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Industry questions findings of TRIA report

Treasury opposes renewal of program without changes

By MARK A. HOFMANN

WASHINGTON—The U.S. Congress should move swiftly to deal with the terrorism insurance issue in the wake of the Treasury Department's recommendation that the Terrorism Risk Insurance Act not be extended in its present form, risk managers and insurers say.

In a June 30 letter accompanying his department's long-awaited report on the state of the terrorism insurance market, Treasury Secretary John Snow said that "continuation of the program in its current form is likely to hinder the further development of the insurance market by crowding out innovation and capacity building. Consistent with its original purpose as a temporary program scheduled to end on Dec. 31, 2005, and the need to encourage further development of the private market, the administration opposes extension of TRIA in its current form."

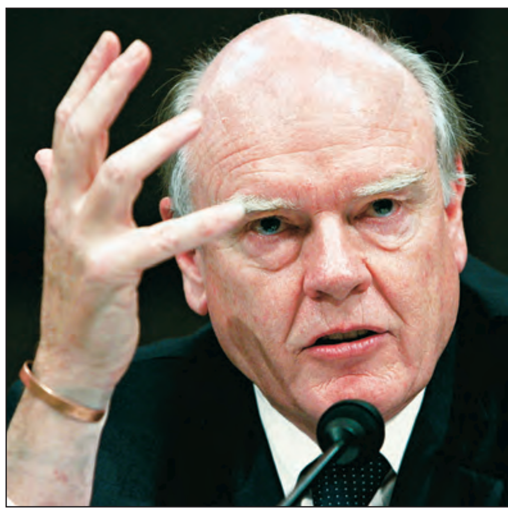

PHOTO: REUTERS LIVE

"Continuation of the program in its current form is likely to hinder the further development of the insurance market."

John Snow
U.S. Secretary of Treasury

But Mr. Snow added said that the Bush administration would accept an extension of the program under certain conditions. These include increasing the size of the terrorism loss needed to trigger TRIA coverage to $500 million; requiring insurers to pay higher deductibles; and eliminating a number of lines of coverage, including commercial automobile and general liability, from TRIA's protection.

Risk managers, insurers and brokers have supported an extension of TRIA, holding that the private market would lack the capacity to meet the demand for terrorism insurance without the TRIA backstop. Others, such as the Consumer Federation of America, a Washington-based consumer advocacy organization, urge that TRIA be allowed to expire, because they consider it little more than a bailout for the insurance industry.

TRIA, which was enacted in late 2002, created a federal backstop for insurers paying losses from possible future catastrophic terrorist attacks. In his letter, which went to the chairmen and ranking members of the Senate Banking Committee and the House Financial Services Committee, Mr. Snow said that the Treasury Department report found that "TRIA has achieved its goals of sup-

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AIG UNDER PRESSURE

Insurer eliminating Starr compensation to key executives

By RUPAL PAREKH

NEW YORK—American International Group Inc.'s move to eliminate a decades-old executive compensation plan that paid top officials through affiliated entities is prudent and won't burden the company financially, observers say.

In an annual proxy statement filed last week with the U.S. Securities and Exchange Commission, the embattled insurer disclosed that certain of its current and past officers—including former Chairman and Chief Executive Officer Maurice R. Greenberg and current top executive Martin J. Sullivan—for years were promised deferred com-

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House bill would prevent 'meltdown' of PBGC

By JERRY GEISEL

WASHINGTON—Legislation to stiffen pension funding rules and avoid a possible employer- or taxpayer-funded bailout of the federal agency that insures corporate plans is beginning to move through the U.S. Congress.

Last week, the House Education and the Workforce Committee cleared the measure, setting the stage for a vote by the full House later this month.

With the United Airlines pension plan debacle as a catalyst, committee members said Congress has to act now to strengthen pension funding rules to reduce the likelihood of more multibillion-dollar pension failures, which could swamp the Pension Benefit Guaranty Corp., which already is $23 billion in the red. That, in turn, could lead either to big PBGC premium hikes, which could exacerbate the growing employer exodus from defined benefit plan sponsorship, or a costly taxpayer-funded bailout of the PBGC.

Referring to those possibilities, Rep. John Boehner, R-Ohio, the chairman of the Education and the Workforce Committee said: "We have an environment that demands action."

Rep. Boehner said his bill, co-sponsored by several other House Republican leaders, would avert a PBGC financial collapse by strengthening corporate pension plans.

"I think the effect of this bill, over the next 10 to 20 years down the road, will be to prevent a meltdown of the PBGC," he said.

Others concur that the Boehner legislation, if enacted, could avert the agency's failure and, as a result, eliminate the need for big PBGC premium hikes or a taxpayer bailout of the agency.

This legislation is a key step in moving toward a better structure," said Ethan Kra, chief actuary

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Late News

PBGC takes over more United plans

The Pension Benefit Guaranty Corp. last week took over two more massively underfunded pension plans sponsored by bankrupt United Airlines. The Assn. of Flight Attendants, which is pursuing legal action to try to undo the termination, says the takeover triggers its United members' right to strike; United says such an action would be illegal. The flight attendants' plan has about $1.8 billion in unfunded benefits that are guaranteed by the PBGC. The other terminated plan covers management and public contact employees and retirees and also has $1.8 billion in PBGC-guaranteed benefits. The PBGC earlier terminated a United plan covering ground employees, while a plan covering United pilots has yet to be terminated.

ROA execs get jail time

A federal judge last week sentenced Kenneth R. Patterson, former president and chief executive officer of seized malpractice insurer Reciprocal of America, to 12-and-one-half years in prison, while Carolyn B. Hudgins, former executive vp, was given a five-year sentence. The two admitted to attempting to save ROA from collapse by concealing and misrepresenting its deterioration through fraudulent accounting reports submitted to Virginia regulators, ROA's board and insureds, according to the U.S. attorney's office for the Eastern District of Virginia.

OneBeacon names Miller as chief

OneBeacon Insurance Group has appointed Mike Miller as president and chief executive officer. He succeeds John Cavoores, who is leaving OneBeacon "for personal reasons," the company said in a

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Canadian law gives labor unions the power to resist benefit changes.
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The broker is the first solvent company to get preliminary approval that could result in the U.K. Pension Protection Fund taking over its underfunded pension plans.
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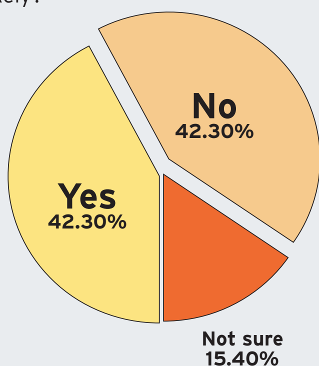
Online poll - [6/27-7/1]

Will the RAND Corp.'s new report on terrorism insurance make extension of the Terrorism Risk Insurance Act more likely?



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

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Group captive reaches antitrust deal

Justice Department questioned data-sharing among competing members

By MICHAEL BRADFORD

WASHINGTON—A settlement reached with the U.S. Department of Justice by a captive insurance company has antitrust implications that could trip up other unwary captives.

Professional Consultants Insurance Co. Inc., a Burlington, Vt.-based group captive, and its three actuarial consulting firm members, agreed in a settlement filed June 24 in U.S. District Court in Washington to stop sharing information regarding the use of limitations of liability in client contracts.

The Justice Department has not revealed the existence of any other similar investigations into captive activity, but its antitrust theory could extend well beyond this one professional liability insurer and its actuarial consulting firm members.

"The principle or the legal rule on which this case was brought would apply outside the actuarial consulting industry," said J. Bruce McDonald, deputy assistant attorney general in the Justice Department's antitrust division. "It would also apply outside the captive insurance business and the insurance industry," he added.

It is a case that group captives should be aware of in their dealings with members, Mr. McDonald said.

"If there are other captives involving professional services who might be interested in capping their liability," there could be some implications from this case, concurred Sean F. Bowland, an attorney with Howrey L.L.P., a Washington law firm that represented PCIC.

The case could also have ramifications for insurance associations in which information might be shared, Mr. Bowland noted.

PCIC provides professional liability insurance to the three members, which were not identified in court documents. The three firms, which are competitors, "each employ hundreds of professional actuaries through-

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JLT opts to disclose all U.K. compensation

LONDON—Jardine Lloyd Thompson Group P.L.C. will begin disclosing to U.K. corporate clients all compensation it receives on their business regardless of whether clients request that information.

In addition, JLT said that it may alter its compensation structure for small- and middle-market business when competing with regional brokers that still collect contingent commissions.

JLT, like many of its peers, announced last fall that it would no longer collect contingent commissions from insurers. The broker said at the time that such payments made up less than 2% of its £429.0 million ($701.0 million) revenues in 2003.

Ken Carter, executive chairman of the London-based brokerage, said the disclosure move came in response to the Assn. of Insurance & Risk Managers' recent call for brokers to automatically provide information on remuneration to clients (*BI*, June 17).

Currently, the Financial Services Authority requires brokers to respond to buyers' requests for information about payments only when specifically asked.

PHOTO: DOUGLAS FRY

Ken Carter, executive chairman of Jardine Lloyd Thompson Group P.L.C., announced JLT will disclose to U.K. corporate clients all compensation it receives on their business.

In an announcement Friday, JLT said that by the end of 2005 it would begin disclosing all compensation on U.K. business placed through its risk solutions and general corporate insurance units.

Mr. Carter said that for some small- and middle-market business, where JLT is in direct competition with regional brokers that may still be using contingent commission arrangements, JLT may charge additional "appropriate market remuneration" but that those payments would be fully disclosed.

Such payments may, in some cases, be commissions paid by insurers, said a spokesman.

In the United States, JLT did not collect contingent commissions on property/casualty business, according to Mr. Carter, and most business it places for major U.S. clients is conducted on a fee basis, he noted.

JLT said that in markets outside of the United Kingdom and United States where the broker acts for corporate clients, it will comply with local regulatory requirements about disclosure.

—By Sarah Veysey

Canada cracks down on bulk drug exports

OTTAWA—Canada's federal health minister last week proposed changing the law to allow the government to ban bulk exports of prescription drugs to the United States when necessary to protect the Canadian drug supply.

Health Minister Ujjal Dosanjh said he intends to introduce legislation under the Food and Drugs Act that will allow the government to prohibit the bulk export of prescription and other drugs when necessary.

"In light of potential American legislation legalizing the bulk import of Canadian prescription and other medications, our priority must be the health and safety of all Canadians and the strength of our health care system," the minister said in a statement. "We must be proactive in making sure that the supply of affordable prescription medications remains stable and sufficient to meet the needs of Canadians."

Mr. Dosanjh also wants to strengthen existing federal regulations governing the sale of prescription drugs in Canada to require an established patient-practitioner relationship. Cross-border drug sales often involve prescribing practices in which there is no clear patient-practitioner relationship, with Canadian doctors signing prescriptions for U.S. patients whom they have not examined.

The minister is also working with the provinces and territories and various stakeholders to establish a network that would provide Health Canada with comprehensive data on Canada's prescription drug supply.

According to estimates from the U.S. Department of Health and Human Services Task Force on Drug Importation, some 12 million prescription drug products at a cost of nearly $700 million entered the United States through Canada in 2003 alone.

Under current law, it is illegal for anyone other than the original manufacturer to reimport prescription drugs into the United States. Several states and cities, though, have developed arrangements to facilitate the importation—from both Canada and elsewhere—of prescription medicines for employees and residents.

—By Gloria Gonzalez

PHOTO: REUTERS LIVE

Canadian Health Minister Ujjal Dosanjh said that his nation's priority must be to ensure the supply of affordable prescription drugs to meet the needs of its citizens.

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Canada's unions make pension changes a tough sell

By GLORIA GONZALEZ

Canadian employers attempting to control rising pension and benefit costs by reducing, eliminating or modifying their plans have been significantly hampered by strong unions in Canada.

For the most part, Canadian unions have been able to resist pensions and benefits changes that are more common in the United States, particularly the development of two-tiered pension programs.

"Unions really have managed to control, in good measure, what's happening with respect to pensions and benefits here," said Lee Shouldice, a partner in the labor and employment group of Blake, Cassels & Graydon L.L.P. in Toronto.

Canadian unions derive their strength mostly from a legislative environment that observers describe as more union-friendly than in the United States.

For example, certification of a union in Canada gives it the authority to negotiate on behalf of all employees, regardless of whether they support the union, Mr. Shouldice said. In contrast, if a union in the United States has only the support of a fraction of the workforce, that may force the union to shy away from certain issues, including pensions and benefits, he said. In Canada, "the unions wouldn't have that insecurity," Mr. Shouldice said.

Canadian labor laws also dictate that when a company becomes unionized, the union must negotiate all terms and conditions of employment, which usually includes pensions and benefits.

For unions, "generally, the legal environment is more favorable here than in most states" in the United States, said Bob Baldwin, the outgoing director of social and economic policy for the Canadian Labor Congress, an association of labor unions based in Ottawa.

Union membership

As a percent of workers

vs.

The workforce in Canada is also more heavily unionized than in the United States, which gives Canadian unions some of their leverage, observers say. In 2004, about 31% of Canadian workers belonged to a union, according to Statistics Canada, the federal government's research agency. In contrast, only about 12.5% of wage and salary workers in the United States belong to a union, according to the U.S. Department of Labor.

In addition, unions have been fairly successful in negotiating for representation on the boards of trustees of pension plans. This allows them to influence the agenda of organizations in ways that they have historically not been able to, according to Patrick Gilligan-Hackett, a partner in the employment and labor law practice of Ogilvy Renault L.L.P., based in Vancouver, British Columbia.

Resisting change

Because of their influence, Canadian unions have been able to resist many attempts by employers to revamp their pensions and benefits programs.

In particular, observers note, Canadian unions are steadfastly opposed to one cost-cutting method popular in the United States: the creation of a two-tiered pension system, in which current employees remain in defined benefit plans while new hires are placed into new defined contribution plans.

It is very rare that companies are

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The U.S. Chemical Safety & Hazard Investigation Board said the June 24 fire at the St. Louis Praxair Inc. distribution center caused no serious injuries even though it launched "a barrage of dozens of gas containers, which flew like missiles from Praxair's facility when they exploded."

Feds investigate safety of fire protection system in Praxair blast inquiry

By MICHAEL BRADFORD

ST. LOUIS—A federal agency investigating the explosion at a Praxair Inc. distribution center has come away from the site with concerns about the facility's fire protection system.

The June 24 blast at the St. Louis facility damaged the plant and several homes, businesses and automobiles in the neighborhood. At least one home suffered heavy damage. No serious injuries were reported. Praxair said in a statement that 22 employees and two customers at the plant at the time of the explosion got out safely.

Investigators from the U.S. Chemical Safety & Hazard Investigation Board wrapped up a two-day investigation on June 27, and while no cause for the explosion and fire that resulted was determined, the three-person team left the site with plans to examine how the blaze was able to grow.

