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Business Insurance

www.businessinsurance.com

May 24, 2004

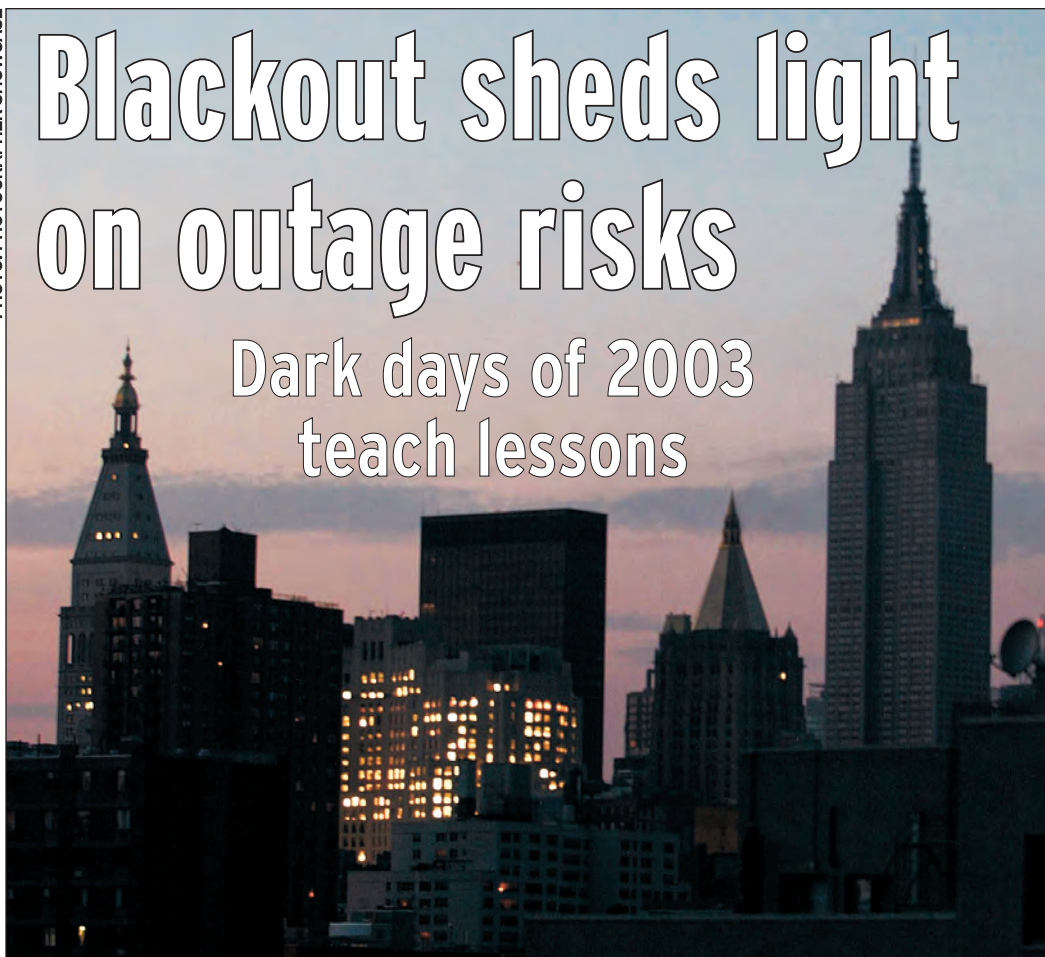
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\$5

PHOTO: PHOTOGRAPHER SHOWCASE

Blackout sheds light on outage risks

Dark days of 2003
teach lessons



By MEG FLETCHER

With forecasts predicting higher-than-normal temperatures in the Ohio Valley and elsewhere this summer, companies are taking steps to protect against losses due to any repeat of last year's unprecedented electrical power outage.

Many risk managers learned lessons from the loss of production and operations that their companies sustained in last August's widespread blackout. The outage, which was the largest in North American history, affected 50 million people in the United States and Canada, according to a recent report by the U.S.-Canada Power System Outage Task Force.

Given the risks involved, "it's the job of risk managers to bring these real-life events like power outages to the table and then to assist in doing a risk analysis with your operations team about the company's ability to respond," said Dan Kugler, assistant treasurer-risk management with Snap-on Inc. in Pleasant Prairie, Wis.

"Risk managers need to be watching and monitoring the power supply for their facility so they are aware if there are any difficulties due to lack of supply," which can reduce their production capacity and curtail their ability to operate, said Joe LaFleur, Baltimore-based senior vp in Marsh Inc.'s Crisis Consulting Practice.

Utility companies are leading the way in attempting to prevent—or cope with—another massive outage. For example, an energy company that was directly involved in the blackout is

See **OUTAGE**/page 18

Late News

PBGC's deficit shrinks, still remains high

The Pension Benefit Guaranty Corp.'s financial condition has improved slightly, but its deficit is still a near-record \$9.7 billion. As of March 31, the midpoint of its 2004 fiscal year, the deficit fell from its record \$11.2 billion in fiscal 2003. The reduction was largely due to investment gains from equity assets, a spokesman said. But PBGC's deficit could rise again if more financially weak employers with big underfunded pension plans terminate those plans. The release of the six-month figures is a policy change for the PBGC, which previously released its net position once a year.

Drugmakers facing suit over blocking purchases

A lawsuit seeking class-action status accuses several major pharmaceutical companies of violating antitrust laws by preventing U.S. consumers from purchasing prescription drugs from Canada. The suit, filed in U.S. District Court in Minneapolis by the Minnesota Senior Federation, alleges the companies are violating state and federal antitrust laws by limiting or threatening to limit supplies to Canadian pharmacies suspected of reimporting their products into the United States. Spokespeople for Pfizer Inc. and GlaxoSmithKline, which are named in the suit, said their companies' practices comply with U.S. laws.

NAIC urges Congress to help fight fraud

Citing an increase in health insurance fraud, the National Assn. of Insurance Commissioners is asking Congress to beef up federal enforcement of anti-fraud laws and encourage federal-state cooperation. A letter to the Senate Finance Committee from Kansas Insurance Commissioner Sandy Praeger, chair of the NAIC's Health Insurance and Managed Care Committee, outlines recommendations including expanding the Labor Department's authority to issue cease-and-desist orders and summary seizure orders against financially hazardous health plans. To prevent future fraud, the NAIC urged funding to assist it and the Labor Department in a joint consumer education and

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Lawmakers hold hearing on need for backstop Senators, insurers urge TRIA extension

By MARK A. HOFMANN

WASHINGTON—Support for extending the Terrorism Risk Insurance Act appears to be growing in the Senate.

In fact, one member of the Senate Banking, Housing and Urban Affairs Committee said during a hearing on TRIA last week that "we would make a serious mistake if we allowed this program to expire." Some other members of the committee, as well as several witnesses who appeared before the panel on May 18, shared that sentiment, expressed by Sen. Robert Bennett, R-Utah.

TRIA, which provides a federal backstop to the private insurance market in the event of a

future catastrophic terrorist attack, is scheduled to expire on Dec. 31, 2005. The law, which President Bush signed Nov. 26, 2002, was designed as a temporary measure that would encourage availability of terrorism insurance and give insurers and reinsurers time to create a private market for terrorism risks.

Most observers, including the General Accounting Office—whose director of financial markets and community investment, Richard J. Hillman, testified before the committee last week—give TRIA high marks for enhancing the availability of terrorism coverage. But the law's second goal, creation of a private terror-

See **TRIA**/page 6

Accident cover for risks in Iraq increasingly costly, scarce

By CAROLYN ALDRED and PETA MILLER

BAGHDAD, Iraq—Personal accident insurers are curbing the amount of coverage available to companies with staff in Iraq as violence worsens in the country.

Buyers of personal accident coverage are facing increased deductibles and reduced capacity in addition to higher premiums, which first began to rise earlier this year.

Underwriters are becoming increasingly loath to offer the coverage within Iraq, as violence spreads in the country.

Nonetheless, some personal accident coverage is still available, brokers and underwriters say,

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International

U.K. MAY COMPENSATE FOR LOST PENSIONS

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NEWSPAPER

May 24, 2004

Bank seeks \$100 million limit for fraud loss HSBC suing five insurers for denying fidelity claim

By DOUGLAS McLEOD

NEW YORK—Banking giant HSBC USA Inc. is suing five insurers for refusing to pay a \$100 million fidelity claim arising from a 1990s investment fraud that cost the bank more than \$500 million in restitution payments and that put one of its securities brokerage units out of business.

HSBC and a dormant brokerage subsidiary, Republic New York Securities Corp., filed the suit this month in U.S. District Court in New York against Lloyd's of London underwriters and several other insurers.

The complaint seeks a ruling that the insurers are liable for the \$100 million limit of Republic's fidelity program for losses stemming from a

promissory note scheme in which money manager Martin A. Armstrong, aided by Republic employees, allegedly defrauded dozens of Japanese investors.

Mr. Armstrong is currently in jail awaiting trial on federal securities fraud and other charges.



HSBC and Republic paid \$569 million in restitution to injured investors in 2002 as part of a settlement with the Securities and Exchange Commission that also resulted in revocation of Republic's broker/dealer registration.

HSBC's lawsuit does not describe the grounds insurers have cited for denying the fidelity claim. None of the insurers has yet answered the complaint, and their representatives have declined to comment on the dispute.

New York-based HSBC USA acquired its troubles with Mr. Armstrong when it bought out banking rival Republic New York Corp. and its securities brokerage unit in 1999. Four years earlier, Mr. Armstrong and his now-defunct investment management operation, Princeton Economics International Inc., had become key Republic brokerage clients.

Holding himself out as an expert money manager, Mr. Armstrong

See **HSBC**/page 16

Aetna HRA offers option for funding retiree benefit

By JERRY GEISEL

HARTFORD, Conn.—A new retiree health care arrangement unveiled last week by Aetna Inc. could be a middle ground for employers that are unable to afford a full traditional plan but that don't want to entirely withdraw their financial support.

Aetna is calling the arrangement its HealthFund Retiree Reimbursement Account. Under the arrangement, employers would create accounts for employees and periodically credit those accounts with flat dollar amounts. The accounts, though, would not be advance-funded.

If an employee were to retire, he or she would draw upon the account for the tax-free reimbursement of qualified health care ex-

penses. Those expenses could include out-of-pocket medical expenses and premiums such as those charged by Medicare or a private insurer from which the retiree chooses to purchase coverage to supplement Medicare.



Or the account could be drawn upon for the reimbursement of premiums the retiree would pay for a health care plan that his or her former employer offers but does not subsidize.

The employer offering the accounts would retain control over the plan design, such as the establishment of a schedule for the vesting of the credits. Aetna would handle the administration and reporting functions.

"There could be a lot of flexibility in how this could be designed," said Jay Sheehy, Aetna's head of underwriting for national accounts in Hartford, Conn.

Mr. Sheehy said the new plan is client-driven, with employers looking for innovative ways to continue to help their retirees pay for medi-

See **RETIRES**/page 15



PHOTOS: AFP

Kroll Inc. provides a range of services, from managing security in high-profile properties such as Chicago's Sears Tower, to corporate restructuring of companies, including Enron Corp.

Marsh expands its menu of risk consulting services with Kroll acquisition

By SALLY ROBERTS

NEW YORK—Companies will be able to tap a broader array of risk control services from Marsh & McLennan Cos. Inc. when it incorporates the operations of Kroll Inc.

Last week, MMC announced that it would acquire the New York-based risk mitigation services firm in a \$1.9 billion cash transaction that is expected to close in the third quarter. Under terms of the deal, Kroll shareholders will receive \$37 for each outstanding share of Kroll common stock they own, representing a 31.7% premium over the company's closing stock price of \$28.10 on May 18, the day the definitive agreement was signed.

New York-based MMC said it would finance the deal through a combination of debt and cash from operations.

Executives from both firms say the deal will give MMC's corporate clients a wider range of risk management services.

Global security concerns as a result of the Sept. 11, 2001, ter-

rorist attacks and a host of new regulations that have increased corporate accountability have created a need for more risk services, Jeffrey W. Greenberg, chairman and chief executive officer of MMC, said during a conference call to analysts last week. In addition, he cited the growing interest in risk services stemming from corporate restructuring, bankruptcies, and merger and acquisition activity, as well as complex litigation around the world.

The addition of Kroll will allow MMC "to serve clients better and more effectively," Mr. Greenberg said.

Kroll CEO Michael Cherkasky echoed that view.

