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hit supplement makers / 3**

Business Insurance

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\$4



Carve-out losses, disputes still spiral through market

By CAROLYN ALDRED

NEW YORK—A legal battle between Swiss Reinsurance Co. and Lincoln National Corp. is the latest dispute over hundreds of millions of dollars of claims spiraling through the personal accident reinsurance market.

In circumstances that resemble the notorious excess-of-loss spiral that plagued the London market in the 1980s and early 1990s, many reinsurers today are exposed as both cedents and reinsurers on accident risks that were carved out of workers compensation policies.

Several reinsurers are refusing to pay the claims, arguing that they were not informed that they were assuming the same risks several times over.

While many of the disputes are being arbitrated, problems in the personal accident market are turn-

ing up in the courts.

In a lawsuit filed April 24 in federal court in New York, Swiss Re Life & Health America Inc., an Armonk, N.Y.-based unit of Swiss Re, seeks to reduce by \$770 million the \$2 billion it initially agreed to pay Lincoln National for its life reinsurance operations. The dispute is tied to personal accident reinsurance written by Lincoln National Reinsurance Co. (Barbados) Ltd.

Swiss Re argues in its lawsuit that if Lincoln National refuses to return the money, the purchase agreement requires that the dispute be arbitrated. But, in its court filing, Fort Wayne, Ind.-based Lincoln National counters that the dispute seeks "to rewrite the terms of the purchase agreement" and therefore exceeds the scope of arbitration.

Swiss Re's acquisition of the life reinsurance business included a se-

See SPIRAL/page 16

EEOC to end enforcement of Erie case

By JERRY GEISEL

WASHINGTON—Employers may soon again be free to provide less generous health care benefits to Medicare-eligible retirees than to younger retirees without facing the threat of being sued by federal regulators for age discrimination.

The Equal Employment Opportunity Commission says it intends to propose a new regulation by the end of the year that would make clear that altering, reducing or eliminating employer-sponsored health benefits when a retiree becomes eligible for Medicare does not violate federal age discrimination law.

The EEOC—the federal agency in charge of enforcing the Age Dis-

crimination in Employment Act—said the new rule "will ensure that the application of the ADEA does not discourage employers from providing health benefits to retirees."

The EEOC's announcement, published last month in the Federal Register as part of the agency's semi-annual regulatory agenda, nearly completes the EEOC's policy reversal on the issue and may once and for all ease employer concerns that commonly accepted retiree health care plan designs might trigger lawsuits by the EEOC.

"This is fantastically good news," said Nancy Ross, a partner with the law firm McDermott, Will & Emery in Chicago.

See EEOC/page 20

Texas ruling's impact debated

Satire not protected from libel action

By JUDY GREENWALD

FORT WORTH, Texas—Legal experts are split on whether a recent Texas state appellate court decision that permits public officials to proceed with a libel suit against an alternative weekly because it published a satirical article that targeted them will have a nationwide impact.

While some observers said that the Court of Appeals for the 2nd District of Texas' May 2 decision in *New Times vs. Bruce Isaacks and Darlene A. Whitten* will influence courts across the country, others contend

it's an aberration that is likely to be overturned if the Texas Supreme Court should decide to hear the case.

The decision comes as the media liability insurance market—spurred by the overall property/casualty insurance market's hardening, as well as rising litigation costs—is already experiencing reported rate hikes of 50% or more in some cases as well as higher deductibles.

In the Texas Court of Appeals decision, a unanimous three-judge panel ruled that satirical articles may be held to the same "actual

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Late News

Aon delays spinoff of Combined Specialty

Aon Corp.'s spinoff of its Combined Specialty Group Inc. insurance underwriting operation will now be completed some time

after June 30, rather than by the end of June as the

company had earlier estimated. In a statement, Patrick G. Ryan, Aon's chairman and chief executive officer, attributed the delay to "the expected timing of certain regulatory approvals." Aon also said it will establish reserves currently estimated at \$20 million to \$30 million for CSG in connection with losses the company expects to incur due to an alleged breach of contract by National Program Services Inc., an independent managing general agent. Last year Combined Specialty Insurance Co. signed a managing general agent agreement with NPS related to general liability policies for apartment owners. On May 2, Combined Specialty sued NPS alleging breach of contract and failure to perform obligations under the MGA agreement. The insurer subsequently obtained a restraining order barring the MGA from withdrawing or using policyholder funds paid for insurance with Combined Specialty, and requiring NPS to produce various records for audit.



PHOTO: NOAA

The Atlantic hurricane season, which began Saturday, may see fewer storms form.

Revised Gray forecast sees fewer storms

The hurricane forecast team at Colorado State University is scaling back its estimate of storm activity for the 2002 hurricane season. The team—led by William Gray, a professor of atmospheric science at CSU in Fort Collins—

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International

TAKING AIM AT WORLD CUP RISKS

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Inside

Groups oppose federal backstop

The Consumers Union and the Consumer Federation of America call on the Senate to abandon plans for a federal terrorism insurance backstop. **Page 4**

Read this column, win valuable prizes

In Commentary, Senior Editor Dave Lenckus has an embedded message in a rant about nagging problems in the world of benefits and risk management. **Page 6**

Consumer groups partially correct

Two consumer groups are correct in calling for an expansion of risk transfer options, but a federal backstop for terrorism insurance is still needed, this week's editorial says. **Page 8**

Inspect consulting relationships closely

In Perspectives, Barry E. Thompson writes about getting risk management advice from one of the Big Five auditors. **Page 10**

Wellington to form new reinsurer

Wellington Underwriting P.L.C. has raised capital for what would be the largest independent U.K. reinsurer. **Page 15**

Market watches trial on MGA dispute

A ruling in a trial in London is expected to set precedent for other reinsurance disputes arising from the so-called personal accident spiral. **Page 19**

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

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predicted last week that 11 named storms would form during the Atlantic hurricane season, which began June 1 and lasts until the end of November. The team predicts that six of those storms would become hurricanes, two of which would become major hurricanes. In April, the team had predicted 12 named storms, seven hurricanes and three intense hurricanes. A December 2001 prediction had forecast even greater activity.

Reinsurer combined ratio improves in quarter: RAA

The combined ratio of 30 reinsurers surveyed by the Reinsurance Assn. of America improved to 101.8% in the first quarter of 2002, compared with 106.4% reported by a similar group in the same period last year. Collectively, the group's loss ratio was 74.8%, while the companies' expense ratio was 27.0%, according to the Washington-based RAA. The reinsurers wrote \$7.7 billion in net premiums in the first quarter, up from the \$6.7 billion that a similar group wrote in the first quarter of 2001.

St. Paul may face fines in Nevada

The Nevada attorney general's office has filed an administrative complaint against The St. Paul Cos. Inc. in connection with its decision to stop offering medical malpractice coverage in the state. The complaint cites St. Paul, which announced late last year it would exit the medical malpractice market, for alleged unlawful business practices, unauthorized policy modifications, payment of commissions to unlicensed agents, unlawful policy cancellations and nonrenewals, and failure to return unearned premium payments. A St. Paul spokeswoman said, "The decisions we took in Nevada were consistent with Nevada law and were reviewed and approved by the Division of Insurance staff."

Hub expects IPO to raise more than \$68 million

Hub International Ltd. said it expects to raise between about \$68.6 million and \$79.1 million through its

Late News

previously announced initial public offering in the United States. In its May 30 registration statement with the Securities and Exchange



Commission, Hub said it plans to sell 5 million common shares on the New York Stock

Exchange for between \$14 and \$16 per share. Hub, whose insurance brokerage operations are based in Toronto and Chicago, already is listed on the Toronto Stock Exchange. The IPO includes a provision to offer the underwriters for the offering an option to buy an additional 750,000 shares.

SAI to merge with Fondiaria

Societa Assicuratrice Industriale S.p.A. took control of Florence-based La Fondiaria Assicurazioni S.p.A. last week after it used its holding in Fondiaria to elect board members that would agree to a merger of the two insurers.

Under the terms of the merger, Fondiaria shareholders will receive one SAI share for every four Fondiaria shares. If approved by regulators, the deal could be completed by the end of 2002. Standard & Poor's Corp. revised its CreditWatch implications for Fondiaria's A- rating to "negative." S&P said the change was based on the necessity for SAI to exercise its option to buy 29.9% stake in Fondiaria in order for the merger to go ahead.



PHOTO: ZUMA PRESS

AXA has lost attempts to avoid paying claims under loan guarantees it wrote for films including "The Crew."

Courts rule against AXA in film dispute

Two New York courts have handed defeats to AXA S.A. in its effort to avoid millions of dollars of claims under policies guaranteeing movie industry loans made by Chase Manhattan Bank. A New York State Supreme Court judge last month resolved several coverage issues in favor of Chase on policies written by AXA Reassurances S.A. covering Chase loans to the producer of the 2000 Burt Reynolds film, "The Crew." The court rejected AXA's argument that the losses were not fortuitous and that its underwriter did not understand the deals. Meanwhile, an intermediate New York appeals court affirmed a ruling dismissing claims by AXA Reinsurance UK P.L.C. and General Star International Indemnity Ltd., a Berkshire Hathaway Inc. unit, against London-based film producer J&M Entertainment Ltd.

Transportation mutual posts loss in 2001

London-based mutual transportation insurer the TT Club has posted a \$40.2 million loss for 2001, compared with a \$383,000 deficit

for 2000. The TT Club said the loss was in large part due to a \$23 million reserve strengthening that was made for an expected increase in claims for 1999 and 2000. The mutual insurer writes property and liability coverage for international commercial transportation risks, including trucking. The TT Club also announced that it had signed a five-year quota-share reinsurance arrangement with Swiss Reinsurance Co. to protect against future claims volatility.

Montpelier Re plans IPO in U.S.

Montpelier Re Holdings Ltd. is planning a U.S. initial public offering of as much as \$250 million in stock. Much of the proceeds

from the offering will be used to support the company's Bermuda-based underwriting unit, Montpelier Reinsurance Ltd., according to K. Thomas Kemp, chief financial officer of Montpelier Re Holdings. The share price and the number of shares to be offered have not been determined. Montpelier Re was formed in December of last year with \$1 billion in capital to provide reinsurance capacity after the Sept. 11 terrorist attacks caused an already hardening marketplace to further constrict.

Briefly noted

A new **Superfund advisory panel** will hold its first public meetings June 18 and 19 in Washington and Alexandria, Va. Environmental Protection Agency Administrator Christine Whitman announced the creation of the panel—which includes business, government, labor and environmental activists representatives—on Thursday. The panel will examine the scope of the current Superfund program and how it relates to other state and federal cleanup programs....A former **HIH Insurance Ltd.** director, Rodney Adler, has been banned from acting as a company director for 20 years. The Supreme Court of New South Wales found that he illegally attempted to prop up the share price of the defunct insurer through a \$10 million Australian (\$5.6 million) share purchase in 2000. Mr. Adler and his company were also fined \$900,000 Australian (\$504,000).

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

Rate hikes bolster insurers' bottom lines

Earnings momentum expected to continue into 2003, though asbestos, reserve concerns loom for some

By JUDY GREENWALD

Double-digit rate hikes are working their way to the bottom lines of property/casualty insurers—a trend that is expected to bolster results for the rest of this year and probably into 2003.

Despite improved first-quarter results and the expectation that rate firming will continue, analysts say insurers also face some potential threats to profitability. These include rising asbestos liabilities and reserve inadequacy, as well as the

continual threat of losses from terrorism and other catastrophes.

For the first quarter ending March 31, the 15 property/casualty insurers surveyed by *Business Insurance* that report this data posted a 24.8% increase in net income to \$3.41 billion compared with the first three months of 2001.

Other key results posted by the 17 insurers surveyed by *BI* include:

- Net premiums written increased 14% to \$27.29 billion, compared with the first quarter of 2001
- The combined ratio improved to 100.1% from 103.3%.
- Policyholder surplus for the 15

Property/Casualty FIRST-QUARTER RESULTS

insurers that report this data dropped 8.4% to \$40.72 billion.

"It's probably the best quarter in over 10 years for the group," said Cliff Gallant, an analyst with Keefe, Bruyette & Woods in New York. "We saw some very strong top-line growth and fairly attractive combined ratios. About the only partial offset was that investment income was weak overall," he said.

"Earnings were much better than they were last year and generally above expectations," said Michael

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Reinsurer appeals dispute over arbiter

By DAVE LENCKUS

CHICAGO—A rare decision by a federal judge to overturn a reinsurance arbitration panel's ruling because of evident partiality by a litigant-appointed arbitrator is raising concerns among some other arbitrators.

Arbitrators who disagree with the judge's finding on what constitutes relevant information that arbitrators must disclose about prior professional relationships with parties in a dispute say the ruling threatens the arbitration process. The ruling makes what is designed to be an

ironclad dispute resolution easier to overturn, they say.

Other arbitrators, though, agreed with the ruling as well as criticized the arbitration panel's handling of the knotty dispute it heard, which involves the personal accident coverage debacle wending through the reinsurance industry (see story, page 1).

Attorneys say the federal judge's ruling may mark the first time a court has overturned a reinsurance arbitration ruling due to partiality by a litigant-appointed arbitrator.

The reinsurer in the case, Brighton, England-based Sphere

Drake Insurance Ltd., appealed the federal district court's decision to the 7th U.S. Circuit Court of Appeals May 31. The reinsurer, owned by Fairfax Financial Holdings Ltd. of Toronto, also likely will ask the district court or appellate court to stay any new arbitration hearings in the dispute until the appellate court acts on Sphere Drake's appeal.

The multimillion-dollar coverage dispute centers on six personal accident reinsurance contracts that Sphere Drake wrote for Chicago-based All American Life Insurance Co. The reinsurer refused to cover the losses, arguing that reinsurance

intermediary Stirling Cooke Brown Insurance Brokers Ltd. of London knew that Sphere Drake agent Euro International Underwriters Ltd. of London had exceeded its authority in accepting the business for the reinsurer.

In the position paper All American submitted to an arbitration panel assembled last year to resolve the dispute, the insurer responded that it had no agency agreement or relationship with Stirling Cooke and that the broker had no authority to bind All American. Still, Stirling Cooke, not All American's agent, WEB Management L.L.P.,

acted as the insurer's intermediary.

All American's argument prompted Sphere Drake to ask the panel to rule in its favor before starting the full arbitration process. Sphere Drake argued that in distancing itself from Stirling Cooke, All American effectively conceded that no legal reinsurance contracts had been consummated.

On July 5, 2001, a week after hearing oral arguments from both sides on Sphere Drake's motion, the panel ruled 2-1 in the reinsurer's favor. The majority votes were cast by the arbitrator that Sphere Drake ap-

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PHOTO: KRT

A resident of Libby, Mont., holds vermiculite pieces he says were scraped from building exteriors, allegedly generated from a nearby mine operated by W.R. Grace & Co.

EPA joins asbestos plaintiffs

Suit alleges Grace diverted assets

By DOUGLAS McLEOD

WILMINGTON, Del.—Asbestos plaintiffs and the U.S. Environmental Protection Agency are charging that bankrupt manufacturer W.R. Grace & Co. fraudulently shifted billions of dollars in assets out of the company in the 1990s to shelter the funds from asbestos and pollution cleanup liabilities.

Asbestos personal injury and property damage claimants in the Grace bankruptcy have filed suit against three companies that assumed businesses spun off by Grace between 1996 and 1998. Named in the suits are Sealed Air Corp. and a unit, Cryovac Inc., which took over a Grace packaging operation; and Fresenius Medical Care Holdings Inc., which acquired Grace's National Medical Care Inc. unit.

The asbestos claimants charge that the complex Grace reorganization was intended to protect its profitable ongoing businesses from huge claims stemming from former asbestos mining and manufacturing operations. At the time of the spin-offs, the Grace unit that owned the packaging and health care businesses was already insolvent as a result of its asbestos exposure, the claimants allege.

The EPA, meanwhile, is seeking to join the asbestos claimants, charging that the reorganization likewise siphoned away assets that should have been available to cover Grace's cleanup liabilities at hundreds of polluted sites, including its Libby, Mont., vermiculite mine, a federal Superfund site.

The lawsuit—filed with the permission of the Delaware bankruptcy judge overseeing the Grace estate—seeks to unwind the spin-off transactions, returning billions of dollars in assets to benefit Grace's creditors.

"If the fraudulent conveyance claims are prosecuted successfully, the value of the bankruptcy estate would dramatically increase," the EPA noted in its filing.

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Public Risk Management Assn. conference

Insurance can help transform brownfields into opportunities

By MEG FLETCHER

SAN ANTONIO—Risk managers of public entities that want to restore "brownfields" sites into clean, productive property should consider a variety of risk financing options to



More coverage of the PRIMA annual conference can be found on page 14

minimize the often complex risks associated with converting such sites, experts say.

Environmentally impaired property, which can range from industrial sites to former military bases, creates "unique environmental issues," many of which affect local governmental agencies, according to the Public Risk Management Assn., which hosted a discussion of brownfields risks during its annual conference in San Antonio last month. Such issues include determining responsibility for the contamination, finding funding for cleanup, transferring liabilities and exercising oversight, PRIMA



PHOTO: AP/WIDEWORLD

A former slag dump site in Pittsburgh, along the Monongahela River, is being remediated as part of a development project.

stated.

"There is nothing cookie cutter about this," said Abigail S. Hudgens, risk and benefits manager for the City of Knoxville, Tenn. She became familiar with such issues after Knoxville bought a former railroad maintenance yard, which had been a Superfund site before the railroad cleaned it up.

To encourage development of the site, the city purchased an environmental impairment liability insurance policy to protect itself as well

as to help alleviate any liability concerns of future buyers, said Ms. Hudgens, who introduced speakers at the PRIMA conference session.

"Brownfields" can refer to any polluted site where the prior owner or the purchaser plans to clean it up, or "remediate" it, for continued productive use, said Robert P. Hallenback Jr., senior vp of XL Environmental, a unit of XL Capital Ltd. in Exton, Pa.

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Makers of dietary supplement facing scant liability coverage

By RODD ZOLKOS

With the stimulant cited in numerous wrongful death suits and linked by some to the high-profile deaths of college and professional athletes, manufacturers and distributors of dietary supplements containing herbal ephedra or the alkaloid ephedrine are facing a difficult, if not impossible, product liability insurance market.

"If you take the words 'ephedra'

and 'ephedrine' out, there's a market," said Keith Feickert, a casualty broker at Swett & Crawford Group in Los Angeles. "You put those two words in and there's no market."

Product liability insurers are essentially taking ephedra or ephedrine out of their coverages, excluding products containing them by endorsement, said Craig Simon, senior vp and head of the large account casualty marketing practice at Willis in New York.

"The ones that I have seen, they're doing specific exclusions for ephedra and ephedrine-based products," he said.

"I've worked on five or six accounts in the past six months and nobody would do it without putting an exclusion on," Mr. Feickert said.

In one case he's aware of, a company did get product liability coverage for ephedra products, but only

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PHOTO: GETTY



Senate Majority Leader Tom Daschle, D-S.D., says there is 'great urgency' in passing a terrorism insurance bill in the Senate.

