to contribute more cash to meet funding requirements, he said. A Mercer study estimated that more than 70% of Canadian pension plans were less than fully funded at the end of 2004.

The Mercer report is produced based on pension plan data the company keeps and is updated quarterly. It can be found at *www.mercerhr.ca/knowledgecenter*.

Contract: Plan offered for clarity

Continued from page 37

sential step in addressing the much larger challenge. We must get the basics right and do it quickly," Mr. Prettejohn said in a statement.

And he said the market must adopt a new process that will demonstrate that contract wordings have been fully agreed to and checked before the contract comes into force. The market must find a way to measure contract certainty, he added.

In his letter, Mr. Prettejohn asked each London market company to respond by May 13 and provide the name of a "board-level sponsor" for the contract certainty project within the company.

David Gamble, executive director of the Assn. of Insurance & Risk Managers, said he welcomed the Market Reform Group's blueprint.

But he said the association recognized that much work remained to be done before contract certainty was achieved. "It involves a change in behavior by both the insurance buyer and the insurer" with assistance from brokers, Mr. Gamble said.

One change that must be made if contract certainty is to be achieved is that the placement process must begin earlier, noted Mr. Gamble, because agreeing on wordings, for example, can take time.

The Market Reform Group comprises representatives of Lloyd's and London company market firms, brokers, the International Underwriting Assn., the Lloyd's Market Assn. and the London Market Brokers Committee.

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AIG: Comp accounting probed

Continued from page 1

nounced last week that they would appoint an outside consultant to audit New York-based AIG's reporting of workers comp premiums. Their announcement followed the discovery of a 1992 internal AIG legal memorandum written by E. Michael Joye, who was AIG's general counsel at the time, sources familiar with the matter said.

The document, which warned AIG upper management that the premium misclassification practice was illegal, apparently was ignored and followed similar warnings made years earlier, New York officials allege in a statement.

Mr. Joye had enough influence within AIG to ensure that the insurer's board of directors and Maurice R. Greenberg, who resigned as AIG's chairman and chief executive office in March, saw his memo, a source familiar with the document said.

"It wasn't one of those things that had to filter up," the source said. "I'm not saying it was alarmist. But it was pretty in-your-face kind of language he was using to alert the board to the fact that it was an illegal practice and it should be terminated."

AIG says it is cooperating with investigators and regulators looking into the company's operations and said it corrected the problem in 1997. The practice of misclassifying workers comp premiums stopped at some point at AIG and officials have no evidence that the alleged practices took place at other insurers, a spokesman for Mr. Spitzer said.

One AIG document from the early 1990s estimated that AIG benefited by tens of millions of dollars annually, according to Messrs. Spitzer and Mills. "By booking income as something other than workers' compensation premiums, AIG avoided paying its true share into various workers compensation funds," the statement said.

As of late last week, though, it was unclear which funds, if any, would have benefited if the premiums had been classified as general liability business, a New York Insurance Department spokesman said. The Department currently assesses workers comp insurers 1% of premiums for its Workers Compensation Security Fund.

Such assessments are passed on to policyholders and are usually made obvious to them when policies are bound, said Leroy Raynor, president of the Risk & Insurance Management Society Inc.'s Long Island chapter and corporate risk manager for Leviton Manufacturing Co. Inc. in Little Neck, N.Y. But how those fees are reported to the state is an internal insurer matter, Mr. Raynor added.

During the several years that AIG is alleged to have improperly reported workers compensation premiums, though, the Security Fund did not assess any insurers because of its healthy financial status, according to the insurance department documents.

The New York State Worker's Compensation Board also assesses insurers to operate four separate funds that pay liabilities and administer its benefit system. But the NYSWC did not begin to base insurer assessments on premium volume until 2000,which is after AIG says it corrected the practice in question.

"Our consultant will look to see if it did stop in 1997 as AIG claims," the Insurance Department spokesman said. The consultant will also establish the merit of the 1992 memo warning AIG's upper management that the premium classification practice was illegal and should be stopped, the spokesman added.

Among the issues the consultant is likely to investigate is whether the alleged improper representation of premiums benefited the insurer in other ways, the Insurance Department spokesman said. For example, it will likely look into whether AIG could have gained tax advantages or benefited in setting reserves as a result of the practice, the spokesman said.