"The business idea of Kroll has been simple—to help solve risk-related problems for our clients," he said. "Today, those problems are more complicated, more global and more serious than ever before. We're convinced that the Kroll/MMC combination will provide our clients with an unprecedented breadth of

See **KROLL**/page 17

Inside Business Insurance

High court opens door to ADA liability for state

The Supreme Court ruled that Tennessee is not immune to lawsuits alleging violations of the Americans with Disabilities Act. **Page 4**

CalPERS opts to drop high-cost hospitals

An influential retirement plan administrator draws a line on rising health care costs. **Page 4**

Employers need options on benefit plan design

Guidance from the Treasury Department can help employers design cost-saving alternatives, one of this week's editorials says. **Page 8**

Insurer gets subpoena on contingency fee issue

New York's attorney general has subpoenaed Chubb Corp. in his probe of contingent commissions. **Page 19**



Court bars asbestos suit against government

An Australian court dismissed a suit against a state government that sought to recover money paid to a worker with mesothelioma. **Page 13**

Online

• *Business Insurance* articles as well as trial documents from the **World Trade Center** insurance coverage trial.

• Searchable **directories** of all the listings of industry vendors found in *BI's* Market Sourcebook.

• New **Opinion Poll** for readers: Do you think that most HMOs' charges are too high, too low or about right?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

High court rules states liable under ADA

Case, though narrow, may affect private employers, experts say

By MARK A. HOFMANN

WASHINGTON—States cannot block all Americans with Disabilities Act lawsuits against them by claiming sovereign immunity, a sharply divided Supreme Court held last week.

The high court's decision in *Tennessee vs. Lane* means that individual plaintiffs can seek monetary relief for alleged ADA violations by states, which had claimed that the Constitution's 11th Amendment granted them sovereign immunity from suits brought against them in federal courts.

Although the decision involves public rather than private entities, disability law experts say that it could have implications for private employers as well.

The case began when George Lane, a paraplegic, refused to crawl up the steps of the Polk County, Tenn., courthouse—which

lacked an elevator—to make a court appearance. The state claimed that Mr. Lane also refused the assistance of court personnel. As a result, he was arrested for failing to appear. Mr. Lane sued in 1998 for monetary damages, saying that his rights under the ADA had been violated.

The state responded that Mr. Lane had no right to bring an ADA suit against it because Congress had exceeded its constitutional authority in Title II of the ADA. Title II holds that no disabled person shall be "excluded from participation or denied the benefits of the services, programs or activities of a public entity" because of his or her disability. Tennessee argued that the 11th Amendment protects it against private ADA suits such as that brought by Mr. Lane in federal court.

The 6th U.S. Circuit Court of Appeals in 2003 rejected the state's argument, setting the stage for last week's Supreme

Court ruling.

By a 5-4 vote, the justices ruled Title II amounted to a valid exercise of Congress' enforcement rights. Writing for the majority, Associate Justice John Paul Stevens held that Congress had the right to enforce access to the courts.

Justice Stevens noted that the Supreme Court and numerous other courts have issued decisions that "have identified unconstitutional treatment of disabled persons by state agencies in a variety of public programs and services. With respect to the particular services at issue, Congress learned that many individuals, in many States, were being excluded from courthouses and court proceedings by reason of their disabilities."

Justice Stevens called Title II "an appropriate response to this history and pattern of unequal treatment." He said that the provi-

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PHOTO: ZUMA PRESS

Associate Justice John Paul Stevens called Title II "an appropriate response" to a history and pattern of unequal treatment of disabled persons in many states.

Citing high costs, CalPERS removes 38 hospitals from Blue Shield network

By JOANNE WOJCIK

SACRAMENTO, Calif.—The California Public Employees' Retirement System voted 10-1 Wednesday to exclude 38 high-cost hospitals from its largest health maintenance organization network—Blue Shield of California—to help the state's largest health care purchaser cut costs.

"We want to send a message to these providers that their costs are over the top," said a spokesman for Sacramento-based CalPERS, California's largest purchaser of employee health benefits and the third largest in the nation.

"We cannot sustain these kinds of price increases," the spokesman said.

HMOs with CalPERS contracts increased rates by 57% between 2002 and 2004, the CalPERS spokesman said.

CalPERS expects to save up to \$36 million in 2005 and \$50 million annually thereafter with the elimination of 13 hospitals from Sutter Health, five Sharp HealthCare hospitals, five Catholic Healthcare West hospitals, three Daughters of Charity hospitals and two Tenet Healthcare Corp. hospitals.

Most of the savings will come from excluding the selected Sutter Health hospitals, whose costs average 60% higher than their Northern California peers and 80% higher than the statewide average, according to Sid

Abrams, chair of CalPERS Health Benefits Committee, in a statement.

A spokesman for Sutter Health said, though, that it had made an offer to CalPERS that would have lowered its pricing but was rejected.

"We're extremely disappointed that CalPERS took such harsh action despite a very generous offer by Sutter Health to help hold the line on cost increases," the spokesman said. "We got the distinct impression that we had met their requirements."

He declined to provide details of the offer, citing a confidentiality agreement.

But the CalPERS spokesman said that Sutter Health's proposal, which included a rate increase cap "in the single digits...still would have left Sutter Way out of line with everybody else."

He added that this might not be the end of negotiations between CalPERS and the hospitals participating in the Blue Shield Network.

If any of the excluded hospitals agree to price cuts, CalPERS may reinstate them, the spokesman.

"The door is wide open," he said.

CalPERS provides coverage for 1.2 million state and public employees, retirees and their families, 416,000 of whom are enrolled in the Blue Shield HMO. About 53,000 of those enrollees will be affected by the cuts.

Analysts forecast moderation in rate hikes

Insurers post earnings growth as reserve situation improves

By JUDY GREENWALD

Risk managers finally may be seeing some signs of rate relief, but commercial property/casualty insurers are still flourishing.

With insurers' reserves now in much better shape than they have been in previous years, more of the revenues generated by the hard market are filtering through to their bottom lines.

However, many analysts question how much longer the rate hikes can last.

According to *Business Insurance's* survey of insurer results, the 13 surveyed insurers that report net income posted a 184.2% increase to \$5.11 billion.

**Property/Casualty
First-quarter
RESULTS**

Excluding the results of Hartford Financial Services Group Inc., which posted a \$1.4 billion loss for 2003's first quarter, the remaining insurers reported a 42.3% increase in net income, to \$4.54 billion.

"By and large, it was a very good quarter from an earnings perspective for most of the companies," said Michael Paisan, an analyst with Legg Mason Inc. in New York. "It was probably the beginning of the earnings momentum we had been expecting now for some time, on

See RESULTS/page 17

Canada's top court takes limits off chronic-pain comp claims

By GLORIA GONZALEZ

A Supreme Court of Canada ruling that struck down limitations on workers compensation benefits for chronic-pain claims could have broad implications for the Canadian workers compensation system.

Although the ruling has had a direct impact on only the two provinces that had imposed limits on such claims, it could lead to the court barring other existing limits

or exclusions on workers comp claims, observers note. Such changes, they say, could fuel increases in claims and, by extension, Canadian employers' workers comp premiums.

The October 2003 decision in *Nova Scotia (Workers Compensation Board) vs. Martin* declared that limitations on claims for chronic pain were illegal and ordered provinces that had limitations or exclusions for such claims to formulate new

policies within six months.

Nova Scotia's policy was challenged because a section of its Workers Compensation Act limited the amount of time a worker with chronic pain could receive benefits and set a fixed financial benefit. The Supreme Court found this provision unconstitutional and said that workers with chronic pain must have the same access to workers comp benefits as other injured

See COMP/page 15

Errors and omissions

• Due to a reporting error, an article in the May 3 issue, "Some Iraq Risks Finding Cover Available," mistakenly stated that risk managers seeking coverage related to U.S. military contracts must use brokerage Rutherford International of Alexandria, Va. Rutherford is the exclusive broker for Defense Base

Act policies for projects of the U.S. Agency for International Development; buyers seeking coverage for U.S. military projects or other government projects can obtain coverage through other brokerages.

• Due to an editing error, a quote in the May 17 article "IRB Privatiza-

tion Stalled, Gen Re Exits Brazil" was mistakenly attributed to Henrique Oliveira of Swiss Re Brazil. The quote was from a risk manager who asked not to be identified: "As a risk manager, you want to have options. You want to choose where you place your risks, and nowadays, that is not possible."

TRIA: Industry urges extension of federal backstop

Continued from page 1

ism insurance market, has yet to be met.

Government and the private market must act as partners in terrorism insurance, said Jacques Dubois, chairman and chief executive officer of Swiss Re America Holding Corp. in New York. "We are not optimistic this will be temporary," he said. "The possible losses are just too high."

"If anything is certain about terrorism, it is that it won't fade away with TRIA's expiration," said Chubb Corp. Vice Chairman and Chief Administrative Officer John Degan. Mr. Degan testified on behalf of 10 property/casualty trade associations that support extension of TRIA. He called on the Senate to move swiftly on reauthorizing the program.

Christopher Nassetta, CEO of Host Marriott Corp., called for a two-year extension of TRIA on behalf of business-backed Coalition to Insure Against Terrorism; Delaware Insurance Commissioner Donna

Lee Williams also backed extension of the act as she testified for the National Assn. of Insurance Commissioners.

Only one witness, Consumer Federation of America Director of Insurance J. Robert Hunter, called



The Treasury Department's attitude toward TRIA extension could 'charitably' be called 'somewhat lackadaisical.'

*Sen. Charles Schumer
D-N.Y.*

unequivocally for TRIA's expiration. "Insurers do not need free reinsurance any more," Mr. Hunter said.

But the senators made clear that even before TRIA can be extended, they believe the Treasury Department must move more quickly on

recommending whether TRIA's "make available" provision should be extended for another year.

The provision requires insurers that participate in the federal terrorism insurance backstop program to offer terrorism coverage to policy-

holders on materially the same policy terms and limits as they do with other property/casualty coverages. But the provision is set to expire later this year—a year before TRIA itself sunsets. Treasury, which has to make its recommendation on extending the make available provi-

sion by Sept. 1, only recently opened a formal comment period that won't end until June 4.

During the hearing, senator after senator asked Brian Roseboro, Treasury's undersecretary for domestic finance, whether Treasury would make its recommendation before the deadline. "Sept. 1 is a very late date to decide this," said Sen. Paul Sarbanes, D-Md.

Mr. Roseboro refused to commit to a specific date but indicated a decision would be made as soon as Treasury considered it prudent.

He came under considerable verbal fire from Sen. Charles Schumer, D-N.Y., who was one of the principal architects of TRIA. Sen. Schumer said that Treasury's attitude toward TRIA extension could "charitably" be called "somewhat lackadaisical." He repeatedly asked Mr. Roseboro when Treasury would make its recommendation on extending the program, but Mr. Roseboro would not answer, and denied that he had any predisposition as to whether TRIA should be extended.

Another issue emerging in the debate over TRIA is whether the law should apply to group life insurance as well as property/casualty insurance if TRIA is reauthorized past Dec. 31, 2005. Several lawmakers and witnesses, including Mr. Dubois and Ms. Williams, urged expanding TRIA to include group life insurance.

In an interview after the hearing, Chubb's Mr. Degan said he had no objection to adding group life to TRIA, provided that it did not slow the process of reauthorizing the law.

One senator, however, remained skeptical of the need to extend TRIA. The terrorist attacks of Sept. 11, 2001, required "a temporary, I emphasize, temporary, response," said Sen. Wayne Allard, R-Colo. "Once again, we're being told that the markets need a little more time to adjust," he said. Once an industry becomes dependent on a government subsidy, that industry doesn't like the subsidy changed, he said.

Iraq: Capacity tightening for personal accident risks

Continued from page 1

and that coverage can still be extended to include nuclear, biological and chemical perils, despite the explosion of a bomb in Iraq earlier this month that apparently contained the nerve agent sarin.

"The risks for foreign workers

Still, those policyholders seeking coverage for personnel in Iraq should act soon, cautioned Anne Williams, a director of accident and health in the facilities unit of London-based broker Heath Lambert Ltd.

"I am a little nervous about how

to write more business in Iraq," Mr. Butcher said.

Those insurers that are still offering personal accident coverage are insisting on changes in coverage terms.

David Bruce, divisional head of syndicate 33, managed by Hiscox P.L.C., said that though insurance rates have not risen significantly over the past month, buyers should be prepared to accept higher deductibles and less flexibility over coverage terms.

Rates are already high, and Mr. Bruce acknowledged that further rate increases could make the coverage unaffordable for companies seeking coverage for personnel in Iraq.

Rates and coverage conditions vary greatly depending on the peculiarities of a risk, but, as an example, a company that maintains 1,500 employees in Iraq and accepts a deductible of five to 10 lives would pay between 6% and 10% of the sum insured annually, he said.