The "broader issues of the incident" that the investigators will consider include "the plant's fire protection system and whether there are opportunities for improvement of fire suppression in outdoor storage facilities," said Steve Selk, investigations manager with the Washington-based agency, in a statement.

Praxair, which is based in Danbury, Conn., packages acetylene, oxygen, nitrogen, propane and other gases into cylinders at the St. Louis facility. The gases are then shipped from the distribution center to Praxair customers.

Praxair said in a statement that tests conducted by the Missouri Department of Natural Resources found asbestos in ashes

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Massachusetts attorney general tells Marsh clients to delay settling

By SALLY ROBERTS

BOSTON—Massachusetts Attorney General Thomas F. Reilly is advising clients of brokerage Marsh & McLennan Cos. Inc. in the state to hold off before deciding whether to accept restitution from the company in accordance with its $850 million settlement with New York Attorney General Eliot Spitzer earlier this year.

The letter, sent to roughly 150 Marsh clients in Massachusetts last month, noted that Mr. Reilly is currently working with a "multistate group of attorneys general to investigate various allegations against Marsh and other brokers."

"It may be advisable for you to take your time deciding whether to sign on to the settlement agreement, since by accepting the settlement offer, you would be waiving various rights,"

Thomas F. Reilly and other state AGs are probing brokers.

Quentin Palfrey, assistant attorney general in the insurance division of Mr. Reilly's office, wrote in the letter. "There is no advantage to responding to Marsh well in advance of the Sept. 20 deadline."

A spokeswoman for Mr. Reilly's office declined to comment further on the multistate investigation.

New York-based MMC sent letters detailing potential restitution amounts on May 20 to 135,000 clients nationwide that qualify for reimbursement. MMC in January agreed to pay affected clients $850 million to settle charges by Mr. Spitzer that it steered clients to insurers paying the highest contingent commissions and colluded with insurers to produce inflated quotes to channel business to those favored insurers (*BI*, Feb. 7).

"There's no new investigation. This is a continuation of the investigation and we're continuing to cooperate with all the attorneys general," an MMC spokeswoman said.

California gaining self-insurers

By ROBERTO CENICEROS

Despite falling insurance costs stemming from workers compensation reforms in California, self-insurance groups are gaining in popularity.

There are now 22 authorized self-insurance groups, with more applications pending, according to Mark Johnson, manager of the Self Insurance Plans office of the California Department of Industrial Relations, the Sacramento-based state agency that authorizes employers to self-insure for workers compensation losses.

California regulations adopted in 1993 allowed companies in the same industry to form self-insurance groups—or SIGs—for workers comp. But because of plummeting insurance pricing, employers did not immediately gravitate to them. The first SIG approved by the state did not begin operating until January 2002, when prices were rising.

And even though rates are dropping again, self-insurance proponents say the groups will continue to recruit new members.

A California Department of Insurance report shows that, in the wake of workers comp reforms adopted in 2003 and 2004, insurers filing rates in June for July 1 renewals planned to reduce their rates an average of about 15%.

The report also shows that many insurers complied with or exceeded Commissioner John Garamendi's recommendation last month that work comp insurers reduce their rates by 18%, with some reporting reductions as high as 26%.

Even with falling insurance rates, though, Chris Stafford, assistant vp for ABD Insurance & Financial Services in Redwood City, Calif., said he still expects that SIGs can draw strong participation.

ABD Insurance currently is marketing Independent Banks Self-Insurance Group Inc. The recently approved pool hopes to begin insuring community banks by Aug. 1 and has several banks now seeking the Self Insurance Plans office approval to participate, Mr. Stafford said.

If you exclude 20% of California's community banks—those with the worst loss history—then the remaining banks have a loss ratio of about 30%, Mr. Stafford said. Therefore, there remains a significant gap between the price insurers charge banks with a good loss history and the banks' claims costs, Mr. Stafford said. Additionally, his pool should be able to maintain lower administration costs than an insurer, he said.

But the falling insurance rates are making SIGs less competitive on price, other pool administrators say. Nonetheless, they say they still expect SIGs to continue growing.

For example, a pool for members of the San Francisco-based Western Independent Bankers association had enjoyed a 30% to 40% pricing

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Wanted: Top benefit managers for *BI*'s Benefit Manager of the Year

Business Insurance is pleased to announce the launch of its first Benefit Manager of the Year™ award to recognize excellence and innovation in employee benefits management.

The inaugural award in benefits follows in the tradition of the magazine's longstanding Risk Manager of the Year™ competition. *BI* invites readers to nominate outstanding benefit managers for this award, the winner of which will be announced in the Dec. 5 issue of the magazine.

Any full-time employee of a corporation, nonprofit organization or government entity who oversees or administers benefits functions is eligible. A nominee need not manage benefit programs as his or her sole responsibility but must be a full-time employee of his or her organization.

An independent panel of judges will score each nominee on how well he or she:

- Solved one or more major problems for his or her employer.
- Innovatively applies benefit programs to his or her organization's needs.
- Effectively uses benefit programs to help control costs.
- Exhibits leadership in achieving change within his or her organization.
- Established an effective system for communicating benefit programs to employees.
- Skillfully administers benefit programs through the application of technology.
- Develops in his or her career and promotes the advancement of the benefits management profession.

The value or generosity of specific benefits will not be judged; the award is intended to honor outstanding performance in managing and administering benefit programs overall. The highest-scoring candidate will be named Benefit Manager of the Year™. Judges will include representatives of employee benefit consulting firms, brokerage firms, health insurers/managed care organizations and benefits industry vendors.

"At a time when benefit programs are becoming a strategic challenge for employers, and with *Business Insurance* covering benefit issues closely since the magazine's inception, we think it's a great moment to give special recognition to leaders in the benefits field," said *BI* Editor Regis Coccia. "We invite all our readers to help us identify the top benefit managers by submitting nominations."

Candidates may nominate themselves or be nominated by a supervisor, colleague, broker, consultant or service provider, but the nomination must be accompanied by a letter from a superior who is familiar with the candidate's work. The deadline is Aug. 26.

To nominate a candidate, please download a nomination form at *www.businessinsurance.com/BMOY* or request one from Regis Coccia at 360 N. Michigan Ave., Chicago, Ill. 60601; or e-mail *rcoccia@businessinsurance.com.*

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PAUL WINSTON

Editorial Director

Pension system deserves attention

It took a financial disaster for tens of thousands of United Airlines' employees and retirees and for the Pension Benefit Guaranty Corp., but Congress finally is waking up to the need to address serious flaws in the nation's pension system.

With United terminating four underfunded plans as part of its bankruptcy reorganization, many of its employees and retirees will see their benefits cut by more than one-third. Of the $9.8 billion in unfunded United pension plan liabilities, the PBGC only guarantees about two-thirds.

For the PBGC, taking over the plans will produce a $6.6 billion loss. This not only is by far the agency's biggest loss, but United's plans alone account for more than 25% of its overall deficit.

Jarred by the United plan terminations—and the likelihood that more and bigger losses are down the road—Congress finally is taking a long-overdue look at how fragile the nation's private pension system has become. Last week, a House committee passed legislation that would strengthen pension funding rules for underfunded plans. It is an important first step, but has yet to win passage in the full House and Senate.

Members of Congress have a choice: either toughen funding rules for underfunded plans, or start planning a taxpayer-funded bailout of the PBGC.

Lawmakers also need to reconsider whether it is fair for taxpayers and other employers to shoulder the cost of fulfilling another employer's failed pension obligations, thereby letting the original sponsor emerge from bankruptcy free of the benefit liabilities it has amassed. If I ran a competing airline that was still solvent and funding a pension, I'd feel like United had just dropped a big block of blue ice on my runway.

Some members of Congress appear to agree. The full House in June passed an appropriations bill containing a provision that would block the PBGC from using any funds to take over United's underfunded plans. While it sounds impressive, in reality the measure was merely an attention grabber, as the PBGC does not require congressionally appropriated funds to take over a pension plan. While perhaps symbolic, the House action underscores concerns about the impact of the termination of United's plans and the way in which the termination process was handled.

This heightened scrutiny of pension policy marks a potential turning point in this country—perhaps as pivotal as the adoption more than 30 years ago of the Employee Retirement Income Security Act—as lawmakers struggle to maintain a healthy private pension system that is not overly burdensome to employers while assuring that the benefits of employees and retirees are protected.

ERISA was enacted because lawmakers recognized there were flaws in the operation of private pension plans, which they wished to preserve as the cornerstone of America's retirement security system. In addition to creating the PBGC, the law introduced new safeguards to strengthen participant rights, plan funding, oversight and disclosure.

Today, it is obvious that while ERISA did much to improve retiree benefits and the rights of participants, serious problems remain with pension funding and making such plans attractive for employers to offer. If lawmakers and regulators want to encourage employers to maintain their crucial role in the nation's retirement system and improve the security of retirement benefits, they have their work cut out for them. Not only must funding requirements be strengthened to protect existing benefit promises, but federal regulations also must be overhauled to make it more likely that employers would want to offer some sort of retirement benefits.

As long as America relies on the private sector to deliver the lion's share of retirement income benefits, the government has an obligation to make the system work. Pension funding reform is doable—especially if Democrats and Republicans agree on the necessity of reform. Hopefully, the increased attention of lawmakers will result in action. The future well-being of the nation's defined benefit plan system demands it.

Of course, there is another option: Congress could leave the flawed private system alone and instead improve the funding of, and benefits provided by, the Social Security system for all. But I realize that's as politically likely as pigs taking wing.

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

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Editorial

A revised TRIA better than no program at all

WHILE WE'RE DISAPPOINTED with the U.S. Treasury Department's recommendation that the Terrorism Risk Insurance Act, at least in its present form, be allowed to expire at the end of the year, we realize that the situation could be worse.

That's because, even in advocating that TRIA sunset on Dec. 31, the administration has left the door open to the maintenance of some sort of federal backstop for insurers faced with paying claims stemming from a future catastrophic terrorist attack.

Treasury Secretary John Snow made clear that an acceptable program, among other things, would have to include far more risk bearing by the insurance industry and, by extension, its customers. It would also have to exclude coverage for certain lines of business such as commercial automobile coverage that the administration believes do not present sufficient aggregate terrorism exposures to merit a federal backstop.

Call it TRIA Lite. We would have preferred a straight-out extension for two years, with the requirement that proposed long-term solutions to the problem of insuring against terrorism be presented to Congress long before a reauthorized TRIA expired. But, given political realities, the sometimes-incomplete understanding of the business of insurance on Capitol Hill and the industry's recent troubles, simply extending the program might have been nearly impossible regardless of what Treasury said.

And a long-term solution is what the issue of terrorism insurance demands. This is a peril that defies the normal rules of underwriting, yet must be covered. It is more akin to an act of war than a natural disaster, but is quite possibly less predictable than an act of war.

The amount of potential loss is unquantifiable, and there is no way that the private insurance industry could bear all of the risk by itself. Without some sort of government guarantee, the property/casualty insurance industry could be sent spinning into near-collective insolvency by a single terrorist act.

We're glad, then, that Treasury at least left the door open—if only by a crack—for some sort of government role in the provision of terrorism insurance. While it's far from a perfect solution, this is certainly a situation in which the perfect cannot be allowed to become the enemy of the good, or, in this case, the barely adequate.

There is too much at stake to allow even the smallest of openings to go unexplored in the effort to find a permanent solution to a deadly serious issue.

Schillerstrom

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Softening of market belies some hard truths

IT'S RENEWAL TIME AGAIN, and the consensus so far is that rates in most lines of coverage are flat to falling. As rates continue to decline, many buyers may cheer, but we see clouds on the horizon.

As we report in our annual Midyear Market Report, beginning on page 11, the pricing environment for risks is stabilizing or easing. In the past few renewal periods, underwriters have invariably vowed they'll maintain discipline and not, as they have done so often in the past, cut rates to improve market share. Time will tell whether they'll keep their promise.

Buyers, who now may be enjoying lower rates, should have no illusions about the consequences of undisciplined underwriting.

Rather than see prices cut and then raised sharply and capacity reduced following adverse claims, underwriters should strive for consistency—price risks so the buyer gets value while also generating a profit for the insurer. This approach, often preached but seldom achieved, would curtail the yo-yo effect that has historically wreaked havoc on policyholders' attempts to accurately budget what they expect to be paying for insurance coverages. Given the lack of predictability in the traditional market, it's no surprise that retentions have increased over the last several years as buyers have tried to mitigate the shocks to their balance sheets. Or haven't underwriters noticed?

At the same time, brokers are implementing new compensation models, some of which could reduce underwriting expenses. Most major brokers have ceased accepting contingent compensation and pay for services to underwriters, but insurers have been mum on reducing premiums by a commensurate amount. The rate reductions we're reporting in this issue are based more on market conditions and competition than any stated objective by insurers to return excess capital.

Brokers expect and deserve to be compensated for the value they offer. Insurers ought to communicate a similar approach. Nobody wants to pay more when they don't have to, but buyers would be wise to ask whether underwriters offering the store at renewal time are really committed to offering long-term value. If the prices and terms and conditions seem too good to be true, they probably are, and buyers should expect an unpleasant surprise sooner rather than later.

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Perspectives

Clock ticking on mold claims

New exclusions make recovery under old policies urgent

By Daniel Lentz
and Joe Galanti

Toxic mold claims have skyrocketed in recent years, fueled by media hype and a heightened public sensitivity. Mold has become the latest "tort du jour" of the plaintiffs' bar, with well-publicized mold-related verdicts such as the $32 million *Ballard* decision, as well as multimillion-dollar mold claims brought by celebrities. As mold claims escalate, commercial property owners need to be mindful of the toxic mold claim hourglass.

The insurance industry is reeling from mold-related losses. According to the Insurance Information Institute, mold-related property damage grew from $700 million in 2000 to $3 billion in 2002—nearly a 330% increase in only two years. Other losses, such as business interruption and third-party liability, often can dwarf remediation and property damage expenses, so the III's estimates grossly understate the burgeoning costs of mold contamination.

Insurers did not see mold as a significant threat until a few years ago, when claims began to grow in lockstep with the public's awareness and fear. As mold-related claims percolated through the adjustment process and the court system, insurers identified holes in their policies that provided coverage for mold-related losses. They have since filled those holes with exclusionary language and endorsements to preclude future claims. Basically all new policies, except those written to specifically cover pollutants such as mold, purport to preclude most claims for mold-related losses.

Due to these changes, time is running out for property owners and other stakeholders to recover mold-related losses from their insurers. As time passes, insurers' rapid adoption of new policy language more effectively excludes coverage for mold-related losses. Potential coverage opportunities are slipping away like sand through an hourglass.