One AIG document from the early 1990s estimated that AIG benefited by tens of millions of dollars annually, according to New York Attorney General Eliot Spitzer and Acting Insurance Superintendent Howard Mills.

While New York officials look to see if any money is owed to their workers comp funds, the California Insurance Guarantee Assn. would have benefited if the practice of misrepresenting workers comp premiums as general liability premiums reached the West Coast, said CIGA's executive director, Larry Mulryan.

From 1989 to 2000, CIGA did not assess insurers for workers comp policies but did so on a few occasions for general liability policies, Mr. Mulryan explained.

AIG is the second largest writer of workers comp coverage, ranking after California's State Comp Insurance Fund. AIG wrote 8.8% of the U.S. workers comp market, amounting to $4.43 billion in direct premiums written, according to data for 2003 provided by A.M. Best Co. Inc.

AIG wrote nearly 14% of the direct written workers comp premiums in New York in 2003, according to the New York Compensation Insurance Rating Board.

Asbestos: Bill bogs down in markup session

Continued from page 3

it difficult for Equitas to seek such relief.

Under the bill, the insurers of defendant companies in asbestos liability cases are responsible for paying $46.025 billion into the fund, with another $90 billion coming from the defendant companies themselves and the rest coming from existing asbestos compensation funds. Individual insurers' allocations would not be determined until the bill became law.

The Senate bill also relies on medical criteria to determine the level of compensation available to an individual, with those suffering from mesothelioma—an extremely virulent cancer—being eligible for the maximum $1.1 million. But while Sen. Kennedy, who opposes the bill, argued unsuccessfully that the criteria would too restrictive in some cases and should therefore be relaxed, another member of the committee who also opposes the bill argued that existing criteria would allow some unqualified petitioners to receive compensation.

In fact, said Sen. Tom Coburn, R-Okla., if the bill's assumption about the number of potential lung cancer claimants were understated by only 1%, the fund would end up paying out an additional $47 billion over its projected 30-year existence. Sen. Coburn, who is a physician, also said he believes that the fund could be depleted within three or four years.

Throughout the markup, Sen. Specter repeated that he would be willing to consider additional changes to the bill before it reached the Senate floor but was equally insistent that he wanted to complete the markup in one session.

"If this bill is to pass, we're going to have to vote it out of this committee today," he said.

The markup came two days after an extremely contentious hearing on the bill called by Sen. Specter at the behest of one of the bill's most vocal critics, Sen. Dick Durbin, D-Ill. At one point in the hearing, Sen. Durbin denounced the proceedings as "so sterile, so bloodless," adding "what is unfortunate in the hearing today is that you don't see the faces of victims." At that point, he asked two victims of asbestos-related disease to stand.

This did not amuse Sen. Specter, who admonished his colleague for not having called victims as witnesses, particularly since Sen. Durbin had been permitted to choose three of the witnesses at the April 26 hearing. Sen. Durbin said that he chose expert witnesses instead and complained about what he considered a lack of adequate hearings, which led Sen. Specter to remark "this bill has not suffered from a lack of analysis."

When Sen. Durbin complained again, Sen. Specter replied, "Excuse me, Sen. Durbin, I'm still the chairman here."

Meanwhile, on the other side of Capitol Hill, Rep. Chris Cannon, R-Utah, introduced a bill last week that would require claimants in asbestos injury cases to meet specific medical criteria before their claims could proceed. The measure, H.R. 1957, resembles similar medical criteria legislation that has been approved by several states and individual judicial districts as a means of ensuring that truly sick plaintiffs have their cases heard before those of unimpaired individuals.

United: Deal on pension plans reached with PBGC

Continued from page 3

would face if it were to continue the pension plans–which cover about 120,000 United employees, retirees and dependents–United won't have to shell out any cash to the PBGC for many years to come.

For example, under the terms of a $500 million note to be issued to the PBGC with a 6% interest rate, interest would be paid in the form of more notes or United common stock through 2011. The note itself would not have to be paid off until 2030.

In a statement, PBGC Executive Director Bradley Belt described the agreement, under the circumstances, as being in the best interests of the agency's insurance program and the employers that fund that program through the premiums they pay the agency.

"The PBGC has an obligation to reduce its losses for the protection of workers and retirees, other companies that pay insurance premiums and taxpayers. By reaching a settlement now, we further that goal," Mr. Belt said.