Most companies buy coverage on an annual basis, Mr. Bruce noted, but for monthly coverage, the rate for the same risk would be from 0.625% to 0.75% for most policyholders and up to 1% for high-risk policyholders.

Underwriters currently are less open to negotiating coverage terms and conditions, particularly for risks in Northern Iraq, he said.

Southern Iraq also is starting to be viewed as more perilous than in the recent past.

"Until recently, we were more relaxed about the British sector (in the southern, Basra region), but events of the past few weeks are making us very concerned," said John Murphy, employers liability underwriter for Brit Insurance Holdings Ltd. at Lloyd's.

Although rates for so-called hazardous and nonhazardous risks in

Iraq have not changed significantly in recent weeks, more risks in Iraq are being classed as hazardous, said Ms. Williams of Heath Lambert.

"Anyone carrying a gun is viewed as a high hazard," said Ms. Williams, who pointed out that under-

'There is sufficient capacity (for personal accident risks in Iraq) at the moment, but my advice to clients would be to buy now, as you may not get it later.'

*Anne Williams
Heath Lambert Ltd.*

writers are looking "really carefully" at the growing army of unqualified security personnel working in the region.

In addition, underwriters are inserting clauses that permit them to review rates for annual policies on a monthly or quarterly basis, said Ms. Williams.

Up until mid-April, personal accident underwriters were prepared to offer annual coverage for a fixed rate but, with the volatile situation in Iraq, underwriters want the option of increasing premiums if the violence escalates further, Ms. Williams said.

Rates are holding steady at between 6% and 10% for annual coverage and between 0.6% and 1% of the sum insured for monthly cover-

age, but underwriters are requiring much more information on policyholders' security arrangements, said David Partner, an accident and health broker at Miller Insurance Services Ltd. in London.

He said the higher-priced coverage can include extensions for nuclear, biological and chemical, or NBC risks. This expanded coverage is still available despite the discovery of a small amount of the nerve agent sarin in a bomb that exploded earlier this month, he noted.

"Initially, we thought that might affect the amount of cover" offered for the NBC risk, said Mr. Partner. But he noted that reports indicate that the bomb dated back to the Iran-Iraq war, rather than a newly produced weapon.

The price of the NBC coverage extension is now declining because several insurers have recently renewed their reinsurance contracts and some have this coverage included in their reinsurance contracts, Mr. Partner said.

While reports regarding sarin took the insurance market by surprise, rates for NBC coverage have not increased, according to Nigel Guillaume-Smith, underwriting director for accident and health at syndicate 2020 managed by Wellington Underwriting P.L.C. in London.

Again rates for the coverage vary widely, but a company with 1,500 people in Iraq might expect to pay 25% of the base rate for the NBC coverage extension, he said.



PHOTO: AP/WIDE WORLD

U.S. Army soldiers secured an area in Baghdad, Iraq, after marking the location of an explosive device with red smoke. Insurance capacity for Iraq risks is becoming harder to find, sources say.

have escalated significantly in recent weeks. We have seen a substantial number of ambush attacks targeting contractor convoys, kidnappings and killings," said Josh Mandel, a Middle East analyst for London-based security consultant Control Risks Group.

And as the violence continues in Iraq, contractors are withdrawing their personnel.

"Very, very few companies are sending employees out there at the moment. In fact, companies are pulling out," said Paul Rudden, a senior liability underwriter for Aspen Re, part of Aspen Underwriting U.K. Ltd.

much capacity is still left in the market. There is sufficient capacity at the moment, but my advice to clients would be to buy now, as you may not get it later," Ms. Williams said.

Some underwriters who were previously offering coverage in Iraq have stopped accepting new business.

"We are on hold at the moment," said Tim Butcher, an employers liability underwriter for syndicate 386, managed by Limit Underwriting Ltd., a personal accident insurer at Lloyd's of London.

"The situation needs to improve significantly before I will be looking

Paul Winston

Editor Paul Winston's weekly column will return in the May 31st issue

Business Insurance

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Chicago: 312-649-5276; Irvine CA: 949-255-5355;
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SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by
Crain Communications Inc.

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Published weekly at 360 N. Michigan Ave., Chicago, Ill.
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Four weeks' notice required for change of address.
Send subscription correspondence to Circulation De-
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Schillerstrom

Editorial

Embrace plan design innovations

IF EVER THERE WERE an example of necessity being the mother of invention, the innovation now taking place in health care plan design is it.

Employers need no reminder of just how much health care plan costs have been going up. It would be safe to say that employers, typically, are paying 30% to 50% more on their health care plans now than they were just three years ago.

One important reason for this big cost increase—coming at a time of low inflation for most other goods and services—has been poorly conceived plan designs.

Those plan designs typically feature little employee cost sharing for enrollees who use in-network providers. The result has been that employees have had little, if any, financial incentive to use costly

health care services more carefully.

Now, thanks to the U.S. Congress, which listened to the pleas of business groups, and the Treasury Department, which speedily disseminated the guidance, employers have some real alternatives to traditional benefit plan designs.

Employers that believe greater employee exposure to the cost of medical care is required if health care inflation is ever to be brought down to more-reasonable levels now have a tax-effective way to put that belief into action.

Since Jan. 1, under legislation passed last year by Congress, employers have been able to set up high-deductible health insurance plans linked to health savings accounts.

For employees used to little cost sharing, high-deductible plans are

no easy sell.

But if such plans were to be coupled with HSAs, employees might become a lot more amenable. That is because employees would receive immediate tax deductions for the contributions they make to HSAs, which they could withdraw for tax-free reimbursement of uncovered health care expenses, such as those that fall under the deductible. Employers could help to fund HSAs as well.

An employee who uses health care services prudently would have an ever-growing HSA, which could be a source of funds for the purchase of retiree health care coverage, which fewer and fewer employers are offering.

Necessity has demanded such a plan, and we are glad that legislators have responded to that need.

Insurers also are responding to the demand for new health care designs. As we report on page 3, Aetna Inc. is launching a health reimbursement account exclusively for retiree health care.

Under such a design, employers would create accounts for employees and credit those accounts with fixed amounts of money. Employees, at retirement, would tap those accounts to cover health care expenses, such as health insurance premiums.

To us, such an arrangement could strike the right balance for employers that want to help subsidize retiree health care costs but cannot afford the open-ended liabilities of traditional plans.

The approach offered by Aetna strikes us as one well worth looking into.

Check on hospital costs laudable

WE COMMEND THE gutsy decision of the California Public Employees' Retirement System to drop several dozen hospitals from the largest health maintenance organization from which it purchases coverage.

As we report on page 4, CalPERS decided to drop the 38 hospitals from its Blue Shield of California HMO after an analysis determined that the facilities' charges were substantially higher than those of other hospitals in the same regions.

For example, costs at 13 Sutter Health hospitals were 60% higher than their Northern California

peers and 80% higher than the statewide average, a CalPERS official said.

As a CalPERS spokesman put it so well, those kinds of costs are "over the top."

No doubt, CalPERS' decision will not go over well with enrollees in the Blue Shield HMO who used providers affiliated with the affected hospitals. They will either have to find new providers or enroll in preferred provider organizations where they can utilize out-of-network providers, though with higher cost-sharing requirements.

Unpopular as its decision may be with enrollees, CalPERS, as a pru-

dent buyer of health care services, had no choice but to do what it did.

It is perfectly reasonable that there would be variations in costs between two hospitals in a given area. For example, a hospital may have borrowed funds at a time when interest rates were lower and, thus, has lower costs than another nearby facility.

But there can be no explanation—other than pure greed—for a hospital's costs being 60% higher than those of its geographical peers.

For too long, both employers and health plans have been resigned to accepting hospital rate increases. We hope that CalPERS' action is the

beginning of a new aggressiveness on the part of buyers.

To be sure, CalPERS has a lot of muscle: It is not only California's biggest purchaser of health care services but also one of the largest in the United States.

But plenty of insurers have buying clout, too, and they should not be afraid to use it. Escalating hospital costs are a major reason that health insurers have had to hike premiums so much in recent years.

Left unchecked, the soaring—and, in many cases, unjustified—hospital costs will make health insurance coverage unaffordable, both for employers and employees.

Thoughtful providers should know that it can't be in their best interests to charge out-of-reach prices to their best customers. They need to bring down their costs to more-reasonable levels, or they risk losing those customers.

Schillerstrom



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Comings & Goings-Industry



Mr. Cross



Mr. Liss



Mr. Holland



Ms. Field

Insurers:

Fireman's Fund Insurance Co. has named **Charles Kavitsky** as president and chief executive officer, replacing **Jeff Post**, who resigned. Before his promotion at the Novato, Calif.-based property/casualty company, Mr. Kavitsky was president of Allianz Life Insurance Co.

Stephen Cross has been named CEO of Aon Captive Services Group, Aon Corp.'s London-based captive management and risk finance consulting operations. He replaces **Philip Stamp**, who continues as chairman of ACSG. Before his promotion, Mr. Cross was chief operating officer.

George Town, Grand Cayman-based United National Group Ltd. has named **Seth D. Freudberg** as president and CEO of its Bermuda

and Barbados offshore operations. Previously, Mr. Freudberg was president and CEO of United National's U.S. operations in Bala Cynwyd, Pa. He will be replaced in that position by **William Schmidt**, who formerly was chief underwriting officer of United National's U.S. operations.

Wilfried Verstraete has been named CEO of credit insurer Atradius N.V., formerly known as Gerling NCM, based in Amsterdam. He succeeds interim CEO **Paul-Henri Denieuil**, who will join the insurer's supervisory board. Before joining Atradius, Mr. Verstraete was chief financial officer of three units at France Telecom Group.

The Hartford Financial Services Group Inc., based in Hartford, Conn., has made several senior-level appointments:

- **Dick Mucci** has been named executive vp and director of the group benefits division for Hartford Life Inc. Previously, Mr. Mucci was senior vp.

- **Ronald Gendreau** was named senior vp and head of profit management and underwriting of the group benefits division for Hartford Life. Previously, he was the division's vp of underwriting and profit management.

- **Timothy Schiltz** has been appointed to the position of senior vp of international operations for Hartford Life. He will continue as president of Hartford Life Insurance K.K., a seller of variable annuities in Japan.

Reinsurance:

- **Greg Coda** has been named senior vp in the direct treaty division

of American Re-Insurance Co. in Princeton, N.J. He also serves as business unit leader of the division's national accounts group. Mr. Coda previously was a senior vp at intermediary John P. Woods Co. Inc. and before that was marketing director of Swiss Re America Corp.

Pembroke, Bermuda-based PartnerRe Ltd. has named **Thomas Renggli** as head of finite reinsurance, global. Mr. Renggli, who will be based in Zurich, Switzerland, joins PartnerRe from Swiss Reinsurance Co.'s Financial Services Group, where he was head of insurance marketing, Central Europe.

Minneapolis-based reinsurance intermediary John B. Collins Associates Inc. has named **Vibhu Sharma** as executive vp and chief financial officer. Mr. Sharma, who previously was a partner at KPMG L.L.P. in Minneapolis, succeeds Collins Associates' Executive Vp and CFO **Dan Burke**, who retired.

New York-based Guy Carpenter & Co. Inc. has named **Scott D. Price** as senior vp and co-manager of the company's marine and energy practice. Before joining Guy Carpenter, Mr. Price was senior vp at Willis Re.

Agents/Brokers:

Michael C. Liss has joined Savannah, Ga.-based Palmer & Cay Inc. as an executive vp and manager of the brokerage firm's Atlanta

operations. Before joining Palmer & Cay, Mr. Liss was leader of Marsh Inc.'s middle-market global broking division for the Midwest region.

John Verbich has been named CFO of New York-based Willis North America Inc. Previously, he was senior vp and CFO of SCOR Reinsurance Co. He takes over the CFO duties that had been assumed by Wole Coaxum, who will remain Willis North America's chief operating officer.

London-based Heath Lambert Group P.L.C. has promoted **Martin Holland** to managing director. He will be based in Swindon, England, and will be responsible for expanding the company's credit and surety operations. Mr. Holland previously was deputy managing director.

Other suppliers:

John C. Langenus has been named executive vp for sales and account management at Avon, Conn.-based Evolution Benefits Inc. Before joining the company, Mr. Langenus was senior vp of the national market segment at CIGNA Corp.

Philadelphia-based law firm Cozen O'Connor has named **Ann Thornton Field** as chair of its national insurance litigation department. Previously, Ms. Field was vice chair of the department. She will replace **Robert R. Reeder**, who is retiring.