Groups oppose plans for U.S. terror coverage

By MARK A. HOFMANN

WASHINGTON—Two prominent consumer groups are urging the Senate majority leader to "leave terrorism insurance legislation off your agenda."

In a letter sent late last month to Sen. Tom Daschle, D-S.D., the Consumers Union and the Consumer Federation of America said that while "some potential terrorist tar-

gets" are experiencing difficulty obtaining coverage and others are confronting high rates, "there is plenty of evidence that a dynamic market for terrorism insurance is developing."

In support of their argument, the consumer groups cited signs that banks are "freely loaning money to businesses," recent surveys showing that coverage is available for most businesses and the influx of new

capital into the insurance industry as reasons to put terrorism insurance legislation on hold.

Instead, the groups advocate expanding the Risk Retention Act, "determining if there are any tax disincentives for the development of captive insurance companies or self-insurance mechanisms" and looking at ways to encourage risk securitization.

"Given the vibrant market for terror coverage, there is absolutely no reason why taxpayers should pick up the tab for terrorism losses," according to the two groups.

The House of Representatives passed a terrorism insurance bill late last year, but the Senate has yet to take up any legislation because of disputes over tort reform.

Sen. Daschle said late last month that he believed there was "great urgency" in passing a measure that would allow the federal government to cover some of the losses caused by future terrorist attacks.

'Given the vibrant market for terror coverage, there is absolutely no reason why taxpayers should pick up the tab for terrorism losses.'

*Consumers Union
Consumer Federation of America*

Groups that back a federal role in providing a guarantee for losses arising from future terrorist attacks quickly criticized the consumer groups' position.

The Risk & Insurance Management Society Inc. supports a federal backstop for a limited time—five to six years—to help build reinsurance capacity, said Christopher E. Mandel, the group's president.

Speaking for RIMS, Mr. Mandel who is also assistant vp-enterprise risk management at insurer USAA Group in San Antonio, said banks are not "freely loaning money," as the consumer groups claim.

Mr. Mandel said the lack of terrorism coverage will "become more disruptive to the real estate industry before it gets any better."

A spokesman for the American Insurance Assn. in Washington said that Congress' Joint Economic Committee issued a report late last month providing "solid evidence for the need to enact a temporary federal terrorism insurance backstop." (BI, May 27). He said that the consumer groups' letter to Sen. Daschle "ignores many facts and twists others."

The Downers Grove, Ill.-based Alliance of American Insurers also issued a statement criticizing the letter, noting that new capital flowing into the industry is going to off-shore reinsurance facilities and not domestic underwriters.



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These features include the ability to search an online archive of *BI* articles from 1994 to the present, as well as the past two years of daily news items. Subscribers also will be able to readily access additional articles related to whatever news story they are reading. In addition, sub-

scribers will have full access to the information contained in *BI*'s searchable online database of industry vendors culled from the magazine's exclusive directories. Finally, a new e-mail product offering highlights of the current week's issue will give subscribers the ability to quickly access current articles online.

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Commentary Puzzling issues demand answers

A few benefits and risk management issues have been troubling me, ranging from annoying health care practices to the enterprise risks that Major League Baseball faces.

I have some ideas about tackling many of these concerns. Some proposals may need a little polishing. Others may require sandblasting. But at least they can serve as kernels for the ultimate solutions.

As a special bonus to readers who also may feel like blowing off steam, this column offers you the chance to win a *Business Insurance* hand-held, battery-operated fan. The first 10 readers who find the message that's been encoded in this column and e-mail me with the message and how it appears will receive the fans.

• Solely in the interest of preventing new mental health claims, I propose discouraging health insurers from sending plan participants benefit statements that require years of military intelligence training to decode. Non-compliant insurers should eat the deductibles and coinsurance requirements for those claims.

• Equally irksome is that many health providers' office staffs are incapable of copying health insurance cards and properly billing insurers. Some entrepreneur could become wealthy by developing an insurance billing training course.

• Exactly how do hospital administrators think they will attract nurses during a national shortage and minimize their facilities' medical liability risks by requiring their nursing staffs to work 12-hour shifts?

• Maybe doctors won't expend all of their growing clout with HMOs on obtaining higher fees. Maybe they'll push for greater authority over the medication they may prescribe.

• So, twice within the last 15 years—first with the London market excess of loss spiral and now with the personal accident spiral—the reinsurance industry has been duped into making some unscrupulous individuals wealthy by feeding on itself. Fool me once, shame on you; fool me twice, shame on me.

• Could I be getting paranoid? Sure, but I have to ask: Besides banning box cutters and knives on flights, shouldn't airlines offer soft drinks only in plastic bottles rather than in tin cans, which easily can be ripped in two and used as weapons?

• Like I said before, I have to ask: Seems the wait at airport security

checkpoints is close to what it was before Sept. 11. Has security really gotten that efficient over the past nine months that the flying public is safe and no longer inconvenienced?

• Environmental and asbestos liabilities pale compared with a brewing long-term liability exposure for Corporate America. Look for class-action lawsuits against companies that use microscopic print in producing paychecks and health benefits statements. The charge: indifferent infliction of blindness and really bad headaches. I use more ink dotting my i's. Is there an ink shortage I haven't heard of?

• All together now: Let's think outside the box and create a new

paradigm for describing creative problem solving without using the phrases "outside the box" and "paradigm."

• Risk management theory seems to dictate that insurers try avoiding all the coverage disputes triggered by varying interpretations of policy language. Why not provide a supplement that

includes examples, written in layman's terms, of losses that would be covered and others that would be denied?

• Tons of good attorney jokes aside, blaming lawyers for society's litigious nature is like blaming spoiled children and overpaid baseball players—in some contexts, a redundancy in terms—for their behavior. Clients, like parents and team owners, are accountable.

• On the subject of professional baseball, if clubs don't have chief risk officers, they should. This would be a good time for CROs to step up to the plate and knock some sense into management and players about the long-term enterprise risks of another suspension in play.

• Memo to players, just to keep this all in balance: Get off your high horse. Unless you're self-employed, an artificial cap on earnings is part of the American way of life.

• Evidently, Congress did not see or was not moved by an earlier column urging lawmakers to award medals posthumously to the passengers and crew of United Flight 93, who prevented terrorists from crashing the jetliner into a fourth target on Sept. 11.



Dave Lenckus

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

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Editorial

Congress should expand alternatives

WE HAVE HAD more differences than common ground with consumer groups over the years on business issues as varied as health care, insurance rate regulation and tort reform.

So it may come as a surprise that we find ourselves in partial agreement with sentiments expressed by the Consumer Federation of America and Consumers Union in a recent letter to Senate Majority Leader Tom Daschle, D-S.D.

As we report in this week's issue, the two groups are urging the Senate leader to abandon consideration of proposals for the federal government to reinsure terrorism losses, and instead enact other legislative proposals that would increase and enlarge buyers' risk financing options.

We see plenty of room, however, for Congress to consider both issues; they are not mutually exclusive.

We wholeheartedly support the groups' call for legislative and regulatory action to expand the ability of buyers to use captives and other self-insurance mechanisms. Among other things, they urge Sen. Daschle to approve proposals that would expand the Risk Retention Act. Such measures would help buyers respond to sharply higher rates for most property/casualty lines as well as the withdrawal of capacity for some risks.

But those risk financing proposals do not eliminate the need for Congress to also enact legislation now stalled in the Senate that would have the federal government serve as a backstop to private insurers if another major terrorist attack occurs.

The consumer groups hold that insurers today are in a better position to deal with terrorism losses than they were before Sept. 11, and in fact that a "vibrant market for terror coverage" is emerging. They contend, therefore, that there is "absolutely no reason why taxpayers should pick up the tab for terrorism losses."

While we view the slow emergence of a private terrorism insurance market as a positive development, the fact remains that the market is too limited, its costs are too high and there are terrorism risks that insurers sim-

ply won't underwrite for any price. Without adequate reinsurance capacity for terrorism risks—which essentially was wiped out by Sept. 11—such an attack today would cripple the ability of the private insurance industry to continue meeting the economic needs of businesses and personal insurance buyers.

That's why we continue to believe that a limited, temporary federal role in providing terrorism insurance is more than justified. As Congress' Joint Economic Committee said in a report only a few days ago, without a federal guarantee of coverage for future losses, another attack could throw major businesses into bankruptcy as they confronted losses for which they lacked adequate coverage (BI, May 27). That, in turn, could force Congress to approve "a much larger, more costly and poorly designed role" for the government than that envisioned under any existing legislative proposal for a terrorism backstop.

Indeed, rather than stop consideration of federal terrorism insurance proposals, as the two consumer groups urge, we would prefer that the Senate act more quickly.

Despite Sen. Daschle's recent comment that the Senate faces "great urgency" in passing such a bill, the Senate has failed to move on the matter, ostensibly because of disagreements over liability limits backed by Senate Republicans.

In contrast, the House passed its own terrorism insurance bill last November. While we have our problems with the House approach—which is basically a loan guarantee program for insurers and would do nothing to address questions of terrorism insurance availability and affordability—at least the House took the issue seriously enough to move ahead.

Although business groups and risk managers, the consumers of commercial insurance, oppose the call to end consideration of terrorism insurance proposals in the Senate, they should welcome the support of the two consumer groups to increase their alternative risk financing options.

Letters to the Editor

Revenue shortfalls cause retiree benefit problems

To the editor: Your March 11 editorial, "Bush Denial of Bailout Avoided Bad Precedent," says the current cost problems in the U.S. steel industry are due to management's and union's bidding up of health care coverage for retirees, decades ago. This is an astonishing—and irresponsible—oversimplification, for a publication of your stature and sophistication. Perhaps it comes from having ventured so far beyond your core competencies.

The U.S. steel industry has existed for many years, so it should not surprise anyone that they have many retirees. However, the industries' current difficulty in earning enough revenue to pay retiree health care obligations is not something that anyone could have foreseen 30 years ago. Nor could today's health care costs—particularly prescription drugs—have been foreseen.

Can you tell me what Microsoft's fortunes will be, in 30 years? If you were intellectually honest, you would admit that no employer pre-funded these retiree health care costs in past years—it just was not on anyone's radar screen.

If the steel retirees' health care benefits covered one half of what they cover today—whatever that is—these companies still could not pay for them. The problem is on the revenue side, which has nothing to do with retirees. To suggest, as you do, that if these retirees did not have health care benefits, their former employers "would have survived" is an extremely reckless assertion.

Every other western, industrial country on earth provides for its retirees' health care needs through a publicly financed system. This obviously lifts that cost burden off of companies which happen to be in business long enough to generate retirees.

I don't understand, how one could reasonably expect one company, which is 70 years old, to be so much more efficient than another company, which is perhaps 1 year old, that it can pay the social costs of retirees. Instead, we should provide each of these companies with a level playing field, and let the best ones win.

Mark B. Naess
Grosse Pointe, Mich.

Schillerstrom



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Ask A Benefit Actuary

Benefit plan risks need managing, too

Q: How can good governance reduce the level of risk in my company's benefit plans?

A: This question comes from the vp-human resources at a Fortune 500 company. The company offers a defined benefit plan, a 401(k) plan and comprehensive medical, disability and life insurance benefits.

In light of recent and well-publicized company failures, the vp aims to assure her board of directors that none of the company's benefits will be tomorrow's headlines. She also knows good governance is a hot topic for reasons unrelated to benefits and is intent on learning more about how governance and benefits tie together.

Good employee benefit plan governance and good plan risk management go hand in hand. The Employee Retirement Income Security Act of 1974 is very process-oriented. Plan sponsors of well-governed plans recognize this and establish sound processes for making decisions, following those processes and documenting how they have been followed. For example, in lawsuits triggered by investment losses, underlying claims often focus on whether there was a process in place to select and continue the questioned investments.

ERISA does not require "20/20 hindsight" so that every decision is perfect. Instead, decisions have to be "prudent" at the time the decisions are made. ERISA Section 404(a) requires that fiduciaries use "the care, skill, prudence and diligence under the circumstances then prevailing" that a prudent person "acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims" (emphasis added).

In other words, the courts and regulators should re-create the context of a questioned decision and see if they might reach the same

decision, based on their own analysis of the facts as they were known, or should have been known, at the time. Courts and regulators will evaluate the "prudence" of a benefits decision by examining:

- Who made the decision?
- What processes were used to collect and analyze information?
- What standards were used to reach decisions?



Mr. Miner

The vp can use these concepts to help her board by making sure that the "right" decision-makers are in place for the right choices, the "right" decision-makers have access to the data and tools they need, and the "right" decision-makers apply a prudent process to reach their decisions and document their use of the process.

Good governance starts with allocating decisions to the right people. For example, most companies grant boards the ultimate authority to establish, amend and terminate benefit plans. Boards will typically rely on senior management to recommend plan design changes, and senior management often relies on others for recommendations.

Additionally, senior management and the board will rely on others to implement strategic decisions and make tactical ones. For most benefit plans, the board is ceded the authority and responsibility to appoint and monitor one or more plan committees that will act as fiduciaries in administering and investing any plan assets, or in selecting investment managers. Documenting these

allocations of decision-making authority and reviewing the decision-maker's performance are critical to good governance.

The second foundation of good governance is ensuring that decision-makers have the tools they need to make prudent decisions. For example, a fiduciary should assess how an investment manager's performance compares to benchmark investment indices and the performance of other investment managers with similar objectives. The lack of certain information does not excuse poor decisions. Decision-makers have a duty to ask appropriate questions and insist on "good answers." Having a process to ask the right questions is an important part of good governance.

The third foundation of good governance is that decision-makers must apply a prudent and documented process. A prudent process includes policy objectives, benchmarking standards to determine if the objectives are being met and defined timeframes for periodic review of performance relative to objectives. For example, a prudent process might call for annual review of all service contracts to determine reasonableness of fees. In managing employee benefit plan risk, however, policy statements must be consistently applied and revised as appropriate. Indeed, a policy statement that is not followed may be worse than having no policy statement at all.

Many of today's headlines are generated by lawsuits over poor investment performance in 401(k) plans. This has caused some employers to focus on the processes for selecting and monitoring the investments offered to participants. Good governance should extend to all ERISA plans, not just retirement plans, and should include all areas that impact benefit plans: plan design, financial management, administration, communications, and compliance.

Good governance will not ensure that benefit plans will stay out of tomorrow's headlines; however, good governance should reduce the likelihood of participant and governmental challenges. More importantly, good governance can provide a powerful defense to any challenges. Most importantly, good governance is a critical tool for managing benefit plan risks, just as it is for managing other corporate risks.

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

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

This month's column on actuarial questions in the benefits field is written by William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago. Alec Dike, a senior consultant in Watson Wyatt's Chicago office, assisted Mr. Miner with the research for this column.

Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore., answers actuarial questions in the casualty field. Christopher E. Mandel, assistant vp-enterprise risk management at USAA Group in San Antonio and president of the Risk & Insurance Management Society Inc., answers questions on risk management. Dennis J. Nirtaut, managing director of compensation and benefits for Arthur Andersen L.L.P. in Chicago, answers questions on employee benefit plans.

Address your questions to ASK, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Consulting relationships warrant close inspection

By Barry E. Thompson

Once upon a time, contracting with your Big Five auditor for risk management consulting services was a noncontroversial and safe decision.

Many risk and benefits managers receive various professional services from their corporate audit/accounting firms. Due to Enron-related fallout, however, some may have had to terminate relationships in the middle of a crucial project. Still others may anticipate some higher degree of executive-level scrutiny in the months to come. But do these consulting relationships present a real conflict or problem? And how else can you get "independent" services?

There are no practical reasons that your company's auditor can't also service risk and benefit department needs. In a common and ethical service company structure, audit and consulting units manage revenue separately.

Auditors don't risk credibility by playing favors to support the consulting unit's relationship. From the insurance/risk consulting unit's perspective, services such as procedure design, risk control, claims cost reduction and RMIS/IT consulting are far enough from financial reporting to be considered safe. Actuarial studies are within the Securities and Exchange Commission's

scope of independence.

At the moment, however, perception is circumventing practicality.

Executive management may be dealing with external pressures to safeguard against potential problems. Drawing a hard line between financial reporting and consulting at all levels may be their method of choice. Unfortunately, thousands of risk and benefits consultants who consistently perform ethical and honest work are tainted in the fallout.

If your company is skipping the knee-jerk reaction in favor of an honest assessment, you may be able to defend your consulting relationship. Welcome the scrutiny with open arms and ample information. Be able to answer questions such as:

- Was a competitive bid required for this project?
- Is there a complete record of the bidding and contracting process?
- Is anyone from the audit service team involved in the work?
- What are these consultants doing?
- What are the goals?
- Should a broker or insurer be doing this?
- Is there a timeline and is the project on schedule?
- How is billing being handled?
- Are there current or anticipated cost overruns?

• What are the termination conditions in the contract?

• Did counsel review the bid process, request for proposal and contract?

• How will the value of this work be measured when completed?

Consider this scrutiny an opportunity to join executive management in designing a response to actual or anticipated criticism from stockholders, media, constituent groups or others. Your worst tactic might be to go on the defensive and limit information. This will fuel fears of critics and likely result in a decision to terminate the relationship, and will cast doubts on your capabilities.

If a continued relationship with a member of the Big Five is out of the question, you may have to search harder for an independent consultant. Independence is critical in that it promotes unbiased findings, recommendations and actions that are in your best interest.

If you are forced to look at smaller independent consultants, there are basic, albeit time-consuming, methods to build confidence. Some include:

- Get as many references of similar projects done as possible.
- Check all references, confirm their satisfaction and get the specific names of consultants used on the projects.

• Check individual biographies for true consulting experience, preferably with the Big Five. Backgrounds in only brokerage, insurance and/or corporate risk management may not suffice. True consulting is a learned skill. Your project is not the place to test a "wannabe." Confirm who will be on your team in the contract.

• Review bidders' past work product. Serious contenders should have versions void of names and proprietary information for your review.

• Apply fixed-fee arrangements for gradual steps of completion for the project. This allows you to fire a poor performer at a finite cost and might allow open-ended billing for later phases when higher confidence is apparent.

• Think positively. This is your opportunity to help resolve an executive-level concern.

At worst, you may have to rebid project work; however, the bidder's pool should be sensitive to and welcome added scrutiny based on current events. If not, they make an easy cross-off from your list.

Barry E. Thompson is president of Risk Acuity L.L.C., an independent risk management consulting firm based in Thomaston, Conn.

Comings & Goings

Insurers:

Kevin R. Callahan was named chief executive officer of Allianz Insurance Co. of Burbank, Calif., a unit of Allianz A.G. Holding. Mr. Callahan—who joined Allianz from Aon Corp., where he was an executive vp—replaces **Wolfgang Schlink**, who left the company.

Robert S. Cubbin, president and chief operating officer of Meadowbrook Insurance Group Inc. of Southfield, Mich., will assume the additional title of CEO. **Merton J. Segal**, who previously held that title, will remain chairman of the company.