Others say the deal is about the best the PBGC could get. "It is a positive. For the PBGC, it gives them a chance at some recovery," said James Keightley, a partner at the Washington law firm of Keightley & Ashner L.L.P. and a former general counsel at the PBGC.

By contrast, if United, unable to emerge from bankruptcy because of an inability to secure financing, had to liquidate, the PBGC might get nothing at all, Mr. Keightley added.

Under the agreement, "the PBGC gets something of value, and it allows United to emerge from bankruptcy," said Nell Hennessy, president and chief executive officer of Fiduciary Counselors Inc. in Washington and a former PBGC chief negotiator and deputy executive director.

Regardless of how much, if anything, the PBGC ultimately receives from United, the termination of the United plans will result in the agency's single biggest loss. At $6.6 billion, the termination of the United plan far exceeds what now is the agency's biggest loss–the December 2002 termination of the pension plan of failed steelmaker Bethlehem Steel Corp., which the PBGC booked as a $3.7 billion loss.

The agreement with United, while ensuring the PBGC a chance of some financial recovery, could lead to more terminations of underfunded plans by other financially strapped airlines and more losses for the agency, some say.

With a much lower cost structure due to the termination of its pension plans, United will become a far more formidable competitor, putting pressure on other old-line airlines–which also have hugely underfunded pension plans to which they must make big upcoming contributions–to seek termination of their plans.

"This aggravates the pressure on other airlines to eliminate their defined benefit plans," said Mr. Keightley.

The termination of the United plans, though, will not add to the PBGC's reported deficit, which at the end of the agency's last fiscal year was $23.3 billion. The agency earlier had recognized the United plans as a probable loss and thus has included its takeover of them in calculating its deficit, informed observers say.

California: Disclosure bill fails in committee

Continued from page 3

Clark Payan, chief executive officer of the Sacramento, Calif.-based Insurance Agents & Brokers of the West, the IIABA's California association, said he believes the proposal was defeated because the committee felt it was "overreaching" and that Insurance Commissioner John Garamendi "had not identified a problem" that the measure was intended to address.

"The bill just went too far," said Janine Gibford, vp of government affairs in the American Insurance Assn.'s Sacramento office.

Commercial insurance buyers also opposed the measure.

Jeffrey W. Pettegrew, executive director of the Sacramento-based California Self-Insurers' Security Fund., said the proposed legislation "doesn't seem reasonable for the more sophisticated buyers because of the much more complex arrangements" they enter into.

Meanwhile, the California Insurance Department has also proposed regulations focusing on the issues of disclosure and compensation that are intended to provide guidelines to brokers and agents.

A department spokesman said, "The commissioner strongly believes that insurance consumers must know if their broker is working for them or working to pad their own bottom line." The commissioner is "going to continue with these regulations...and try to shine sunlight on this problem," the spokesman said.

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Gallagher: Sets aside settlement funds

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mate" and is based on the size of similar settlements authorities have reached with Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings Ltd., which have been tied roughly to a year's worth of contingent commissions. Collectively, the top three brokers have agreed to pay more than $1 billion to resolve investigations into their use of contingent commissions.

Gallagher's contingent commissions were $39.5 million in 2004, $32.6 million in 2003 and $25.2 million in 2002, according to Securities and Exchange Commission filings.

During a conference call with analysts, J. Patrick Gallagher Jr., president and chief executive officer of the brokerage, said that Gallagher is facing 22 inquiries and subpoenas from various state attorneys general and insurance departments, 12 class action lawsuits and one shareholder derivative suit against its board of directors.

"We reserved $35 million to try to resolve as much of this as we can," Mr. Gallagher said. "Unfortunately, in the end, I really don't know what it will cost or when they will be resolved."

Mr. Gallagher said the brokerage is in "varying stages of discussions" with authorities. "Clearly, if we can find a way to put this behind us, we will do so."

The brokerage declined to comment further on the investigations and potential settlements.

Observers say it isn't surprising that Gallagher would be next on the list to settle concerns and allegations into its compensation practices.

"Obviously, their three larger peers have settled in succession of size," said Mark Dwelle, a Gallagher analyst with Ferris, Baker & Watts Inc. in Richmond, Va. "I don't think it's surprising that they would be the next asked to settle."