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Personal risk-taking reaps career rewards

By Victor Caleo

In my view, no one at the middle- or senior-management level in the global property/casualty insurance marketplace should be unemployed for any serious length of time. One might consider this an outrageous statement in this economy—but I believe it is true.

The main inspiration for this premise is the current needy state of the property/casualty industry. There are literally thousands of specific problems in the industry to be solved on a daily basis. And there are literally thousands of qualified, experienced individuals who possess the solutions to these issues. Now, how do we match them up?



I believe it is a matter of people taking a careful and honest intellectual inventory of themselves. This same process is as applicable to the buyers of property/casualty insurance—corporate risk managers—as it is to sellers and intermediaries.

It has been my vocation over the last 20 years to observe people, as I have placed thousands of them in senior management positions in the property/casualty industry. From this perspective, I see many individuals' career goals fall victim to that dreaded four-letter word: fear—fear of risk and fear of change.

Let's look at fear of risk. It has always been confusing to me that individuals in this industry, who spend most of their working lives

examining, embracing and making serious decisions about risk (in all its complex forms), would be personally risk-averse. No one has ever successfully explained this phenomenon to me.

My ambition is to help transform the entire unemployed property/casualty population into a swarming army of independent consultants screaming for potential employers to: Show me the problem!

Fear of change and all the potentially frightening consequences of change can be understood more easily. A new job, new location, family disruption, making new friends, learning a new culture, etc., all can be intimidators.

Having briefly touched on these two major career inhibitors, let's discuss potential solutions:

- *Apply the basic principles of risk management.* This entails using the tools you work with every day—identification, analysis, management and measurement of potential risks—in your own personal decision-making. This will help you break the myth of fear, which simply stands for "false evidence appearing real."

- *Change your mindset.* Instead of dreading a big change in jobs, see it as a wonderful opportunity for you and your family to become personally versatile and diversified.

Bear in mind that the property/casualty insurance cycle has shortened, which means that any career move driven by current market conditions is likely to be much shorter than in the past. A new career move, therefore, could last less than three to four years, not forever.

If a move is required, remember that your

home base will always be there for you upon your return. Go explore and have an exciting adventure with your life. In 20-plus years of moving families around the world—many of whom never moved before—I have yet to lose

a family, and many have even grown closer to one another.

- *Transform yourself into a consultant.* This is invaluable advice, and it is simple to follow. First, make a list of your 10 most value-added accomplishments (actually write them down). Next, structure each of them into a before-and-after scenario.

For example, when you were initially given a project to complete or problem to solve, what did it look like? Then, after you put your skills—be they in underwriting, actuarial, finance, risk management, etc.—to work, how did you transform these tasks? Did you make or save the company bottom-line dollars?

- *Transform yourself into a marketing guru.* Sounds scary doesn't it? However, the inability to sell oneself (externally or internally) is probably the No. 1 reason that people fail to advance in their careers.

This is mind-boggling, especially when the solution is so simple: Learn to sell your knowledge (and bear in mind that knowledge is power). Pair this core premise with a bit of passion and persistence and you will have the makings of an amazing enhancement in your career.

- *Show me the problem!* Remember how many times Cuba Gooding Jr.'s character

screamed "Show me the money!" in the movie "Jerry Maguire"? Well, my ambition is to help transform the entire unemployed property/casualty population into a swarming army of independent consultants screaming for potential employers to: Show me the problem!

Solving a problem for a company as a consultant is an extremely effective way to secure full-time employment. It also simultaneously allows one to witness the important corporate culture before committing to a longer employment relationship. Performing such a service also bridges the fearful unknown of only spending a few hours of interviewing (which is not an exact science) with a company.

Overcoming fear of risk and fear of change is critical. I feel strongly that if you make a full-bodied attempt to regularly apply these principles, the end result will be permanent career security. You cannot discover new oceans unless you have the courage to lose sight of the shore.

I wish you well and leave you to reflect on an excerpt from my favorite risk meditation, "Risk," a poem that is attributed to Janet Rand:

*To try is to risk failure.
But risks must be taken, because
The greatest hazard in life is to risk nothing.
The person who risks nothing, does nothing,
has nothing, and may end up with nothing.
They may avoid suffering and sorrow,
But they cannot learn, feel, change, love, live.
Only a person who risks is free.*

Victor Caleo is president and chief executive officer of The Michael Scott Consulting Co. Inc., a property/casualty consulting firm based in New York.

Book aims to help company execs understand risk

By Regis Coccia

"Risk from the CEO and Board Perspective"

By Mary Pat McCarthy and Timothy P. Flynn, with contributing author Rob Brownstein McGraw-Hill Cos. 2 Penn Plaza, New York, N.Y. 10121-2298 \$27.95

Upper management support is crucial to the success of corporate risk management, and this book by two KPMG L.L.P. partners is likely to help boost appreciation for risk managers.

In an era of questions about corporate governance and increasing litigation against directors and officers, the authors suggest that organizations must empower their boards to oversee risk management. Setting the correct "tone at the top" is a recurring theme.



The book offers sage advice drawn from the authors' interviews with executives, directors and risk management researchers, along with enlightening case studies that show both good risk

Book Review

management and the lack of it.

Among the ideas offered is that risk management is, at heart, about creating value for the institution and its stakeholders. To best do that and to avoid situations that diminish value, each organization must determine and articulate its risk appetite. The authors describe this process as "risk optimization."

Risk management, according to the authors, is conducted on three levels of increasing sophistication. The first is basic risk transfer, or insuring against probable loss. The second is a formal process, embedded in an organization's operations. This departmental—or "bottoms-up"—approach has been successful for decades and for many organizations is their only form of risk management, the authors write. The third and highest level is enterprise risk management, and this comes from the board and chief executive all the way down to line workers.

Given the book's aim to promote ERM, it's not surprising that considerable discussion is given to financial risks and hedging tools. Risk managers seeking a basic understanding of the role derivatives can play in offsetting losses will find this very helpful.

A quote by James Lam, who coined the title "chief risk officer" for his role at GE Capital and who is now a risk consultant,

underscores the importance of risk management: "Over the longer term, the only alternative to risk management is crisis management, and crisis management is much more embarrassing, expensive and time-consuming."

Both novice and experienced risk

managers will find this book informative, and they would be wise to share it with their organizations' top management.

Regis Coccia is managing editor of *Business Insurance* in Chicago.

Business Insurance seeks articles for publication in Perspectives section

Business Insurance accepts articles from experts in commercial insurance, risk management and employee benefits management for publication in its Perspectives section.

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- We will notify you of any questions we have about your article and any substantial editing we think is necessary.

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Commentary

In D.C., simplicity is not an option

"Keep it simple, stupid" is one of the most sage bits of advice ever offered.

It applies with equal validity to owners' manuals, software and national constitutions. And it's particularly appropriate when it comes to legislation.

That's probably why it's such a rare notion when it comes to legislation, particularly in Washington, a city that often seems to celebrate complexity for complexity's sake. A case in point is the Fairness in Asbestos Injury Resolution Act—one of many "FAIR Acts" that have floated around Washington in my time here. The only thing simple about the act was its acronym.

Faced with an unsustainable system for compensating victims of asbestos-related disease—a system characterized by suing anyone who had the slightest connection to the manufacture, use or distribution of asbestos—lawmakers managed to accomplish the truly miraculous feat of devising an even-more-cumbersome system to replace it.

After years of national hand-wringing over the asbestos mess, and after numerous corporate bankruptcies stemming from asbestos liability, the Senate kicked into gear and came up with the FAIR Act. The House, showing unusual restraint, decided to let the Senate take the lead on this one. Given the Senate's less-than-inspiring track record on tort reform of any kind, House leaders seemed to think it would be a waste of their time to get involved with yet another losing proposition. After all, there were other pressing matters on which to waste their time, such as approving the names of new post offices.

Stakeholders of all persuasions approached the creation of the FAIR Act with guarded hope but soon had those hopes dashed. At the center of the act was a trust fund, a no-fault pool paid for by defendant companies and their insurers. The size of a payout from the fund would depend on the seriousness of a claimant's illness. It all sounded quite reasonable except for: (1) there was no agreement among stakeholders as to how big the fund should be, and (2) there was no agreement about how the costs would be allocated among individual defendants or individual insurers. When you're talking billions of dollars, these can be serious disagreements. And (3) there was no guarantee that the

whole issue of liability would not revert to the courts should the fund start running low on cash. As a matter of fact, the FAIR Act said that claims would go back to court under those circumstances, albeit federal court.

The trust fund, in short, had the potential to make the stillborn Environmental Insurance Resolution Fund—a controversial trust fund suggested a decade ago as a solution to Superfund—look like an exercise in first-grade math.

The trust fund idea, at least as embodied in the FAIR Act, was probably a nonstarter from the beginning, but for various political reasons it had to be considered. In the meantime, the asbestos

problem remained serious and, arguably, grew worse as more companies sought bankruptcy protection.

Now, nearly a year after the Senate Judiciary Committee passed its version of the FAIR Act, we're back at square one. We've got a complicated problem that we've been working on for decades, and we're no

closer to a solution than we were 15 years ago.

But there is a simpler approach that might give lawmakers and stakeholders breathing room to come up with a more enduring solution. It doesn't even involve tort reform, which is a nearly obscene term to some people. For lack of a better expression, you might call it docket reform.

That approach is to adopt a so-called "inactive docket" for asbestos injury cases. People who fear that they have been injured by asbestos exposure can file suit, but those suits get put on an inactive docket until the claimants manifest actual illness, as defined by medical criteria. The cases of the claimants who meet the criteria proceed with all due speed. For those who never get sick, at least their rights have been protected at no cost to anyone else.

Here we have an asbestos litigation management tool with a track record, no need for a new bureaucracy to oversee it, and no diminishment of anyone's rights. It's simplicity itself.

And that's why I'm not holding my breath that the inactive docket will be embraced any time soon on Capitol Hill. In a town that loves complexity, simplicity's simply not an option.

Senior Editor Mark A. Hofmann can be reached at mhofmann@businessinsurance.com.



Mark A. Hofmann

ADA: States can't block all suits

Continued from page 4

sion "does not require States to employ any and all means to make judicial services accessible or to compromise essential eligibility criteria for public programs. It requires only 'reasonable modifications' that would not fundamentally alter the nature of the service provided, and only when the individual seeking modification is otherwise eligible for the service."

Disability law experts say that, despite its relatively narrow focus, the case could have an impact on private employers.

While the *Lane* decision "decides only the issue of states' immunity to federal legislation on the narrow issue of accessibility to courthouses for disabled individuals," it "does affirm that in passing the ADA, Congress meant to remedy what it considered to be 'systematic deprivations of fundamental rights' and 'pervasive problems of discrimination that people with disabilities are facing,'" said Philip M. Berkowitz, a partner in the New York office of law firm Nixon Peabody L.L.P. "These problems are described as 'difficult' and 'intractable,'" he pointed out.

"In ruling in the plaintiffs' favor, the court reaffirmed, even if by a narrow margin, the importance of providing a remedy to disabled

individuals who are victims of discrimination. Thus, employers should be aware that the Supreme Court continues to take seriously the remedies provided by the ADA and the need to remain vigilant to assure that discrimination does not occur in the workplace. Employers should also review their physical plants and assure that they comply with the ADA's accessibility requirements," said Mr. Berkowitz.

"The case has limited implications for private employers defending ADA claims, as the key issue is the ruling's examination of federalism principles and the abrogation of state sovereign immunity," said Gerald L. Maatman Jr., a partner at Seyfarth Shaw L.L.C. in Chicago.

"However, it may have significant practical implications, for public bodies will now face denial-of-access litigation similar to the rash of third-party claims private businesses and their employment practices liability insurance carriers have experienced over the last several years," Mr. Maatman said. "In that respect, it may convince legislators on the state level that businesses have a point in their campaigns for amendments to state access laws for what some believe are a significant number of suits filed simply to take advantage of the situation

in the guise of disability discrimination charges."

"A lot of private employers are being sued, facility by facility, for denial of access and have lobbied Congress to amend the ADA to provide a 90-day waiting period before lawsuits can be filed. Those lobbying efforts have gone nowhere, but perhaps with the onset of lawsuits against public bodies, these efforts will receive more serious consideration" at the state level, he said.

State laws often provide more generous damages than those available under the ADA, he said.

The National Council on Disability, an independent federal agency, hailed the decision as a victory for all citizens.

"With today's rulings, we hope that all states will continue to move forward in improving accessibility for all their citizens with disabilities and that we will continue to work toward the goals of the ADA—equality of opportunity, full participation, independent living and economic self-sufficiency for people with disabilities," NCD Chairperson Lex Frieden said in a statement issued after the ruling.