Also at Meadowbrook: **Joseph C. Henry**, current executive vp and president of insurance company operations, will assume the additional title of COO; and **Karen M. Spaun**, current vp of finance and accounting, will assume the position of senior vp and chief accounting officer.

Geoffrey G. Gregory was named president of ACE Casualty Risk, a new casualty umbrella unit of ACE USA Holdings Inc. in Philadelphia. Mr. Gregory previously was executive vp and chief operating officer of American International Group Inc.'s excess casualty division.

ACE USA recently announced several other executive appointments:

- **James M. English**, previously chief internal audit officer of ACE INA, has been promoted to chief operating officer with responsibility for administration, operations, communications, underwriting audits, the Wilmington Financial Center and reinsurance services.

- **Trish Henry** was promoted to senior vp of government affairs, responsible for maintaining relationships with local, state, federal and international government officials, as well as overseeing the ACE INA Foundation. Previously, she was vp-asbestos issues management of ACE USA's Brandywine Holdings Division.

- **Ed K. Ota**, who previously held the post of ACE INA assistant general counsel, has been promoted to general counsel and also has assumed responsibility for regulatory matters and the filings of products and producer appointments.

- **Ed Zaccaria**, who previously held the position of senior vp, ACE USA Power Products, has been promoted to president of the ACE USA Specialty P&C Group with responsibility for global property, energy, power products, commercial ma-

rine, U.S. international and engineering.

- **Patricia Goudarzi** was promoted to senior vp from vp and will take over Mr. Zaccaria's responsibility for the power products division.

- **William P. Garrigan** was promoted to executive vp and chief operating officer of ACE Westchester Specialty from chief financial officer of ACE USA. He previously was CFO of ACE USA.

John S. Benson has been named president and chief operating officer of Frankenmuth Mutual Insurance Co. of Frankenmuth, Mich. **Gerald L. Stanton**, who had been Frankenmuth's president, will continue to serve as chairman and CEO. Previously, Mr. Benson was executive vp.

Ralph Mucerino was named president of American International Group Inc.'s global energy division in New York. Mr. Mucerino most recently was senior vp of American International Underwriters, AIG's international property/casualty insurance operation.

Other suppliers:

Dr. Christopher Vojta joined Philadelphia-based IntraCorp as vp and medical director for the company's health care management business unit. Dr. Vojta formerly was on the faculty of the University of Pennsylvania School of Medicine's Division of Geriatrics.

Gerti Reagan was promoted to president of Garner Consulting of Pasadena, Calif. She previously was vp of the firm. **John C. Garner**, president and founder of the company, retains the title of chief executive officer.

Lyndon Norley joined the law firm of Kirkland & Ellis in London as the head of its U.K.-based insolvency practice. Mr. Norley comes to the firm from the London office of Cadwalader, Wickersham & Taft.

Mike Ponce joined DailyAccess.Com Inc. of Mobile, Ala., as director of new business. DailyAccess.Com is a national provider of retirement plan products and services. Prior to joining the firm, Mr. Ponce was director of business development and senior consultant at MK Consulting Inc., which also operates in the retirement plan market.

David Browne joined Buck Consultants Inc. as a principal in its organization effectiveness consulting practice. Mr. Browne, who will work from Buck's Stamford, Conn., office, was formerly with Synthesis Group, a strategic behavior change services firm he founded in New York in 1998.

Steve Olson joined HealthAllies, a Glendale, Calif.-based provider of consumer-driven health care products, as the Midwest regional sales director. Mr. Olsen was formerly a salesman at eBenX, which is also in the benefits field.

Brokers:

Don K. Ardolino and **George W. Smith** have been promoted to senior vps at Daniel & Henry Co., a St. Louis-based brokerage. Previously, Messrs. Ardolino and Smith were vps.

Jeffrey Pettus was promoted to chief operating officer at Brentwood Services Inc., a specialty workers compensation brokerage firm based in Brentwood, Tenn. He previously was chief financial officer.

Alan R. Quinlan was named senior vp and commercial lines manager for northern New England at Morse Payson & Noyes, an affiliate of Banknorth Insurance Group in Portland, Maine. Previously, Mr. Quinlan served as vp and account executive.

Reinsurance:

Ronald Collins joined Willis Re in New York as senior vp on the aviation team. Previously, he was the U.S. production representative of the London-based brokerage firm Alexander, Brooks & Stevens, responsible for development marine, aviation, satellite and property excess of loss business.

In Willis Re's Atlanta office, **R. Stephen Girard** joined the treaty property and casualty team as senior vp. Mr. Girard had been senior vp and chief underwriting officer at Berkley Underwriting Partners L.L.C. in Oakbrook Terrace, Ill.

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AGENT/BROKER TOPICS

A MONTHLY EDITORIAL SECTION SENT EXCLUSIVELY TO AGENTS, BROKERS AND CONSULTANTS

Information Technology



Outside systems gaining favor

By MICHAEL BRADFORD

Agents are rejecting in-house management systems and are turning to application service providers to take care of the maintenance and other headaches that often accompany computer networks.

The movement toward ASP models is evident at AMS Services Inc. and Applied Systems Inc., the two largest U.S. vendors of agency management systems. Both say much of their new business comes from agents who want to turn over the

complexities of running and managing a system to someone else, while many current customers are abandoning their legacy systems for ASP models.

With an in-house system, agents license software from vendors and receive technical support. Agents are responsible for much of the maintenance on their networks and must back up data, have a disaster recovery plan in place and make sure systems are secure from outside eyes. Under an ASP arrangement, those responsibilities and others rest with the vendor that provides system services over servers accessed through

the Internet.

Other advantages to an ASP model include faster processing speeds for most users, less time spent solving technical issues and lower costs up front because software licensing fees are eliminated and there is less hardware to purchase.

"More than half of our new business every month is ASP-based," said Doug Johnston, executive vp at Applied Systems in University Park, Ill. "That's a pretty clear indication that there's something to this."

A smaller percentage of existing customers are switching, though, he said. Many went

through Y2K upgrades and are continuing to use their refurbished systems, he explained, but could become ASP customers later.

At AMS, ASP systems have become the vendor's best seller, said Loren Parsons, chief executive officer of the Windsor, Conn.-based vendor. First offered in 2000, ASP systems are now selling four-to-one in favor of in-house setups, he noted.

Much of the movement toward ASP models has come from middle-market agencies, or those with five to 30 employees, said Mr. Parsons. Large agencies with multi-

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AGENT/BROKER TOPICS

ASP: Outside agency management systems growing

Continued from previous page

unit desktop systems in several locations and a professional information technology staff have been slow to move toward ASP systems, Mr. Parsons said. And many very small shops are sticking with their investments in desktop systems.

Around half of the agencies choosing an ASP model each month at AMS are existing customers making the change, Mr. Parsons said. A dozen or so each month “get to the point where they need to buy new hardware or

they have a LAN administrator quit,” he explained, and it makes more sense to move to an arrangement whereby a service provider takes care of such issues.

As for large insurance agencies, many are able to depreciate their equipment and that’s one reason they have chosen to keep their systems in-house, Mr. Parsons noted. But many could probably benefit from the efficiencies and cost savings of managing multiple locations through an ASP server, he said.

Mark Parrish, president of

Ajasent Inc., an ASP vendor in West Monroe, La., agreed that one of the advantages to the arrangement is in managing branches. With an in-house system, “it’s difficult to set up good remote access to your server,” he said. “If you have one office or 100, it doesn’t matter to us. It also allows you to work from home or a remote area” simply by dialing in to the ASP, he said.

Mr. Johnston said agents are attracted to the ease of operation. A conversation with an agent in a taxi to the airport in Orlando

following the annual technology conference sponsored by ACORD last month revealed why, he said.

“He said that at the end of the year he was moving to an ASP,” Mr. Johnston recalled. “He said, ‘At the end of the day, I want to go home. I don’t want to worry about backups or server crashes. With an ASP, I don’t have to worry about that.’”

The cost of ASP systems compared with in-house arrangements has been the subject of debate, Mr. Parrish acknowledged. Under the ASP

system, users pay a monthly fee per user instead of investing in hardware and software licensing as with an in-house system.

Mr. Parsons pointed out that the fees for hosting the agency add up over time to more than the client would have paid the vendor for licensing an in-house system, “but if you look inside the shop, there are a lot of checks they don’t write anymore” for expenses related to keeping the system upgraded, secure and operating.

“Plus, there’s the time saved,” he emphasized. With an ASP model, there are no more technical calls to the vendor that use up time that could be used to market insurance products. Technical issues are usually minor and take a few minutes to resolve, Mr. Parsons said.

An agent said, ‘ “At the end of the day, I want to go home. I don’t want to worry about backups or server crashes. With an ASP, I don’t have to worry about that.’ ”

*Doug Johnston
Applied Systems*

“If you add it all up, we think it’s less cost” to sign up with an ASP system, he suggested. “And if you have multiple locations, it gets easy to justify.”

Mr. Parrish said that big savings are realized when an agent does not have to replace outdated hardware. Overall, “some studies show that there is a pretty substantial savings, and I would maintain that there is a pretty good case that, over a five-year period, you would pay less” with an ASP system, he said.

In some cases, using an ASP model can generate substantial savings.

The Pinckard Agency in Troy, Ala., spends \$2,850 per month on its ASP system provided by AMS, compared with the \$4,700 per month it was spending on the in-house system from AMS that the agency used to manage three offices. In a synopsis of its savings on AMS’ Web site, the agency said that while the monthly fee paid to AMS is higher, savings offset the fee.

The agency says now spends just \$300 per month on maintenance, for example, mostly on items such as replacement monitors, video cards and other computer equipment. When the agency was using the in-house system, its monthly maintenance tab was \$1,500 per month.

And The Pinckard Agency reported that its profits grew by \$39,000 at its home office for the first six months the system was in place, which it expects came from greater efficiencies. One branch reported a \$24,000 rise in profits and the other recorded a \$9,800 increase.

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AGENT/BROKER TOPICS

2002 ACORD conference

Adoption of XML lags support for standard

By MICHAEL BRADFORD

Agents and insurers are slowly but surely adopting extensible markup language, or XML, as a standard for online transactions.

The development of an XML standard for insurance transactions continues apace, while its actual adoption and implementation by insurers and agents lags. A Catch-22 seems to have slowed its acceptance, as many of those who wish for widespread implementation wait for others to embrace it before jumping on board, experts say.

XML is a computer language that lets those who exchange data define the data in specific ways, enabling different computer systems to communicate.

'Everybody is kind of waiting for the other person' before moving to adopt the computer language.

*Denise Garth
ACORD*

Agents have long clamored for the standard as a way to simplify their transactions among insurers and vendors. A common electronic standard would eliminate the time-consuming and expensive process of re-keying information to match various computer languages.

The ultimate goal is to create a process whereby everyone in the insurance distribution chain is using the same standard to process information.

The consensus at last month's 2002 ACORD Conference in Lake Buena Vista, Fla., though, was that widespread acceptance of XML is still at least a few years away.

A recent survey by Gartner Inc. of life insurance and property/casualty agencies showed that "XML is still in its early stage," said Denise Garth, vp with Pearl River, N.Y.-based ACORD. While some agencies are using the XML standards, others are still developing a strategy for its implementation and "many don't have a strategy at all," she pointed out during a panel discussion at the conference.

And insurers "are still taking a wait-and-see attitude," Ms. Garth noted. She said, however, that insurers and agencies that have put XML in place are gaining a "strategic advantage" over their competitors by being among the first to use the new language to create more efficient processes.

While there is a "positive perception" of XML standards, Ms. Garth said, "everybody is kind of waiting for the other person" before moving to adopt the computer language.

Much of the adoption of XML to date has been limited to internal

uses by companies, according to Jack W. Tyniec, managing director of TCI Consulting & Research in Cresskill, N.J., and a participant in the discussion. "I think, in the future, the value is going to be as more industry suppliers and providers get on board," he said, which "will allow us to close the gap along the entire value chain."

Many feel XML will be adopted more widely throughout the

industry over the next three years, Ms. Garth said. And that means agents must ask themselves if they are positioned to adopt the standards to remain competitive, she emphasized.

Todd N. Eyler, senior analyst with Forrester Research Inc. in Cambridge, Mass., said he thinks the insurance industry actually is ahead of other industries in terms of adopting a data standard. Where the insurance industry is behind

other industries, though, is in its reluctance to spread use of that standard, he suggested.

Once the XML standard is in place in insurance computer applications, the challenge is in using it, said Mr. Eyler, who also was a panelist. He urged those who have XML in place to be bold in going out to vendors and third-party service providers to encourage them to also implement the language so that more efficient

online partnerships and new business relationships can be developed.

Others were not so quick to give the insurance industry credit for being out front with a data standard.

"I see only a handful of companies doing heavy-duty implementation," said Kimberly H. Harris, research director, financial services industry with Gartner in

See XML/next page

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AGENT/BROKER TOPICS

XML: Widespread adoption of standard lagging

Continued from previous page

Raleigh, N.C., and a panelist. She agreed with Ms. Garth that many are waiting for others to adopt XML. "If everyone waits for everyone else, we're never going to have industry adoption."

Uttam Narsu, vp with Cambridge, Mass.-based Giga Information Group, said financial services companies other than insurers have finalized standards in

recent years without waiting on a "broad consensus" from all users. "There is a tremendous amount of activity going on in the financial standards world," he said.

Mr. Narsu, who participated in a different panel discussion, said agents and insurers should not be too confident that they are ahead of others regarding implementation of a data standard.

Many agents and insurers are

slow to adopt the standard because they can't see a return on the investment needed to put it in place, according to Ms. Harris.

She said she is encouraged, though, by the enthusiasm for XML that she saw at the ACORD conference and the work by some to implement it. The industry has had to realize that the standard is not a "silver bullet" that will solve all their problems, Ms. Harris

noted. "We've gotten past the hype now and people understand what XML means."

She said she expects it will be two or three years before industry players begin to move together towards widespread adoption of the standard.

The Agents Council for Technology continues to push for adoption of the standard.

Jeff Yates, executive director of

the group, said during a presentation at the conference that "we are big advocates of XML standards." He urged cooperation among agents, insurers and vendors to overcome the "spotty" implementation that marks current XML use.

"We've all got to be moving forward together," Mr. Yates said, if the standard is ever to gain widespread adoption.

2002 ACORD conference

Agencies not budgeting for technology expenses

By MICHAEL BRADFORD

Many insurance agencies are covering technology costs on a pay-as-you-go basis, rather than budgeting for those expenditures, according to an extensive new survey by the Assn. for Co-operative Operations Research & Development.

The recently concluded survey, which was conducted by the ACORD User Groups Information Exchange—AUGIE—polled around 9,000 insurance agency employees and management to come up with a "high-level overview" of technology issues, according to Rick Gilman, vp with Pearl River, N.Y.-based ACORD. Preliminary results of the survey were presented at ACORD's annual technology conference, which was held last month in Lake Buena Vista, Fla.

The survey found that just 41% of respondents include technology expenses in their budgets,

while 48% pay those costs as they arise.

Mr. Gilman pointed out that, among agencies with less than \$2 million in annual revenues, the percentage of agencies that do not budget for technology expenses is even greater than for the respondents overall.

Funding technology as expenses arise, though, is not a good business practice, he said. "AUGIE believes, clearly, that budgeting for technology should be a matter of course, regardless of the size of the agency."

The survey, which was conducted online over six weeks beginning in January, is the first of its kind to reach such a broad range of agency respondents, Mr. Gilman said. Although the survey will not be distributed until next month, he cited some key findings:

- Most respondents—81%—have broadband access to the Internet. But among small agencies—those

with less than \$150,000 in annual revenue—45% still use dial-up access. The majority of those agencies don't use broadband access because it is not available in their area, Mr. Gilman noted.

- More than half of small agencies have no plans to create a Web site for their company.

- Agencies with more than \$150,000 in revenues overwhelmingly chose multiple-company, Web-based real-time rating as their preferred method of obtaining rating information from insurers. In contrast, smaller agencies, preferred desktop software from multiple companies for rating information.

- Training and keeping up with developments in technology were consistently cited as the greatest challenges for agencies on many technological fronts, Mr. Gilman said.

One agent, he said, wrote: "Trying to load each company's rating

programs and other files to our network just to access their Internet site is a nightmare. Just trying to keep an agency management system upgraded is full-time work."

The complete findings from the AUGIE survey will be distributed on CD-ROM in early July. Ordering information will be available from AUGIE at www.acord.org.

2002 ACORD conference

1,500 attend event

ACORD's annual gathering drew around 1,500 attendees to three days of educational sessions and other events.

Agents, insurers, technology vendors and others gathered May 19-21 at Walt Disney World's Dolphin Resort in Lake Buena Vista, Fla., to hear a number of speakers discuss the latest progress in data standards, business models for agents, user

group survey results and a number of other issues. The 10th annual meeting was themed "Real World Solutions" and featured more than 60 workshops and general sessions.

There were 120 exhibitors at the conference exhibit hall, a record number.

Next year's conference is scheduled for the same location May 18-21.

For more information, visit www.acord.org

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AGENT/BROKER TOPICS

AAMGA annual meeting

Automated underwriting gaining more ground

By JOANNE WOJCIK

Automated underwriting, which has been used in personal lines for several years, is starting to make inroads into the commercial lines sector thanks to a maturing technology.

The hard market also is helping to fuel the use of automated underwriting because many insurers, having downsized to trim expenses during the soft market, now lack sufficient in-house underwriting expertise to handle the deluge of new applications coming in. Furthermore, many of today's insurance company underwriters have never experienced a hard market.



However, while the use of automated underwriting may help insurers play catch up now, and even assure lower expenses when the market turns soft again, insurance industry experts say it is unlikely that technology will ever replace human expertise.

"There have been versions of this out there for a long time," said Ann W. Spragens, senior vp for public policy development and general counsel to the Alliance of American Insurers in Downers Grove, Ill. "The concept actually is not new."

"We've seen this in what they call the 'Rapid Rater' for automobile insurance that's been around for a couple of decades," she said. "It takes some of the general elements that an underwriter would apply to any risk and it automates the data evaluation process. For homogeneous products, for commodity-type products like personal lines, it's relatively simple to do."

Automated underwriting "has been in existence for 20 years in some rudimentary ways on the personal lines side," concurred Don Griffin, assistant vp of business and personal lines at the National Assn. of Independent Insurers in Des Plaines, Ill.

He estimates that more than half of the NAI's 700 members use some form of automated underwriting in personal lines. By contrast, only a few use it in commercial lines. "It's just starting to get there," he said.

That's because "it's taken a while for the approach to mature to be able to engage the more complex issues presented by commercial lines," Ms. Spragens explained. "But the principles are the same."

Yet while some standard business insurance can easily be underwritten with these systems, Mr. Griffin was doubtful that large, complex risks ever will be.

"You have companies doing business in different countries; those will still have to be evaluated individually by a very experienced underwriter," he said.

Automation also is more difficult

in commercial lines because the products are more diverse, Ms. Spragens said.

"The products are not that homogenous. In addition, they are not particularly simple. It's variety from product to product within a company, and there's a lot of variety from company to company in terms of the niches they market to," she said.