"The various regulatory entities are starting at the top of the list and are working their way down," said Nik Fisken, an analyst with Stephens Inc. in Little Rock, Ark. "And now that they've gone through the top four, either settling or setting up a reserve, you'll probably see it continuing to go down the list."

Just how far down the brokerage rankings it will go remains to be seen, they say.

"I'm just not sure it's going to go down any further," said Timothy J. Cunningham, a principal with OPTIS Partners L.L.C. in Chicago. "My sense is that to the extent that (other brokers) are going to have to put up a reserve or be subject to a fine, is it's going to be modest if anything."

"I think they'll reach some point where they'll decide that a particular broker doesn't do a sufficient amount of nonmiddle market business that it really becomes not worth their while," said Mr. Dwelle, referring to investigating authorities. "How far down that is is anybody's guess."

"I will say," Mr. Dwelle added, "the biggest four (brokers) are a lot bigger than the next four, so that's a reasonable cut off place, but I don't think that guarantees anything."

At least one brokerage executive offered insight last week as to why his firm has not put up a settlement reserve, despite numerous subpoenas and requests for information from various state officials.

"It's my understanding from our auditors that there has to be a reasonable expectation and 'estimatable' number and we're not there," Martin L. Vaughan III, chairman and CEO of Hilb, Rogal & Hobbs Co., told analysts during a conference call discussing the brokerage's first-quarter results. "I've asked and if I had even a reasonable estimate, I'd be happy to, but at this point, I do not."

According to HRH's 2004 annual report filed with the SEC, although the company has not received a subpoena from New York Attorney General Eliot Spitzer, it has received subpoenas from attorneys general in Connecticut, Florida, Massachusetts and North Carolina seeking information about its business practices. It also has received requests for information from 10 state insurance departments.

"We continue to provide whatever information is asked of us, and we continue to cooperate and work through the process," Mr. Vaughan said on the conference call. "Of course, it's very expensive and it's very time consuming for our in-house lawyers and others in the firm. We feel like we're managing the process well and are working through it. We look forward to the time where we've reached a definitive conclusion and can put it behind us."

In 2004, Glen Allen, Va.-based HRH recorded $42.4 million in contingent commissions and override commissions. Beginning Jan. 1, HRH stopped accepting volume-based contingent fees, but continues to collected profit-based commissions.

In the first quarter of 2005, HRH collected $37.3 million in contingent commission, 92% of which were based on profitability, premium growth, total premium volume or some combination of those factors. The remainder were from volume-based national override agreements related to fourth quarter 2004, the company said.

A spokeswoman for BB&T Insurance Services Inc., the world's 7th largest brokerage, said the company has not set up any reserve for potential settlements with state authorities. The Raleigh, N.C.-based brokerage has not received any subpoenas, but has received 10 requests for information from various states "and we have complied fully with them," she said.

Other U.S.-based brokerages among *Business Insurance's* ranking of the world's 10 largest brokers either did not return phone calls or could not be reached for comment.

Gallagher resolves lawsuit with alternative energy firm

ITASCA, Ill.—Reflected in the first-quarter 2005 results it reported last week is Arthur J. Gallagher & Co.'s resolution of one other legal matter in addition to its setting up of a $35 million reserve for potential settlements with various state attorneys general and other regulators.

The Itasca, Ill.-based broker said it reached a settlement last week with Headwaters Inc. to resolve all litigation with the South Jordan, Utah-based alternative energy technologies company. Headwaters originally sued Gallagher's financial services unit, AJG Financial Services Inc., in October 2000 over a contract whereby AJGFS licensed Headwater's technology to create synthetic fuel.

In February, a Utah jury found in favor of Headwaters and awarded the company $175 million. Gallagher appealed the verdict (*BI*, Feb. 21).

After the jury verdict, Headwaters petitioned the trial court for a declaratory judgment that AJGFS owed the company significant additional payments related to the future production of synthetic fuel. No ruling was made on Headwaters' request.

On April 25, the companies agreed to settle all litigation for $50 million. Additionally, the companies agreed to modify their existing licensing agreement, allowing AJGFS to use Headwaters' technology for $70 million to be paid on or before Jan. 1, 2006, plus an annual royalty on AJGFS' two synthetic fuel facilities, which, at full production, would be roughly $20 million per company, Gallagher said.

Gallagher took a $131 million pretax charge in the first quarter related to the settlement.