But while newer policies generally preclude recovery of such losses, many mold claims are attributable to issues that arose in earlier policy years. The water damage that causes most mold-related losses often can be traced well into the past, triggering earlier policies without mold exclusions. Determining causation grows more difficult as time elapses, and tracing causation to periods before 2002, when coverage often existed, becomes even more arduous. Policyholders need to act now or their coverage will vanish.

Ignoring resident complaints can increase third-party liability and enable problems to grow—literally. Property owners must develop appropriate protocols for maintenance personnel so the extent of mold problems and their causes can be determined quickly. The protocols should dictate how to address mold growth, including finding and eliminating the water source. Simply cleaning up mold spores with biocides like bleach without eradicating the water source will not prevent future mold growth.

> Potential insurance coverage opportunities for mold-related claims are slipping away like sand through an hourglass.

Records important

Management should also keep detailed records to substantiate claims and ensure there are proper reporting mechanisms in place so that executives are made aware of problems before they become unwieldy.

While most commercial property losses consist solely of property damage, business interruption and extra expenses, nearly all mold claims also have a liability component. This makes the management and quantification of such claims far more onerous. Not only do policyholders need to be cognizant of the various policies and limits that may apply but also the policy years that may respond. The interplay among insurers can be mind-boggling on complex mold losses.

Determining the dates and causes of loss on mold claims and matching the policy provisions that afford coverage with specific areas of loss can be extremely complex. For example, it may be difficult to segregate mold-related property damage from normal operating expenses without a firm understanding of the types of costs involved, such as desiccant systems, engineering consultants, retrofitting and other remediation expenses.

In addition, rental properties often have high turnover and vacillating rents, making it difficult to quantify business interruption and third-party costs of residents. Identifying who was in what unit for what period of time and at what rent level can get quite tricky over long intervals, especially when residents are displaced for remediation.

Many policyholders think that they do not have coverage for mold-related losses. Trusted brokers sometimes tell them that they lack coverage and should not pursue a claim when, in fact, they do have potential coverage.

The decision to file a claim, though, should involve weighing the expected recovery relative to the anticipated costs—including remediation and retrofitting expenses, higher future premiums, potential third-party liability and reputational losses. Policy language and provisions differ on every policy, and a coverage opinion from an experienced attorney should be sought for larger claims.

New insurance policies have much more effective mold exclusions, and, under them, losses may not be covered. But when the insured peril that caused the mold growth occurred during an earlier policy year, coverage may exist. After getting advice from counsel, policyholders should pursue claims immediately, before the coverage hourglass runs out.

Daniel Lentz is a partner in Ernst & Young's investigative and dispute services practice in Washington. Joe Galanti is a senior manager in Ernst & Young's investigative and dispute services practice in Miami.

Facility sale ruled not a 'layoff' for pension purposes

The 6th U.S. Circuit Court of Appeals in Cincinnati ruled that an Employee Retirement Income Security Act plan administrator did not act arbitrarily and capriciously in determining that employees did not experience a "layoff" within the meaning of the plan providing for immediate retirement benefits upon layoff.

Employees of SKF USA Inc. were employed until June 11, 1999, in SKF's tapered roller bearing division. On that date, SKF sold the division to Tyson Bearing Co. The employees became employees of Tyson immediately after the sale at the same facility with no period of unemployment or interruption of wages. Tyson agreed to provide a pension plan equivalent to the SKF plan. The employees subsequently filed claims with the SKF plan, arguing that they were entitled to pension benefits because they were "laid off" from SKF employment as a result of the June 11, 1999, sale. The plan administrator denied their claims, asserting that the employees were not "laid off" when they became employees of Tyson immediately after the sale. The employees then brought this suit under ERISA seeking pension benefits. The trial court ruled against the employees. They appealed.

On appeal, the employees argued that the permanent termination of their employment with SKF constituted a "layoff" under the plan. But the appellate court said that the separation of employees from their original employer and immediate employment by the company purchasing the original employer's facility did not constitute a layoff. The court emphasized that there was no interruption in the employees' employment because they immediately became employees of the purchasing company upon completion of the sale. The trial court decision was affirmed.

Morgan vs. SKF USA Inc., 6th U.S. Circuit Court of Appeals, Oct. 8, 2004 (BI/02/M.-$10)

Legal Briefs

Attack not compensable

An employee's injuries incurred in a scuffle with a co-employee did not arise out of his employment and, thus, the employee was not entitled to workers compensation benefits, according to the Court of Appeals of Indiana.

Anthony Farmer was clocking out of his third-shift service at DePuy Inc. As he was headed toward the time clock, a first-shift coemployee was waiting to begin his shift. While passing this employee, Mr. Farmer brushed his time card against the co-worker's side.

The record indicated that the coworker, having a bad day and being in a grouchy mood, became enraged and attacked Mr. Farmer. Mr. Farmer sustained severe injuries to his back. These injuries led to his taking time off of work, surgery and large medical bills. Mr. Farmer applied for and was awarded workers compensation benefits. The employer appealed.

The appellate court said that the record was devoid of any evidence that, at the time of the battery, the co-worker assaulted Mr. Farmer because of a disagreement arising out of their customary work obligations.

"Rather," the court said, "we find that the quarrel was a consequence of (the co-worker's) bad start of the day and grouchy mood." According to the court, starting out irritably, the co-worker introduced his personal problems into the work environment, which eventually resulted in Mr. Farmer's injuries.

Thus, the court concluded that Mr. Farmer's injuries, although sustained in the course of his employment, did not arise out of his employment with DePuy. The court reversed the award of benefits.

DePuy Inc. vs. Farmer, Court of Appeals of Indiana, Oct. 5, 2004 (BI/01/M.-$10)

No cover for idiopathic fall

Harm that can be attributed to a personal or idiopathic cause is universally noncompensable under workers compensation, according to the Court of Appeals of Nebraska.

In March 1996, Kyle Lucas worked as a manager of an automobile dealership. On March 31, 1996, Mr. Lucas was sitting at his desk talking to a co-worker. He stood up from the desk and a look of severe pain crossed his face. Mr. Lucas then fainted and fell to the floor. Mr. Lucas remembered waking up with several people standing over him. In the emergency room, he was treated for his fainting spells and complaints of hip pain.

Tests revealed that Mr. Lucas had broken his hip and required surgery. His fainting was deemed due to hypoglycemia. Later medical treatment included the resetting of his hip and the amputation of his left leg above his knee. Mr. Lucas filed for workers compensation benefits, claiming that he injured his left leg in a work-related accident. A trial court awarded him benefits. The employer appealed. A review panel reversed the trial court and denied Mr. Lucas benefits. He appealed.

On appeal, Mr. Lucas argued that, even though he fainted because of hypoglycemia, a personal cause, he was entitled to recover because the desk and chair at which he was sitting changed the manner in which he fell, increasing his risk of injury.

The appellate court said that the trial court found that Mr. Lucas fainted because he was hypoglycemic and that he fell as a result. Because the trial court found that Mr. Lucas' fall was not an unexplained fall, but, rather an idiopathic fall, the court said that he was required to show some affirmative employment contribution to offset the fact that his fall was precipitated by a personal condition. According to the court, there was no evidence to support the trial court's finding that his risk of injury was increased because he was getting up from a chair behind a desk when he fell to the ground. The court affirmed the decision denying Mr. Lucas benefits.

Lucas vs. Ford, Court of Appeals of Nebraska, Oct. 12, 2004 (BI/03/M.-$10)

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available, at $10 each, by sending a check payable to Mayo H. Stiegler, to Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Provide the listed number for each opinion ordered.

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Spotlight

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& HEALTH CARE

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Property rates favorable, but TRIA still in question

By MARK A. HOFMANN and SALLY ROBERTS

It's still a buyer's market for property insurance.

Rates continue to decrease, albeit not quite as steeply compared to this time in 2004 as they had between midyear 2003 and midyear 2004. Capacity for most risks remains adequate.

But questions surrounding the availability of terrorism insurance this time next year are beginning to have their impact on the market. While terrorism coverage remains relatively inexpensive despite the U.S. Congress' failure to reauthorize the Terrorism Risk Insurance Act, insurers have begun inserting terrorism sunset clauses in property policies that extend beyond TRIA's Dec. 31 expiration date.

TRIA's long-term outlook became even hazier last week when the Treasury Department recommended that the act not be extended in its current form. Treasury left open the possibility that the administration could accept a significantly scaled back program (see story, page 1).

Terrorism policy options allowing rate revisions worry buyers. Page 20.

Still, buyers right now have a good deal with which to be pleased.

"The property market, in general, is competitive. There are a lot of players, and, certainly, we are in a soft-market phase," said Tim Rose, president of Liberty Mutual Property in Weston, Mass. "I don't think there's that big of a difference between January and June and July," he said. "As far as rates go, we're in the high single-digit to lower double-digit rate decreases. For larger accounts, they are averaging a little more than that, and medium-sized accounts a little less."

"So far this year, our average account has probably been turning over with premium reductions of between 5% and 10%. But averages don't always tell the full story," said Randy Schreitmueller, vp at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. "Clients who really went the extra mile to improve their facilities would be at the high end of the spectrum."

There has been no wholesale movement of accounts, Mr. Schreitmueller said.

"In general, at least client retention is holding up very well. In batting-average terms, we're still probably in the mid- to high .900s," he said. "All things considered, I don't think we're seeing a lot of business changing hands," Mr. Schreitmueller

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D&O market sees marginal moves

By DAVE LENCKUS

The directors and officers liability insurance market is stabilizing from the sharp price decreases over the past 12 months but buyers are purchasing additional limits and negotiating coverage enhancements, brokers and insurers say.

Some risks were able to slice their primary coverage rates by 20% to 40% during July 1 renewals, market executives note. But those buyers had suffered the largest rate hikes during the hard market and were among the last policyholders to obtain rate relief, the market executives say.

Such large rate cuts will not be available for other risks that already have negotiated significantly lower rates, said broker Todd Jones, North American practice leader at New York-based Willis Executive Risk, a unit of Willis Group Ltd.

Nashville, Tenn.-based HCA Inc., the nation's largest multihospital company, renewed recently for about 12% less than last year, even though it purchased higher limits, said James D. Hinton, vp-risk and insurance.

After D&O problems in the late 1990s, HCA strengthened its board

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Prices in GL market mostly flat or down

By MICHAEL BRADFORD and GLORIA GONZALEZ

Insurance buyers are finding a general liability market that, with a few exceptions, is welcoming them with flat or falling coverage prices.

"I think we're seeing a true swing in the market now," said Tim Brady, national casualty practice leader at Marsh Inc. in New York. While the rate of price increases was moderating a year ago, many buyers are seeing "flat or decreasing" rates at 2005 midyear renewals, he said.

Competition in the primary general liability market has heated up and capacity is plentiful for most risks, industry sources say. Some buyers of excess layers will also find good deals in a marketplace that has remained stable over the past year, sources say.

An energy company risk manager is among those with a smooth liability renewal.

"General liability across the market is kind of flat," said Reed Wykes, director of risk management for Houston-based Parker Drilling Co. "You're not seeing big swings either way. If you have a consistent program to last year, you'll see things generally flat."

As for capacity, "we've had no problems," Mr. Wykes said. "There are more people entering the market right now."

Another risk manager plans to buy general liability coverage after four years of self-insuring the expo-

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P/C: Competitive market, general trend still favorable to policyholders

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said. It's "more of a struggle" to get new business, he said, because insurers are defending their accounts.

"Honestly, I think there is a lot more downward pressure. I don't think there's any more competition; the market's competitive whether it's in the up or down cycle," said Mike Petruzzello, senior vp and chief underwriting officer of Hartford Steam Boiler Inspection & Insurance Co. in Hartford, Conn.

"In many cases, there becomes a mindset that the market is softening" and brokers are expected to come back with lower quotes on renewal, Mr. Petruzzello said. "I think it's softening; I wouldn't say it's soft. It's not unbearable."

"The rate of decrease is less than it was a year ago," noted Gail Norstrom, managing director-property practice group for Aon Risk Services in Avon, Conn. "In round numbers, we're probably looking at 10%. It's all over the lot, though—about a third of our customers are getting decreases of 10% to 25% and probably a like amount having as-is renewals," he said. Mr. Norstrom said that although in "a very few cases," clients are facing increases, "the general trends are still favorable to the policyholders."

"We found it as a continuation of an improved marketplace," said Bradley R. Wood, senior vp-risk management for Marriott International in Bethesda, Md. "Premiums, on average, decreased 15% to 20% but varied considerably among the perils. We saw a much larger decrease on terrorism insurance; wind-exposed locations saw no decrease or were virtually flat," said Mr. Wood, whose property program renewed in April.

"We saw sunset clauses on a significant share of our program, which underscores the importance of the reauthorization of TRIA," he said.

"We had another good property year," said Steven La Shier, deputy director-risk management for the Los Angeles Unified School District. "We saw rate reductions across the board on most items."

The district's excess property rate went down 5%, its earthquake policy on its 29-story headquarters building went down 10%, and its boiler and machinery rate decreased 12%, Mr. La Shier said.

It's the second year in a row for rate decreases at the district, which retains the first $500,000 on each property claim. "Everything went up from 9/11 until July of last year," Mr. La Shier said. "I had even bigger decreases last year, but this year I unfortunately had 8% to 14% property value increases."

"I have $8 billion worth of property, so when you raise property up 8%, even though rates went down 5%, my net premium was an increase," Mr. La Shier said. He noted, though, that "if I had the old rates from last year, I would have paid an extra $232,000 in premium" rather than just the $40,000 extra the district paid on its most recent property renewal.

"Not only have the rates come down, but a few of the bells and whistles are coming back that we lost in the late '90s and, obviously, post Sept. 11," Mr. La Shier said. "I got enhanced limits, I got enhanced coverages and I got rate reductions at the same time."

Despite four hurricanes hitting Florida last year, Mike Benishek, risk manager for the Palmetto, Fla.-based Pacific Tomato Growers, said he doesn't expect "anything shocking" when he renews his property coverage on Aug. 31. The Tomato Growers' property coverage is part of a commercial package policy.

In fact, after receiving a rate decrease on the property portion of the package policy last year, Mr. Benishek said he anticipates even softer rates this year.

Current market conditions should not change soon absent negative external developments, said Liberty Mutual's Mr. Rose.

"It will remain competitive through the rest of this year," he predicted. "When it will end, I'm not sure. There are certain events that could influence the insurance cycle. Certainly, one manmade or natural catastrophe…would have an impact on the cycle, maybe bringing it to an end."

Mr. Rose noted that, similarly, a significant improvement in the investment climate could extend the length of the current cycle

Whether current market conditions persist will depend on insurer' results, said Aon's Mr. Norstrom. He noted that deductibles are still high, but a major earthquake or another active windstorm season could turn the market.