Helping fill talent gap

But even if only standard

business insurance is written with these expert systems, that alone could help fill the void of hard market expertise many insurance company underwriting departments are experiencing.

Using such systems is almost like cloning the most experienced underwriters, because it is their interpretations of the underwriting "rules" that generally are downloaded into them, technology experts say.

Although young underwriters "have certain underwriting skills,

they may not have the skills necessary to adapt to this kind of environment," said Mr. Griffin.

"This is certainly a way to deal with that issue," said Don Chase, executive vp of AscendantOne Inc., a 2-year-old technology firm based in Nashua, N.H.

AscendantOne has an online rating and underwriting engine that can be used to underwrite homeowners, personal auto and personal umbrella as well as commercial general liability, commercial auto and commercial

property. The Insurance Services Office Inc. has invested in AscendantOne, and ISO's insurance rating, rules and other information on 18 lines of business that ISO supports will become available on AscendantOne platforms beginning with the new business owners program in late summer.

"But this is a cyclical business," Mr. Chase points out. That means the deluge of business will eventually recede. Recognizing this, Mr. Chase emphasizes how

See **AUTOMATION**/next page

health care benefits administration: topic #2



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AGENT/BROKER TOPICS

Automation: Gaining ground

Continued from previous page

automation will reduce the companies' expenses both now and during lean times in his sales pitch to insurers.

"What's wrong with the industry in the first place is there's too much cost in the process anyway," he said. "We're promoting a process of actually looking at the operation and providing some real return on investment based on eliminating cost by providing real-time straight-through processing to deal with both the underwriting and rating issues without being touched by human hands."

"That's exactly what automation is intended to do," said Ms. Spragens. "Every company looks at the potential that automation can help it become more efficient and improve its expense ratio."

"Will it make it possible to make underwriting decisions faster? Probably. But there are some that will still require more time invested," she said.

Better results uncertain

But will it make underwriting decisions better? That remains to be seen, industry observers say.

While industry experts say the automated systems that insurers have used to underwrite personal lines have improved loss ratios in those lines, there's no guarantee such systems could improve loss ratios in commercial lines, they say.

For example, using credit scores in the underwriting rules employed by automated systems has helped improve auto insurance loss ratios for many insurers, Mr. Griffin said.

How successful automated underwriting is in improving an insurer's loss experience "depends on what the quality their

underwriting has been up to that point," suggests Ms. Spragens. "It might make a difference for some. For others it might not have a significant impact."

For example, "if you're using any kind of an automated system, if you make a mistake, that mistake is going to be repeated throughout your system," she said. "That's why a prophylactic defense...is going to become a part of everyday internal insurance company operations when they go to this kind of thing. You have to really keep a sharp eye on it."

It's like using the spell check function embedded in most word-processing software, she said. It catches most spelling errors but often misses homonyms, words that sound alike but are spelled differently.

"Automated underwriting began with the automation of basic human judgmental factors that were general enough that they could be modeled. So what you've done is automated a certain general level of judgment," she said. "When it's kicked out because those elements were not met, you simply are applying human judgment to it in a different way. You can't escape the element of human judgment that has to take place in an underwriting decision. It's just that it's been automated at the front-end."

This is the reason the process can never really be fully automated, and there will always be human oversight in the underwriting process, Ms. Spragens said.

"Any time you use an automated system, you have to stand back and look at the outputs and say, 'Is this consistent with reality as I know it?' That always has to be a part of this process," she said.

Human judgment essential

Because of this error potential, the automated underwriting systems on the market today all have the capacity for human intervention built in.

AscendantOne's software, for instance, is programmed with rules established by company underwriters to analyze risks. If the rules are violated in any way, such as when a risk fails to fit within the guidelines, the program will alert the user. Then it will suggest possible actions to take, such as stopping the process entirely, completing the process and routing the transaction to a human underwriter for manual review, or allowing the underwriting to continue, only with different terms and conditions, Mr. Chase said.

Likewise, if a risk fed into Caliber One Management Co.'s easyUmbrella or easyExcess systems doesn't fit the programmed underwriting rules, it is referred to specialist underwriters, according to

Alan S. Ogilvie, vp of legal and e-commerce at the Yardley, Pa.-based surplus lines subsidiary of PMA Capital Corp.

Caliber One's system can be used to underwrite commercial excess and umbrella insurance using the ACORD application. This summer the company plans to introduce commercial general liability, auto and property versions.

"It can do it in 15 minutes. It takes another five minutes to bind. Within three minutes, the actual policy is in the (electronic) in basket" of the wholesale broker, Mr. Ogilvie said. "We've put zoos and amusement parks through this and got a quote in 15 minutes."

e-Policy Solutions' RightRisk also refers applications to a human underwriter if a risk doesn't fit the programmed guidelines, according to Rick Ulmer, senior vp-sales at the Torrance, Calif.-based insurance technology company. The company's automated underwriting software can be programmed to underwrite anything from simple personal lines risks to commercial risks as complex as medical malpractice, he said.

Underwriters will always be

necessary; it's just the way they work that will change, the Alliance's Ms. Spragens predicts.

"They'll have to become attuned to systems issues and systemic problems in addition to the way in which they are looking at individual risks that merit an individual underwriting evaluation," she said.

"That's why underwriting is an art," she said. "We have to remember that. Science itself has backed away a little bit from the hard-line mathematical approach. They, too, stand back and say, 'Wait a minute. Does the mathematical model fit reality, as we know it?'"

"There's still something that you get by looking at the whole picture yourself. The experience level and the gut feel that those people have is still something that cannot always be reduced to science," said Mr. Griffin, a former underwriter.

"Your company might be unique, your underwriting requirements might be unique, and your experience might be unique enough to be able to identify something that the computer does not," he said.

AAMGA annual meeting

Profits follow productivity

By JOANNE WOJCIC

Agency owners that keep careful and frequent track of productivity will be more successful in reaching their profit goals than those who use only their annual financial statements as a guide, an agency consultant says.

"Financial statements are in such a broad form, and so many things are lumped together, it's very difficult to manage a business just by looking at an income statement," said Dirk S. Nohre, owner of Nohre & Co. S.C., an accounting and consulting firm in Eau Claire, Wis.

"We need productivity criteria that can be broken down on a per-department basis, where we can manage our transportation department different than our personal lines," he suggested during a seminar on financial management held during the 76th annual meeting of the American Assn. of Managing General Agents, held May 5-9 in Las Vegas.

"Does the agency have predetermined targets in these areas of productivity: revenues per employee? Revenues per underwriter or underwriting team? And revenues per accounting employee?" Mr. Nohre asked. "I suggest that these are actually more important to manage than...your financial statements. The agency has to have predetermined targets to manage to."

To determine what activities are making money and which are not, Mr. Nohre suggested that agency owners prepare a budget that tracks revenues on a per-department or per-profit-center basis.

"Yo u know that of all the things that are going on in your business,

only some of them are making money," he pointed out. In other, unprofitable activities "you're spinning your wheels."

Too often agency owners use the amount of paper being processed to



measure productivity, Mr. Nohre said. But, "you don't know whether any of your people are busy or not. They all look busy. They're all shuffling paper. But you know that everyone will expand work to the time they have allotted to do it."

Once the manager knows what resources are being dedicated where, he or she is in a better position to do a cost-benefit analysis to determine whether additional personnel are necessary, according to Mr. Nohre.

There are some cases in which an agency owner may discover that adding an additional employee can significantly boost revenues.

Mr. Nohre cited as an example an agency that had no human resources manager, instead delegating that responsibility to each department head. After hiring a good HR manager, the agency increased its revenues each year, more than making up for the personnel investment. This was because the department heads could focus all of their efforts on increasing the business coming into the agency after they were relieved of their non-revenue-producing tasks, Mr. Nohre explained.

To use manpower efficiently, Mr. Nohre suggested that owners delegate tasks to the lowest-paid employee capable of doing them.

"Every piece of work should be done by the lowest-paid person with competence. Delegate work to the lowest level," he said.

Mr. Nohre also advised agency owners to keep close tabs on their accounts receivable. "When a business starts to get overworked, the receivables regularly are one of the first things to go," he said.

Insurance agencies assume a significant amount of credit risk, Mr. Nohre said. For example, a premium of \$100 produces \$10 to \$15 in retained revenue, of which only \$2 to \$3 is added to an agency's bottom line, he calculated.

"We're taking \$100 credit risk for, at the most, \$2 to \$3 of profit," he said. "When you start seeing that, your tolerance for bad debts should go way down."

In addition to measuring profitability on a per-employee and per-department or profit-center basis, Mr. Nohre suggested that agency owners measure retained revenues on a per-account basis.

Start from the largest account and progress to the smallest account, then set a benchmark, or a minimum amount of profitability, and dump the accounts that fall below it, he said.

Likewise, he suggested that MGAs measure revenues produced by each retailer and insurer with which they do business.

"To identify a productivity problem, identify which relationships are creating it—which employee relationships, which company relationships, which customer relationships, which retail agency relationships. And you start cutting off the lowest of the low."

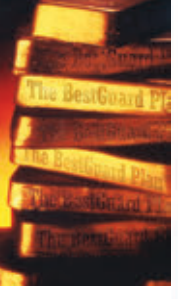
"As soon as you start cutting those people out, productivity, profitability...starts to go up."

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AGENT/BROKER TOPICS

AAMGA annual meeting

AAMGA gets a new manager

By JOANNE WOJCIK

The American Assn. of Managing General Agents has selected a new management firm with extensive insurance industry experience, in an effort to improve service to its members.

King of Prussia, Pa.-based Accolade Management Inc., which is co-owned by former AAMGA President Tom Rogan and Bernd G. Heinze, who has served as AAMGA's interim executive director since January 2001, took over management of the association in February.

Mr. Rogan, who is an independent insurance industry consultant, is retired from MacNeill Group Inc., a managing general agency in Fort Lauderdale, Fla. Mr. Heinze, president and chief executive officer of Beacon Management Group Inc. of Wayne, Pa., has served as legal counsel in various insurance industry capacities since 1983.

AAMGA was forced to select a new management firm when its prior firm, Martin Fromm & Associates of Kansas City, Mo., announced it was dissolving in November 2000. Accolade was

chosen from among 16 management companies that submitted proposals.

"The vote (to select Accolade) was unanimous, based largely on the board's belief that the selection of Accolade is in the best interests of AAMGA," explained Baron Garcia, AAMGA's past president

The change in the management of the association also resulted in AAMGA moving its headquarters to Pennsylvania.

and president of Oklahoma City Agency of Oklahoma City. "We will be their only client, and their team knows our needs."

In addition to implementing the AAMGA board's directives, Accolade will offer ideas to enhance the association's role in the insurance marketplace and to expand the services it provides to members, Mr. Heinze said.

Among the improvements that Accolade is working on are: developing a component for

AAMGA's Web site to let members exchange data electronically; offering registration for meetings and AAMGA University courses—the association's professional development arm—online; and creating a virtual trade mart where vendors can display information. Accolade will tap the AAMGA Automation and Technology Committee's expertise in implementing those changes, he said.

The change to Accolade also resulted in AAMGA's moving its headquarters to King of Prussia, Pa., from Kansas City, Mo., and the loss of two key staff members. Jeanne Corlew, director of meetings, was replaced by Marcia Reik; and Chris Behymer, who had been director of education, took an underwriting position at Markel Southwest Underwriters. Mr. Behymer is continuing to volunteer his services to the University while AAMGA seeks a new director of education.

For more information about AAMGA, visit the organization's Web site at www.aamga.org or call 610-225-1999. The AAMGA's new headquarters is at 150 S. Warner Road, Suite 156, King of Prussia, Pa. 19406.

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AGENT/BROKER TOPICS

Agents, consumers see differing roles for Internet

By NICOLE VOGES

Insurers and agents are currently satisfied with how they use the Internet to conduct business with each other, but customers shopping for insurance information online are not feeling as fulfilled, according to the Future One 2001 Technology Study.

The study, conducted by Future One, a cooperative effort of the Independent Insurance Agents & Brokers of America and 26 insurance companies, was based on three surveys of agents, insurers and insurance buyers.

Madelyn Flannagan, IIABA's vp of education and research, said the first-time study establishes a "definitive understanding of the opportunities the Internet and related technology present to the agency system."

The study, conducted mainly online in late 2001 and released in February 2002, surveyed 2,887 consumers, 201 small businesses, 666 agents and 35 insurance companies. According to the study, the purpose was to "explore whether the concerns and plans of agents and carriers coincide, and how these two groups can work together to optimize the role of technology in the insurance industry."

At the time of the study, 41% of consumers and 48% of small businesses had purchased a product or service, not necessarily related to insurance, online within the last year. However, only 22% of consumers and 28% of small businesses had shopped online specifically for insurance during the same time frame.

The study also suggested that consumers view agents' and insurers' Web sites as still lagging behind other financial services

sites, such as those maintained by banking and investment firms.

Within two to five years, however, consumers can expect the services offered on insurance sites to rival those of banking and investment sites, said Ms. Flannagan.

While consumers and small businesses cite gathering information and requesting quotes as their main use of insurance Web sites, agents view the Internet as a means of dealing with insurance companies more efficiently and improving internal operations, the study found.

The survey found that agents have a definite interest in using the Internet for claims tracking and other policy service, but agents prefer to have personal interaction with new clients. While 79% of agents ranked improving customer service as an important element in their Internet strategies, only 32% viewed acquiring new customers with the same importance.

Agents are also very interested in insurers offering Internet capabilities that would allow them to bind business online without dealing with an underwriter or other company representative, but few insurance companies offered this at the time of the survey.

According to the study, agents are gravitating toward insurers that offer more online capabilities and dropping those that don't emphasize Internet technology.

Technology issues that agents stress include the "perceived level of commitment to technology on a carrier's part, the speed and efficiency agents and brokers can serve customers, and the use of systems that can make an agent or broker's job easier or present workflow obstacles," according to the study.

The survey found that "independent agents and their carriers may be in danger of losing Internet marketing opportunities" if they continue at their current pace in embracing new technologies. Of the 666 responding agents, 67% currently have Web sites, but 33% remain without this technology. However, while the agents surveyed spend an average of about \$13,000 annually on Internet technology, almost half spend less than \$5,000.

The study found that "among agencies that spent more than \$10,000 on Internet technology in 2001, 63% increased relationships with certain carriers, compared with only 45% among agencies with lower technology expenditures."

By comparison, insurance companies also are spending significantly less on technology than is needed, according to the study. Insurers' average annual expenditures for technology in 2001 were approximately \$9.6 million, according to the study.

Of agents surveyed, 43% cited the cost of new technology as the top obstacle to Internet development, while 16% said their main problem as the lack of time for planning and implementation. Other problems cited include a lack of in-house expertise and a need for additional training. Only 4% of agents cited no barriers at all.

Meanwhile, insurance companies surveyed see "enabling agents to handle more of the new business process themselves as the most important element in their Internet strategies," the study found. The Future One study found that 70% of insurers consider providing company and product information to agents and brokers as highly important.

Like agents, insurers in the survey are not highly interested in direct online interactions with consumers. Although 79% of companies currently offer consumers product information online, only 38% consider providing that information as an important part of their Internet strategy.

Of the 35 insurers surveyed, 85% currently provide company and product information to agents, and the remaining 15% expect to have

these capabilities within two years. In addition, 55% currently have the technology available for agents to view loss histories for accounts, and 45% expect to offer this within two years.

While only 25% of insurers offer customers the ability to report and track casualty claims online, 50% plan to offer this within two years, and the remaining 25% do not see it as a near-future possibility.

For property claims, only 8% currently offer online claim reporting and tracking, though 63% plan to offer it within two

years, the study found.

There is no doubt that the Internet and other technological advances can continue to transform the insurance business, but according to the survey "today, the ultimate impact of the Internet remains murky."

Printed copies of the "Future One 2001 Technology Study" are available for \$59.95 by calling 800-261-4422 or faxing 703-683-7556. An order form can also be downloaded at www.independentagent.com.

A/BT Briefs

IIABA creates diversity task force

ALEXANDRIA, Va.—The Independent Insurance Agents & Brokers of America has established a new diversity task force to foster an independent agency force that represents and capitalizes on the opportunities of the diverse U.S. population.

The diversity task force will build on the IIABA's Multicultural Agents Forum series, which was conducted in 1999 and 2000 with the goal of helping to create awareness of urban market opportunities among insurers and to raise the profile of minority-owned independent agencies.

The new task force comprises IIABA agents, members of groups representing Latin-American and African-American agents and representatives from seven insurers—CNA Financial Corp.; Chubb Corp.; Encompass Insurance, a unit of Allstate Insurance Co. created to manage personal lines business it acquired from CNA; Metropolitan Life Insurance Co.'s Auto & Home Group; Prudential Property & Casualty Insurance Co., SAFECO Corp; and Travelers Insurance Co.

"The diversity task force is responsible for taking the emerging-markets focus of the Multicultural Forum to the next level of accomplishment by working collaboratively and implementing a strategic plan that will be beneficial to minority and urban agents as well as agency-system companies," Joe A. Hernandez Jr., chairman of the task force and vp and principal of Hamman, Miller, Beauchamp, Deeble Inc. in Long Beach, Calif., said in a statement. "We are undertaking this effort not solely for business reasons. We are engaged in this effort because it is the right thing to do."

The task force's chief goals include:

- Increasing the penetration of the independent agency system in urban insurance markets by increasing the number of diverse-agent appointments.
- Fostering the ability of diverse agents to grow their business.

- Working in coordination with other industry groups interested in multicultural insurance issues.

Banknorth buys upstate N.Y. firm

PORTLAND, Maine—Banknorth Group Inc. will soon be providing insurance agency products and services in upstate New York with the acquisition of Community Insurance Agencies Inc. of South Glens Falls, N.Y.

The Portland, Maine-based financial services holding company already conducts banking services in Glens Falls, N.Y., through its Evergreen Bank subsidiary.

"This acquisition will continue our practice of seeking to provide insurance services wherever we provide banking services," William J. Ryan, Banknorth's group chairman, president and chief executive officer, said in a statement. "We continue to be innovative and aggressive in seeking to offer our customers a full range of financial services."

In 2001, Community Insurance Agencies' 57 employees operating out of seven offices generated \$24 million in premium volume and \$4.2 million in revenues.

Terms of the deal, which is expected to be completed by year end, were not disclosed.

BB&T purchase gives boost to benefits

RALEIGH, N.C.—BB&T Insurance Services will expand its employee benefits operation with the acquisition of Richmond, Va.-based Benefit Consultants of Virginia Inc.

"This acquisition will allow us to strengthen our emphasis on employee benefits, an important piece of our product line," Wade Reece, president of BB&T, said in a statement. "In Richmond, we haven't had a significant employee benefits operations, but this changes that dramatically, allowing us to round out our product offering for our clients."

Benefit Consultants of Virginia will continue to operate out of its existing location with all of its 13 employees. President Matt Davis will become vp and agency manager of BB&T-Benefit Consultants of Virginia.