That charge, along with the $35 million settlement reserve charge for payments it may have to make to resolve compensation related investigations (see related story), resulted in a $74 million loss for the first quarter, compared with a $38.9 million profit in the first quarter of 2004, Gallagher said.

For the quarter, revenues from Gallagher's brokerage and risk management segments rose 11.6%, to $316.9 million. Corporatewide revenues, which include investment income, rose 4.8%, to $348.9 million.

Included in the quarterly revenue figure is $20.7 million in contingent commissions, which relate to agreements in force during 2004, Gallagher said. The brokerage ceased entering into new contingent commission agreements as a retail broker on Jan. 1.

—By Sally Roberts

UnitedHealth to track drug side effects

MINNETONKA, Minn.—In an effort to help improve patient safety, UnitedHealth Group is creating a prescription drug registry, using claims data from its more than 10 million members, to expedite the discovery of harmful side effects that may not be detected before the products are sold to the public.

The i3 Aperio drug registry, created by i3, a unit of UnitedHealth subsidiary Ingenix, will be made available beginning in the third quarter of 2005 to drug manufacturers, regulators and other stakeholders so they can assess the risks of any newly introduced drugs more quickly than with clinical trials.

The registry will help to prevent situations like that which led to the removal of Vioxx from the market last year, the company suggested in a press release issued last week. Merck & Co. Inc. pulled the arthritis drug from the market on Sept. 30, 2004, when it was revealed that the Vioxx significantly increased the risk of heart attack and stroke in patients taking it for longer than 18 months (*BI*, Nov. 15, 2004).

"Clinical trials are a powerful and essential step in testing drug safety, but, by necessity, they are generally performed on limited numbers of people who don't have other diseases or take other medication," said Dr. K. Arnold Chan, a senior scientist at i3 in Basking Ridge, N.J.

"i3 Aperio offers researchers the data to analyze real-world prescription drug experience, including the health experiences of patients with co-morbidities, or those taking multiple medications. Further, the registry will provide a much greater scope of data, which may allow researchers to identify more rare side effects that did not surface in prior analysis," he said in the UnitedHealth press release.

In addition to providing particular data to help assess safety concerns, i3 Aperio will offer an annual report of all drugs in the registry. And to ensure the registry meets the privacy requirements of the federal Health Insurance Portability and Accountability Act of 1996, it will not individually identify patients whose claims data are used.

For more information about the drug registry, visit *www.i3global.com*.

—By Joanne Wojcik

Florida passes law to bolster regulatory interventions

TALLAHASSEE, Fla.—Florida legislators are sending the governor a measure that will strengthen the state insurance regulator's authority to crack down on unauthorized insurance businesses.

Previously, the Office of Insurance Regulation could issue cease-and-desist orders—known as immediate final orders—to unlicensed entities, but it was easier for a defendant to successfully appeal such an order.

Such appeals will be more difficult under the new measure because it contains a legislative presumption that the violations of the law constitute "an imminent and immediate threat to the health, safety and welfare of the residents of this state," according to a state Senate legislative analysis.

Insurance regulators say that adding that presumption will reduce the possibility that a state court will a rule against a regulator's order, as one court previously did.

The measure, however, gives a defendant a 30-day period to challenge the regulator's action.

"This bill provides the office with the ability to protect consumers from becoming victims of unauthorized insurance entities," Florida Insurance Regulation Commissioner Kevin McCarty said in a statement.

Unauthorized insurers have left more than 4,423 Floridians with nearly $17.8 million in unpaid claims since September 2003, according to the legislative analysis. Coverages include health care, property, watercraft, workers compensation and other liability insurance.

If signed, the measure will go into effect July 1, Mr. McCarty's spokeswoman said.

—By Meg Fletcher

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Rite Aid: Drug chain relaunching PBM

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ing drugstore chains with approximately 3,400 stores in 28 states and the District of Columbia, announced April 22 that it was contracting with Duluth, Ga.-based ProCare RX to provide back-office services to create a new, yet-to-be-named, PBM.

In addition to providing all of the usual PBM services, Rite Aid will also offer 90-day refills at all of its in-store pharmacies—at the same cost to employers and health plans as mandatory mail-order refills, a Rite Aid spokeswoman said.

The move follows a similar announcement in February by Deerfield, Ill.-based Walgreen Co., which began offering 90-day refills at its 4,761 in-store pharmacies through its PBM, Walgreens Health Initiatives, after the drugstore chain announced it was dropping out of a prescription benefit plan offered by the state of Ohio because of a mandatory mail-order requirement.