Tennessee vs. George Lane et al., U.S. Supreme Court., No. 02-1667. Decided May 17, 2004.

Deadline approaching for agent/broker directory

Business Insurance will publish its online Directory of Agents and Brokers in conjunction with the July 19 Agent/Broker Profiles issue. That issue will contain profiles of the 10 largest brokers worldwide, as well as a ranking of the 100 largest brokers of U.S. business.

The online directory will be available to *BI* subscribers on www.businessinsurance.com and will be included in *BI's* 2004/2005

Market Sourcebook, a special printed compilation of *BI's* directories and rankings, which will be published in December.

To be listed in the directory, an agency or brokerage must deal directly with corporate or institutional policyholders and must generate at least \$500,000 in gross revenues from commercial retail insurance brokerage.

Listings are published as an editorial service; there is no charge

to be included. If your company meets the requirements but has not received a questionnaire, please request one by calling Directory Editor Kevin P. Edison at 312-649-5279.

Completed directory questionnaires must be submitted by the June 4 deadline.

Copies of the questionnaire also can be printed from the Directories area of the *BI* Web site, www.businessinsurance.com.

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U.K. considering pension safety net

Proposal to retroactively cover lost pension benefits raises new questions

By SARAH VEYSEY

LONDON—A new U.K. government proposal to compensate people who have missed out on promised pension benefits could ultimately place an additional financial burden on employers that sponsor defined benefit plans.

The Department for Work and Pensions earlier this month proposed the creation of a £400 million (\$704 million) fund, provided by the government, that would compensate individuals who have lost pension benefits when their employers terminated underfunded pension plans.

The proposal is outlined in an amendment to pension-related legislation already under consideration by Parliament. That legislation, would, among other things, create a Pension Protection Fund similar to the Pension Benefit Guaranty Corp. in the United States. The PPF, which would be introduced in 2005, would be funded by a

levy on employers that provide defined benefit pension plans, known as final-salary plans in the United Kingdom.

While the PPF would respond to future pension plan terminations, the more recently proposed retroactive fund would aid individuals who already have lost pension benefits.

Although the proposal calls for the government to contribute £400 million to the fund over the next 20 years, it leaves open "the possibility of further contributions from industry," the Department for Work and Pensions noted in a statement. The department added that details of how the fund should operate—including eligibility criteria—would be worked out after a consultation period, and that the operation of the fund would be reviewed in three years.

The London-based Trades Union Congress, which represents workers, welcomed the proposed retroactive fund.

"The task now is to make sure that each individual who has lost out gets a fair deal from the funds," Brendan Barber, general secretary of the TUC, said in a statement.

However, some analysts questioned whether £400 million would be sufficient to meet the fund's goals, even under the government's estimate that 60,000 people would likely be eligible to make a claim.

Tim Keogh, European partner at Mercer Human Resource Consulting in London, said that while £400 million is a "serious sum," it is not all that large in relation to the potential problem.

"If the estimate of 60,000 people affected is anything to go by, then £350 (\$616) a year each (over the 20 years) will make only a modest difference," he said.

"The only way that that £400 million will have a material impact is if the rules are defined

See PENSIONS/next page

World Updates

Many in U.K. not ready for asbestos rules

More than half of U.K. businesses surveyed are likely to be in violation of new asbestos rules that took effect May 21. The Davies Arnold Cooper survey of 500 U.K. companies, conducted last month, found that 58% of respondents had not carried out an asbestos assessment on their premises—one of the major requirements of the Control of Asbestos at Work Regulations 2002. Failure to comply with the rules is a criminal offense punishable by fines, imprisonment or both.

Zurich records gains in quarter

Zurich Financial Services Group recorded net income of \$702 million for the first quarter of 2004, a 424% increase over the year-earlier period. The Zurich, Switzerland-based insurer said the improvement was due in part to firmer prices in key markets. In addition, Zurich's investment income for the first quarter was \$1.95 billion, up 305% over the year-earlier quarter. The group's total gross written premiums increased by 5.9% to \$14.3 billion.

Allianz posts profit of \$824 million

Allianz A.G. Holding posted net income of 675 million euros (\$823.5 million) for the first three months of 2004, up from a loss of 546 million euros (\$595.1 million) for the year-earlier period. The Munich, Germany-based insurer wrote gross premiums of 25.0 billion euros (\$30.5 billion) in the first quarter of 2004, down less than 1%.

SCOR earnings up, but writings drop

SCOR S.A. posted profits of 32 million euros (\$39.0 million) for the first quarter, up 3% from the prior-year period. The Paris-based reinsurer's gross written premiums fell 43% to 716 million euros (\$873.5 million) for the quarter. SCOR's nonlife reinsurance business generated gross premiums of 388 million euros (\$473.4 million) in the quarter, down 48% from the comparable period last year.

Briefly noted

Lloyd's of London broker Howden Insurance Brokers has set up a new wholesale medical professional indemnity division. **Howden Medical Insurance Services** will be headed by Executive Director Lance Rigby. Howden is part of London-based Hyperion Insurance Group.

Skyguide CEO admits errors contributed to air collision

ZURICH, Switzerland—Skyguide, the organization responsible for air traffic control in Switzerland, has accepted responsibility for errors that contributed to a midair collision over Germany in 2002.

Following the publication this month of investigators' report on the incident, Skyguide Chief Executive Alain Rossier conceded that the company made errors that played a role in the collision of a passenger jet and a cargo plane in July 2002. The crash killed 71 passengers and crew.

However, an attorney for Geneva-based Skyguide stressed that the admission of partial responsibility does not mean the government-owned air traffic controller has accepted full liability.

Apportionment of liability among Skyguide, its insurers, the two airlines involved—Bashkirian Airlines of Russia and cargo carrier DHL—and their insurers has not been decided, said Alexander von Ziegler, a partner with the law firm of Schellenberg Wittmer in Zurich.

The accident report faulted various parties, including the air traffic controller and the crew of the Bashkirian Airlines passenger plane.

So far, 13 families have received compensation for the accident from a pool funded by Skyguide and the German and Swiss governments, according to a Skyguide statement.

Skyguide's insurance at the time of the accident was led by Winterthur Group based in Winterthur, Switzerland, and now part of XL Capital Ltd.

DHL's hull and liability program was led by ACE Global Markets, a London-based unit of ACE Ltd.

Bashkirian Airlines' hull and liability coverage was placed with local Russian insurers and reinsured with Avicos, another Russian company. The airline also had an excess liability program that was led by Lloyd's of London syndicates.

—By Peta Miller



PHOTO: NEWSPIX

Workers dismantle and bury shacks built with asbestos products manufactured by James Hardie Industries, which is the target of an inquiry into whether it has adequately funded a trust to settle asbestos claims.

NSW not liable for asbestos injury to private worker

By ELIZABETH FRY

SYDNEY, Australia—Asbestos producers and victims of asbestos-related disease cannot sue the state government for failing to protect workers from the hazardous material, the New South Wales Court of Appeal ruled.

The appeals court on May 17 dismissed a lawsuit in which a former subsidiary of Australian building materials giant James Hardie Industries sought to recoup compensation it had paid to a construction worker who developed mesothelioma.

Amaca Pty. Ltd., a unit of James Hardie until its ownership was transferred to an asbestos claim trust in 2001, paid \$370,000 Australian (\$256,150) in 1994 to the worker, who was exposed to asbestos dust from the company's products while building a power plant in the late 1950s.

Court of Appeal Justices Keith Mason, David Ipp and Ruth McColl ruled that New South Wales workplace safety inspectors did not have a duty to warn the state-employed worker of the dangers of asbestos at the work site.

The ruling was the culmination of a protracted five-year battle between Amaca and the state government.

The case stems from a lawsuit brought by the worker against the New South Wales Electricity Commission. Both the worker and the commission filed cross claims against Amaca, which then countersued the state government. After Amaca's lawsuit was dismissed by the trial court, Amaca and James Hardie took the case to the Court of Appeal.

Amaca argued that government safety inspectors at the site knew as much about asbestos disease as Amaca did. The company also claimed the state government was negligent in not enforcing safety precautions. After losing its case in the Court of Appeal, Amaca and its new parent, the Medical Research & Compensation Foundation, appealed to the New South Wales High Court in March.

At that point, Amaca's prospects looked slightly brighter, as the High Court found that the lower court judge had made some serious errors. The High Court found that the lower court judge improperly assumed that the state had breached a duty of care without identifying either the duty owed to the plaintiff or the breach, making it impossible to identify the extent of damage.

The High Court also overruled the Court of Appeal's finding that the state government

See ASBESTOS/next page

Asbestos: Not liable

Continued from previous page

should not have to contribute to asbestos cases because it is a taxpayer-funded entity, rather than a for-profit company. The High Court told the lower court to go back and consider the matter on its merits.

In its decision, the High Court also said that the purpose of conferring power on the state to enforce safety was because employers do not always adequately protect workers. "It is reasonable to suppose that these inspectors did, from time to time, observe concentrations of visible dust which must have been in excess" of the 1946 exposure standard adopted by U.S. governmental industrial hygienists, the court said.

Despite the High Court's comments about the power of the state, the Court of Appeal rejected Amaca's claim that the state knew or

should have known that brief exposure to the quantities of dust observed by the inspectors might injure workers.

Meanwhile, a special investigation in July is expected to report its findings on whether James Hardie properly funded the asbestos trust, the MRCF, to settle asbestos claims. This investigation will assess whether James Hardie knew when it established the trust that assets of \$293 million Australian (\$202.8 million) would not be enough to meet asbestos claims. The MRCF now estimates a shortfall of \$800 million Australian (\$553.8 million) between its assets and projected liabilities.

Amaca Pty. Ltd. vs. The State of New South Wales & ANOR [2004] NSWCA 124

Pensions: U.K. safety net

Continued from previous page

pretty tightly in terms of how it is distributed," said Raj Mody, a consultant at Hewitt Bacon Woodrow in Leeds, England. "But that will still leave many people out there who will end up with less than what their expectation might have been," he said.

Indeed, £400 million would not be enough to cover the benefits of all workers who have missed out on promised pension benefits, noted Raymonde Nathan, consulting director-London at Jardine Lloyd Thompson Group P.L.C.'s employee benefits arm. In addition, administration of the retroactive fund would likely be costly and complex, he noted.

Analysts said the government could ask employers to donate to the fund—possibly on a voluntary basis—should government contri-

butions fall short.

But employers, many of whom are already unhappy about the proposed PPF levy, would likely balk at also being asked to make contribu-

£400 million would not be enough to cover the benefits of all workers who have missed out on promised pension benefits.

*Raymonde Nathan
Jardine Lloyd Thompson
Group P.L.C.*

tions to the retroactive fund, noted Mr. Keogh.

Hewitt's Mr. Mody said that while employers may be prepared morally to contribute to such a

fund, "commercially, the decision is less clear-cut."

Digby Jones, director general of the London-based Confederation of British Industry, welcomed the proposed retroactive fund but stressed that the government, not employers, should be fully responsible for the funding.

A CBI spokesman said many employers believe it would be wrong to expect companies with well-run pension plans to retroactively "bail out" the pensioners of employers that ran underfunded plans.

But Paul McGlone, a principal and actuary at Aon Consulting in London, said government representatives had suggested that the "contributions" from industry mentioned in the proposals could come in the form of assistance with administering the fund, rather than financial contributions.

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ANNOUNCEMENT

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Olive Johnston BSc FCIP

Mr. Ronald G. Schwab, President and Chief Executive Officer of Commonwealth Insurance Company is pleased to announce the following appointments: **Olive Johnston**, to Senior Vice President, Non Marine Underwriting, Energy and International Division; **Leslie Bomford**, to Senior Vice President, Marine Underwriting, Energy and International Division; and **Nigel Jobson**, to Vice President, Non Marine Underwriting, Energy and International Division.

Ms. Johnston's career with Commonwealth spans over 26 years and includes various positions in Commercial/Industrial Property Underwriting. The last 19 years have been devoted to the company's Energy and International Division. During her Commonwealth tenure, Ms. Johnston was named the Canadian Insurance Institute's top graduating fellowship student and was awarded the Knollys Shield. In her new role, Ms. Johnston will manage all aspects of Commonwealth's Non Marine Energy portfolio.

Ms. Bomford has been with Commonwealth some 28



Leslie Bomford

years spending the majority of her tenure in aspects of Inland Marine and Marine Energy Underwriting. Ms. Bomford will assume responsibility for the management and continued development of the company's Marine Energy business.