Terms of the transaction, which is expected to be completed in June, were not disclosed.

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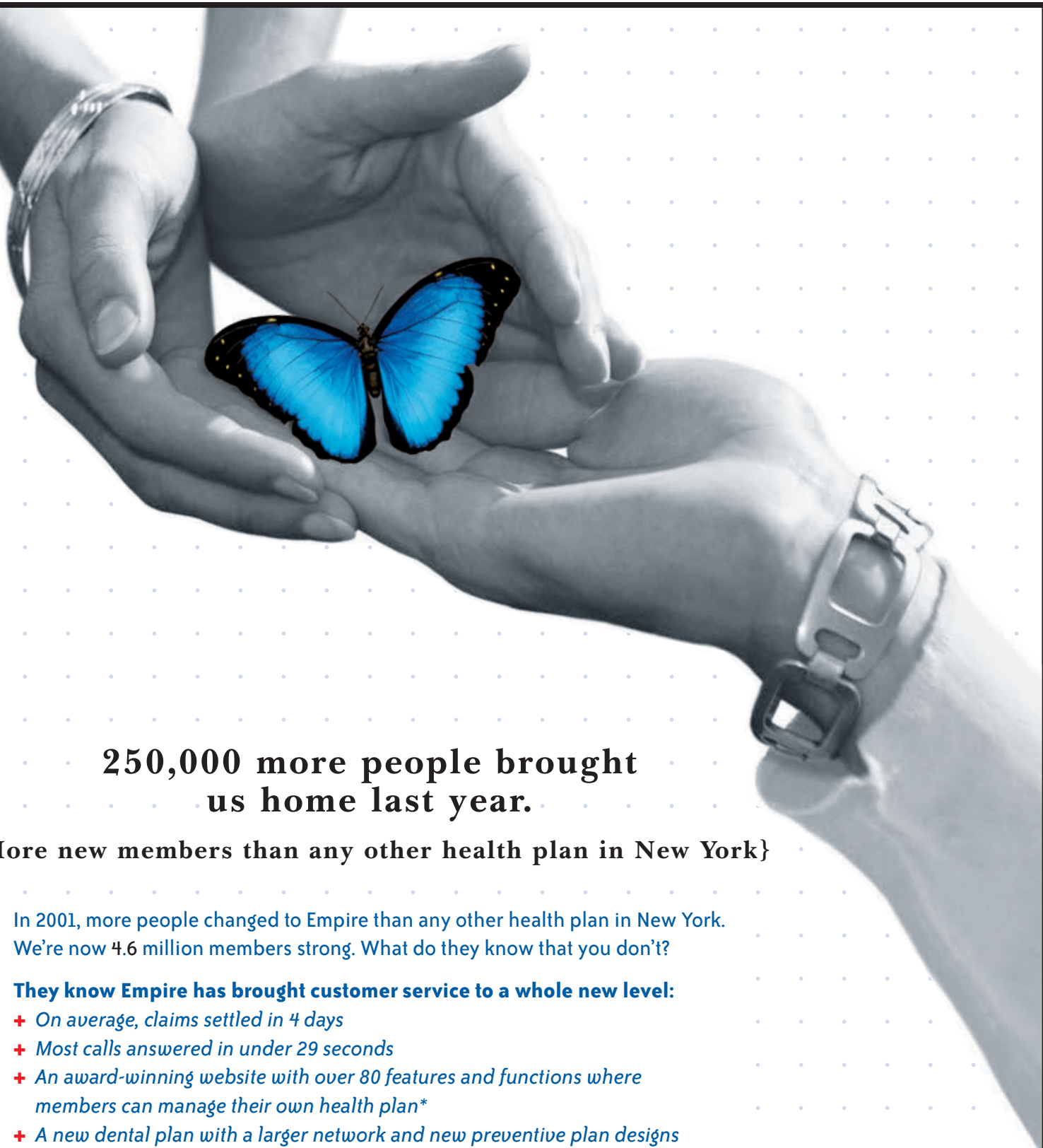
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Public Risk Management Assn. conference

Security comes to the forefront for public entities

By MEG FLETCHER

SAN ANTONIO—In the wake of the Sept. 11 terrorist attacks, public risk managers must raise their awareness of the risks they face and find the most cost-effective way to manage and finance them, according to speakers at the Public Risk Management Assn.'s recent conference.

Broadly defined, terrorism is the "unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives," said Dawne L. Davenport, an Atlanta-based consultant with Towers Perrin.

Since the mid-90s, there has been an increase in the number of terrorist acts, while the severity of those

acts has become more difficult to predict, she said in a session on the implications of the attacks. It was held at PRIMA's recent annual conference in San Antonio.

"As a nation, we have been put on notice, with the Sept. 11 attacks," Ms. Davenport said.

Potential targets include top executives or public officials attending large meetings or highly publicized events, she said. In addition, targets may include public structures, including the iconic Golden Gate Bridge and Mount Rushmore, as well as dams, water treatment and power plants. Risk managers also should be concerned about terrorist activity at privately owned facilities, such as shopping malls.

"Public entity risk managers, therefore, have the responsibility to

prepare in a comprehensive manner," Ms. Davenport said. They need to prepare to protect and preserve public entities, people, facilities and resources with plans for prevention, mitigation, recovery and risk financing, she said. "Not planning is indefensible."

Public entities already have responded by increasing security in several key areas. For example, many communities have tightened building security with identification checks and use of video surveillance.

In addition, public entities are more concerned about computer security and are emphasizing periodic backup of data as well as creation of firewalls to protect the confidentiality of important data, she said. They also have taken steps to preserve public health by educating workers about protocols to follow in the event of contamination by chemical, biological or nuclear

weapons.

In terms of assessing risk financing alternatives, "a proactive response to the events of 2001 is prudent," said Lisa Gattel Chanzit, a Boston-based principal with Tillinghast.

Buyers need to "understand that traditional insurance solutions are not designed to take care of all possible risks and financial implications," she said. In addition, they need to "model various retention programs to determine the probable impact to key financial parameters."

In addition, there are several steps that insured public entities should take, she said. For example, they should network with peers and obtain benchmark information from them or other sources, she recommended. In addition, they should research the insurance companies with which they are doing business to ensure their viability,

strive to establish a working relationship with underwriters, explore the concept of group self-insurance with peers and consider the various alternative risk financing options.

"For 2003, start early and consider getting 'conceptual' insurance proposals," Ms. Chanzit said. Actual quotes may not be available until near the end of the negotiating process, she said.

In exploring risk financing issues, public entities should consider their potential exposures in the broad range of risks that they face, while keeping in mind the fact that state laws may provide some protection in the form of tort caps or immunity in some areas, she said.

In addition, risk managers also may want to consider alternatives or supplements to traditional insurance, including a letter or line of credit, bonding authority and taxing powers, she said.

Public Risk Management Assn. conference

PRIMA issues code of ethics

By MEG FLETCHER

SAN ANTONIO—Public entity risk managers have a handy new resource to consult when seeking guidance about how to handle questionable business practices and arrangements.

The Public Risk Management Assn. is offering members its formal code of ethics, which it adopted earlier this year, printed on a card that is about the size of a large travel wallet.

The card was laminated to encourage risk managers to keep it on their desks, rather than burying it in a drawer—as they might with a piece of paper—said Allen Garner, city counselor for Jefferson City, Mo. He discussed ethical issues during a session at PRIMA's annual conference in San Antonio last month.

Adherence to the code "is voluntary, however, because there are no sanctions that PRIMA would take against an individual risk manager" for not following it, said Mike Grace, manager of risk and insurance for St. Louis County, Mo. PRIMA cannot impose sanctions on individual risk managers because its members are the public entities and not their representatives, said Mr. Grace. He serves on PRIMA's board of directors as vp of Region VI.

Yet, "organizations will generally have better-behaved members with a code" of ethics, Mr. Garner said.

PRIMA's code of ethics addresses an appropriate "standard of professional conduct" in several specific areas, including personal integrity, serving the public interest, developing competence and professional

excellence as well as maintaining ethical standards.

For example, the code calls for members to be truthful and honest "without compromise for advancement, honor or personal gain."

It also calls for them to avoid any activity "which may lead to a conflict of interest or its appearance," including misusing public resources, engaging in improper outside employment, accepting gifts, engaging in nepotism or creating a hostile work environment.

Members also must be "diligent" and "respectful," in addition to accepting responsibility for their errors and ensuring that others receive credit for their work.

In serving the public interest, the code calls for members not to make "unauthorized commitments or promises of any kind purporting to bind the entity" as well as to disclose "waste, fraud, abuse and corruption" to appropriate authorities.

The code also encourages members to help colleagues adhere to ethical standards and even describes steps to address a colleague's questionable behavior. The code calls for members to seek guidance and directly approach the colleague and discuss the complaint with him or her, when feasible. The code urges that unresolved issues be referred to PRIMA's board of directors for "appropriate action."

Copies of PRIMA's code of ethics will be sent to members and can be viewed on the organization's Web site, www.primacentral.org.

Brownfields: Variety of options

Continued from page 3

Once remediated, such sites are typically used for commercial or residential development, with development in adjacent properties likely, as well, he noted.

Before such new developments can become a reality, though, there are many potential problems that can occur during remediation, Mr. Hallenback said. For example, new types of contaminants may be discovered during the cleanup process, improper remediation may create new contamination, the remediation plan may not be followed, the contamination may spread and there could be a change in regulatory requirements, he said.

In addition, post-remediation exposures may include new contamination of neighboring areas, new operations creating additional contamination and an "environmental stigma," or fear that a pollution exposure persists despite remediation.

There are a range of risk control and financing products and approaches available to protect entities against such exposures, but brownfields sellers and buyers often

lack experience with them, Mr. Hallenback said.

These include a variety of specialized coverages, such as remediation stop loss, finite risk products, and various types of EIL policies, includ-

Finding funding for brownfields remediation can be a challenge, because 'banks are still fairly skeptical' about former waste sites due to their lack of experience with environmental insurance products.

*Robert P. Hallenback Jr.
XL Environmental*

ing contractors pollution liability and transportation pollution liability, said John Farinacci, senior associate broker with St. Andrews Insurance Brokers Inc. in Tustin, Calif.

The particulars of such coverages vary. For example, Mr. Farinacci said, a typical EIL policy is written

on a claims-made basis for a specific site. It protects against first- and third-party claims for up to 10 years and includes legal defense costs within limits, which may be \$15 million to \$100 million, he said.

While many state laws offer financial incentives to attract capital to develop brownfields projects, finding funding for remediation can be a challenge, because "banks are still fairly skeptical" about former waste sites due to their lack of experience with environmental insurance products and their fear of coverage gaps, Mr. Hallenback said.

"Lenders coverage" is an EIL product that may make bankers more willing to provide capital by alleviating their fears about assuming any potential environmental liability, Mr. Farinacci said. Such coverage protects them from loss of collateral value, the inability of borrowers to repay the loan and liability for environmental conditions on foreclosed properties, he said.

As a result of such policies, more banks appear to be willing to participate in brownfields transactions, Mr. Hallenback said.

Public Risk Management Assn. conference

PRIMA rounds up 2,000

SAN ANTONIO—A western theme dominated the 23rd annual conference of the Public Risk Management Assn. May 14-17 in San Antonio.

Nearly 2,000 people gathered at the "Risk Management Roundup" to discuss a broad range of loss control challenges and general risk management issues

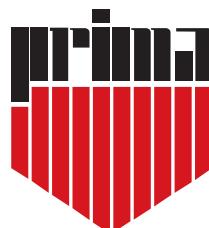
that public entity risk managers face. These included coping with the aftermath of the Sept. 11 terrorist attacks, cyber risks, risk financing, mutual aid agreements as well as environmentally impaired property transactions.

In addition, small groups of attendees visited educational sites, including

the city's river tunnel system, a school construction project, the Alamodome as well as a police helicopter unit and training academy.

Arlington, Va.-based PRIMA plans to celebrate its 25th anniversary next year at its 24th annual conference May 18-21 in Reno, Nev.

For additional information, contact PRIMA at www.primacentral.org.



June 3, 2002

International

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Wellington Re Lloyd's agency forming big U.K. reinsurer

By SARAH VEYSEY

LONDON—Lloyd's of London company Wellington Underwriting P.L.C. has raised £448 million (\$653.1 million) to establish a property/casualty insurer and reinsurer outside of Lloyd's that, if approved, would be the largest independent reinsurance company in the United Kingdom.

Wellington announced last week that an investor group, led by London-based investment groups The Blackstone Group and Candover Investments P.L.C., had agreed to provide the capital for the proposed company, Wellington Re.

The investors have formed a yet to be licensed Bermuda-based holding company, called Holdings, which will acquire a shell company, City Fire Insurance Co. Ltd., for about £16 million (\$23.3 million). London-based City Fire will be renamed Wellington Re.

Wellington Re will write both property and casualty reinsurance worldwide, said Chris O'Kane, the new chief executive of Holdings and formerly chief underwriting officer at Wellington Underwriting P.L.C. In the United States, the reinsurer will write both property and casualty facultative business. U.K. commercial property insurance will account for about 20% of the new company's book, Mr. O'Kane added.

He said Wellington Re would write about £200 million in net premium in 2002 and the company

See **WELLINGTON RE**/next page

World Cup organizers step up against risks

By SARAH VEYSEY

SEOUL, South Korea—The 2002 World Cup kicked off May 31 with numerous insurance coverages in place to limit financial losses from weather, hooliganism, terrorism and other risks to the soccer tournament.

Both the organizers and businesses expecting to benefit from the influx of fans to the host cities in Japan and South Korea have bought insurance policies to protect what is expected to be substantial income generated by the tournament.

The World Cup is expected to generate revenues of about 750 million Swiss francs (\$473.9 million), according to the tournament's organizers, the Zurich, Switzerland-based Federation Internationale de Football Associations.

The world championship, which is held every four years, is the highlight of the soccer calendar, and teams from 32 nations will contest for the title of world champion in the monthlong tournament.

This year's World Cup, however, falls during southeast Asia's rainy season, and some businesses based in and around host cities for the matches and training camps have been looking for ways to cover any potential loss of revenues if matches are canceled or rescheduled due to adverse weather conditions.

Tokyo-based Mitsui Sumitomo Insurance Co. began selling weather derivatives in March to businesses situated near the stadiums where matches are being held. The cost of the coverage is 1 million yen (\$8,019) and the policy will pay out 1.5 million yen (\$12,028) for every day that rainfall exceeds 10 millimeters (0.4 inches), subject to a minimum number of days specified in each contract, a Mitsui spokesman said. The policy limit is 15 million yen (\$120,280).

Tokyo-based banking group Daiwa Holdings has sold weather

PHOTO: ALLSPORT PHOTOS



Police in Seoul, South Korea, inspect a vehicle outside a stadium as part of efforts to enhance security during the 2002 World Cup, which commenced May 31.

derivative contracts to businesses in three of the 22 towns hosting World Cup training camps. The "Japan Pack" derivative, for example, covers businesses situated in Iwata—where the Japanese squad is holding its training camp—for the period May 28 to June 14. For a premium of 720,000 yen (\$5,774), policyholders will receive 500,000 yen (\$4,010) for every day that rainfall in Iwata exceeds 10 millimeters—provided that there are at least three rainy days in that period. The policy limit is 5 million yen (\$40,095), a Daiwa spokesman said.

Businesses such as restaurants and retail shops are also purchasing protection against property damage due to hooliganism. Supporters of several national teams are notorious for causing riots in host cities before and after World Cup games.

Seoul-based Hyundai Fire & Marine Insurance said it has sold more than 1,000 policies specifically designed to cover property damage

caused by hooliganism. The policy has limits of 50 million won (\$40,545) for hooliganism-related property damage. No details of premium were available.

Some standard property policies exclude vandalism, forcing some buyers to seek additional coverage.

Other potential risks that are being covered by insurers include losses due to terrorism.

The threat of terrorism caused problems for FIFA in October 2001 when its insurers withdrew their cancellation coverage for the tournament in the wake of the Sept. 11 terrorist attacks (*BI*, Oct. 15, 2001). AXA Colonia Versicherung A.G., a unit of Paris-based insurer AXA S.A., which led a consortium providing 944 million euros (\$869.6 million) in coverage limits, said the termination was prompted by "the current uncertain international climate."

Later that month, FIFA, which has threatened legal action against

See **WORLD CUP**/next page

World Updates

E.U. grants extension of aviation insurance

The European Union will allow member states to extend government-backed aviation war and terrorism insurance packages for another month while an alternative plan is developed. Aviation insurance rescue packages had been due to expire at the end of May, but the European Commission's transport ministers granted an extension until June 30 to give airlines time to set up a mutual insurer. Aon Group Inc., Marsh Inc. and Willis Group Ltd. plan to seek E.U. approval for a European pooling arrangement, known as Eurotime, which they are jointly working to establish. Eurotime would provide war risk and aviation coverage of up to \$1 billion. European transport ministers are scheduled to discuss the proposal June 17.

ACE teams with Huatai in Chinese venture

ACE Ltd. is joining forces with Huatai Insurance Co. in China as part of an alliance to develop property/casualty insurance coverages in the growing Chinese market. Under an agreement reached last week, ACE will pay around \$150 million for 22% of Huatai's shares. Under Chinese regulations, which restrict the stakes that foreign investors can hold in domestic companies, the investment will be made by three ACE subsidiaries—ACE INA Holdings Inc., ACE Tempest Re and ACE US Holdings.

Munich Re profits jump on sale of stakeholdings

Munich Reinsurance Co.'s sale of shareholdings in several companies, including Allianz A.G. Holding, sent Munich Re's first-quarter 2002 profits soaring to 4.5 billion euros (\$4.14 billion) compared to 225 million euros (\$207.3 million) in the first three months of 2001. Even without the one-time 3.8 billion euro (\$3.50 billion) gain from the sale of the shares, Munich Re's underlying profits rose to 700 million euros (\$644.8 million). Munich Re said that gross premium income for the first quarter of 2002 was 10.7 billion euros (\$9.86 billion), a 20.2% increase over the same period in 2001.

Alexander Forbes realigns U.K. retail

Johannesburg, South Africa-based brokerage Alexander Forbes Ltd. has restructured its U.K. retail business. Starting June 1, the U.K. retail unit will be known as Alexander Forbes U.K. Corporate Solutions and will have two main subsidiaries. The U.K. Corporate

See **WORLD UPDATES**/page 19

PHOTO: AFP



Jet crash kills 225

Hull of China Airlines Boeing 747 insured for \$20 million

By SARAH VEYSEY

TAIPEI, Taiwan—The China Airlines Co. Boeing 747-200 jetliner that crashed May 25, killing all 225 people on board, was insured for \$20 million, the airline said.

Taipei-based China Air said it was fully covered for hull and liability claims stemming from the crash. It said the program was placed with nine local insurers, including Taiwan Fire & Marine Insurance and Shinkong Insurance Co.

The hull was reinsured in the international market, led by London-based Global Aerospace Underwriting Man-

agers Ltd., sources said.