Still, the rate decreases won't last forever, said Bob Howe, director-global property placement for Marsh Inc. in New York. "Accounts that have had major reductions may see some pushback from underwriters. Underwriters are getting close to that line where they're looking closely at rates and how the rates stand up to where they think they're appropriate. We've seen some underwriters walk away from business," he said.

"Clients need to be very conscious of the compounding effect of these multiyear reductions," he said.

Mr. Howe said some rate decreases might be misleading because of an escalation in replacement values used by some underwriters. Higher costs for construction materials such as steel and cement have caused some underwriters to increase replacement values to the point where they significantly reduce the rate cuts, he said.

TRIA's hazy future, if it has any future at all, is definitely having an impact, said Alexandra Glickman, manager director and practice leader of

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Reinsurance rates falling, but less than in primary

By JUDY GREENWALD and SARAH VEYSEY

Reinsurance rates are declining, but not dramatically, say many reinsurers and intermediaries.

Both property and casualty reinsurance rates are slipping during midyear renewals, reflecting a general softening across most of the insurance market, they say.

One of the few exceptions is Florida property catastrophe rates, where increases are being pushed through in light of the losses from the series of hurricanes that battered the state last year.

And although capacity is expanding for traditional reinsurance coverages, there is little appetite to buy or sell finite risk coverage as that line of business continues to be scrutinized by state prosecutors.

The market is experiencing a "gentle slide downwards," said Steven Bolland, president of reinsurance intermediary Gill & Roeser Inc. in New York.

"The general market trend is slightly down, but the feeling appears to be...we're coming off one of the best rating environments in years, and therefore you could reduce the rates a little bit and still

maintain an element of profitability on an underwriting basis," said Mr. Bolland. Florida is an exception because of last year's hurricanes, but it is "not enough to offset the general trend," he said.

"It's OK. It's nothing dramatic. Very orderly," said John Berger, president and chief executive officer of Chubb Re in Bernardsville, N.J., of the midyear renewals.

"I think, just in general, there's erosion in pricing and terms and conditions," with a "steady spiral downwards," he said. Rates overall are down "anywhere from flat to 10% on the reinsurance side, which is compounded by about the same thing on the insurance side," said Mr. Berger. "On quota share, you see buyers pushing for more commission and loosening of terms, but nothing dramatic."

The renewals are proceeding in a "rational way," said Gregory T. Doyle, executive chairman of Shelton, Conn.-based BMS Vision Re. "Where there are exposure changes up or down, the market's taking that into account," he said. "While there is a little more competition on the price side than there was at Jan. 1, it's nothing that seems terribly out of line with normal market trends."

For U.S. business, the market has been generally stable, said James Few, chief underwriting officer and head of property reinsurance for Bermuda-based Aspen Insurance Ltd. Terms and conditions remain steady, and although price reductions are inevitable as the market softens, so far, the rates decreases have been moderate, he said.

The market is softening, said Callum Stewart, head of North American treaty business at London-based broker Alwen Hough Johnson Ltd. The hurricanes that hit the United States last year had a stabilizing effect on prices at the Jan. 1, 2005, renewal, he noted.

But those hurricanes had a greater effect on primary layers than on reinsurance and it is in-

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P/C: TRIA's a question mark

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Arthur J. Gallagher & Co.'s Gallagher Real Estate & Hospitality Services unit in Glendale, Calif.

"This is a schizophrenic market. We're seeing rate decreases, including catastrophic perils, in the 15%-plus range. At the same time, the threat of TRIA not being extended is limiting a lot of carriers from providing capacity to the commercial real estate and finance industries," Ms. Glickman said.

"Until Treasury and Congress gets this sorted out, my concern are clients are going to be paying ridiculous premiums for stand-alone coverage that they may not need if, in fact, (TRIA is) extended," she said.

"I think you're beginning to see in the industry conditional extensions" for terrorism coverage on property policies, said Liberty Mutual's Mr. Rose. "We'll see some withdrawal of capacity, and some carriers have said, beyond the Dec. 31 date, they will not provide the cover. I think very shortly the pressure will build, depending on what Treasury decides."

"It's a very real and very big issue for property carriers and for the insurance industry," Mr. Rose said. "There's a lot of interest in the industry to see it extended, and, if it's not, then there will be a reaction, from an underwriting standpoint, as to pricing and capacity."

"If TRIA is not reauthorized, we're going to have a pretty difficult situation," said Mr. Norstrom, adding that almost 60% of Aon's customers purchase terrorism coverage.

"Absent TRIA, terrorism coverage will be very scarce and very expensive," he said.

Reinsurance: Renewal rates fall, but not as much as in the primary market

Continued from page 14

evitable that the market will continue to soften, Mr. Stewart said. Recently, he renewed a major catastrophe program for which there was a "vast amount" of available capacity and the coverage was provided at a "reasonable rate," Mr. Stewart said.

Clement Booth, chairman and chief executive officer of Aon Re International in London, said cedents are paying "a little less" for their coverage than they were doing a year ago.

But although prices are falling, cedents that took higher retentions to offset some of the price increases during the hard market are unlikely to reduce those retentions as the market softens, Mr. Booth said. Many cedents now feel comfortable with the levels of retentions that they are taking, he said.

Price reductions for property reinsurance are a continuation of an existing trend said Richard DiClemente, president of New York-based THB Intermediaries Inc., a reinsurance intermediary.

"The prices, of course, have been dropping for quite a while now, anywhere from 10% to 25% on property renewals, primarily due to all the excess capacity that's in the marketplace, except for areas that are heavily exposed for cat business, as in wind areas, for example. We're even starting to see the (difference in conditions) business getting pressure downward, which is usually one of the signs the property market's really reaching a fairly soft level," he said.

Reinsurance report card

Reinsurance industry executives generally agree rates for coverage are declining in the following lines:

Property reinsurance: 10% to 25%, except for catastrophe-exposed business, where rates may be up at least 10%.

Casualty reinsurance: Rates continue to decline, with easing of terms.

Finite risk: Low demand amid industry investigations.

Large property business is "under significant pressure pricingwise all the way from the primary on up," said Chuck Hewitt, Boston-based executive vp, client development, for intermediary Benfield Blanch Inc. "The reinsurance rates may not be declining that much, but when you combine it with the declining primary rates, the amount that they are getting for the business" is down at least 10% year over year, which is on top of last year's rate declines, "so it's a continuing pressure." An exception is Florida catastrophe business, where rates may be up 10% to 20%, said Mr. Hewitt.

In the casualty area, "we're seeing a relatively small but continuing reduction in pricing in rates," but that is being driven by "having a much higher comfort level that the base pricing is much more adequate than it's been," with the industry's emergence from a "very rough period" in 1997-2002, said Mr. Hewitt.

But Dom Addesso, president of the direct treaty unit at Princeton, N.J.-based American Re-Insurance Co., said primary rates, particularly on the casualty side, are falling "more quickly and to a greater degree than we had expected, and that is particularly true in the large account arena. It's also something we're seeing in the (directors and officers liability) marketplace, and something that we didn't fully expect now," said Mr. Addesso.

Some observers see a change in the market's buying and selling habits. Insurers are buying reinsurance more opportunistically than

> Buyers are "viewing reinsurance as much more of a commodity."
>
> **Richard DiClemente**
> **THB Intermediaries Inc.**

they have in the past, said Mr. DiClemente. "They're viewing reinsurance as much more of a commodity, and buying just in areas where they feel there's a specific need, as compared to the past, where it may have been more relationship-driven," he said.

BMS Vision Re's Mr. Doyle said reinsurers are now more willing to venture into other market areas. "As things have gotten a little bit more competitive, there's been a little bit of expansion in terms of reinsurers being more willing to look at segments that six months ago, and certainly 12 months ago, they would have been more reluctant to look at," he said.

But despite this, little if any finite reinsurance is being written, which is a direct result of the scrutiny it has undergone by New York Attorney General Eliot Spitzer and others, say observers. "I think there's little demand for finite right now, just because it's going to receive scrutiny even if it's a legitimate finite deal," said Patrick J. Denzer, president and chief executive officer of intermediary John B. Collins Associates Inc. in Minneapolis.

The insurance industry investigations have in general made market participants more cautious, say observers. "I think most reinsurers, insurers and brokers are not putting their heads above the parapet," said John N. Gilbert Jr., chairman and CEO at New York-based Holborn Corp., a reinsurance intermediary. "They're keeping their heads down and hoping that this too shall pass," he said.

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Liability: Rates in general liability market mainly flat to falling

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sure.

Nick Hensgen, vp of risk management at ResCare Inc., a Louisville, Ky.-based provider of services for people with mental disabilities, said he is buying $2 million in per-occurrence limits with a $20 million three-year aggregate. "For the first time in four years," he said, the company received a "viable quote" and in late June was lining up the coverage with XL Ltd.

"This year there has been some new capacity" from existing players in the general liability market and from new entrants, he said.

"The market has very definitely gotten more competitive than what we have seen in the last couple of years," said Russell M. Johnston, New York-based president of domestic risk management at AIG Global Risk Management, a unit of American International Group Inc.

Liability rates generally are flat, though some prices for excess layers have dropped significantly, said Kathy Woodliff, senior vp, liability line of business director for Zurich North America in Schaumburg, Ill.

John Q. Doyle, president of American Home Assurance Co., an AIG unit in New York, characterized the excess market as "relatively stable. We're seeing very little price change and very little change in terms of coverage."

Mr. Doyle said he has seen some tightening of capacity in the excess market. "One competitor has exited and one is selectively nonrenewing parts of its book," he said.

Even as prices have flattened or fallen, sources note underwriters are not reckless, and more competition does not mean an across-the-board softening.

"We're not seeing anything irrational," said Charles H. Dangelo, president of AIG Global Risk Management. "It is a good competitive market out there."

Sources agree the current market is driven by healthy insurers with expanding capacity, and no one is predicting drastic rate reductions by underwriters eager to raise cash.

A return to such a market is unlikely, Ms. Woodliff said, as is a "prolonged rate decrease."

"We haven't seen a precipitous slide" in rates, said Jonathan Zaffino, executive vp of Willis Risk Solutions in New York. "We are seeing underwriters taking into account loss experience, and, for the good risks, we are seeing rate reductions of 5%, 10%, 15%."

"We're seeing the market operate within a pretty defined range in terms of scope of coverage and the rate environment," he said.

Mr. Wykes said he believes the general liability market will remain flat into 2006. He said he does think, though, that next year could see "some reductions if the capacity continues to increase. But the disclaimer there is if you have another 9/11 or you have extensive losses the industry has to absorb. If it's business as usual, I think you'll see a reduction."

Risks with less than stellar loss records and those in classes traditionally considered by underwriters as tough—pharmaceuticals for example—won't see the price breaks given to accounts with few claims in safer classes, said Mr. Johnston of AIG Global Risk Management.

Ms. Woodliff said some large accounts such as pharmaceutical companies or others with heavy product exposures have begun to self-insure their defense costs because insurers' appetite for that risk has changed.

And there are some smaller accounts that have had so much trouble finding affordable general liability insurance that they have turned to an alternative coverage source.

The general liability market for small to midsize construction risks went from "a very competitive soft market" a few years ago to "just stopping" in recent months, said Annette Singer, vp and director of United Contractors Insurance Co., a Washington-based risk retention group.

The RRG, approved by regulators last October, has written coverage for around 767 accounts since it began accepting risks in January. The insurer writes $1 million in per occurrence general liability limits and the same for products and completed operations. The coverage carries a $1 million aggregate.

"It's been phenomenal," Ms. Singer said of response to the RRG.

Buyers should evaluate alternative markets, even when there is ample capacity from traditional insurers, because some alternatives may be better suited to a company's objectives, said Willis' Mr. Zaffino. Even though most buyers are not being driven to alternatives by a lack of capacity or other marketplace dislocations, there are "many benefits to evaluating those programs," he said.

Although buyers in the traditional market are finding attractive prices, many are still eager to retain some exposure, sources said.

"It's our sense overall," said Mr. Brady of Marsh, that companies generally are maintaining or raising their retentions.

Mr. Wykes of Parker Drilling said that's the case for his company. A spike in energy prices has helped Parker keep more of its risk, he said.

"When our profits are up, we are able to take higher retentions and that reduces our insurance premiums," Mr. Wykes said.

Many large clients are taking significant retentions for general liability lines, said Mr. Zaffino, but also are seeing some stringent collateral requirements from insurers. "The level of required collateral is pretty significant and that doesn't seem to be changing at all," he said.

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TRIA clauses worrying

Brokers warn of policy option to renegotiate rates

Risk managers with midyear renewals need to consider the consequences of policy endorsements some insurers are linking to the possible expiration of the Terrorism Risk Insurance Act.

TRIA is scheduled to expire in December unless it is reauthorized by Congress. The act provides a federal reinsurance program that provides insurers with coverage in the event of losses related to terrorist acts.

In a move that "concerns us greatly," some insurers are adding policy endorsements that will allow them to "unilaterally renegotiate the premium in the event of the expiration of TRIA," said Tim Brady, national casualty practice leader at Marsh Inc. in New York.

The renegotiation can occur regardless of a policyholder's exposure to terrorism, even if no terrorist incident has taken place, he said.

After pressure from brokers, some insurers have agreed not to include the endorsement, Mr. Brady said.

The presence of the endorsements, Mr. Brady said, "should be of great interest" to all companies with renewals.

—By Michael Bradford

Overflow marine hull capacity keeping rate increases low

By BARBARA COCKBURN and SARAH VEYSEY

LONDON—Rates for marine hull business were generally flat or modestly higher at July renewals, as an abundance of capacity kept rates level.

Hull rates are generally remaining stable, said Jonathan Macey, a broker in the marine division of London-based Tyser & Co. Ltd.

After the terrorist attacks of Sept. 11, 2001, Mr. Macey said, rates for marine hull business rose by between 25% and 50%. Such increases have since slowed, and the stabilization is being driven by the abundance of capacity, he said.

Kevin Juniper, operations director at London-based Aon Ltd., said hull rates were rising by 5% to 10%, with plenty of capacity generally available for all but the largest risks.

Nicholas Bonnar, head of specialty lines at Aspen Re, a unit of Bermuda-based Aspen Insurance Holdings Ltd. in London, also noted that primary rates have risen for some marine hull business. Mr. Bonnar said, though, that the price increases are less pronounced than those in 2004 and 2003 and that the '03 and '04 price hikes were coming off extremely low rates before 2002.

One factor behind the continued increases, he said, is the high cost of raw materials—particularly steel—which has led to an expectation that claims costs will increase, he said.

Nic Wilmot, senior vp of Gard Services, a unit of Norwegian marine insurer Gard in Bergen, said that "while there has been a small decline in the number of (accidents), the average cost of (accidents) is rising. And, overall, the total claims picture is not getting any better."

Mr. Wilmot said that the increased cost of steel, coupled with rising freight traffic, could be in part to blame for rising claims costs. And the cost trends, he said, are deterring underwriters from slashing rates.