"Mandatory mail wasn't that big until last year, and then mail started really to hurt us. And there was definitely a need to find a way to combat mail," the Rite Aid spokeswoman said. "We want to keep people in our stores, because not only do you lose pharmacy business when people go to mail, you also tend to lose some of your front-end business because they're not in the stores as often."

In fact, Rite Aid announced publicly in early September 2004 that "we were getting particularly hurt by United Auto Workers' shift to mandatory mail that we were going to look into ways to combat mail order," she said.

After considering whether to start up or buy an existing PBM, Rite Aid opted to launch its own PBM and contracted with ProCare RX to provide the back-office services.

ProCare RX, which initially began in 1988 to provide claims processing services to the insurance industry, has evolved into a fully integrated PBM. Because it can offer 90-day refills at the pharmacy for the same price as mail order, Rite Aid's new PBM will be marketed to health insurance companies, health plans and employers as a cost-effective alternative, the spokeswoman said.

Surprising move

Rite Aid's decision to re-enter the PBM business came as a surprise to many industry observers, because the company had exited the business in 2000 with its divestiture of PCS Health Systems Inc., a PBM it had owned for only a year, to Irving, Texas-based Advance Paradigm (*BI*, July 17, 2000).

But the Rite Aid spokeswoman explained that, had it not been for the financial difficulties that Rite Aid faced at the time, it was unlikely the company would ever have left the PBM business.

"Rite Aid sold PCS to keep the company from going bankrupt," she said, attributing the company's losses to illegal activities by several high-level Rite Aid executives.

Former Rite Aid Chief Executive Officer Martin Grass resigned in October 1999 and was convicted in 2004 of charges of conspiracy to commit accounting fraud and conspiracy to obstruct justice and is now serving a eight-year prison sentence. Four other former Rite Aid executives were also prosecuted.

John Malley, national practice leader of the pharmacy benefit consulting practice at PwC, said Rite Aid's re-entry to the PBM market will create more choice for employers.

"With large employers, there is a mindset that they only have three choices," Mr. Malley said.

And because Rite Aid and other retail pharmacy-owned PBMs are now offering "something different" from their competition, namely 90-day refills at its retail stores, it may be an attractive alternative to those major players, he added.

"I do think employers are looking for another large PBM," Mr. Malley said. "I think they miss the way it used to be with PCS and Caremark separate."

> "Any competition (among retail drugstore chains) that will create better pricing for us as an employer is excellent."
>
> **Nan Neff**
> **State of Ohio**

Caremark Rx Inc. purchased rival AdvancePCS in 2003, combining the fourth- and second-largest PBMs (*BI*, Sept. 22, 2003).

And although Rite Aid may have some marketing challenges ahead of it, "they could possibly offer employers a legitimate fourth choice," Mr. Malley said. "A lot of people are waiting for another PBM to enter the market, but it doesn't seem to be happening any time soon."

In fact, one employer, whose mandatory mail-order requirement prompted Walgreens and CVS/Pharmacy to drop out of its network earlier this year, said it would welcome the competition from retail pharmacies if it would lower its health care costs.

"Certainly, it would be something we, as an employer, would consider if it is, in fact, as cost-effective as doing it through mail order," said Nan Neff, benefits administrator for the state of Ohio in Columbus.

Because the state's joint management-labor health care committee is just beginning to explore other options as it prepares to renegotiate its contract with some 107,000 employees scheduled to expire in March 2006, "we really are interested in what the marketplace can show us so we can consider changes," she said.

In fact, Ms. Neff said she is already beginning to receive overtures from the other retail drugstore chains seeking to capture the state's business. "Any competition that will create better pricing for us as an employer is excellent," she said.

"If we can give the great access to our employees to be able to go to the retail stores, and save both the state and the employees money by doing that, that's wonderful," Ms. Neff said.

Indeed, "driving down the costs of drugs through competition is in the interests of consumers and payers," observed Helen Darling, president of the Washington-based National Business Group on Health.

Some are doubtful

Other industry observers expressed skepticism at Rite Aid's prospects.

John M. Rector, general counsel to the National Community Pharmacists Assn., said that when he read about the acquisition, he wrote on the top of his newspaper "Again."