Mr. Jobson joined Commonwealth's Energy Division in 1993. Prior to joining the company he held several underwriting and management positions with Insurers active in the Western Canadian marketplace. In his new position, Mr. Jobson will assume increased responsibility in the Non Marine area while taking on certain specific duties emanating from the Marine portfolio.

Commonwealth Insurance Company commenced operations in 1950 and is a major writer of all classes of commercial property, casualty, oil, gas, petrochemical and marine insurance through brokers in Canada, United States and abroad. Commonwealth is a wholly owned subsidiary of Northbridge Financial Corporation which is traded on the TSX (NB).



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LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF

AVIATION & GENERAL INSURANCE COMPANY LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 1985

NO 3091 of 2004

NOTICE IS HEREBY GIVEN that, by an Order dated 20 May 2004 made in the above matter the Court has directed that a meeting (the "Meeting") be convened of Scheme Creditors (as defined in the scheme of arrangement referred to below) ("Scheme Creditors") of the above named company (the "Company") for the purpose of considering and, if thought fit, approving (with or without modification) a scheme of arrangement proposed to be made between the Company and its Scheme Creditors pursuant to section 425 of the Companies Act 1985 (the "Scheme"), and that the Meeting be held on 7 July 2004 at 11 a.m. at the offices of PricewaterhouseCoopers LLP, 1 Embankment Place, London, WC2R 6RU, United Kingdom. All Scheme Creditors are requested to attend at such place and time either in person or by proxy.

Scheme Creditors may vote in person at the Meeting or may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

A copy of the text of the Scheme and of the Explanatory Statement required to be provided to creditors pursuant to section 426 of the Companies Act 1985, as well as blank forms of proxy, may be obtained from the offices of the Company at 2nd Floor, Bankside House, 107/112 Leadenhall Street, London EC3A 4DD, United Kingdom, before 5.30pm (London time) on 5 July 2004 (Ref David Evans).

Ref: Clyde & Co, 51 Eastcheap, London EC3M 1JP

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF
GARETH HOWARD HUGHES AND PAUL CLARKE,
AS JOINT PROVISIONAL LIQUIDATORS OF
OCEAN MARINE MUTUAL INSURANCE
ASSOCIATION LIMITED,
CASE NO. 99-B-42545 (BRL)

NOTICE IS HEREBY GIVEN THAT ON MAY 12, 2004, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. § 304 ORIGINALLY ENTERED IN THIS CASE ON MAY 5, 1999. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING TO CONSIDER WHETHER IT SHALL BE CONTINUED, WHICH HEARING IS SCHEDULED TO BE HELD ON NOVEMBER 5, 2004 AT 10:00 A.M. (THE "RETURN DATE") BEFORE THE HONORABLE BURTON R. LIFLAND, IN ROOM 623 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE BURTON R. LIFLAND AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

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May 24, 2004

Comp: Benefits may expand

Continued from page 4
workers.

Broad impact

Canadian workers comp coverage is provided largely by provincial workers comp boards and financed by employer-paid premiums.

Only two provinces, Nova Scotia and Prince Edward Island, had limitations on chronic-pain claims and had to make changes to their coverage programs, board officials said.

And while the most populous Canadian provinces—Ontario, Quebec, British Columbia and Alberta—were not directly affected by the Supreme Court decision, the decision still has broad implications for those provinces.

That is because the Supreme Court, in ruling on the issue of chronic-pain claims, challenged the

constitutionality of attempts to limit or deny benefits for injuries or conditions arising from the workplace, observers say.

"As long as the link can be made, the courts want the benefits to be paid," said Michael McAlear, a senior consultant for Heath Benefits Consulting Inc. in Ottawa.

Limitations on other conditions, such as work-related mental stress, could be challenged on the basis of the Supreme Court decision, consultants say.

"The Supreme Court has removed the legal basis by which (provinces) can limit the entitlements," said Sheikh Azaad, disability management specialist for John Chute & Associates, a Toronto-based human resources and benefits consulting firm.

Several provinces provide coverage for work-related stress but have

limitations on the nature of the stress condition or the amount of time an employee can be absent from work.

For example, Ontario provides coverage for "traumatic mental stress that is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of employment," according to the Workplace Safety & Insurance Board Ontario's operational policy. However, a worker in Ontario is not entitled to benefits for traumatic mental stress that stems from employment decisions or actions.

If provinces are required to include coverage for work-related stress conditions without limitations, the high costs related to mental stress conditions could be shifted to employers through higher premiums, Mr. Azaad said.

"The potential is for employer costs to increase exponentially," he said. "That's what employers are afraid of."

That possible expansion of liability for the workers comp scheme has serious financial and legal implications for employers, said Robert Patzelt, group corporate counsel and risk manager for Bedford, Nova Scotia-based Scotia Investments Ltd. The court ruling has the potential to turn what was designed as simply a workplace injury compensation program into a broader disability program, he said. "We're in a state of upheaval," he said.

Although provincial workers comp board officials declined to comment on the reasons for these exclusions, consultants say provinces have been instituting limitations to combat rising workers comp costs. Those increases are being driven primarily by rising medical costs, including those related to prescription drugs and chiro-

practor visits.

Indeed, premiums have risen in many provinces to cover increasing health care costs, board officials say. In Alberta, for example, the average premium rate has increased to \$1.98 per \$100 of insurable earnings in 2004 from \$1.49 per \$100 in 1998. Alberta board officials attributed the higher rates to a 72% increase in costs per claim, driven mainly by rising medical expenses.

Coverage options

Many Canadian companies must accept the higher premiums, as participation in provincial workers compensation programs is mandatory for industries that have a high potential for workplace injuries, such as manufacturing. "What you have is a monopoly of the system," Mr. Azaad said. "There is very little opportunity to shop around for a better rate."

Certain industries, such as banking and insurance, are not required to participate in the government-run workers comp program. In addition, other specific organizations such as local municipalities are mandated to have workers compensation coverage but can opt out of the board program if they demonstrate they can secure suitable coverage on the private market.

"For those that can opt out, we have found that they can fare much better," Mr. McAlear said. "They can secure the required coverage at a much more competitive premium. It is substantially cheaper."

Paul Barlow, manager of revenue and risk management for The Greater Vancouver Transportation Authority, said his company must participate in the provincial program. He noted that transportation premium rates have been fairly stable in recent years. "We haven't been finding the 20% to 50% increases as other industries have."

Employers do not have control over the rates set by the boards; rates for each company in a given sector reflect the loss experience of that sector, though those companies that have low incident levels within a sector are eligible for individual rebates.

Direct effects

In the wake of the Supreme Court's ruling, the Workers Compensation Board of Nova Scotia estimates that providing chronic-pain benefits will result in an overall increase of \$198 million to \$217 million to the benefits liability, with an \$11 million increase in annual claims costs.

The average premium rate for employers in Nova Scotia is currently \$2.54 per \$100 of insurable earnings. In Nova Scotia, 28% of every premium dollar is allotted toward making up the deficit. The current needs of the program are only 67.2% funded, a board spokeswoman said.

The workers compensation board will re-evaluate premiums in June for 2005, taking into account the new rules regarding chronic pain, the spokeswoman said.

Employer premiums in Nova Scotia, which are already the second-highest in Canada due to the deficit, will increase to pay for past chronic-pain claims and the estimated costs of future claims, according to Mr. Patzelt. "The medium- and long-term impact is that rates will go up," he said. "We don't have enough money in the pot."

The Workers Compensation Board of Prince Edward Island does not yet know how much compliance with the Supreme Court ruling will cost employers, because legislation adjusting the province's laws to include chronic pain passed just earlier this month, a spokesman said. The board has identified about 150 possible chronic-pain cases, he said.

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Retirees: HRA offers flexibility

Continued from page 3

cal expenses and premiums while limiting their financial exposure.

The Aetna plan is a variant of health reimbursement accounts—or HRAs—which the Internal Revenue Service gave its blessing to about two years ago. Since then, though, HRAs have been used nearly exclusively as vehicles linked to high-deductible health insurance plans offered to employees but not to retirees. In those situations, the HRA, funded by the employer, has been used to cover a portion of the expenses that fall under the deductible.

But benefit experts say there is no reason HRAs have to be limited to employees or linked to high-deductible plans.

"It certainly can exist on a stand-alone basis," said Andy Anderson, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

Some say retiree medical HRAs provide employers with an alternative that avoids the one extreme of keeping a traditional retiree health care plan whose liabilities can be

open-ended and the other extreme of ending all financial support.

"It can be a way of providing resources for retiree health care expenses without having a plan in the traditional sense," said Joe Martingale, national health care strategy leader with Watson Wyatt Worldwide in New York.

"Instead of having an open-ended liability, you have a well-defined subsidy," said Stephen Parahus, vp-senior health care consultant in New York for The Segal Co.

Another attraction of the plan is that the credits are readily visible to and easily understood by retirees.

"It is an easy-to-understand value of what the employer is providing as part of its relationship with its workforce," Hewitt's Mr. Anderson said.

The retiree HRA could, under a recent Treasury Department ruling, be offered by an employer that is providing to active employees a health savings account arrangement linked to a high-deductible health insurance plan. Such an arrangement, the Treasury Depart-

ment has said, would pass muster as long as the HRA was limited to the reimbursement of retiree health care expenses (BI, May 17).

Some experts envision plan designs in which the employee would fund the HSA through tax-deductible contributions while the employer would be responsible for the HRA, which would be limited to the reimbursement of retiree health care expenses. Alternatively, the employer might fund only a portion of the HSA while maintaining a retiree-only HRA.

An advantage of these approaches, from employers' perspective, is that employers, while crediting the HRA with a balance, would not actually have to pay out money until the reimbursement of the retiree health care expenses was required. Such a design would conserve corporate cash.

By contrast, one of the shortcomings of HSAs is that employers that agree to make contributions actually must make cash contributions to the accounts, and those contributions immediately and fully vest.

HSBC: Swing insurers for failing to pay fidelity claim

Continued from page 3

sold billions of dollars of Princeton notes to Japanese investors. The notes were issued by special-purpose vehicles that Mr. Armstrong incorporated in the Turks & Caicos Islands under the "Princeton Global Management" name; he was to invest the proceeds of the SPV note sales through segregated brokerage accounts at Republic, with the proceeds used to pay either variable- or fixed-rate returns to investors.

Mr. Armstrong's business generated \$35 million in commissions and fees for Republic's futures trading division from 1995 to 1999, ac-

counting for virtually all of the division's revenues and making it the most profitable sector of Republic's brokerage unit, according to SEC documents.

While Mr. Armstrong told investors that he would invest the note proceeds conservatively in U.S. government bonds, though, he actually engaged in risky currency, metals and futures and options trading that had generated net losses of \$550 million by 1999, the SEC found in a 2001 administrative proceeding.

As the losses piled up, Republic officials continually helped Mr.

Armstrong conceal the funds' actual performance, according to HSBC's lawsuit, which echoes the earlier SEC findings.

Between November 1995 and July 1999, for example, a top officer of Republic's futures division and several other Republic employees issued more than 200 letters that falsely reported the net asset value of various Princeton SPV accounts, HSBC alleges. In some cases, the letters were "completely false," the suit says. In others, Republic officials transferred funds from one SPV account to another to bring balances up to the reported levels,

even though investors had been told the funds of the various SPVs would not be commingled, according to the complaint.

Rather than allocating trades to the proper Princeton SPV accounts, Republic officials also allowed Mr. Armstrong to set up separate trading accounts and improperly aggregate those accounts with the SPVs', effectively offsetting "massive deficit balances" in the trading accounts with the collateral in the SPV accounts in violation of Republic and New York Mercantile Exchange rules, the suit says.

Republic officers also used segre-

gated SPV funds in a number of improper ways, transferring money out of the accounts to NYMEX to cover Mr. Armstrong's trading account losses; using money from one SPV account to pay noteholders of another SPV; and allowing Mr. Armstrong to divert funds for his own use, HSBC charges.

The bank discovered the alleged fraud in an internal investigation in 1999, before its sale to HSBC, and notified federal prosecutors and the SEC, according to the suit. Mr. Armstrong was indicted soon afterwards on conspiracy, securities fraud and wire fraud charges and is awaiting trial. Though he pleaded not guilty and was released on bond, he has been held since January 2000 in a federal jail in New York City on a contempt of court charge for failing to turn over assets to Princeton's receiver.

While Martin A. Armstrong told investors that he would invest the note proceeds conservatively in U.S. government bonds, he actually engaged in risk currency, metals and futures and options trading.

Securities and Exchange Commission

Meanwhile, HSBC—which negotiated a minimum \$450 million reduction in Republic's purchase price because of the Princeton scandal—filed its suit against its fidelity insurers to recover part of the \$569 million in restitution it paid noteholders.