The flight from Taipei to Hong Kong plunged into the Taiwan Strait shortly after takeoff, killing the 206 passengers and 19 crew. The cause of the crash was not known as of late last week.

The accident is China Air's fourth fatal crash since 1994. China Air said it expects its insurance premiums to increase following the disaster.

China Air also said that it has set up a relief fund for families of the victims. Negotiations about compensation for victims' families was scheduled to begin last week, according to the insurance department of Taiwan's Ministry of Finance.

World Cup: Hosts play defense against risk

Continued from previous page

AXA, announced it had secured new coverage with National Indemnity Co. Ltd., a unit of Berkshire Hathaway Inc. Limits and premiums for the program, brokered by the sports practice of Marsh Inc. in London, were not disclosed.

Japan and South Korea pose different risk management problems, underwriters say. In Japan, earthquake is likely the most significant risk, but in South Korea it is the political environment that is of greater concern to underwriters.

Twenty stadiums—10 in South

Korea and 10 in Japan—will be used during the tournament. And this, said contingency underwriter David Bruce of Lloyd's of London managing agency Hiscox, is useful from a

In Japan, earthquake is likely the most significant risk facing the World Cup matches, but in South Korea it is the political environment that is of greater concern to underwriters.

risk management point of view. Only seven venues in total would be needed for the two countries to successfully run the tournament, he explained. So, if a small earthquake were to hit Tokyo, temporarily forcing FIFA to move matches elsewhere, a replacement venue would be available, he said.

And, if a large earthquake hit Japan, the remaining matches could be played in South Korea, he added.

"Each individual (sporting event) is specific," he said. "Underwriting is tailored to the event and to the stadium."

Hiscox is involved in World Cup-related insurance, Mr. Bruce said, but he would not give details of clients or the type of coverage.

Wellington Re: New U.K. player

Continued from previous page

will likely increase that net premium to between £300 million and £400 million in 2003.

About 40 of Wellington's 320 staff in London will transfer to Wellington Re during 2002, said Mr. Avery, including chief casualty underwriter David May, Chief Operating Officer Sarah Davies and Finance Director Julian Cusack.

Mr. Avery said that the new company would have a strong relationship with Wellington's composite Lloyd's syndicate 2020. Wellington Re and syndicate 2020 will offer each other quota-share reinsurance of up to 20% of their respective underwriting portfolios, he said.

Syndicate 2020 will continue to write specialty business, such as aviation, energy, liability, accident and health, marine and U.S. property surplus lines business, said Mr. Avery.

In April, Wellington's capacity under management had been boosted to £963 million (\$ billion) for the 2002 year from £525 million (\$764.4 million) in 2001, through an investment by Berkshire Hathaway (BI, April 29), Mr. Avery noted.

The decision to set up Wellington Re outside of Lloyd's will enable Wellington to diversify and sepa-

rate its more volatile lines of business, which will remain with the Lloyd's syndicate, from the less volatile business, much of which will be transferred to the new company, explained Mr. O'Kane.

"Besides its track record, the deal structure was likely a factor in helping Wellington to raise the capital it has," said Marcus Rivaldi, an associ-

Wellington Re and its capital backers 'are not turning their back on Lloyd's, they are just not putting all their eggs in one basket. It is sensible risk management.'

Marcus Rivaldi
Standard & Poor's

ate in the insurance rating division of Standard & Poor's Corp. in London.

"Wellington Re and its capital backers will have the opportunity to take advantage of the hard market conditions while being effectively ringfenced from any prior years' adverse developments through Lloyd's," he explained. "They are not turning their back on

Lloyd's, they are just not putting all their eggs in one basket. It is sensible risk management."

Wellington Re will be one of several reinsurers that have established since the terrorist attacks of Sept. 11. Many of the other new reinsurers, however, have set up their holding and operating companies in Bermuda.

The decision to set up the Wellington Re operating company London market was threefold, said Mr. Avery: Wellington already has strong relationships with London brokers; Wellington Re will benefit from Wellington's already established underwriting team in London; and it will be able to use Wellington's support services.

Heidi Hutter, chief executive officer of Black Diamond, and formerly a senior executive at Swiss Reinsurance Co. and Equitas Ltd., will be on Holdings' board of directors, said Mr. O'Kane, as will Paul Myners, who is currently chairman of the Lloyd's of London Investment Committee.

Wellington must now seek approval for Wellington Re from the U.K. financial services regulator, the Financial Services Authority, Lloyd's and a majority of third-party capital providers to syndicate 2020.

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Spiral: Losses, disputes persist

Continued from page 1

ries of reinsurance transactions as well as the purchase of stock in certain Lincoln National companies.

Among other things, Swiss Re is disputing its assumption of \$200 million in liabilities through one of the reinsurance contracts, how Lincoln National calculated reserves for personal accident business, an accounting change made by Lincoln National and taxes assumed by the insurer.

Swiss Re and Lincoln National refused to discuss the litigation.

Meanwhile, another legal battle over personal accident risks is being closely watched by other reinsurers involved in similar disputes.

In that case, currently underway in London, Sphere Drake Insurance Ltd. alleges its predecessor was defrauded by a managing general agent and broker Stirling Cooke Brown Holdings Ltd. into writing more than 100 personal accident contracts (see story, page 18).

Nature of the spiral

The business at the heart of these disputes relates to workers compensation carve-out business written in the mid-1990s by several U.S. and Canadian life insurance companies. Under the carve-out programs, the accident and health component of workers comp policies was separated from the employers liability component. Much of this was then ceded to the personal accident reinsurance market.

Aviation and marine bodily injury carve-out business also was extensively written in the personal ac-

cident reinsurance market and now also is being disputed.

The carve-out business was written at lower rates than was generally available in the traditional property/casualty market during the 1990s and reinsured extensively in the personal accident excess-of-loss markets in Bermuda, the United States and London. The carve-out business led to large losses for many companies that found themselves both as cedents and reinsurers of the same business.

During the past few years, many reinsurers have refused to pay personal accident reinsurance claims, and dozens of disputes are in or awaiting arbitration.

Because many of these carve-out claims are being disputed, that is causing cash flow problems for some companies caught up in the complex claims circle, market observers say.

The "suspension of claims payments is creating tremendous problems and distress for many companies in the reinsurance market," said James Lawless IV, general counsel for Stirling Cooke Brown in New York.

"Companies are suffering considerable cash flow difficulties, particularly smaller companies with less muscle in the marketplace," one reinsurance executive commented.

Willis Group Holdings Ltd. echoed that observation in a recent filing with the Securities and Exchange Commission.

"As a result of the significant amount of underwriting losses that the underwriters for personal accident reinsurance have incurred, set-

tlements between reinsureds and reinsurers have largely stopped," according to Willis.

In at least two arbitrations of such claims, reinsurers successfully argued that they were no longer bound by parts of their reinsurance program, Willis stated in its filing. It did not provide additional detail of those examples.

"Reinsurance recoverables is always an important issue particularly when (failure to collect) impacts cash flow, as cash is very necessary to keep a company alive," said Joyce Sharaf, managing senior financial analyst for A.M. Best Co. in Oldwick, N.J.

She noted that reinsurance disputes are blamed for Mutual Risk Management Ltd.'s current financial woes. MRM is restructuring its operations, and two of its insurer subsidiaries are in rehabilitation (BI, May 13).

Ms. Sharaf did not discuss the nature of MRM's disputes. But, according to the company's 2000 annual report, the most recent filed, MRM is involved in "ongoing arbitration and litigation," including arbitration proceedings involving a series of accident and health programs as well as reinsurance treaties with a U.S. life insurance company that wrote workers comp reinsurance.

Tracing spiral's origins

The current problems with personal accident reinsurance first became widely known in 1999, when Cologne Reinsurance Co. reported a \$275 million pretax loss related to

See SPIRAL/next page

June 3, 2002

Spiral: Reinsurer losses, disputes persist

Continued from previous page

its participation in the Unicover pool.

Unicover, a Lisle, Ill.-based MGA, managed workers comp reinsurance facilities in which reinsurers kept small portions of their risks and retroceded the vast majority to others, most of which retroceded the business again (*BI*, March 15, 1999). Lincoln National was among the participants in the Unicover pool, which was one of several workers comp carve-out facilities.

Some trace the origins of the current personal accident problems to an earlier spiral in the London market.

Many disputes from that earlier personal accident spiral have been settled through market agreements and commutations, according to Lloyd's of London.

"Lloyd's regulators were instrumental in driving the PA spiral out of the Lloyd's market at the end of 1994. The underwriters involved have all left the market and the syndicates involved are now all making progress towards closure," said a Lloyd's spokesman.

However, several former Lloyd's personal accident underwriters subsequently worked for Stirling Cooke or MGAs that wrote much of the workers comp carve-out business that is now in dispute.

According to Lloyd's, its exposure to the current wave of "alleged abnormal personal accident spirals" involving workers comp carve-out business, is limited to only two syndicates. Syndicates 957 and 1101, both of which are now in run-off, are managed by Duncanson & Holt Syndicate Management Ltd., a reinsurance underwriting manager owned by UnumProvident Corp. of Portland, Maine.

UnumProvident shut down its Lloyd's syndicates as part of its withdrawal from the reinsurance business in 1999, which consisted of the Lloyd's syndicates as well as reinsurance pool management and participation. Although Duncanson & Holt was placed on the block, efforts to sell the company were unsuccessful.

In 1999, UnumProvident took charges of \$270.1 million against earnings related to its pullout. In 2000, it recorded an additional \$37.4 million in charges related to its participation in London personal accident reinsurance pools.

UnumProvident's reinsurance pool business consists of more than 20 different pool facilities, the majority of which are managed by D&H and a few pools that are managed by third parties, according to the company's 2001 annual statement filed with the SEC March 28.

In 2001, UnumProvident ceded reserves of about \$324 million to reinsure its Lloyd's syndicate and disability reinsurance liabilities as well as future business underwritten and managed by Duncanson & Holt Services Inc.

Filings detail other losses

Several other insurers also reveal their exposure to ongoing personal accident reinsurance disputes—and illustrate the extent of the current spiral—in their 2001 annual statements.

For example, in its 2001 annual statement, Philadelphia-based CIGNA Corp. notes that certain CIGNA reinsurance operations now in run-off wrote a 35% share in the primary layer of the Unicover pool. The statement says that four retrocessionaires have commenced arbitration in the United States against CIGNA and other pool members, seeking rescission or damages. A hearing on their claims is scheduled for July.

Two of the retrocessionaires—Sun Life Assurance Co. and Phoenix Home Life Mutual Insurance Co.—commenced a separate arbitration in the United Kingdom claiming that CIGNA owed retrocessional coverage to them. The arbitrator ruled earlier this year that CIGNA

did not provide them with retrocessional coverage.

If the arbitration outcomes are unfavorable, the annual statement said, "CIGNA could incur losses material to its consolidated results of operations." However, it added, "management does not expect the arbitration results to have a material adverse effect on CIGNA's liquidity or financial position."

Another insurer embroiled in the disputes is John Hancock Mutual Life Insurance Co.

In its 2001 annual report, John Hancock confirms it set aside \$133.7 million in 1999 for liabilities related to workers comp carve-out business—a portion of which originated through the Unicover pool—written through its group health insurance companies.

Under the workers comp arrangements, John Hancock "both assumed risks as a reinsurer, and also passed 95% of these risks on to other companies. This business had originally been reinsured by a number of different companies, and has become the subject of widespread disputes," the company states.

CNA Financial Corp. subsidiaries also are embroiled in a complex personal accident dispute in which claims payments have ground to a halt as reinsurers have "disavowed their obligations," according to the

company's 2001 annual report.

In 1997, London-based subsidiary CNA Reinsurance Co. Ltd. entered into an arrangement with IOA Global Ltd., an MGA based in Philadelphia, to develop and manage a book of accident and health risks, CNA reports. IGI Underwriting Agencies Ltd., a personal accident reinsurance managing general underwriter, was appointed by IOA Re to underwrite the book, which included "a number of reinsurance arrangements with respect to personal accident insurance worldwide," the CNA report said.

"CNA Re Ltd. both assumed risks as a reinsurer and also ceded a substantial portion of those risks to other companies, including other CNA insurance subsidiaries and ultimately to a group of reinsurers participating in a reinsurance pool known as the Associated Accident and Health Reinsurance Underwriters Facility. CNA's Group Operations business unit participated as a pool member in the AAHRU Facility in varying percentages between 1997 and 1999," according to CNA's annual report.

CNA arranged "substantial reinsurance protection" to manage its exposures under the IGI program but "certain reinsurers dispute their liabilities to CNA and CNA has commenced arbitration proceedings against such reinsurers," the report notes. CNA announced it was quitting its London market operations last fall.

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LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE
(OFFICE OF ENGLAND AND WALES)
CHANCERY DIVISION
COMPANIES COURT
No 3346 of 2002
IN THE MATTER OF
CITY GENERAL INSURANCE COMPANY LIMITED
AND IN THE MATTER OF
THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an order dated 24 May 2002 made in the above matter the Court has directed that a meeting ("Meeting") be convened of the Scheme Creditors (as defined in the scheme of arrangement referred to below) of the abovenamed company ("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 the Scheme Creditors pursuant to section 425 of the Companies Act 1985 ("Scheme"), and that the meeting be held on 12 July 2002 at the offices of DLA, 3 Noble Street, London EC2V 7EE, United Kingdom, commencing at 10 am (London time). 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 statement required to be provided to creditors pursuant to section 426 of the Companies Act 1985, as well as blank forms of proxy and voting forms, may be obtained by attending at, or on written application marked for the attention of David Evans to, the offices of the Company at Suite 208, Coppergate House, 16 Brune Street, London, EC1 7NJ, United Kingdom, before 4pm (London time) on 11 July 2002.

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
IN RE PETITION
MALCOLM L. BUTTERFIELD AND ANTHONY J. MCMAHON, AS JOINT PROVISIONAL LIQUIDATORS OF
BELVEDERE INSURANCE COMPANY LIMITED,
DEBTOR IN A FOREIGN PROCEEDING
CASE NO. 98-B-47660 (REG)

NOTICE IS HEREBY GIVEN THAT ON MAY 20, 2002, 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 NOVEMBER 4, 1998. 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 13, 2002 AT 9:45 A.M. (THE "RETURN DATE") BEFORE THE HONORABLE ROBERT E. GERBER, IN ROOM 620 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 ROBERT E. GERBER 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.

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

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
In re:
NORTH ATLANTIC INSURANCE COMPANY LIMITED
(Petition of Colin Graham Bird and Paul Anthony Brereton Evans)

Case No.: 97-41602 (RLB)

PLEASE TAKE NOTICE that on May 22, 2002, the Bankruptcy Court entered an order (the "Order") continuing the Preliminary Injunction Order pursuant to 11 U.S.C. § 105 and 304(b) originally entered in this case on April 7, 1997. The Order shall remain in effect pending a hearing scheduled for November 20, 2002 at 9:45 a.m. before the Honorable Richard L. Bohanon, in the Alexander Hamilton Custom House, One Bowling Green, New York, New York. Any person wishing to obtain a copy of the Order should contact Theresa D'Agostino at (212) 610-6300.

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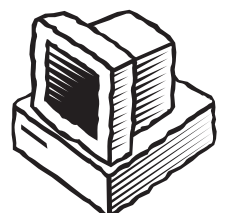
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Trial could set precedents for spiral claims disputes

By CAROLYN ALDRED

LONDON—In one of the most closely watched reinsurance trials of recent years, lawyers in London's Admiralty Court are attempting to unravel more than 100 reinsurance contracts in a lawsuit in which Sphere Drake Insurance Ltd. claims it was defrauded by one of its own managing general agents and by Bermuda-based broker Stirling Cooke Brown Holdings Ltd.

Sphere Drake, a Fairfax Financial Group Holdings unit formerly known as Odyssey Re (London) Ltd., alleges that Stirling Cooke and the MGA structured personal accident reinsurance placements to be relatively profitable for ceding companies but disastrous for Sphere Drake, generating loss ratios as high

as 1,118%. The reinsurer filed the London suit soon after an earlier lawsuit in New York was dismissed on jurisdictional grounds in 1999 (*BI*, April 5, 1999).

Sphere Drake, which is in runoff, is seeking unspecified damages from the defendants and contends that it is not bound to the contracts, under which the reinsurer would face "massive claims which will continue to accumulate for many years," according to its court filings.

Several lawyers describe the case as "the reinsurance trial of the year," and many in the reinsurance market express hope that its outcome will help resolve other disputes over similar loss-plagued contracts.

"There are widespread disputes in

the (personal accident) reinsurance market, and a ruling in the Sphere Drake case will add more certainty to the market," said Graham Brown, an associate in the reinsurance department of London law firm Davies Arnold Cooper.

The litigation concerns more than 100 reinsurance contracts involving 15 different ceding companies, and the resulting judgment will have an impact on other disputes currently being heard, said James Lawless IV, general counsel for Stirling Cooke.

"This case has huge ramifications" for the reinsurance industry, he said. Not only will the case affect other disputes but the ruling also will be of broad interest because the judge likely will comment on market practices and the validity of reinsurance spirals and reinsurance arbitrating, according to Mr. Lawless.

In its suit, Sphere Drake charges London-based managing general agent Euro International Underwriting Ltd. and its principals, John H. Whitcombe and Christopher Henton, with fraudulent misrepresentation, conspiracy to defraud and breach of fiduciary duty. It also alleges conspiracy to defraud and wrongful procurement on the part of two Stirling Cooke brokerage units and Nicholas Brown and Jeffrey Butler, both directors of Stirling Cooke.

According to its lawsuit, Sphere Drake expected EIU to underwrite on the company's behalf low- to medium-risk, short-tail business that was produced through various brokers.

In fact, the reinsurer charges, EIU's business came mostly

through Stirling Cooke and consisted of high-risk, long-tail excess-of-loss or retrocessional treaty risks.

In addition, the suit says that although Mr. Whitcombe had claimed that his past underwriting had been profitable, Lloyd's of London syndicate 1053—later closed into Lloyd's runoff reinsurer Equitas Ltd.—had made "significant losses" while under his control.

'There are widespread disputes in the (personal accident) reinsurance market, and a ruling in the Sphere Drake case will add more certainty to the market.'

Graham Brown
Davies Arnold Cooper

"With a view to their own financial gain," EIU and Messrs. Whitcombe and Henton operated their binding authority with Sphere Drake as if it were a facility for the benefit of Stirling Cooke and its clients, the lawsuit charges.

EIU was established in 1996 by former Mr. Whitcombe and Mr. Henton after their syndicates at Lloyd's closed. Mr. Henton was previously deputy underwriter to Alan Bird at syndicate 103, which had suffered losses through its involvement in 1993 in the "so-called personal accident spiral," according to court papers.

According to the court papers, of the 112 contracts placed by Stirling Cooke and accepted by EIU on behalf of Sphere Drake, 98 either involved business written by entities

either owned or controlled by Stirling Cooke, or were derived from Stirling Cooke-arranged facilities.