While acknowledging that Rite Aid was motivated by what he called "these unfair practices of these giant PBMs," Mr. Rector said he was not wholly supportive. "We strongly opposed their acquisition of Advance PCS," he said.

Mark Merrett, president and CEO of the Pharmaceutical Care Management Assn., the Washington-based PBM trade group, questioned Rite Aid's ability to compete effectively with mail order using a retail product. "This creates an interesting business and policy cross pressures for retail pharmacy. On the business side, they won't be able to establish retail networks that generate cost savings because their competitors won't allow that. Secondly, they won't have the scale or cost-savings ability to compete with PBMs on mail order effectively," he said.

"On the policy side, while PBM activities may be a startup franchise for retail, their policy agenda will be driven from the chain drugstore side, which opposes expansion of mail order and opposes other key practices of PBMs," Mr. Merrett said.

Gloria Gonzalez contributed to this article.

Late News

Continued from page 1

former chief executive officer of HIH, Ray Williams, was jailed for four-and-a-half years for his involvement in the company's collapse. Rodney Adler, a former director of HIH, also was jailed for four-and-a-half years in early April for his part in the company's downfall.

RIMS adds quality improvement tools

The Risk & Insurance Management Society has added two tools to its Quality Improvement Process program that address claims as well safety and loss control. The process includes guidelines for performance expectations and learning resources, which include sample templates and worksheets with examples of performance metrics developed by RIMS. The two tools each contain 39 guidelines designed to facilitate communication, clarification and measurement of performance expectations.

Calif. panel rejects health insurance bill

The California Assembly Health Committee has rejected a measure that would have required all individuals in the state to buy health insurance. However, a companion measure, S.B. 840, which would replace private health insurance in the state with a government-run system, is scheduled to be heard by a Senate Health Committee. A.B. 1670 would have required California residents to have minimum health care coverage for themselves and their dependents.

Court OKs settlement between CIGNA, docs

The U.S. District Court for the Southern District of Florida has approved an $11.6 million settlement between a CIGNA Corp. unit and more than 200,000 health care professionals that stemmed from a suit over claims payment practices. Under the terms of the agreement, the managed care company will establish a fund of $11.6 million from which class members can obtain compensation in an amount based on the volume of claims submitted to CIGNA HealthCare since 1990.

Briefly noted

Glenn Jennings is serving as acting executive director of the **Kentucky Office of Insurance**. The former insurance regulator was appointed Thursday, following the resignation of Martin J. Koetters, according to an office statement. A state spokesman declined to say why Mr. Koetters resigned....Florida Office of Insurance Regulation Commissioner Kevin McCarty last week issued **investigative subpoenas to 17 reinsurance companies** in relation to finite risk products. Finite transactions hinder the ability of consumers and regulators to evaluate an insurer's solvency and have been linked to the failure of numerous insurers in Florida and the United States, the state office said in a statement....The Nevada Assembly Commerce and Labor Committee has approved legislation, A.B. 338, that would cut fees and premium taxes paid by **risk retention groups** licensed in other states and that do business in Nevada. The measure would cut to $250 from $2,450 both the initial registration and annual fees paid by out-of-state RRGs, while also lowering to 2.0% from 3.5% the premium tax on business written in Nevada by out-of-state RRGs..

At *BusinessInsurance.com*

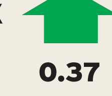
New **Online Poll:** Do you think legislation creating a national no-fault trust fund to compensate victims of asbestos-related disease will win congressional approval this year?

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

BI Stock Index [4/25 - 4/29]

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

Indicator	Value	Change
BI Stock Index	2288.50	 0.37
Dow Jones	10192.51	0.34
S&P 500	1156.85	0.41

Largest gains

Company	Change
Humana Inc.	11.92%
AFLAC Inc.	11.04%
PacifiCare Health Systems	10.69%
American Financial Group	9.74%
Hartford Financial Services	8.99%

Largest losses

Company	Change
Vesta Insurance Co.	-21.73%
Clark Inc.	-16.92%
Allmerica Financial Corp.	-8.48%
Partner Re Ltd.	-5.25%
SCOR	-4.88%

Weekly change by market segment

Segment	Change
Brokers	-1.58%
Insurers/Reinsurers	0.66%
Managed Care Organizations	6.09%

Source: FinancialContent Inc. *(http://financialcontent.com)*