In addition to Lloyd's, insurers participating in the \$100 million comprehensive crime coverage were Travelers Casualty & Surety Co. of America and affiliate Gulf Insurance Co., Chubb Corp.'s Federal Insurance Co. unit, and the Continental Casualty Co. unit of CNA Financial Corp.

The complaint does not say what part of the limit each insurer wrote, and lawyers familiar with the dispute declined to comment.

HSBC's lawsuit quotes the program's insuring agreement, which covers "loss resulting directly from dishonest or fraudulent acts committed by an employee acting alone or in collusion with others." The dishonest acts must be committed with the intent to cause the bank a loss or to "obtain financial benefit for the employee or another person or entity."

HSBC filed a claim with the insurers for its restitution losses and for defense costs that totaled \$14.4 million as of the end of 2001. The insurers refused to pay the claim, though, and "wrongly contend that the policy denies coverage" for the losses, according to the lawsuit.

Along with a declaratory judgment that the claim is covered, HSBC seeks damages for breach of contract and payment of defense costs.

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May 24, 2004

Kroll: Marsh buys risk mitigation firm

Continued from page 3

risk-related solutions, and that's what they want," said Mr. Cherkasky, who will lead the combined Marsh Risk Consulting and Kroll units. Jules Kroll, founder and executive chairman of Kroll, will become a vice chairman of Marsh Inc.

Through more than 3,200 employees in around 60 offices throughout the world, Kroll provides various investigative, intelligence, financial, security and technology services.

Specifically, the addition of Kroll will expand MMC's expertise in corporate restructuring, business intelligence and investigations, security services, employee screening and electronic evidence and litigation

support, MMC said.

Observers are generally positive about the deal.

"This brings into the Marsh family services that recognize a new array of strategic and management risks that are different from what enterprise (risk management) for many people has come to mean—and certainly different from what traditional operational risk has meant," said David Mair, president of Risk Excellence, a strategic risk consulting firm based in Melbourne, Fla.

The deal also "gives Marsh access to a different part of their corporate client base in delivering services that are more often accessed through the executive suite than

through traditional operational risk management," Mr. Mair added.

"I think it's fabulous," said Richard S. Betterley, president of Betterley Risk Consultants Inc. in Sterling, Mass. "What you have here is a professional services firm...bulking up on its professional services it can offer. It fits into the risk management space very nicely."

"Kroll is such an impressive organization, I suspect risk managers would use them even if they were not Marsh clients," Mr. Betterley added.

"Strategically, we believe that the Kroll acquisition makes sense for MMC," analysts for Merrill Lynch & Co. Inc. said in a report issued after

the deal was announced. "Many of the services that Kroll provides appear to be complementary to MMC's consulting and risk management services."

They note, however, that although the two firms may have clients in common, they have different sets of executive relationships with those clients. "This could be both an opportunity and challenge, as the company may be asking certain executives to make buying decisions that they have not historically made," the analysts note.

Although the deal appears to have strategic advantages for MMC, there is a fair amount of debt associated with the deal, and MMC will

be integrating in Kroll a BB- rated company that has grown dramatically through recent acquisitions, said Thomas Upton, a director with Standard & Poor's Corp. in New York.

After the acquisition was announced, S&P put its AA-/A-1+ counterparty credit rating of MMC under review with negative implications.

Moody's Investors Service in New York on Thursday said it would review Kroll's implied credit rating for a possible upgrade.

In the 1990s, Kroll was affiliated with New York-based American International Group Inc., which took a minority stake in the security services firm in 1993. Before he joined MMC in 1995, Mr. Greenberg was AIG's executive vp in charge of the insurer's domestic property/casualty operations.

Results: P/C profits increase

Continued from page 4

the heels of three years of price increases."

Other first quarter results from the BI survey of 14 major property/casualty insurers include:

- Net premiums written increased 13.2% to \$31.41 billion.

- The insurers reported an average 93.8% combined ratio for the first quarter, compared with 97% for the year-earlier period.

- Policyholder surplus for the 11 insurers reporting this data increased 21.5% to \$49.84 billion.

"All the companies did much better than (expected)—certainly on the profitability side, which is what matters in the long run—but even somewhat on the premium-growth side," said Todd Bault, a research analyst at Sanford Bernstein & Co. in New York. "Premium growth is certainly slowing over last year, but it was a little bit better than many thought" it would be, he said.

"Generally, underwriting results

exceeded expectations," said Stephan Petersen, an analyst with Cochran, Caronia & Co. in Chicago. "But, clearly, the story this quarter was the re-emergence of price competition in some of the segments, which dampened premium growth" for some insurers.

"In many cases, top-line growth was lower than expected," which meant results were good at the bottom but "not so good at the top," Mr. Petersen said.

One factor contributing to insurers' strong results was first-quarter catastrophe activity, which was "about average, as historical standards go, but slightly below the comparable period of 2003. So that helped in year-over-year quarter comparisons," said John Ward, chairman of the Cincinnati-based Ward Group.

In addition, insurers saw a slight improvement in investment income, Mr. Ward noted. Interest rates are starting to increase, although "the equities market is obvi-

ously going through turbulent times."

Furthermore, "pricing levels and underwriting discipline remain strong, although it's clear that the trend in pricing increases is definitely beginning to slow, and probably in 2005, the hard market will be largely a thing of the past," Mr. Ward said.

Pressure on rates

"This could be the peak year in the cycle," said James B. Auden, senior director at Fitch Ratings in Chicago.

"We're seeing declines in some areas and sharply reduced increases in nearly all segments, so you wonder if rates are going to be keeping up with loss-cost trends going forward," Mr. Auden said. "Our suspicion is they will not, so that may lead to this year kind of being the best year, in terms of underwriting results, in the cycle."

Mr. Petersen said that last year,

casualty rates increased 5% to 10%, while underwriters now are getting increases of up to 5%. "So you're barely keeping up with inflation and barely keeping up with loss costs at that point," he said. While earnings will improve this year, "I think the short-term crutch of rapid price increases is disappearing."

"There are certainly some troubled segments that are still getting large rate increases," such as medical malpractice and directors and officers liability, said Karen Davies, vp and senior credit officer with rating agency Moody's Investors Service in New York. "But as far as your more vanilla-type coverages within the commercial lines industry, I'd say rates are probably not decreasing, but the level of increase is moderating."

Rates are probably up about 5% on average across all lines through the first quarter, said Chris Winans, senior property/casualty analyst with Lehman Brothers in New York. Although the rate of price increases is slowing, "it's still growing at several percentage points faster than the pace of growth in paid losses, and that's the most important

thing," he said.

"Rates will continue to soften," Mr. Paisan said. "When you're generating this type of profitability" and returns on equity, it is "very hard to justify continued rate increases, so I think we'll start to see some continued pressure on rates for both property and casualty business."

"The market certainly seems to be in transition there," said John Iten, a director at rating agency Standard & Poor's Corp. in New York. "The question is, really, are rates slowing down quicker than anybody thought? Time will tell."

Improved reserves

Meanwhile, there is general agreement that the property/casualty industry's reserve situation has improved.

Mr. Winans estimates that reserves for the commercial lines primary segment are now 1.5% deficient for estimated liabilities as of year-end 2003, compared with 15.5% for year-end 2002.

"We don't expect, given our latest reserves analysis, to see a lot of really large surprises in that area, because we've noted a pretty significant improvement between the year-end 2002 and year-end 2003 reserves," Ms. Davies said. This "bodes better for the quality of earnings in 2004 than...we had previously thought."

"We still think there's some implicit reserve strengthening going on," said Moody's Vp and Senior Credit Officer Alan Murray. He pointed to cases in which insurers have introduced large, double-digit rate hikes, yet later reported only three- or four-percentage point improvements in their combined ratios.

Observers generally agree that 2004 overall will be a good one for insurers.

"The first quarter was sort of setting the stage of continued earnings momentum throughout the rest of the year, so I think we'll continue to see very strong earnings come through," Mr. Paisan said.

"Profits tend to be quite good for a long period" after the hard market has ended, Mr. Bault said. "You usually don't transition immediately to a soft market. How long it will take? Who can say?"

Property/casualty insurers' 2004 first-quarter results

Ranked by net income. All amounts in thousands of dollars

	Corporate			Property/casualty operations					
	Net Income	Percent increase 2004-2003 (decline)	Consolidated Revenues 2004	Combined Ratio 2004	Combined Ratio 2003	Premiums Written 2004	Percent increase 2004-2003 (decrease)	Policyholder Surplus 2004	Percent increase 2004-2003 (decrease)
American International Group	\$2,656,000	35.9%	\$23,637,000	93.2% ²	93.1% ²	\$10,213,000 ²	23.9%	N/A	N/A
The St. Paul Travelers Cos.	587,200	72.7	4,127,500	91.9	99.9	3,471,300	9.6	\$8,788,000	12.1%
Hartford Financial Services Group Inc.	568,000	N/M ³	5,732,000	89.8	96.6	2,398,000 ²	10.7	6,100,000	3.4
ACE Ltd.	446,825	80.6	2,894,858	86.9	90.6	3,238,166	10.5	9,396,820	40.2
Chubb Corp.	360,700	60.6	3,178,300	92.6	95.3	3,017,400	12.8	6,750,000	39.2
SAFECO Corp.	236,200	162.4	1,498,300	89.9	98.2	1,375,700	14.1	3,028,200	17.7
Cincinnati Financial Corp.	146,119	158.0	870,545	87.1	95.1	790,015	15.1	2,791,419	0.4
Old Republic International Corp.	106,413	1.9	822,425	93.0	94.8	381,186 ²	9.5	1,899,073	11.6
American Financial Group	73,200	191.6	874,300	93.8	97.1	539,100	(3.2)	1,933,800	31.7
Ohio Casualty Corp.	19,200	(3.5)	415,300	100.7 ²	108.8 ²	364,100 ²	3.4	887,800	2.3
Argonaut Group Inc.	18,300	(45.5)	171,000	97.9	108.5	145,200	10.9	564,100	4.6
RLI Corp.	16,943	17.4	140,649	91.5	91.2	123,166	16.1	576,112	4.0
CNA Financial Corp.	(125,000)	N/M ⁴	2,270,000	105.0 ²	109.2 ²	1,820,000 ²	(5.2)	N/A	N/A
Liberty Mutual Insurance Co.(F2)	N/A	N/A	N/A	103.8	103.0	3,534,000	0.1	7,126,000	37.9
Cumulative	\$5,110,100	184.2%	\$46,632,177	93.8%	97.0%	\$31,410,333	13.2%	\$49,841,324	21.5%

¹ Includes dividends. ² Statutory. ³ Comparison not meaningful due to 2003 loss. ⁴ Comparison not meaningful due to 2004 loss. N/A Company did not provide data
Source: BI Survey

Outage: Companies take steps to avoid blackout losses

Continued from page 1

making changes such as upgrading its computers and improving its employee training.

Meanwhile, public water systems and private manufacturers that rely on electrically powered equipment are installing backup generators to reduce losses should there be another blackout. In addition, some companies are exploring insurance coverage options.

No legislative solution

Individual companies are taking the initiative in part because Congress is stalemated over energy system reform bills—S. 2095 and H.R. 6—according to Mark Whiten-ton, vp-resources and environmental policy for the Washington-based National Assn. of Manufacturers.

Those bills are designed to improve the reliability of the North American power grid system, which faces major operational problems, according to the report prepared by the U.S.-Canada Power System Outage Task Force.

Manufacturing companies are especially concerned about the availability of electrical power because they consume 40% of nation's electricity, according to a NAM spokesman. As such, NAM members are "major advocates" of a comprehensive U.S. energy plan, and they "have been disappointed" by Congress' failure to pass such a plan, the spokesman said.

The 228-page report, which the task force issued in April, includes 46 recommendations to improve the electrical delivery system that serves both the United States and Canada, including replacing the current voluntary guidelines established by the North American Electric Reliability Council of Princeton, N.J. That industry-sponsored organization oversees the operation of the continent's power transmission grids.

The report "makes clear that this blackout could have been prevented and that immediate actions must be taken in both the United States and Canada to ensure that our electric system is more reliable. First and foremost, compliance with reliability rules must be made

mandatory, with substantial penalties for noncompliance," according to a letter in the report, which was signed by both the U.S. Secretary of Energy and the Canadian Minister of Natural Resources.

Last summer's blackout began August 14 and cascaded through the electrical power system, ultimately affecting an estimated 50 million people in businesses and homes in parts of eight Midwestern and Northeastern states—Connecticut, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania and Vermont—as well as the Canadian province of Ontario.