But Christine Dandridge, executive director at Lloyd's of London managing agency Atrium Underwriting P.L.C., said hull rates generally are down by 5% or less.

She said that hull business "is not a very profitable class" and added that the fact that "there's so much competition is a surprise." Some of that competition, she said, is coming from new entrants from Bermuda.

Simon Beale, a divisional underwriter at Lloyd's managing agency Amlin Underwriting P.L.C., said: "There are too many underwriters who want to write hull business, and that overcapacity drives the pricing down. The persistence of underwriters not letting go could be due to them harking back to the good times in the early 1990s, and those underwriters are expecting it to return."

Meanwhile, rates in the energy market have risen significantly, Ms. Dandridge said.

A key factor behind those increases has been Hurricane Ivan, which struck in the Gulf of Mexico last September, causing underwater mudslides that resulted in property and business interruption losses for many underwriters, she said.

"This has really challenged the market, and rates are going up substantially because of it," she said.

Mr. Bonnar also noted that offshore energy risks in the Gulf of Mexico are seeing price increases in the wake Hurricane Ivan, and some businesses that suffered losses from Ivan are seeing dramatic rate hikes.

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D&O: Marginal market moves

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of directors, its board audit committee and its corporate governance. Those changes have made it an attractive risk for insurers, even though HCA is in a tough industry, Mr. Hinton said.

In addition, HCA's premiums shot up more than sevenfold four years ago, though Mr. Hinton noted that was partly due to the purchase of additional coverage.

Most risks saw only marginal rate movement at renewal. Broker Michael D. Rice, the Denver-based managing director of Aon Financial Services Group, a unit of Aon Risk Services Inc., described the market as "stable," with typical rate movements falling within a range of 5% decreases to 5% increases.

Rate hikes, though, "are still rare, absent a risk having a problem or claims or something like that," observed Tony Galban, senior vp and global D&O product manager at Warren, N.J.-based Chubb Specialty Insurance, a unit of Chubb Corp.

John W. Keogh, president and chief executive officer of National Union Fire Insurance Co. of Pittsburgh, Pa., agreed that rates are generally lower. New York-based National Union is a subsidiary of American International Group Inc.

"Since January, I think, there has been some needed stabilization," with primary rates typically flat to 10% lower, he said.

Risks that faced the toughest renewals included financial institutions, pharmaceutical manufacturers and large technology companies.

Some of those risks, including insurers looking for their own D&O protection, not only faced higher rates but also could not find markets willing to write Side B coverage, Mr. Keogh said. Side B D&O insurance reimburses a corporate entity after it has indemnified its executive management for their D&O losses and legal expenses.

Any kind of risk with a large market capitalization also generally was unable to negotiate rate discounts, market experts say.

For the months ahead, brokers and insurers—who often complain that rates are too low given recent losses and claim activity—say they do not expect to see a marketwide rate spike, unless the market suffers severe losses.

"I'm not prepared to say that hardening is necessarily imminent," said Gary Dubois, the New York-based chief underwriting officer for Liberty Mutual Underwriters, a unit of Liberty Mutual Group Inc. of Boston.

Instead, Mr. Dubois observed, the market is "taking a breather" as it tries to figure out where to head with plenty of capacity but a full pipeline of claims.

Excess coverage rates are somewhat softer than primary rates, because that market is attracting more capacity, several executives say. Rates for low excess layers typically range from 75% to 80% of the underlying rate, while rates for high excess layers generally range from 85% to 90%, market executives say.

Those rates could create trouble for excess insurers, because losses are hitting those layers much sooner than in the past, Chubb's Mr. Galban said.

Many excess underwriters are "only a couple phone calls away" from a loss instead of "years of litigation away," he said. "They're in for a real punishing revelation."

But some excess insurers are beginning to stop chasing business that they would have to underprice, as some reinsurers are restricting how much insurers can cut rates, said Devin Beresheim, a managing director in New York with Marsh FINPRO, a unit of Marsh Inc.

Worldwide D&O market capacity also remains stable at an estimated $1 billion to $1.5 billion of stated capacity and $800 million to $900 million of capacity that they actually will use, market executives say.

While even actual capacity far exceeds risk managers' coverage appetite, more buyers are beginning to purchase a separate tower or are building up their existing towers of Side A-only coverage, market executives report. Side A coverage indemnifies directors and officers directly for legal fees and losses that corporate entities are barred from covering.

The interest in more Side A protection among the largest companies grew earlier this year, after executives at Enron Corp. and WorldCom Inc. settled D&O liability claims by agreeing to contribute a portion of their personal assets to the settlements. And that interest increased further during July renewals, market executives note.

Additional Side A protection would not aid executives under similar circumstances, market executives acknowledge. But it could provide more protection for executives at companies that are barred from indemnifying them or at companies that file for bankruptcy and see their traditional D&O coverage, which combines Side A and B protection, frozen as a corporate asset in bankruptcy court.

Few companies smaller than the Fortune 500 have Side A coverage, but "that's where you see people buy it" for the first time now, National Union's Mr. Keogh noted.

HCA's Mr. Hinton said he used some of the savings HCA obtained during renewals to purchase an additional $50 million of Side A-only difference-in-conditions limits.

While D&O insurers generally are not agreeing to significant rate cuts, many are offering risk managers coverage concessions, market executives report.

Risk managers increasingly are able to negotiate nonrescindability language for their policies, though insurers typically offer that enhancement only for Side A policies, market executives report.

Some insurers, though, now will include that language in primary Side A coverage on a case-by-case basis, rather than on just DIC Side A policies, Mr. Beresheim noted.

More insurers also will recognize and sever innocent executives from corrupt individuals for coverage purposes, market executives say. In addition, some risks have been able to either reduce the number of top executives whose knowledge of wrongful acts would be imputed to all covered executives or eliminate that coverage-limiting language altogether, market executives note.

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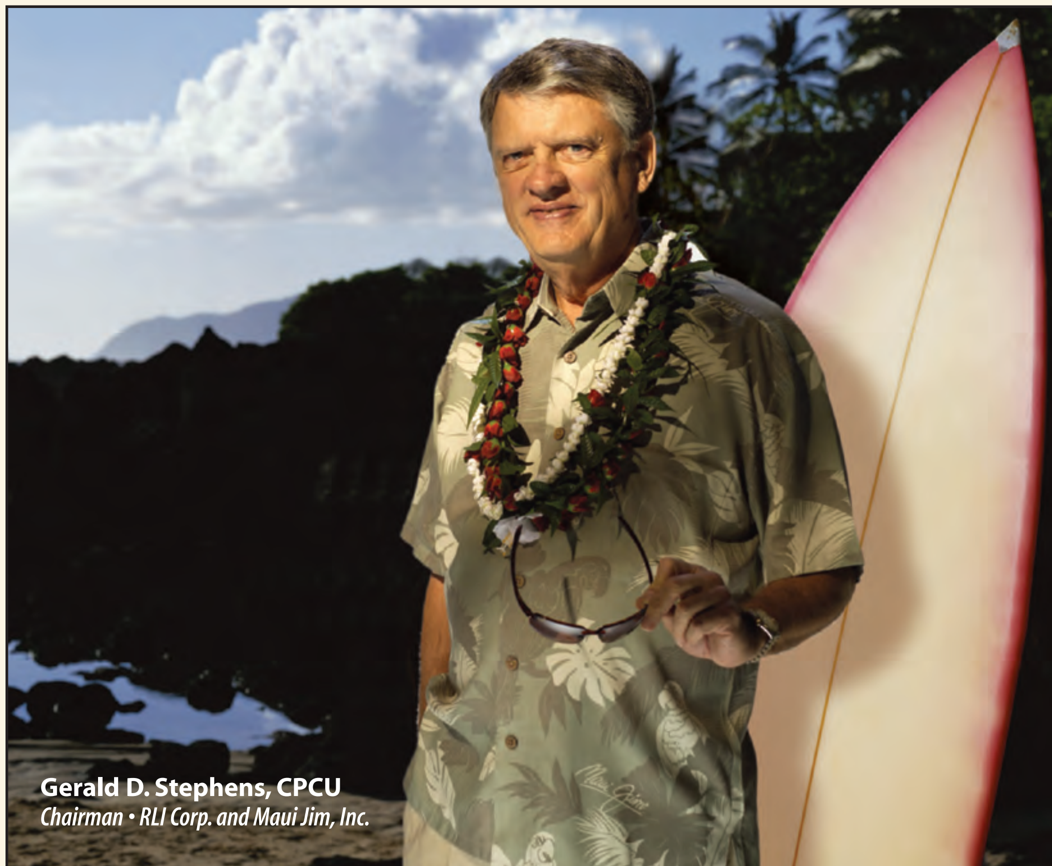

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E&O liability market stable for most risks

By RUPAL PAREKH

For the majority of risk managers renewing errors and omissions liability coverage at midyear, things could be worse.

Unlike the double-digit price hikes of the past two years, E&O rates are now stable to down slightly, insurers and brokers say, with no dramatic changes in the marketplace arising since January.

Buyers on average are negotiating rates that are flat or 5% to 10% lower than six months ago, said Michael W. Smith, president of the professional liability division at National Union Fire Insurance Co. of Pittsburgh, Pa., a New York-based unit of American International Group Inc.

Rate softening is more common, and slightly deeper, in excess layers than in primary layers, market executives report. If primary E&O rates decrease by as much as 10%, then excess E&O rates may go down as much as 15%, according to Sandy Codding, senior vp with Marsh &

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E&O: Most midyear renewals find rates stable to 10% lower than six months ago

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McLennan Cos. Inc.'s FINPRO group in New York and co-leader of Marsh's national E&O practice.

Exceptions to the broad decelerating trend exist in the form of slight upward movement—in the 5% to 10% range—on rates for large law firms and other large accounts with complex E&O exposures, according to Cathy Kelly, vp of the Hartford Financial Services Group's professional liability division in New York and head of Hartford's E&O practice.

While pricing is sluggish or holding steady for a variety of business sectors, professional liability renewals continue to be challenging for accountants, actuarial firms, managed care organizations, large technology vendors, banks and other financial institutions, insurers and brokers say.

Small accounts continue to be a preferred E&O risk, while "real estate hasn't been a difficult class" and "smaller technology has been easy," noted Clint Johnson, senior vp, ACE USA Professional Risk, a unit of Philadelphia-based ACE USA.

All classes of business should be able to find capacity, Hartford's Ms. Kelly said, though large risks may encounter difficulty in attaining all of their desired capacity. For law firms with more than 200 attorneys, for example, "we are more careful about where we attach," she said.

Accounting firms are currently struggling to secure about $100 million in deployed capacity, while large law firms are typically unable to find over $250 or $300 million, Marsh's Mr. Codding has observed.

Overall, however, the professional liability marketplace is more favorable for employers during this summer's renewals than it has been in recent years, executives say.

While there are still only a handful of players writing primary E&O coverage, risk managers are benefiting from increased competition in the excess E&O market, according to Kevin Kalinich, managing national director of technology and professional risks in Aon Corp.'s financial services group unit in Chicago.

In the past year, and even since January, the number of excess insurers in the E&O market has grown, with entrants coming primarily from London and Bermuda, Mr. Kalinich said.

Additionally, "Terms and conditions are substantially negotiable, as they were last year," said Geoffrey K. Allen, senior vp and E&O and e-risk product leader at Willis Group Holdings Ltd. in New York, with underwriters making no major changes to policies in the form of coverage restrictions.

"We were able to negotiate a 19% reduction on premiums, but they've had to raise the deductible a bit," said Jane A. Keegan, enterprise risk manager for the Port of Oakland, with responsibility for Oakland International Airport, in California, who recently completed a midyear E&O renewal. National Union is the port and airport's primary E&O insurer, writing the first $15 million in limits, while ACE USA is their excess insurer, writing the following $10 million, Ms. Keegan said.

Ms. Keegan is pleased with the structure of their E&O program and the rate reduction achieved during this renewal, and believes that "large amounts of senior employees retiring early" helped to improve their E&O exposure, leaving fewer, and younger, workers to potentially file claims.

One change she noted during the process was having increased paperwork to complete on behalf of her broker of several years, Marsh, than in the past. "I had never experienced this amount of disclosure or requirements to bind," she said.

MMC in January agreed to pay $850 million to end regulatory investigations of fraud. As part of its settlement, it and other brokers that have since entered similar settlements pledged to enhance transparency for clients, which Ms. Keegan says contributed to the extra paperwork.

The keys to a successful policy renewal are no secret, underwriters say: get started early, and present complete submission information.

"Risk managers should work closely with producers and meet their underwriters to ensure that all parties understand the risks to the best possible degree," said Ms. Kelly. "That's how they'll get the program they need that is also best for their business."

Face-to-face meetings are valuable not only between primary insurers and risk managers, Mr. Johnson of ACE said, but between higher towers of coverage as well.

Workers comp rates benefit large buyers

By ROBERTO CENICEROS and MEG FLETCHER

Flat to lower renewal rates for workers compensation coverage are now typical, while ongoing state reforms and the fate of the Terrorism Risk Insurance Act stand to affect future insurance purchases.

Large buyers, in particular, are currently benefiting from a bit more insurer competition and improved insurer profitability, observers say.

"We are seeing either flat renewals or renewals that are 5% to 10% less than expiring rates," said Craig Simon, managing director and national casualty marketing leader for Willis North America Inc. in New York.

Several other market observers say, though, that rates, on average, are staying closer to flat. They caution, nonetheless, that workers comp prices vary from account to account and from state to state, making generalizations difficult.

But the greater the policyholders' retentions, the more likely they will receive rate reductions from last year, said Tim Brady, managing director-national casualty practice for New York-based Marsh Inc.

With current pricing, "there is a lot more dancing around" than a year ago, Mr. Brady said. Rates are now about flat or range from 5% decreases to 5% increases, he said.

Excluding coverage for risks in California, where reforms have reduced pricing more than the national norm, rates for 2005 are running about flat to minus 2%, said Joe Treacy, assistant vp-workers compensation for Hartford Financial Services Group Inc. in Hartford, Conn.

Because of reforms enacted in California during 2003 and 2004, The Hartford filed to reduce rates in that state by an average of 18% for policies that incepted July 1, Mr. Treacy said.

Agricultural processor Archer Daniels Midland Co. found that, for nationwide excess workers comp coverage that renewed July 1, pricing remained relatively flat from a year earlier, according to Michael Lusk, ADM's corporate vp for insurance and risk management in Decatur, Ill.

ADM purchased its coverage from Old Republic Insurance Co. and experienced a slight premium increase only because it increased its payroll, Mr. Lusk said.

David Turner, senior vp-risk management for Chicago-based Equity Office Properties Trust, said that

while renewing coverage last summer, he experienced flat pricing. This year, he expects a 5% to 6% decrease, on average.