The contracts included reinsurance and retrocessional reinsurance protections for John Hancock Mutual Life Insurance Co.; Phoenix Home Life Mutual Insurance Co.; Lincoln National Corp.; All American Life Insurance Co.; Clarendon National Insurance Co.; Realm National Insurance Co., a Stirling Cooke unit; CIGNA Reinsurance Co. of Europe; Unum Life Insurance Co. of America; Chubb Corp.'s Federal Insurance Co.; Sun Life Assurance Co. of Canada; and American Phoenix Life & Reassurance Co.

Stirling Cooke denies the allegations and "continues to be optimistic about a favorable resolution" to the disputes, said Mr. Lawless. He noted that the company already has been hurt financially both by the litigation and by a loss of business.

The broker, which is in the process of changing its name to Alpha Star Insurance Group Ltd., last month applied to move its stock listing to Nasdaq's Small Capital Market after its share price dropped below the minimum required for a Nasdaq listing, according to Mr. Lawless.

The other defendants all deny the allegations.

Mr. Whitcombe, who is defending himself in court, described Sphere Drake's charges as "without foundation."

EIU, meanwhile, has filed a counterclaim seeking £20 million (\$29 million) in damages from Odyssey Re (London) Ltd., which is Sphere Drake's parent company, said Mr. Whitcombe.

World Updates

Continued from page 15

Risks division will focus on national commercial clients and will be headed by Managing Directors Jon Hettle and Tim Wilson. A U.K. Risk Solutions arm will cover risk finance, risk engineering and major corporate and international clients. It will be headed by Managing Directors Helen Clift and Ken Rolls.

Briefly noted

Belgo-Dutch insurance and

banking group **Fortis A.G.** reported a net profit from insurance of 302 million euros (\$283 million) for the first quarter of 2002, down 5.3% from the same period in 2001. The Brussels/Utrecht-based company said non-life premium volume increased to 3.4 billion euros (\$3.19 billion) for the first quarter, up 17.2% from the first three months of 2001....**Christian de Gournay** has resigned from his post of deputy managing director of Paris-based Assurances Generales de France. AGF, a unit of Munich-based Allianz A.G. Holding, said Mr. de Gournay would not be replaced and his responsibilities would be shared among other managers.

Arbitration: Reinsurer seeking appeal of court ruling

Continued from page 3

pointed to the panel and by the umpire that both sides chose.

The arbitrator that All American appointed dissented, in part because the arbitration panel effectively issued a summary judgment rather than conducting a full arbitration process that would have included discovery and additional hearings.

Before the arbitration panel conducted any hearings, Ronald A. Jacks, the arbitrator Sphere Drake appointed, had disclosed that he and his former law firm, now known as Mayer, Brown, Rowe & Maw, provided legal services to Sphere Drake subsidiary Sphere Drake (Bermuda) Ltd. during the 1990s. That disclosure did not prompt All American to raise any questions about Mr. Jacks' impartiality.

In seeking to overturn the arbitration panel's ruling, though, All American argued that Mr. Jacks failed to disclose that he had performed legal work for the reinsurer itself from 1992 through 1997, when Mr. Jacks retired. The insurer argued that demonstrates that Mr. Jacks intentionally deceived All

American about his ties to Sphere Drake.

After reviewing Mr. Jacks' billing records, U.S. District Court Judge Rebecca R. Pallmeyer sided with All American and overturned the arbi-

'At what point is an arbitration award susceptible of being overturned because a lawyer or a firm didn't disclose something?'

David Raim
Chadbourne & Parke L.L.P.

tration panel's award in an opinion that lambasted Mr. Jacks.

Sphere Drake's appeals motion with the 7th Circuit does not outline its arguments, and the reinsurer would not comment.

But, the reinsurer's arguments are expected to mirror those it raised in briefs it filed with Judge Pallmeyer. Those arguments include:

- Mayer, Brown's records show that only Sphere Drake's Bermuda subsidiary retained Mr. Jacks and

his former firm and paid their fees.

- An affidavit from Jonathan Crawley, the subsidiary's former president and chief underwriter, explains that two arbitrated coverage disputes in which Mr. Jacks and his firm represented the subsidiary's interests and followed its directions involved contracts that the subsidiary issued as a managing general agent for Sphere Drake.

In one arbitration, Mr. Jacks and his firm technically appeared on behalf of Sphere Drake at the subsidiary's direction, but the subsidiary retained full responsibility for handling that claim. And, in that arbitration, a colleague of Mr. Jacks assumed primary responsibility for the case.

- All American waived its right to object to Mr. Jacks' participation on the panel when it failed to raise any objections after he revealed his prior work for Sphere Drake's subsidiary.

- Because Sphere Drake went through considerable organizational and management changes after Mr. Jacks retired, he had no relationship with Sphere Drake ownership and management during the reinsurer's arbitration with All

American.

Because the court overturned the arbitration panel's ruling based on what some arbitrators say was a nominal relationship between Mr. Jacks and Sphere Drake, those arbitrators say this dispute resolution process may be damaged.

"At what point is an arbitration award susceptible of being overturned because a lawyer or a firm didn't disclose something?" asked arbitrator and attorney David Raim, a partner with Chadbourne & Parke L.L.P. in Washington.

If an arbitration award can be overturned because of an undisclosed relationship "that shouldn't question an arbitrator's integrity, then that could threaten the process," Mr. Raim said.

Attorney Larry Brandes, the arbitrator Sphere Drake appointed in the case involving its Bermuda subsidiary and a friend of Mr. Jacks, called Judge Pallmeyer's ruling "ridiculous."

Mr. Brandes said Mr. Jacks' involvement in that earlier case was limited. He also complained that the judge allowed All American to object to Mr. Jacks' participation too late.

Mr. Brandes, a partner with Cadwalader Wickersham & Taft in New York, said Judge Pallmeyer's ruling will drag out arbitrations by prompting arbitrators and umpires to disclose more information than necessary about their incidental contacts with parties in the case. The extra time needed for those disclosure will drive up arbitration costs, he said.

But some other attorneys, including Elliott M. Kroll, a partner at London Fischer L.L.P. in New York, said they were troubled not only by Mr. Jacks' disclosures but also because the arbitration panel issued a summary judgment against All American. Panels generally have that authority, but several arbitrators said they would rarely, if ever, truncate an arbitration in that manner.

Mr. Jacks is married to Kathryn J. McIntyre, who retired as publishing director of *Business Insurance* last year.

Sphere Drake Insurance Ltd. vs. All American Life Insurance Co., U.S. District Court for the Northern District of Illinois, May 17; No. 01 C 5226.

EEOC: Agency to drop *Erie County* enforcement

Continued from page 1

The threat of EEOC legal action has its origins in a controversial appellate court decision. In that 2000 decision, the 3rd U.S. Circuit Court of Appeals ruled that the ADEA, the federal law that bars employers from discriminating against older employees, also applies to employers' retiree medical plans (*BI*, Aug. 14, 2000).

The 3rd Circuit decision, which involved the health care plans that Erie County, Pa., offered to retired workers, was a bombshell because employers had widely believed that the ADEA's reach extended only to benefit plans offered to active workers and not to retirees.

The health care plans that employers typically provide to younger retirees are almost always richer than those they offer to older retirees, because older retirees receive most of their health care coverage through Medicare. In light of the 3rd Circuit decision, though, such plans were vulnerable to age discrimination lawsuits brought by older retirees.

The possibility of such litigation was heightened when the EEOC in October 2000 incorporated the 3rd Circuit's *Erie County* ruling in its enforcement manual.

In order to comply with the *Erie County* decision and with the rules the EEOC subsequently established, an employer either would have had to offer equal health care benefits to all of its retirees or would have had to spend an equal amount of money for younger and Medicare-eligible retirees.

At the time, benefit experts warned that requiring such parity could have had unintended consequences for retirees.

Upgrading benefits for older retirees—one way to comply with the court decision and the EEOC's policy—would have been prohibitively expensive for many companies. Cutting benefits for younger retirees or eliminating coverage altogether would pass muster, but would strip away corporate-provided health insurance benefits for millions of retirees—including retirees who are not yet eligible for

Medicare.

Both business and labor groups, fearful of such a scenario, urged the EEOC to reconsider its policy. That lobbying effort bore fruit when the agency last summer rescinded its policy that it was discriminatory for employers to offer younger retirees a more generous health care package than older retirees.

At the time, the EEOC's chairwoman, Cari M. Dominguez, said the agency had heard from a wide range of stakeholders, including employers, and that it would focus on developing a new policy, consistent with ADEA that would not discourage employers from offering retiree health care benefits (*BI*, Aug. 27, 2001).

"Clearly, the EEOC heard from companies concerned about its earlier rules," said Paul Dennett, vp-health policy at the American Benefits Council in Washington.

Some benefit experts say the issue still may not be finally resolved, though.

"This is a statement of intent. The content of the regulation has

yet to be disclosed," said Frank McArdle, a consultant with Hewitt Associates L.L.C. in Washington.

In addition, Mr. McArdle noted, the forthcoming regulation itself could be challenged.

Even so, "This is another piece of encouraging news," he said of the EEOC's stated intention.

'Clearly, the EEOC heard from companies concerned about its earlier rules.'

Paul Dennett
American Benefits Council

Although the 3rd Circuit ruling in *Erie County* still stands, if other suits are filed, courts are likely to pay deference to the EEOC's new position.

By contrast, the EEOC had filed an amicus brief on behalf of the plaintiffs in the *Erie County* case.

Erie County, the public entity whose retiree health care plan de-

sign led to the controversial ruling and policy, earlier this year settled the class-action age discrimination suit filed by older retirees, paying \$205,000 to the 114 plaintiffs that made up the class.

In addition, before receiving court approval of the settlement, Erie County switched its younger retirees to a less-costly HMO from a point-of-service plan and required those younger retirees to pay monthly premiums equal to the Medicare Part B premiums paid by older retirees.

Previously, retirees receiving coverage through the POS paid no premiums, while older retirees, who were enrolled in a Medicare HMO, paid monthly Part B premiums of about \$50.

A federal judge earlier had ruled that the POS plan was superior to the Medicare HMO, and therefore discriminatory, because POS enrollees could decide on a service by service basis whether to receive care in or outside the plan's network. Medicare HMO enrollees lacked such a choice.

Ephedra: Supplements face product liability crunch

Continued from page 3

by staying with an insurer whose rating had dropped into the B range and at a higher deductible, he said.

"I know of one account that was just renewed with a B carrier with a \$1 million deductible," Mr. Feickert said. "They stayed with it even though it was a B carrier, just to have the coverage."

The problem facing dietary supplement companies has become so serious that many routinely note in financial statements that the adequacy and availability of insurance coverage for ephedra products may affect their future results.

"It's becoming more and more difficult for manufacturers to get insurance that covers the ephedrine portion of their business," said Kim Smith, director of legislative affairs for the Newport Beach, Calif.-based National Nutritional Foods Assn.

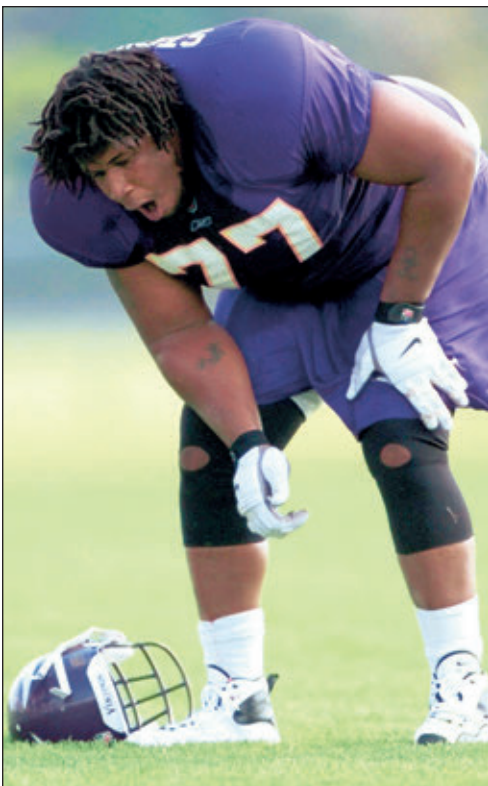
"It's still possible, it's just very, very difficult," Ms. Smith said. "I think it's a result of lawsuits right now."

Ephedra is found in hundreds of products including diet pills and supplements used to boost energy or to enhance workouts or promote body building, as well as over-the-counter nasal decongestants and asthma medications.

Though the products in question are typically marketed as dietary supplements and consequently are not subject to federal Food and Drug Administration pre-market review, for several years the FDA has been collecting information on "adverse events" linked to ephedrine.

Those events include "nervousness, dizziness, tremor, alternations in blood pressure or heart rate, headache, gastrointestinal distress...chest pain, myocardial infarction, hepatitis, stroke, seizures, psychosis and death," according to

PHOTO: REUTERS



The death of Minnesota Vikings lineman Corey Stringer during practice Aug. 1, 2001 was blamed on heatstroke, though ephedra supplements were found in his locker.

the agency, which has called for limits on the amount of ephedrine in dietary supplements, and for warning labels on the products.

Last summer, questions over whether ephedra had contributed to the deaths of two football players—Northwestern University's Rashidi Wheeler and the Minnesota Vikings Corey Stringer—during workouts cast additional attention on the stimulant.

While a medical examiner ruled Mr. Wheeler died from a chronic asthma attack, Northwestern sued the makers and distributors of sup-

plements the defensive back took before the practice to recover any judgment levied against the university in a wrongful death suit filed by the football player's mother.

Medical examiners ruled Mr. Stringer's death was the result of complications from heatstroke. But, while the Vikings have not linked ephedra to the lineman's death, the team said ephedra supplements were in his locker the day he died.

The National Collegiate Athletic Assn., the National Football League and the International Olympic Committee all prohibit the use of ephedra, and the NFL recently announced plans to begin testing players for the substance in July.

"Our industry has serious problems in diet (supplements)

specifically, most of that due to the ingredients ephedra or ma huang," which is a Chinese herb containing ephedrine, said Chris Tisi, chief executive officer of Health & Nutrition Systems International Inc.

Based in West Palm Beach, Fla., HNSI develops and markets weight management products in over 25,000 health, food and drug store locations.

For dietary supplement companies with ephedra products, insurance issues have "become a very material part of our business," Mr. Tisi said. "I've seen the insurance is-

sue just grow over the years, and it's become a real problem in the last year."

"Some of those companies that do have insurance, maybe they have 10 brands and the six that don't contain ephedra have coverage and the four that do don't have coverage," Mr. Tisi said.

"Basically, if the product was regulated by the FDA, most likely it already would have been banned," he said, adding that "that doesn't mean" such a ban would be justified.

Willis' Mr. Simon said that while problems getting coverage for ephedra products are beginning to get more attention, it has been an issue for many companies for the past two years.

"Where you may be able to get some relief is up in the higher excess layers," he said. "You'd have to get it specifically covered." Finding such excess layer coverage is difficult, Mr. Simon said, "But down low it's impossible."

While his company has several ephedra products, Mr. Tisi said his company also has become "sort of a leader in the non-ephedra diet supplement market," Mr. Tisi said.

HNSI has been able to obtain product liability coverage on its entire range of products, but only after being very "pro-active" in making the company's case to insurers about its product testing and other risk management procedures, Mr. Tisi said.

"Our company hasn't had a problem," he said. "As a matter of fact, we were able to secure an extra \$5 million in product liability coverage at a time when most other companies were being dropped or being priced out of the market."

"I can't tell you that next year I won't have a problem, but this year

I don't have a problem," Mr. Tisi said.

Cam Monk, a senior vp and mass tort practice leader at Marsh Inc. in San Francisco, said he's not sure the problems facing ephedrine products will reach the mass tort level like those that have caused serious product liability insurance issues for some other products.

"The real question is whether ephedrine will ever get to that status," he said. "There's evidence that the product may have caused some problems, but whether the plaintiffs' bar will ever get to that state with it, I think the jury's still out."

"I don't know if for ephedrine you're going to see a concerted effort mounted, because at this point I don't think there's sufficient evidence," Mr. Monk said. And, he added, "For something to really get to class status, the plaintiffs bar has to believe there's a cash cow out there. I'm not sure it's to that point yet."

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Results: Earnings momentum expected to continue

Continued from page 2

Smith, an analyst with Bear Stearns & Co. in New York. "The only two negatives are that investment income continues in a downward trail and cash flow from operations was not as strong as you might have expected it to be given the premium growth."

Michael Paisan, an analyst with Williams Capital Group in New York, said, "It was a mostly positive quarter from the standpoint of generating slightly higher than expected earnings growth."

The impact of rate hikes "began to show up in the first quarter," helped by a "very benign catastrophe quarter," he noted.

The outlook for future quarters is positive as well, say analysts.

Other analysts expect rate hikes to continue into next year.

"I don't really see a reason" for the rate hikes to slow as long as the insurance industry still faces the threat of another terrorist attack, asbestos and reserve inadequacy issues, all of which "would tend to keep insurers raising prices," said Todd Bault, an analyst with Sanford Bernstein & Co. in New York.

"We could see some pretty explosive earnings growth for the latter part of this year and into next year," said Mr. Paisan.

"I think the second half of the year is going to show extremely strong growth," said Mr. Smith. But, he added, while earnings momentum should continue into next year,

"there are clearly some concerns about things like asbestos liability that is putting some pressure on the stock."

'Earnings were much better than they were last year.... The only two negatives are that investment income continues in a downward trail and cash flow was not as strong as you might have expected it to be given the premium growth.'

Michael Smith
Bear Stearns & Co.

Matthew Coyle, a director at rating agency Standard & Poor's Corp. in New York, said property/casualty insurers can be divided into "tier one" companies—which are insurers that have at least adequate reserve positions—and the more numerous "tier two" companies—ones that have potentially deficient reserve positions.

"Everyone's going to benefit from the price increases, but the tier one companies stand to gain from this favorable pricing environment more so than the companies that have the reserves issue," he said.

Karen Horvath, vp at Oldwick,

N.J.-based A.M. Best Co., also pointed to the impending hurricane season as a potential cloud on insurers' horizon. "It would be optimistic to say results are going to continue at this particular level throughout the year," she said.

Other analysts also do not expect rate increases to continue at their current levels.

For the next couple of quarters, "the rate hikes will continue with the momentum that we've seen, but I think by the end of this year and the early part of 2003 we're going to start to see some moderation," predicted Stephan Petersen, vp at Cochran, Caronia & Co. in Chicago.

Next year will mark a second round of "solid rate increases" for many insurers and, for some insurers that were "ahead of the curve," it could even be the third round of hikes, he explained.

"You're probably going to see a pull back from 20% to 25%-plus rate increases to something a little bit more in line with the low teens," he said.

"I think year-over-year rate increases will probably slow just because the rate increases were so strong over the past 12 months," said Mr. Gallant. It depends, though, on particular lines of business, he said. The rate of increase for catastrophe or property lines, for instance, may slow, but directors and officers liability, medical malpractice and workers comp "are still see-

ing very strong increases."

The impact of mounting asbestos liabilities on insurer profitability remains a concern for some analysts.