While some areas lost power for only a few hours, others—including parts of New York City—were without it for longer, in some cases, days. Ontario experienced rolling blackouts for more than a week until power was fully restored, the report notes.

The blackout cost the United States between \$4 billion and \$10 billion, according to Electric Consumer Research Council figures cited in the report. In addition, the report notes that Canada experienced a net loss of 18.9 million work hours, as well as a drop of \$2.3 billion Canadian (\$1.66 billion) in manufacturing shipments in Ontario.

The 2003 blackout resulted in \$180 million in insured losses, according to the Property Claim Services unit of the Jersey City, N.J.-based Insurance Services Office Inc. Insured losses were low relative to economic losses in part because of deductible time periods in many business interruption policies (*BI*, Aug. 25, 2003).

Making changes

The report cites several factors that contributed to the blackout, including "inadequate vegetation management"—allowing trees to grow too close to power lines—and the failure to operate within appropriate limits and to "identify emergency conditions and communicate that status to neighboring systems."

In addition, the report faults inadequate operator training and coordination of equipment, among other factors.

There also were "long-standing institutional failures and weaknesses that need to be understood and corrected in order to maintain reliability," the task force's report states.

Still, in the wake of the power outage, some energy companies have taken "significant" steps to improve operations, said John McLane Jr., New York-based senior vp and placement leader with Marsh's Power and Utilities unit.

Some companies "also worked very hard to improve their software" to allow for early detection of problems, noted Mr. LaFleur.

For example, FirstEnergy Corp., the Akron, Ohio-based public utility holding company whose operation was determined to be the starting point of the blackout—to update its computers, enhance its worker training and increase its line inspection and tree-trimming programs, a spokeswoman said.

Essentially, "we will be putting plans in place to ensure that we comply" with recommendations, she said. "We are very willing to do our part," the spokeswoman said, stressing that FirstEnergy expects other companies to make improvements as well. The company operates seven electric utility companies that provide service to 4.4 million customers in Ohio, New Jersey and Pennsylvania.

Utilities and other companies also should review schedules for equipment maintenance to ensure that essential equipment is available during periods of peak demand, such as when hot weather increases the use of air conditioning, Mr. LaFleur said.

That may be especially important this summer. There is an increased likelihood of above-average temperatures on the West Coast and across the South reaching into the Ohio Valley—which extends into Illinois, Indiana and Pennsylvania—said Michael Halpert, head of forecast operations for the U.S. National Oceanic and Atmospheric Administration in Camp Spring, Md.

Despite the weather predictions, U.S. Department of Energy officials "believe that our electric system is being operated more conservatively today than it was before the blackout last August, and this should mean greater reliability this sum-



PHOTO: NEWS.COM

Last summer's power outage affected electricity customers from the East Coast to Michigan, including this General Motors Corp. manufacturing plant in Oshawa, Ontario.

mer," a spokesman said. "This is due to improvements made by energy and utility companies following directives and recommendations" from the task force and other regulatory groups. In addition, there is "a general heightening of awareness since August 14 of the importance of reliability," the DOE spokesman said last week.

Yet, "one of the challenges we face now is how to sustain that awareness for the long term," he said.

Protecting operations

Should another outage occur, manufacturers and some public utilities are among the companies that have taken steps to protect their operations by adding backup power.

"There has definitely been an increase in the demand for backup generators as a result of the power outage," said Richard Brent, director of government affairs for San Diego-based Solar Turbines Inc.

While utilities typically have some type of backup systems, "after the 2003 blackout, they became more aware of the need to have reliable backup facilities," said Jim Crockett, manager of risk and benefits for Denver Water, which provides water service to about 1 million customers.

Denver Water recently installed a large diesel generator to provide backup energy to the utility's administration building, which consists of offices as well as computer and maintenance facilities. The utility, which already had diesel backup for its water plant, had planned to extend that option to the administration building—which had only electrical battery backup, primarily for its computer system—before last year's blackout occurred, Mr. Crockett said.

He noted, though, that finding a place to put backup generators can be a challenge because of their size, which can be comparable to about 20 parking spaces.

A few high-rise building developers in New York are wrestling with that space issue but may have found another solution, according

to Marsh's Mr. McLane. The developers are considering setting aside one or two floors for such backup equipment, he said. They hope that being able to provide that amenity may give them a competitive advantage when seeking building tenants, he added.

Coverage options

In addition, some companies are responding to the blackout by exploring their insurance coverage options.

Only about one-third of the \$180 million in insurance payouts related to last year's outage was for claims filed by commercial policyholders, according to an ISO spokesman.

Most standard commercial policies—including those that protect policyholders from property damage and business interruption—do not cover losses due to lack of power, observers say. Other policies that do offer such coverage limit payouts in a variety of ways.

For example, some policies require that power be out a minimum amount of time—ranging from 24 to 72 hours—before coverage applies, said Dan Devine, director of the New York office of RGL Forensic Accountants & Consultants. The company reviews policyholders' claims for insurers.

After the 2003 blackout, many policyholders that had 72-hour minimum deductibles sought to reduce them, Mr. McLane said, adding that he is not aware of any insurers who agreed to such reductions.

In addition, some New York hotels tried to allege that they lost occupants as a result of the blackout, but statistical data did not support that conclusion, Mr. Devine said.

Insured commercial policyholders that are more likely to be compensated for their outage-related losses are restaurant chains and grocery stores that traditionally face significant losses due to refrigeration failure, Mr. Devine said. Those policyholders frequently rely on manuscripts policies that protect them against off-premises power outages, he said.

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Late News

Continued from page 1
awareness campaign planned for this summer.

Higher copays cut drug utilization: Study

Patients suffering from chronic disease cut their use of preventative prescription drugs by up to 23% when pharmacy copayments double, a RAND Corp. study found. The study of 530,000 adults covered under employer-sponsored health plans found preliminary evidence that patient health may suffer from increases in drug copayments. For example, as prescription drug use dropped, hospital stays rose 10% and emergency room visits increased 17% for patients with diabetes, asthma and gastric acid diseases, the study found.



SBC workers walked out over a benefits dispute.

PHOTO: PHOTOGRAPHER SHOWCASE

SBC, union workers resume bargaining

The Communication Workers of America union on Friday returned to the bargaining table with San Antonio-based SBC Communications Inc., only hours after the commencement of a four-day strike,

according to the Associated Press. CWA workers had called the action, which involved 100,000 union workers in 13 states, to protest increased health benefit cost-shifting and other issues. Federal mediators in Washington had been working with the parties in discussions over health care, wages, pensions and employment security. SBC had proposed premium contributions and some increases in health care copayments by employees and retirees to offset medical cost increases that have averaged more than 10% a year since 1999. Under its current contract with SBC, CWA members are not required to make monthly health care premium contributions. Neither CWA nor SBC could be reached late last week.

Swiss Re unit's CFO in dispute with club

An executive of Swiss Reinsurance Co.'s U.S. property/casualty unit is suing a New York adult entertainment club for allegedly adding thousands of dollars of bogus charges to his bill. Mitchell Blaser, chief financial officer of Swiss Re's Americas Division, filed suit in a New York state court against Scores Entertainment Inc. After spending several hours at Scores with a friend last December, Mr. Blaser was handed a bill for \$8,615 and complained about being overcharged, the suit says. When he called American Express to complain, he was told Scores had actually charged \$28,021 to his card, the suit alleges. A Scores spokesman said the bill was accurate. He said the tab included five magnums of Krug Clos du Mesnil champagne at about

\$3,250 each and \$7,000 in gratuities to the club's dancers. A Swiss Re spokesman declined to comment, saying the matter is a "personal dispute."



PHOTO: KRT

PBGC takes over candy company plans

The Pension Benefit Guaranty Corp. is taking over and terminating two pension plans sponsored by Chicago-based Archibald Candy Corp. Earlier this year, Archibald, which is in bankruptcy, stopped production of its Fannie May, Fanny Farmer and Laura Secord brands of chocolate and closed its 238 retail stores. Alpine Confections Inc. of Alpine, Utah, purchased the Fannie Farmer and Fanny May brands, but will not operate Archibald's Chicago plant or assume pension liabilities. The two Archibald plans are 38% funded, with \$16 million in liabilities and almost \$6 million in assets. The PBGC estimates it will be liable for \$9 million of the funding shortfall.

Briefly noted

The New York Compensation Insurance Rating Board's request last week for an average 29.3% increase in workers compensation rates is prompting an outcry from employers. New York Insurance

Superintendent Gregory V. Serio, who has until July 15 to decide on the request, last year rejected proposed increases of 11.2% and 2.7%, before increasing rates by 1.7%....**Oklahoma lawmakers** have approved legislation to permit the formation of captive insurers in the state. H.B. 2141, identical to a bill passed in April but vetoed by Gov. Brad Henry, would establish liberal capital and surplus requirements for captives....A federal appeals court has removed U.S. District Judge Alfred Wolin from presiding over the **asbestos-related bankruptcy cases** of Owens Corning, W.R. Grace & Co. and USG Corp. In a 2-1 ruling, a panel of the 3rd U.S. Circuit Court of Appeals agreed with asbestos creditors that Judge Wolin abused his discretion in hiring advisers who had conflicts of interest and in meeting privately with parties in the cases. Judge Wolin is also handling the bankruptcies of Armstrong World Industries Inc., whose creditors are likewise seeking his removal; and Federal-Mogul Global Inc., which has not sought disqualification....A New York appeals court has declined to dismiss a lawsuit challenging the 2002 conversion of **WellChoice Inc.** unit Empire Blue Cross & Blue Shield to a for-profit company.

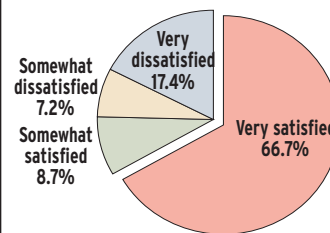
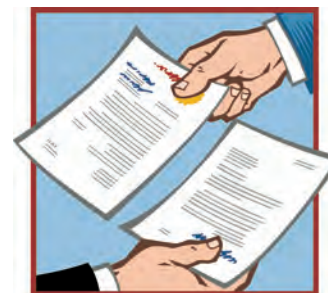
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Online Poll

[5/17-5/21]

How satisfied are you with the speed by which property/casualty insurers issue policies?



BI Stock Index

[5/17 - 5/21]

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S&P 500 1093.59 **-0.19**

Largest gains

NYMagic Inc.	7.55%
SCPIE Holdings Inc.	7.32%
PMA Capital Corp.	5.69%
CNA Surety	4.25%
ING Groep N.V.	3.85%

Largest losses

Trenwick Group Ltd.	-53.33%
American Safety Insurance	-12.59%
PacifiCare Health Systems	-5.07%
Humana Inc.	-4.92%
ProAssurance	-4.40%

Weekly change by market segment

Brokers	0.18%
Insurers/Reinsurers	-0.65%
Managed Care Organizations	-1.76%

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

New York subpoenas Chubb for info on contingent commission programs

By SALLY ROBERTS

NEW YORK—New York Attorney General Eliot Spitzer has widened his investigation into the contingent commissions paid to brokers by insurers.

Warren, N.J.-based Chubb Corp. said Monday it had received a subpoena from Mr. Spitzer's office seeking information on its contingent commission arrangements and that it is cooperating with the inquiry.

Several other large U.S. insurers have not received similar subpoenas. Spokespeople for ACE Ltd., FM Global, The Hartford Financial Services Group Inc. and St. Paul Travel-

ers Cos. said the insurers had not received any subpoenas from Mr. Spitzer. A spokesman for New York-based American International Group Inc. declined to comment.

Late last month, Mr. Spitzer launched an investigation into whether contingent commission agreements, which reward brokers based on the volume or profitability of business they place with insurers, represent a conflict of

interest. Marsh & McLennan Cos. Inc., Aon Corp., Willis Group Holdings Ltd. and Kaye Insurance Associates Inc. confirmed at the time that they had been subpoenaed by Mr. Spitzer and were cooperating with his investigation (BI, April 26; May 3).

On May 4, in conjunction with its first-quarter results announcement, New York-based National Financial Partners Corp. said that its

property/casualty brokerage subsidiary, which accounts for less than 5% of its revenues, also had received a subpoena from Mr. Spitzer.

In addition, California Insurance Commissioner John Garamendi and Connecticut Attorney General Richard Blumenthal have launched their own investigations into contingent commission arrangements.

Insurance brokers have maintained that the use of such commissions is a longstanding and common practice in the industry and that they disclose such arrangements to clients.



Mr. Spitzer

PHOTO: AP/WIDE WORLD



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