Mr. Turner explained that he expects better pricing over last year because workers comp insurers have returned to profitability. Additionally, risk managers' efforts to prevent losses are paying off with a general decrease in overall claims frequency, he said.

But there is less pressure for workers comp underwriters to lower their rates than there is for other lines of insurance, noted Paul Ramont, vp of workers compensation product management for St. Paul Travelers Cos. Inc. in Hartford, Conn. Mr. Ramont added that while workers comp results are improving, the line is still not as profitable as other forms of insurance.

A National Council on Compensation Insurance Inc. report on insurer results released in May states that insurers' calendar year combined ratio dropped four points, to 105%, the best performance since 1997. Insurers' accident year combined ratio dropped to 94%, representing the best performance in over a decade and a 45-point improve-

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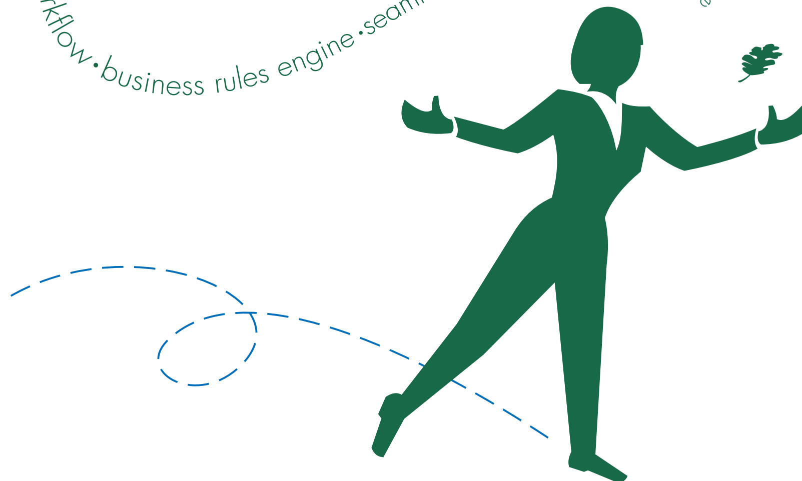

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Workers comp: Reforms in California credited with driving down rates

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ment in five years.

But with medical cost inflation rising at about 10.5%, insurers cannot lower their rates significantly even though they are showing improvements, said John Flatley, workers compensation treaty product leader for GE Insurance Solutions in Kansas City, Mo. Mr. Flatley said that he is seeing neither significant rate increases nor rate decreases, as most insurers strive to maintain rate adequacy, stay ahead of inflation and keep their results from slipping into the red.

Overall, Mr. Flatley described the workers comp market as "stable."

But more insurers are committing increased capacity to the line, Travelers' Mr. Ramont said. Insurers that had shown less interest in the workers comp market have in the past 18 months grown more comfortable with offering coverage, he said.

There currently exists "more vigorous" competition for large accounts, Willis' Mr. Simon said. But there is also competition for middle-market risks, he said.

"Capacity is generally easy to find for most companies that are financially well managed and can prove that they are taking an active interest in reducing and controlling their losses," Mr. Simon added.

> California workers comp "reforms are the most potentially transformative we have seen in the last 10 to 15 years."
>
> **Paul Ramont**
> **St. Paul Travelers Cos. Inc.**

There are also more insurers willing to provide a voluntary-market alternative for certain companies in assigned risk plans, said Jonathan Hall. Mr. Hall is risk manager for Minneapolis-based EMPO Corp. Inc., a professional employer organization that provides administrative services, including some workers comp claims handling and loss control.

Risk managers and insurers, meanwhile, said they hope that the expected results stemming from reforms adopted in California will eventually lead the workers comp market overall to make improvements. The reforms have already attracted some additional insurance capacity to California and have begun to drive down rates there, more so than has been observed in other U.S. locations.

"The reforms are the most potentially transformative we have seen in the last 10 to 15 years," said Mr. Ramont of St. Paul Travelers.

Some of the most significant aspects of California's reforms include their call for "evidence-based" medicine and their allowance of employers and insurers to steer employees into networks that can help control provider practices.

If those measures can drive down losses and rates in California, then employers in other states are likely to seek similar measures in their jurisdictions, Mr. Ramont said.

"If it can work in that environment—which, from a legislative and judicial standpoint, has not all ways been considered pro employer—a lot of it will migrate," Mr. Ramont predicted. But he noted that expected workers comp changes have not always played out as desired in California, and so insurers remain cautious.

On June 1, Texas also adopted a major reform law allowing employers and insurers to direct employees into new physician networks and calling for the adoption of treatment guidelines.

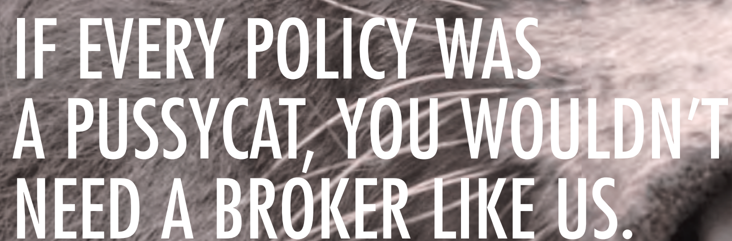
For their part, more employers are making sure they get the most from their insurance purchases by demanding more information from insurers. In particular, more policyholders want details about what portion of their premium dollars is going to insurer administration costs and what portion is going to medical costs, said Anne Ritter, practice leader in Hartford, Conn., for Aon Workforce Strategies, a unit of Aon Corp.

"People are asking much more about every single element," Ms. Ritter said. Some of her clients are going so far as to include in their insurer request for proposals 40 or so workers comp medical claims and asking insurers how they would price each claim. That way, they can better determine what the insurers propose to charge them for certain medical services.

One of the biggest concerns hanging over buyers and insurers alike is the fate of the Terrorism Risk Insurance Act, which currently is set to expire on Dec. 31. TRIA affects employers' workers comp liability differently than other lines of insurance, because nearly every state mandates terrorism coverage for workers comp injuries.

Employers that purchase workers compensation policies with TRIA coverage may face additional unspecified premium charges for the portions of the policies that are in force after TRIA expires, should lawmakers fail to renew the act. Workers comp insurers asked the Boca Raton, Fla.-based NCCI to prepare an endorsement to address a premium increase in such cases, but an NCCI spokesman said he could not comment on how frequently the endorsement has been used.

Insurers say, though, that if TRIA were to expire, though, capacity could become more of an issue than pricing, as insurers re-evaluate their commitment to the workers comp market.



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Abating health care costs keep rate hikes in single digits

Cost-shifting, insurer profits and health promotion programs slowing increases to about 7% to 9%

By JERRY GEISEL

Health care plan cost increases are continuing to ease, with average rate hikes in 2006 likely to be in the range of 7% to 9%, marking the first time in about half a decade that typical rate increases will not go into double-digit territory.

Cost increases first began to moderate this year, after several consecutive years of accelerating rates. In 2005, rate hikes generally were in the range of 10% to 12%, a decline from the 15% to 20% rate increases that were common in 2003 and 2004.

Now, with two consecutive years of slowing rate hikes, experts believe the era of double-digit health care plan inflation is over, at least for a while.

"We are seeing signs that cost increases are moderating, with high single-digit increases becoming much more common," said Ed Lehman, West division director in Los Angeles of Watson Wyatt Worldwide's group and health care practice.

"Cost increases are abating," concurred Dave Guilmette, a managing director with Towers Perrin in Stamford, Conn.

Several factors, experts say, are driving the slowdown in health plan cost increases, including:

- Cost-shifting. After years of refusing to shift costs to employees, many employers starting in 2004 began to significantly hike deductibles and other cost-sharing requirements.

By boosting deductibles, for example, many more claims simply will not pierce the level at which the employer pays all or some of the cost, while employees will use services more carefully, said Barry Barnett, a principal with the HR services unit of PricewaterhouseCoopers L.L.P. in New York.

"After a while, a $100 deductible begins to lose its potency," said Paul Harris, a consultant with Hewitt Associates Inc. in Norwalk, Conn.

- Insurer profitability. With most managed care plans enjoying flush profits, insurers have topped off their reserves and are competing more aggressively for business.

"They (insurers) have built their reserves and surplus and now are trying to grow," said Harvey Sobel, a principal and consulting actuary in the Secaucus, N.J., office of Buck Consultants, a unit of Affiliated Computer Services.

"Carriers are in a much better financial position" to be more aggressive on rates, said Bill Sharon, a senior vp with Aon Consulting in Tampa.

- Provider rate moderation. Both hospitals and physicians are moderating their demands for big rate increases from insurers, taking pressure off insurers, in turn, to increase rates for employers.

"We are not seeing the ridiculous increases from providers that were common just a few years ago," said Blaine Bos, a consultant in the Minneapolis office of Mercer Human Resource Consulting. Negotiations between insurers, Mr. Bos noted, have gotten a lot less contentious.

"Providers may have felt they have done a good job of catching up," said Buck Consultants' Mr. Sobel.

- Health promotion programs. Employers in increasing numbers have added programs to give employees incentives to participate in programs designed to detect health conditions such as hypertension before they result in costly medical treatments.

"These programs are becoming very widespread" and can be very effective in controlling costs, said Mercer's Mr. Bos.

Additionally, employers are testing the waters and are looking for other ways to keep costs increases to more reasonable levels. One example: limiting their coverage to a flat dollar amount for prescription drugs in a certain class, such as cholesterol-lowering medications, to make employees more aware of the cost differences not only between brand names and generics but also the differences in costs among branded products in the same class of drugs.

Such a design change starts to drive employee behavior, said Towers Perrin's Mr. Guilmette.

While cost increases are easing, experts point out that they still are running several times higher than inflation overall. And while the percentage hikes are lower compared to a few years ago, the actual dollar increases are very high, because the base from which cost increases are measured now is much bigger than it was a few years ago.

Yet there is much greater optimism that cost increases can be kept to more reasonable limits compared to a few years ago, when health care inflation was running rampant.

Part of that optimism is grounded in the knowledge that, slowly but surely, much more information about the quality of health care services is becoming available. With that kind of information available, employees will be able to make better, more cost-efficient choices.

"You can drive the system when you have quality information," Mr. Bos observed.

"I am optimistic about the direction the health care system is going," Mr. Sharon said.

> "We are not seeing the ridiculous increases from providers that were common just a few years ago."
>
> **Blaine Bos**
> **Mercer Human Resource Consulting**

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THE BENEFITS OF BETTER COVERAGE.

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Blues plans launch incentives despite doctors' concerns

By LAURA B. BENKO

Blue Cross & Blue Shield plans have dived headlong into pay-for-performance for physician services despite lingering questions about how best to design such programs and hesitation among doctors to embrace the trend.

According to a survey, 29 of the nation's 51 Blues plans have launched a total of 37 pay-for-performance programs in 32 states, and 14 more Blues plans expect to roll out similar programs soon. These efforts ultimately could cover physicians treating 84 million patients in 46 states, according to the survey by Harvard Medical School researchers.

Only six Blues plans publicly report physicians' performance, but eight others have said they planned to do so by 2006 or 2007.

Dr. Allan Korn, chief medical officer at the Blue Cross & Blue Shield Assn., which commissioned the survey, said the organization intends to collaborate with Harvard and the University of California at San Francisco to study incentive programs to assess what works.

"We do believe that the way to successfully impact quality and outcomes with integrity is to improve the level of medical care every physician in the United States is capable of providing," Dr. Korn said in June at a news conference.

Right now, universal physician participation seems far off. Among Blues-plan providers, 59% of primary-care physicians were eligible to take part in a pay-for-performance program, and 68% of those chose to do so. Among specialists, 34% were eligible to participate and just 48% of those opted to do so.

Many physicians report concerns about the validity and fairness of the measures used to judge their performance and discontent with payment methods. Others say they are frustrated by the lack of standardization across programs.

All 37 incentive programs offered by the Blues plans gauged doctors on compliance with a variety of clinical guidelines. Twenty-two incorporated patient-satisfaction scores, 17 measured doctors' accessibility to patients, and 15 scored physicians on their use of information technology.

Many programs also used cost-related measures, such as pharmacy utilization, but the survey did not specify to what extent.

Laura B. Benko is a reporter for Modern Healthcare, a sister publication of Business Insurance.

Hospitals overspending to meet quake standards

By LAURA B. BENKO

California hospitals are at risk of overspending on large construction projects as they race to improve their earthquake readiness, according to a research brief by Moody's Investors Service.

Many California hospitals exceeded their original spending estimates by 15% to 40% in recently completed major capital projects, Moody's said. Overspending is likely to continue as other hospitals scramble to complete extensive retrofitting, Moody's analyst Lisa Martin said.

California law requires hospitals to ensure by either 2008 or 2013 that their buildings will withstand a major temblor and to guarantee by 2030 that the buildings could continue operating after a quake. State officials have estimated that 40% of all hospital buildings need upgrades to meet the standards. That could cost the state's hospitals up to $41 billion.

"While hospitals nationally are at risk of overspending on large projects, we're seeing an early trend developing in California, where hospitals face a number of additional regulatory challenges, and the sheer size of the construction projects magnify their risk," Ms. Martin said.

The California Hospital Assn. is sponsoring a bill aimed at easing some of the pressure. The bill, which is before the state Assembly's health committee after passing the Senate in May, would allow hospitals to skip the 2008 deadline as long as they meet the stiffer 2030 requirements by 2020.

Laura B. Benko is a reporter for Modern Healthcare, a sister publication of Business Insurance.

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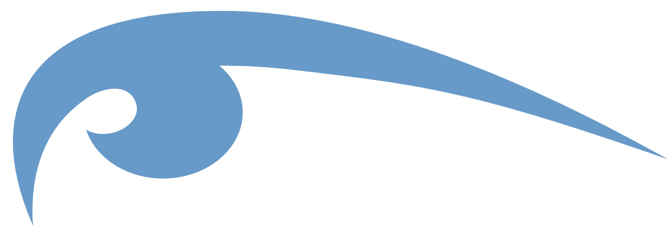

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PRODUCTS & SERVICES

New coverage launched for independent directors

NEW YORK—National Union Fire Insurance Co. of Pittsburgh, Pa., a unit of American International Group Inc., has launched an independent director liability insurance program.

New York-based National Union's IDL Max consists of Side A excess liability insurance with difference in conditions coverage for independent directors of publicly traded corporations. The program also drops down to provide first-dollar coverage should the corporation refuse to indemnify the independent director and the traditional D&O policy fail to respond due to threatened or actual rescission of the underlying insurance policy, wrongful refusal to pay by any underlying carrier or financial insolvency of any underlying carrier, among other situations.

For more information, e-mail *managementliability@ aig.com* or visit *www.aignationalunion.com*.

Monitor releases EPL program for restaurants

ROLLING MEADOWS, Ill.—Monitor Liability Managers Inc., a subsidiary of W.R. Berkley Corp., is offering a new employment practices liability program for restaurants.