Last month, for example, Pittsburgh-based PPG Industries Inc. and about three dozen insurers agreed to pay \$2.7 billion to settle current and future asbestos claims arising from a PPG affiliate (BI, May 20).

"It continues to be sort of the monkey on the industry's back, and it just doesn't seem like it'll go away," said Mr. Gallant.

"It will be hanging out there for a long time," agreed Gary Ransom, senior vp at Hartford, Conn.-based Conning & Co. "The only plausible thing that could cause it to settle down some would be some congres-

'We could see some pretty explosive earnings growth for the latter part of this year and into next year.'

Michael Paisan
Williams Capital Group

sional action of some sort, but if Congress doesn't do anything to simplify matters in the court room, it's just going to continue on.

"We'll have settlements here and there and reserve increases occurring intermittently and it will be hard to judge ahead of time who gets hit," he said.

"We still think the industry's carrying a sizeable (reserve) deficiency," said Mr. Coyle, pointing to the workers compensation line in particular and, to a lesser extent, reserves for medical malpractice, general liability and commercial package business.

Alan Murray, vp at Moody's Investor Service Inc. in New York, agreed. "There is a significant deficiency...that leads us to believe what would otherwise be the euphoria of a market recovery is going to be really dampened, certainly in 2002" and perhaps in 2003, as well, "which begs the question of how sustainable is the current market recovery."

However, John Ward, of the Cincinnati-based Ward Financial Group, said strong first-quarter earnings "gave a lot of companies some relief in terms of earnings, and I don't anticipate any major surprises on the reserving front."

Another potential problem overhanging the industry is the ongoing threat of another terrorist attack.

Judy Blades, executive vp for business insurance at the Hartford Financial Services Group Inc. in Hartford, Conn., said there is a widespread belief that an eventual attack is a certainty "and this time around, unlike Sept. 11, companies are not going to have reinsurers to step in because they're not offering terrorism coverage, and so the industry is a lot more vulnerable than we were for the 9/11 loss."

PROPERTY/CASUALTY INSURERS' 2002 FIRST-QUARTER RESULTS

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

	Net Income	Corporate Percent increase (decrease) 2001-2002	Consolidated Revenues 2002	Combined Ratio 2002	Combined Ratio 2001	Property /casualty operations Premiums Written 2002	Percent Increase (decrease) 2001-2002	Policyholder Surplus 2002	Percent Increase (decrease) 2001-2002
Argonaut Group Inc.	\$7,472	2,164.2%	\$106,147	108.0	138.5	\$95,956	145.0 %	\$287,843	(10.5)%
Ohio Casualty Corp.	26,873	756.2	434,740	106.5 ²	115.2 ²	374,901 ²	0.9	778,697	1.8
American Financial Group	41,800	219.1	925,100	101.4	105.6	643,400	(11.5)	1,687,900	(1.2)
SAFECO Corp.	63,700	107.2	6,866,900	108.3	111.4	1,087,600	(3.3)	2,331,100	(6.1)
ACE Ltd.	197,805	67.1	1,537,863	93.1	95.8	1,986,028	12.9	6,203,925	1.6
Royal & SunAlliance USA	100,000	44.9	N/A	107.9	104.5	690,000	(23.3)	2,623,000	(16.2)
RLI Corp.	9,105	27.6	84,974	96.6	96.7	85,676	21.0	304,626	12.2
Hartford Financial Services Group Inc.	292,000	21.7	3,900,000	99.4	101.8	2,065,000	4.2	5,857,000	(8.9)
Old Republic Int'l	95,555	13.8	639,076	100.1	103.4	292,849 ²	18.7	1,534,054	7.0
Chubb Corp.	198,200	13.3	2,105,200	95.9	99.9	2,190,900	26.4	4,025,900	7.3
American International Group	1,980,300	6.4	16,137,400	95.8 ²	95.9 ²	6,334,300 ²	30.2	N/A	N/A
Cincinnati Financial Corp.	74,904	3.2	686,555	96.3 ²	96.5 ²	620,534 ²	15.3	2,674,675	9.2
The St. Paul Cos.	139,300	(31.1)	2,317,400	100.0 ²	104.1 ²	2,106,700	14.1	5,084,600	(16.7)
CNA Financial Corp.	78,000	(73.6)	3,450,000	107.8 ²	112.7 ²	2,500,000 ²	12.1	N/A	N/A
Travelers P/C Corp.	102,100	(78.7)	3,232,700	101.4 ²	99.1 ²	2,725,100 ²	14.1	7,692,900	3.4
Liberty Mutual Ins. Co. ²	N/A	N/A	N/A	104.4	115.9	2,828,000	17.5	5,818,000	(9.1)
Kemper Insurance Cos. ²	N/A	N/A	N/A	101.0	105.3	663,989	(11.0)	1,504,655	(27.5)
Cumulative	\$3,407,114	24.8 %	\$ 42,424,055	100.1	103.3	\$27,290,933	14.0 %	\$40,715,975	(8.4)%

1 Dividends 2 Statutory N/A - Company did not provide data
Source: BI Survey

Libel: Satire not protected

Continued from page 1

malice" standard that news articles must meet with regard to knowingly publishing false information about public officials. The decision upholds a lower court's refusal to grant summary judgment dismissing the case.

"We hold that satire or parody that conveys a substantial false and defamatory impression is not protected under the First Amendment as mere opinion or rhetorical hyperbole, but instead is subject to scrutiny as to whether it makes a statement under defamation case law," says the appellate decision.

The case began in October 1999 when juvenile court Judge Darlene A. Whitten ordered 13-year-old Christopher Beamon detained for five days after he wrote a graphic Halloween horror story depicting the shooting death of a teacher and two fellow students.

In November, Rose Farley, a staff writer for the Dallas Observer, an alternative weekly, wrote a satire called "Stop the Madness" in which she "reports" on 6-year-old Cindy Bradley's arrest for writing a book report on Maurice Sendak's "Where the Wild Things Are." The article quotes Judge Whitten as stating, "It's time for you to grow up, young lady, and it's time for us to stop treating kids like children."

It also quotes Denton County

District Attorney Bruce Isaacks as stating about Cindy, "We've considered having her certified to stand trial as an adult, but even in Texas there are some limits."

The opinion says the article was printed in the newspaper's news section and at least some readers took it seriously.

The Dallas Observer's attorney, Jim Hemphill of George & Donaldson in Austin, said he will seek a rehearing before the panel.

Attorney Mike Whitten, of Griffin, Whitten, Jones & Reib in Denton, Texas, said, "I think it is a decision the press can live with. There's no reason in the world for this so-called satire to have caused this problem but for the failure of the Dallas Observer to apply common sense in the manner in which they presented" the article, said Mr. Whitten, who is married to Judge Whitten and represented the plaintiffs.

The case could have wider influence, said Charles L. Babcock, an attorney with Jackson Walker in Houston. There are few cases on this issue, "and any time there's a paucity of authority, then the few cases that do decide the issue are given greater attention," he said.

"I think it has the potential to be very influential," agreed Charles D. Tobin, an attorney with Holland & Knight in Washington. "I think

there are probably a number of courts that will look at it and cite it as precedent," he said.

But Tom Kelly, a media attorney with Faegre & Benson in Denver, said, "I think it's unlikely to be very influential anywhere." There are "so many more courts in more influential jurisdictions," including federal circuit courts, that have applied broad protections to satire, he said.

Nathan Siegel, executive litigation counsel for television network ABC Inc. in Washington, said, "I don't think it's likely to be influential because I think it's clear that when you're dealing with something like satire or for that matter anything, the mere fact that somebody might misunderstand what somebody is saying" does not mean there is actual malice involved on the part of whomever originated it. "You couldn't have people doing comedy and satire when every time a joke was misunderstood it could make them liable in a lawsuit," he said.

New Times Inc., d/b/a Dallas Observer; Dallas Observer L.P.; Rose Farley, Julie Lyons and Patrick Williams vs. Bruce Isaacks and Darlene A. Whitten, Court of Appeals for the 2nd District of Texas, Fort Worth; No. 02-01-023-CV and No. 02-01-261-CV.

Media market hardens

The media liability insurance market has hardened, fueled by rising defense and reinsurance costs.

"The media market has hardened like every other market," said Chad Milton, senior vp and national practice leader for media at Marsh Inc. in Kansas City, Mo.

Rates are now increasing between 25% and 75%, with an average of about 50%, and there have been "quantum jumps" in retention levels as well, Mr. Milton said.

"Most of the media losses have been for legal expense, and legal expense is getting higher," he said. Insurers also are attempting to set policyholder retentions at a level that is higher than the cost of dealing with nuisance suits, he said.

"Legal fees are continuing to rise and damage awards and settlements are going up," agreed Karen Stanton, assistant vp and media liability product manager at Simsbury, Conn.-based Chubb Specialty Insurance. "To be profitable in this line of business, and to be committed to writing this business in the future, the retention levels and the premium levels needed to be addressed," she said.

Higher reinsurance costs are also a factor in the market, said Mr. Milton. "Media insurers that rely on reinsurance to fill out their capacity are finding that reinsurers are less interested than they were" in the business as a result of their Sept. 11 losses, he said.

Despite the cost of defending claims, it remains difficult for plaintiffs to win "run of the mill" libel cases against media companies, Mr. Milton said. "Plaintiffs are more successful as media companies sort of deviate from standard news practices," such as in cases where radio stations conduct pranks that offend people or cause emotional distress, he said.

Jim Borelli, vp-claims at Kansas City, Mo.-based Media/Professional Insurance, a managing general agency, said, "Fewer cases are going to trial because, I think, the media are being smarter about what cases we choose to take to trial."

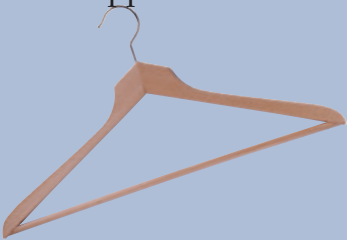
According to a survey by the New York-based Libel Defense Resource Center, there were 17 trials against the media in 2001, compared to an average annual number of 18.5 in the 1990s and 26.1 in the 1980s. Defendants scored victories in about half of the trials conducted in 2001 and 2000 compared to a 38.7% defense victory rate in the 1990s and a 35% victory rate in the 1980s.

—By Judy Greenwald

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to order in lunch?



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dropped-off?



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at your front door?



Like to shop by
catalog or online?



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AT&T to outsource benefits administration

AT&T Corp. has signed a seven-year outsourcing contract with Aon Consulting. Under the agreement, effective June 1, Aon Consulting in New York will provide AT&T with human resource administration and payroll services, including the oversight of the telecommunications company's existing benefit plan service providers. In August 2000, Aon acquired Actuarial Sciences Associates Inc., a retirement plan and benefit consulting company that originally had been part of AT&T's benefits management department. AT&T spun off the operation into an independent company in 1998 but remained a major client of ASA.



Rise in work injuries ends California streak

An increase in lost workdays because of employment-related injuries has ended a decade-long decline in the injury rate among

California workers, according to a May 21 bulletin from the California Workers' Compensation Institute. The injury rate rose from 6.3 per 100 full-time employees in 1999 to 6.5 during 2000. The increase ends a string of declines dating back to the peak level of 9.9 per 100 during 1990 and 1991. The increase in California's injury rate was due to a rising incidence of lost-time cases.

S&P change results in Employers Re downgrade

Employers Reinsurance Corp. has been downgraded to AA+ from AAA by Standard & Poor's Corp., after S&P changed its criteria for rating the reinsurer. Previously, Overland Park, Kan.-based ERC had been awarded the same rating as its parent company, GE Capital Corp. But New York-based S&P has changed its ratings criteria "to distinguish between... 'core' and 'strategically important' financial services businesses owned by major corporations," an ERC statement said. "We do not believe that ERC represents a core holding of GE Capital Corp.," explained Don Watson, a director of S&P in New York.



ZFS reducing Nordic market share

Zurich Financial Services Group is reducing its presence in the Nordic markets. Under a deal reached with

Danish property/casualty insurer Tryg Vesta, most of Zurich's nonlife business in Norway and Denmark will



be transferred to Tryg. The business Zurich is transferring in those countries represented gross premiums totaling about 109.5 million euros (\$100.9 million). As part of the arrangement, Tryg will service Zurich's international and corporate clients in Denmark and Norway. In Sweden, Zurich's personal and commercial business will be run off, as will disability and financial institutions businesses in Denmark. Corporate business in Sweden will be handled by Zurich's Swiss-based headquarters.

StanCorp to acquire group life, disability book

StanCorp Financial Group Inc. has agreed to purchase substantially all of the group disability and group life insurance business of Teachers Insurance & Annuity Assn. The deal is structured as a reinsurance



agreement between TIAA and StanCorp's subsidiary, Standard Insurance Co., with Standard paying \$75 million for the book of business. The business being acquired includes about 1,800 group life insurance contracts covering 650,000 lives.

Alliant to buy specialist in tribal coverage

Alliant Resources Group Inc. plans to acquire Affinity Insurance Services L.L.C., a property and casualty agency focusing on coverage for

Native American tribal and casino gaming operations. San Diego-based Affinity will continue operating as an autonomous company but will report to Alliant's San Diego-based Driver Alliant Insurance Services Inc. unit. Terms were not disclosed.

Briefly noted

The **House Financial Services Capital Markets Subcommittee** will hold the first of a series of hearings concerning insurance competition and regulation on June 4....Bermuda-based **AXIS Specialty Ltd.** has received approval from Irish regulators to begin writing insurance and reinsurance through its office in Dublin. AXIS Specialty will offer insurance through its AXIS Specialty Europe Ltd. unit and will write reinsurance through its AXIS Re Ltd. subsidiary....**Royal & SunAlliance USA's** Terry Broderick will retire June 30 as president and chief executive officer. Mr. Broderick will be succeeded by Steve Mulready, who is president and chief operating officer of the Charlotte, N.C.-based insurer's commercial division....The **New York Compensation Insurance Rating Board** has asked the state's insurance department to approve an average 9.4% increase in workers compensation rates for employers,

effective Oct. 1, said Martin Heagen, vp and actuary for the rating board. The insurance department, which must act on the request by July 15, earlier this year rejected the rating board's request for an average 8% increase....Johnston, R.I.-based **Factory Mutual Insurance Co.**, which does business as FM Global, has restructured and renamed its Norwood, Mass.-based Factory Mutual Research affiliate. The research division is now called FM Global Research, and its approvals division has been renamed FM Approvals....San Francisco-based **Blue Shield of California**, which has 2.3 million members, will acquire another nonprofit health care organization, Lifeguard Inc., which has about 200,000 members. Terms of the transaction, which is expected to close in 30 to 60 days, pending regulatory approval, were not revealed. Lifeguard will continue to operate independently as a Blue Shield subsidiary....**Employers Reinsurance Corp.** has applied for a license to operate in China. The Overland Park, Kan.-based reinsurance company hopes to open a branch office in Beijing or Shanghai. Chinese regulators are expected to decide whether to grant ERC the license within 18 to 24 months.

Online Poll [5/27 - 5/31]

Are your company's directors and officers concerned about the adequacy of your D&O coverage to protect them?

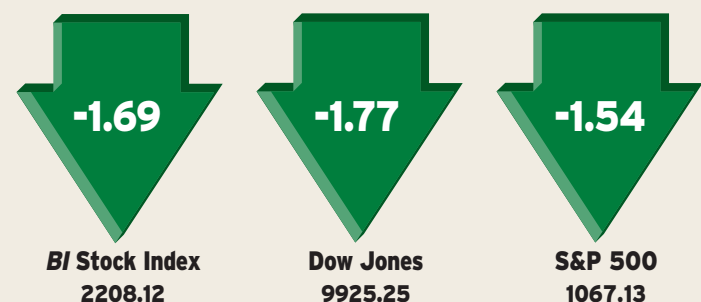
Yes **52.7%** No **47.3%**

Take part in our weekly poll at www.businessinsurance.com

BI Stock Index [5/27 - 5/31]

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

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



Largest gains

Meadowbrook Ins. Group	22.22%
Seibels Bruce Group	19.15%
AFLAC Inc.	7.02%
HCC Insurance Holdings	6.15%
Hilb, Rogal & Hamilton	5.94%

Largest losses

Renaissance Re Holdings	-67.40%*
SCPIE Holdings Inc.	-28.73%
Fremont General Corp.	-23.45%
Penn-America Group	-13.40%
NYMagic Inc.	-13.33%

Weekly change by market segment

Brokers	0.20%
Insurers/Reinsurers	-3.46%
Managed Care Organizations	-0.89%

*RenaissanceRe stock split 3-for-1 at the close of business 5/30.

Source: CNET Investor (investor.cnet.com)

Grace: Asset diversion alleged

Continued from page 3

Sealed Air, Cryovac and Fresenius all deny the charges, and Sealed Air in its first quarter 10-Q filing said it will "defend its interests vigorously."

Grace and several affiliates filed for Chapter 11 bankruptcy protection in April 2001, citing an unexpected rise in asbestos claims that has also triggered bankruptcy filings by several other major asbestos producers. At the end of 2000, Grace reported that it had settled 53,607 asbestos personal injury lawsuits for a total of \$1.25 billion and was a defendant in an additional 61,395 pending cases, court filings note.

The Chapter 11 filing came a few years after Grace carried out a massive and complex restructuring that saw it divest profitable subsidiaries.

In 1996, W.R. Grace & Co.-Conn., an intermediate holding company for Grace's diverse operations, transferred ownership of National Medical Care, a kidney dialysis provider, to Grace. A new parent was formed for Grace-Conn., spun off to Grace stockholders and

renamed "W.R. Grace & Co.," while the former parent—owning only of the health care unit—was sold to Fresenius Medical Care A.G. of Bad Homburg, Germany.

Grace launched a similar series of moves in 1998, assuming ownership of the packaging business from Grace-Conn., forming a new holding company for Grace-Conn. and spinning off the new holding company to Grace stockholders. Grace-Conn. now held the company's specialty chemicals operations and was the repository for Grace's asbestos and pollution liabilities. The former Grace parent company—now consisting largely of the packaging business—merged with Sealed Air Corp. and adopted its name.

It was the Grace entity that retained the asbestos and pollution liabilities that filed for bankruptcy last year.

The aim of all of these transactions was to strip Grace's valuable assets to keep them out of the hands of asbestos and other claimants, court filings by asbestos

creditors and the EPA charge.

The transactions bear several "badges of fraud," the filings charge.

For one thing, Grace-Conn. received far less from its parent for the health care and packaging units than the operations were worth, claimants charge. While Grace transferred \$1.2 billion to Grace-Conn. for the packaging business, for example, the business itself was worth up to \$5 billion, the suit says.

Because of the huge flood of asbestos and environmental liabilities facing it, Grace-Conn. was actually insolvent at the time it spun off the assets, or was insolvent shortly afterward, the asbestos claimants charge.

As a result, the spin-offs should be considered fraudulent conveyances of assets, and the deals should be reversed, the claimants and the EPA argue.

Sealed Air denies that Grace-Conn. was insolvent at the time of the deals—even including projected asbestos liabilities—and maintains that the transactions were legal.