The customized EPL program, Restaurant InsurePak, is available to full-service restaurants, fast-food restaurants, cafeterias, food services contractors and vendors. It is targeted to small-to-midsize restaurants ranging from five to 2,000 employees. Liability limits of up to $5 million are available.

For more information, contact the Rolling Meadows, Ill-based company at 847-806-6282 or visit *www.monitorinsurepak.com*.

Online courses target sexual harassment

ST. GEORGE, Utah—LearnKey Inc., a provider of online training courses, has developed a sexual harassment prevention training series for businesses.

The Preventing Sexual Harassment Series helps companies comply with initiatives and improve workplace environments. The series consists of two online courses, "Preventing Sexual Harassment for Employees" and "Preventing Sexual Harassment for Employers/ Supervisors." Each course is self-paced, and the courses can be taken at any computer with Internet access. Employers also have the ability to track which employees have taken the courses.

The courses provide information on employment law, the different types of sexual harassment and the proper procedures for dealing with each type. The courses are led by an attorney from the Seattle-based law firm of Lane Powell Spears & Lubersky L.L.P.

To learn more, contact the company at 866-306-7241 or visit *www.compliancetraining.org*.

CDHP available for Illinois employers

ROSEMONT, Ill.—Flexible Benefit Services Corp. and Blue Cross & Blue Shield of Illinois have partnered to offer a consumer-driven health care program for Illinois employers.

The FlexWORKPLACE program offers voluntary health benefits that help employees customize their individual health plans according to their budgets and needs. There are no participation requirements, and an employer contribution is not required. The program includes FlexHSA, which consists of a BCBSIL-compatible health savings account with banking and investment options. It also features HSA55, which is an HSA designed for individuals age 55 and older. HSA55 is paired with a compatible BCBSIL health plan, allowing individuals to accelerate their tax-free contributions to help build savings for retirement and post-retirement health benefits.

Chicago-based BCBSIL supports FlexWORKPLACE by providing access to its consumer-driven health plans, including BlueEdge Individual HSA, BlueEdge Individual HSA 5000, High-Deductible Plan, Children's Major Medical Plan and Children's Alternative Plan. FBSC provides distribution as an independent general agent for BCBSIL, offering its FlexHSA and HSA55 products.

For more information, contact the Rosemont, Ill.-based company at 877-353-9967 or visit its Web site at *www.flexworkplace.com*.

IREM updates book on building security

CHICAGO—The Institute of Real Estate Management has published its second edition of "Spotlight on Security for Real Estate Managers."

The book has been updated and expanded to address the latest building security measures following the terrorist attacks of Sept. 11, 2001, and contains the latest efforts available for protecting buildings and occupants. Some of its highlights include legal issues including negligence and liability, crime prevention strategies and asset protection strategies for a variety of properties. New chapters cover protecting computers and data from viruses and hackers, security in the mailroom and security at construction sites, among other topics. New appendices include Internet resources and a recommended reading list.

To order the book, contact the Chicago-based IREM customer service department at 800-837-0706, ext. 4650, or online at *custserv@irem.org*. More information can also be obtained by visiting the organization's Web site at *www.irem.org*.

Second edition of HSA guide available

WASHINGTON—The HSA Insider Inc. and the HSA Coalition have published the second edition of "HSA Road Rules," which provides information on the health savings account marketplace.

The guide is available for employers, insurers, administrators, trustees and consumers, and it includes nine new HSA road rules for administrators, banks and employers to help ease HSA administration. The guide is published in an easy-to-understand format and provides facts as they apply to the targeted readers.

To download the "HSA Road Rules," visit *www.hsainsider.com*.

Chubb offers bonds for big projects

WARREN, N.J.—Chubb Corp. is offering a surety bond for construction projects over $500 million.

The SuretyPlus product intends to respond to the protection needs of large-scale construction projects. SuretyPlus provides payment bonds of up to $250 million in excess of a minimum of $500 million of primary bond limits. The product is available through Atlantic Star Intermediaries L.L.C., a wholesale broker based in New York.

More information can be obtained by contacting Bob Kelly, vp-Chubb Surety, at 908-903-4584 or Nate Lampard, vp-Atlantic Star Intermediaries, at 212-233-5015.

Venture expands hospitality program

WEST CHESTER, Pa.—Venture Insurance Programs has expanded its hospitality program targeted to full-service restaurants, hotels and resort properties.

The new addition to the Venture Hospitality program offers property, general liability, liquor liability, commercial auto and umbrella coverage.

The package is underwritten by Hannover Insurance Co., a property/casualty insurer based in Worcester, Mass. The limits available for property are up to $20 million per location, general liability limits are up to $2 million aggregate, auto and liquor liability limits are up to $1 million aggregate and umbrella limits are available up to $25 million.

More information can be obtained by contacting Annamarie Keen, director of corporate sales, at 800-282-6247, ext. 278, or visiting *www.ventureprograms.com*.

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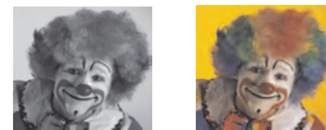

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PPF evaluating Heath's underfunded plans

Broker is first solvent employer to get OK

By SARAH VEYSEY

LONDON—Heath Lambert Group has become the first solvent employer to get preliminary approval to transfer pension obligations to the United Kingdom's recently created guaranty fund for pension benefits.

London-based Heath Lambert last week received notification from the London-based Pension Protection Fund that its three defined benefit pension plans have been validated to enter the fund's assessment period. Following that period, which could last a year or longer, the plans may be admitted to the rescue fund.

While some observers say that cases like Heath Lambert's will be relatively rare, others warn that such moves could encourage other solvent companies to make pension promises they know they can't keep and then push the burden onto other employers through the fund.

Heath's underfunding

- **6,000:** Number of participants in Heath Lambert Group's three defined benefit plans. The plans were closed to new participants between 2000 and 2002.
- **£210 million:** Amount of estimated underfunding of the Heath plans at time of application to the Pension Protection Fund.
- **£155 million:** Heath Lambert Group's consolidated revenues in 2004.

Heath Lambert last week became the sixth company to enter the PPF's assessment period since the fund, which is similar to the Pension Benefit Guaranty Corp. in the United States, began operations in April.

In May, Heath Lambert said that, as the final part of a financial restructuring of the company that has been underway since December 2003, it would seek to enter the three plans into the PPF.

Sources said that investors in Heath, who provided capital as part of the restructuring, had agreed to do so on the condition that a resolution was found for the company's pension funding problem.

Plans in peril

Under U.K. Financial Reporting Standard 17, which calculates the assets and liabilities of defined benefit pension plans, the Heath Lambert plans had a combined deficit of about £210 million ($382.2 million) when the company approached the PPF, according to a spokesman for Heath Lambert. He declined to provide further details about the assets and liabilities of the plans.

The three defined benefit pension plans—the Heath Lambert Group Pension Fund, the Lambert Fenchurch Pension Fund and the Morgan Insurance Brokers Pension Fund—all were closed to new entrants between 2000 and 2002, according to the spokesman. As part of the recent restructuring, the defined contribution plan that replaced those plans will be modified with enhanced benefits, the Heath Lambert spokesman said, declining to provide details.

About 6,000 current and former staff of Heath Lambert participate in the three plans, according to the spokesman.

The PPF is intended to safeguard the pension benefits of employees at insolvent companies with underfunded plans, though exceptions may be made if a company can

See HEATH / next page

PHOTO COURTESY OF AON LTD.

St. John's University students Allah Jackson, left, and Marco Perci , holding the flag, with a waiter at Lloyd's of London. The students conducted insurance market research funded by a trust that Aon and Marsh established after the Sept. 11, 2001, terrorist attacks.

Trust by Aon, Marsh funds U.S. students' London market study

LONDON—Two students from St. John's University in New York last week presented their findings from a month-long study trip to a group of senior London insurance market figures.

The students, Allah Jackson and Marco Perci, are undergraduates in risk management and insurance at the School of Risk Management, Insurance and Actuarial Science at St. John's Peter J. Tobin College of Business. Their research trip was funded by the U.K. Market Charitable Trust, a fund set up by Aon Ltd. and Marsh Ltd. in the wake of the Sept. 11, 2001, terrorist attacks on the United States.

Messrs. Jackson and Perci last month became the first students sponsored by the trust to undertake a month-long education program in the Lloyd's of London and the London company

See ST. JOHNS / page 32

Evidence of steering found Down Under

Australia sees a few problems among brokers

By BARBARA COCKBURN and ELIZABETH FRY

SYDNEY, Australia—The Australian Securities and Investments Commission has completed its review of brokerage compensation practices, concluding that while there was no evidence of "systemic misconduct," there are some "deficiencies" in Australian insurance brokers' disclosure of compensation and their management of conflicts of interest.

Australian risk managers said the report underscores the need for brokers to be more upfront about their compensation and for buyers to seek that information.

ASIC noted that while its review of brokers—which covered both commercial and personal lines property/casualty firms—did not uncover any instances of bid-rigging such as that alleged against Marsh & McLennan Cos. Inc. in New York Attorney General Eliot Spitzer's October 2004 lawsuit against the brokerage, the Australian regulator said it did see "limited" evidence that suggested some steering of business may exist in the marketplace.

In its report, issued Thursday, ASIC said that it would contact individual companies to resolve any potential problems identified. The regulator did not disclose what companies were involved in the examination.

ASIC's investigation, which began late last year, examined the practices of 15 brokers—comprising small, medium and large firms—by reviewing statements and documents it obtained from the companies that generally applied to an 18-month period ending in December 2004. ASIC also asked nine insurers for information on their relationships with brokers, the report notes.

ASIC's review determined that eight of the brokers it examined had some kind of contingent commission arrangement with insurers at the time of the review.

ASIC notes in the report that such compensation generally is legal only if "inherent conflicts are appropriately managed" and such pay is disclosed.

The report notes that all brokers have an obligation under Australian law to manage conflicts of interest and to disclose some information about remuneration. In addition, personal lines brokers face even stricter disclosure rules, ASIC notes.

"The brokers generally considered that most, if not all, conflicts of interest arising from contingent and other preferential remuneration arrangements could be adequately managed by disclosure. However, where contingent remuneration arrangements that give rise to a conflict of interest become very significant to broker revenue or profit, or are too complex to adequately disclose, ASIC considers

See ASIC / page 32

Updates

QBE merges some European units

QBE European Operations, the European arm of Australian insurer QBE Insurance Group, has merged its non-Lloyd's of London underwriting operations. London-based QBE European Operations said that its European commercial and European retail divisions will trade as QBE Insurance (Europe).

Buyers split on plan to revise safety law

Roughly half of the respondents to a survey said they believe a proposal to toughen corporate manslaughter law in the United Kingdom would promote better health and safety performance. The survey, conducted by the London-based law firm of CMS Cameron McKenna, polled 320 risk managers, health and safety managers and company lawyers about the U.K. government's proposal, currently in a public comment period, to revise corporate manslaughter law to make it easier to prosecute companies when safety failures lead to the deaths of employees or third parties.

ABI links climate to higher storm losses

Climate change could result in as much as a two-thirds increase in the worldwide cost of major storms by the 2080s, according to the Assn. of British Insurers' global analysis of the potential effects of projected climate-change trends. "Financial Risks of Climate Change" notes that under "high-emissions scenarios"–in which carbon dioxide levels double–weather changes could boost insurers' capital requirements for U.S. hurricanes by more than 90% and for Japanese typhoons by more than 80%.

Cooper Gay expands Middle East business

The Cooper Gay Group, a Lloyd's of London-based insurance and reinsurance broker, now has expanded its business to cover all lines in the Middle East, following the announcement of a partnership with marine insurance broker LMG (ME) E.C. in Dubai.

Aon Re U.K. names new CFO

Aon Re U.K. has appointed London-based Michael Reynolds as chief financial officer of Aon Re International. Mr. Reynolds will also continue in his role as CFO for Aon Captive Services Group and will join the boards of Aon Re U.K. and Aon Re International. Mr. Reynolds is currently responsible for the financial management of the three business units of Chicago-based Aon Corp.

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Heath: Broker is first solvent employer to get OK from Pension Protection Fund

Continued from previous page

demonstrate that it risks insolvency if its plan is not accepted into the Pension Protection Fund, sources say.

The fund guarantees 100% of benefits to members already in receipt of a pension and 90% of benefits owed to members still working, up to an annual limit of £25,000 ($45,500). Once a pension plan has been finally admitted into the PPF, the fund can take an equity stake in the sponsoring employer.

Although Heath Lambert is not itself insolvent, a spokesman for the insurance brokerage said that it believed the plans would be eligible for the fund in part because they are held by a separate subsidiary company, Heath Lambert Management Ltd., which is insolvent and was wound up in May.

In a statement, the Pension Protection Fund said that the fact that this subsidiary entity had entered administration was one of the factors making the Heath Lambert pension plans eligible for consideration.

During the assessment period, trustees of Heath Lambert's defined benefit plans must continue to pay benefits up to the PPF level, a spokesman for the PPF explained. In its assessment, PPF will attempt to determine whether there is any chance the plans can be maintained by the company and provide benefits that are at least equal to PPF benefits.

A spokeswoman for the United Kingdom's Pensions Regulator, which regulates occupational pension plans in the United Kingdom, noted that while Heath Lambert is not itself insolvent, the regulator determined that both members' benefits and staff jobs were at risk if the company were not allowed to apply to the PPF for relief.

In order for sponsoring employers that are not insolvent to be able to access the PPF, the Pensions Regulator must be satisfied that there is no realistic chance of the employer being able to fund its pension deficit in the future, the spokeswoman explained.

In such cases, the regulator looks at all the circumstances of the company, the spokeswoman noted, and companies that are deemed able to continue to fund their pension deficits without risking insolvency will not be admitted to the Pension Protection Fund.

"It is not a case of just dumping pension liabilities onto the Pension Protection Fund," the spokeswoman said, adding that one of the statutory objectives of the Pensions Regulator is to try to prevent situations arising that cause claims for compensation from the fund.

More to follow?

Some observers, though, say that Heath Lambert's move is troubling to other sponsors of defined benefit plans.

Donald Duval, chief actuary at Aon Consulting in London, said that by validating the Heath Lambert pension plans, the Pension Protection Fund "has made it morally acceptable for businesses to promise pensions they cannot afford, then dump their pension liabilities into the Pension Protection Fund."

"The costs will be borne by those responsible businesses who keep the promises they have made," he added.

The PPF, which was set up with an initial £400 million ($728 million), backing from the government, is currently funded by a flat-rate levy on employers that operate defined benefit pension plans. Next year, the funding is slated to be changed to a risk-based levy, which will be based on how likely an employer is to tap the fund.

A spokesman for the National Assn. of Pension Funds said that the London-based organization had concerns about the principle of a sponsoring employer that is not insolvent being allowed to access the PPF.

He said the NAPF was concerned that, although it is expected that cases such as Heath Lambert's would be rare, "other companies who are struggling" might be encouraged to place their pension funds into the PPF in return for the PPF taking an equity stake in the ongoing company.

Without commenting on the specifics of the Heath Lambert case, Tim Keogh, a European partner at Mercer Human Resource Consulting in London, said that the Pensions Regulator is likely to be strict about testing future cases of solvent companies that claim they could become insolvent unless they can shed their pension liabilities.

It will not be sufficient for a company to demonstrate that its pension deficit is larger than its assets, Mr. Keogh said, noting that the Pensions Regulator has indicated that a company must show that there is no realistic chance of the company ever being able to pay that deficit off.

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IN THE SUPREME COURT OF BERMUDA
COMPANIES (WINDING UP)
NO. 496 of 1993
IN THE MATTER OF THE COMPANIES ACT 1981
AND IN THE MATTER OF

THE BERMUDA FIRE & MARINE INSURANCE COMPANY LIMITED

(IN LIQUIDATION)

NOTICE TO CREDITORS AND CONTRIBUTORIES OF INTENTION TO APPLY FOR RELEASE

Take notice that I, the undersigned, as one of the Joint Liquidators of the above-named Company, intend to apply to the Court for my release, and further take notice that any objection you may have to the granting of my release must be notified to the Court within twenty-one days of the date hereof. All of my former duties and responsibilities shall be assumed by John Christopher McKenna and Gareth Howard Hughes, the remaining Joint Liquidators of the company.

A summary of the receipts and payments to March 31, 2005 may be obtained from the Joint Liquidators or the company's website (www.bfmic.bm).

Enquires with respect to the above should be directed to:

The Joint Liquidators of The Bermuda Fire & Marine Insurance Company Limited (In Liquidation), C/o Ernst & Young, P.O. Box HM 463, Hamilton HM BX, Bermuda

Attn: Jahni Lindsay

Dated this the 25th day of June, 2005

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Pensions: Legislation would stiffen funding rules

Continued from page 1

of Mercer Human Resource Consulting in New York.

Others note that a cash balance plan-related amendment—proposed by Rep. Boehner—attached to the bill also could bolster the defined benefit plan system. That amendment would make clear that the basic design of most, if not all, cash balance plans is not age discriminatory. The amendment, though, would apply only to new or converted cash balance plans set up after the amendment's effective date.

That would end the uncertainty fueled by a 2003 federal judge's ruling involving IBM Corp.'s cash balance plan. The ruling said that providing older and younger employees in cash balance plans with the same benefit and interest credits is age discriminatory because those credits would buy a smaller retirement annuity for the older employee than the younger employee.

Well over 1,000 employers in the last two decades have converted their traditional plans to cash balance plans, which legally are defined benefit plans. But amid legal uncertainties, that move has stopped, leading some employers with cash balance plans to close them to new employees, as IBM has done, and expand existing defined contribution plans; other employers with traditional plans are switching to defined contribution plans.

If that trend continues, the defined benefit plan system could wither away. "The crisis is (to keep) the defined benefit plan system alive and that requires resolving the cash balance plan and hybrid plan issue," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

"Rep. Boehner's bill is a positive step in that direction," Mr. Brown added.

Nevertheless, benefit experts say the bill needs to go further so that the cash balance plan amendment is retroactive. Rep. Boehner, noting that a prospective effective date for the cash balance provision is all he could obtain for now, said he will continue working to broaden the amendment.

The heart of the legislation, though, is aimed at improving plan funding to avoid future United Airlines-type pension failures. Despite complying with federal rules, United's plans were only 41% funded when the PBGC took them over, resulting in a $6.6 billion PBGC loss, by far the agency's biggest, and a $3.2 billion loss to plan participants for the benefits they earned but the PBGC did not guarantee.

To improve plan funding, the legislation would:

- Require employers to fully fund their plans and amortize plan liabilities over seven years. Current law generally considers plans to be fully funded when they are only 90% funded, while in some cases companies can take decades to amortize liabilities.
- Curb the use of so-called credit balances by employers with underfunded plans. Credit balances are earned for contributions that exceed the minimum required contribution and are used to offset—regardless of a plan's funding level—future required contributions.
- Bar plans that are less than 80% funded from increasing benefits.
- Bar participants in plans that are less than 60% funded from accruing new benefits. Sponsors of such plans also would have to use more-conservative actuarial assumptions in valuing benefits.
- Require employers to use interest rate assumptions that are tied to plan demographics and based on corporate bond yields of different maturities. Under current law, all employers—regardless of how their plan demographics vary—use the same interest rate, based on an index of long-term corporate bonds, to value liabilities.

Additionally, the measure would gradually raise PBGC premiums. For employers with plans that are least 80% funded, the base $19 per participant premium would rise over the next five years to $30, while for plans that are less than 80% funded, the increase would be phased in over three years.

The measure's next step is not yet clear. It could be taken up by the House Ways and Means Committee, which also has jurisdiction over pension legislation, or it could go directly to the House floor later this month. House Republican leaders have yet to make a decision.

Republican leaders also have been mulling whether to try to attach the pension bill to a controversial measure now being put together to revamp the Social Security system.

Retiree plan sponsors likely to seek Rx subsidy: Survey

Most employers with retiree medical plans will seek a government subsidy to continue offering prescription drug coverage to their Medicare-eligible retirees, according to a new study.

Sixty percent of plan sponsors will seek the subsidy, at least for the first year, according to a new survey of 257 retiree plan sponsors conducted by Mercer Human Resource Consulting.

Smaller employers are much less likely to seek the subsidy, with only 36% of those with 500 to 999 employees indicating they will do so, according to the survey. Meanwhile, 64% of employers with 1,000 or more employees say they will take the subsidy.

To give employers and other plan sponsors an incentive to maintain prescription drug coverage for Medicare-eligible retirees, the government has offered to subsidize a portion of the cost for each Medicare-eligible participant covered under an employer plan. To receive the 28% subsidy, the plan sponsor must demonstrate that the benefit it provides is equivalent to the benefit provided by the Medicare Part D plan.

About half of the plan sponsors surveyed by Mercer, though, have not yet confirmed whether they pass tests required to determine that their plans are equal to the government benefit, which begins in January 2006.

Fourteen percent of surveyed employers will offer plans that wrap around or integrate with coverage from health plans authorized to provide the Medicare Part D benefit. One-third of these respondents say they will save more money than they would if they accepted the subsidy.

Other employers are taking this approach because they want to either avoid the cost and effort of equivalency testing (22%) or because they believe their plans would not pass the required tests (22%), according to the survey.

Seven percent of employers will contract directly with commercial vendors to offer prescription drug plans to provide coverage to their retirees, the survey found.

Five percent of employers said they will terminate their medical (or drug) coverage for Medicare-eligible retirees, with the remaining 14% saying they will not make any changes at this time.

—By Gloria Gonzalez

ASIC: Some evidence of business steering found

Continued from page 29

there is an increased risk that disclosure will not be a sufficient way to deal with the conflict."

In such cases, ASIC said, the only way to manage the conflict "may be to avoid it."

The National Insurance Brokers Assn. of Australasia welcomed ASIC's findings.

"The report reinforces what we have been saying since last November, when the Spitzer inquiries in the United States first began—that Australian brokers are very tightly regulated and professional in their dealings with clients," Noel Pettersen, chief executive of North Sydney-based NIBA said in a statement.

Noting that the review had essentially cleared brokers of any wrongdoing, Mr. Pettersen said that "in the small number of cases where isolated deficiencies were identified, they were not judged serious enough to warrant enforcement action by ASIC."

Australian risk managers said the report highlights the need for brokers to ensure disclosure.

While ASIC's report found no systemic abuses of remuneration or other broker practices, it was nevertheless disquieting to see there was insufficient disclosure of remuneration and management of conflicts of interest by some of the 15 brokers that provided information to ASIC, said Brad Greer, president of the Risk Management Institution of Australasia Ltd. in Sydney.

"The Corporations Act does not expressly require brokers to disclose to wholesale (corporate) clients the remuneration paid by insurers, but all risk managers should seek this information so they can make an informed decision," Mr. Greer said.

In addition, he noted that, "given that ASIC only sought information from a limited number of brokers, there is a fear that bad practices are more widespread in the industry."

Eamonn Cunningham, vp-global risk management for Sydney-based Westfield Ltd., said that brokers should be more forthcoming about their compensation so that risk managers don't have to "probe and probe to get the total picture."

And Grant Gernhoefer, group risk manager for Perth-based diversified industrial conglomerate Wesfarmers Ltd., said the difficulty is that many corporate buyers don't actually know the whole picture in a transaction. For example, he said, a company may place business through an Australian broker that, in turn, places business through its London offices and gets a commission from that transaction.

"At the end of the day, the cover that corporates are buying is competitive, which should mean that clients shouldn't be too concerned about it. The problem is that brokers haven't been too upfront about those," he said.

The report is available at *www.asic.gov.au.*

St. John's: Trust sponsors London market study

Continued from page 29

insurance market.

In the culmination of their period studying the London market, the two students on Thursday took part in a debate on whether that market is well placed to face "the challenges of the 21st century."

The debate was narrowly won by Mr. Jackson, who argued that the London market has proved its resilience and ability to pay claims through some of the toughest times in the industry's history, that it has significant intellectual capital and that strong regulation by the United Kingdom's Financial Services Authority made London one of the safest places for clients to purchase insurance.

Mr. Jackson warned, though, that the market must not ignore the importance of technology as a way to improve its processes.

The internship program included visits with various divisions of brokers Aon, Marsh, and Jardine Lloyd Thompson Group P.L.C.; Lloyd's; London-based insurance groups Allianz Global Risks and Zurich Financial Services Group; and the Chartered Insurance Institute.

John Turner, chairman of global client solutions at Aon in London and host of this year's internship, said that the trust aimed to expand the program next year to accommodate four students.

The trust is funded by a series of golf days organized by participating companies.

—By Sarah Veysey

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Canada: Unions resist benefit plan changes

Continued from page 3

allowed to phase out their defined benefit plans and replace them with defined contribution plans, said Ian McSweeney, co-chair of the pensions and benefits practice with Osler Hoskin & Harcourt L.L.P. in Toronto. Unions sometimes allow defined contribution plans as an option but not as a substitute for defined benefit plans, he said.

"The union understands that there is no percentage in compromising pensions," Mr. McSweeney said. "It's political suicide."

In one high-profile example of a union's refusal to permit a switch from a defined benefit to a defined contribution plan, Montreal-based Air Canada Inc.'s restructuring efforts were nearly derailed last year by its unions' refusal to accept a two-tiered pension plan.

An attempt by Montreal-based Abitibi Consolidated Inc. to introduce a defined contribution pension plan for union employees was stymied last year by the Communications, Energy and Paperworkers Union of Canada. The paper and wood products company has a defined benefit pension plan for union employees and a defined contribution pension plan for nonunion employees, a spokesman said.

Although instances of unions in Canada allowing a switch to a defined contribution plan are rare, they are not unheard of.

For example, technicians for Montreal-based Bell Canada voted last year to accept a contract that will put new hires into a defined contribution plan beginning in the fourth year of the contract.

Joel Carr, national representative for Toronto-based CEP, said the union was forced to abandon its traditional opposition to defined contribution plans in that situation because its members were swayed by a generous contract offer from the company. "Certainly, we're not fans of" defined contribution plans, he said. "It was one of the things we didn't like at all."

Despite the Bell Canada situation, resistance to defined contribution plans remains the CEP's ad hoc policy, Mr. Carr said.

Compromise in U.S.

In contrast, more unionized workforces in the United States are seeing their pension offerings converted to 401(k) plans, said John DiNome, a Philadelphia-based partner with Reed Smith L.L.P. who specializes in labor and employment issues. This is a way to protect the current workforce that also helps the employer reduce costs, but it does create a two-tier pension program, he said. U.S. unions are "probably not comfortable, but it's a compromise," he said. "It's a compromise that has to be made."

Canadian unions are open to certain changes that help employers reduce costs.

> "There's no way to unilaterally expunge something from collective agreements."
>
> **Lee Shouldice**
> **Blake, Cassels & Graydon L.L.P.**

For example, some unions may be willing to let employers make smaller benefit changes, such as changing to discretionary from mandatory indexing, which is more expensive, said Karen DeBortoli, acting director of Watson Wyatt Worldwide's Canadian Research and Information Center in Toronto. Indexing adjusts pension benefits to account for inflation.

Changes to health care benefits also are more easily negotiated than pension changes, observers say. Some employers have managed to get unions to agree to copayments because their costs—particularly prescription costs—were out of control. Unions, though, say health care benefits are generally not as significant during negotiations as pensions because of Canada's socialized health care system.

Tough sell

But changes to pension offerings tend to be a tough sell for employers.

Toronto-based York University was forced to abandon a bid to control its pension costs by slightly reducing its pension contributions for future retirees, due to opposition from the school's unions, which represent virtually all of its employees. "That just did not fly," Leona Fields, manager of the university's pension fund, said of the proposed change. "The university just backed off and said, 'We're not going to fight that fight.' "

In many cases, the proposed restructuring of benefits can become a deal-breaker in contract negotiations, as in a recent situation involving Toronto-based Hydro One. Employees of the utility company have been on strike since May 25 primarily because of an attempt to reduce the wages, pension and benefits schedule for their future colleagues. "They don't like two-tiering," a Hydro One spokesman said. "That's the real stumbling block."

Employers have limited options when it comes to making benefit changes for unionized workforces because they cannot sidestep collective agreements without the union's consent. "There's no way to really say is 'No, we're not going to unilaterally expunge something from collective agreements," Mr. Shouldice said. "All the union has to do it.' The employer then is in a difficult position."

In theory, some employers can seek relief from pension and benefits obligations by entering court-supervised restructuring and asking a judge to order a change to a defined contribution plan. But it is unclear how far a judge can go in changing the terms of collective agreements, Mr. Shouldice said.

The employer does have the option to lock out employees if the union does not agree to benefit changes. "It's a very severe option," he said. "You have to be struggling so much with the pension that you have to lock them out."

Pools: Self-insurers growing

Continued from page 4

advantage over insurers, said Anne K. Scully, president of the Western Independent Bankers Services Corp. But with recent insurance rate declines, insurers are nearly matching the Western Independent Bankers Self Insurance Program of California's pricing.

Still, Ms. Scully said the four-month-old pool continues to attract interest by touting its ability to insulate members from future insurance market volatility.

The recent and rapid growth in SIGs, however, has California's Self Insurers' Security Fund concerned about the oversight–or possible lack thereof–of the groups, said Jeff Pettegrew, SISF's executive director. The Sacramento-based security fund has a vested interest in the financial health of SIGs because it would be responsible for unpaid claims should one of them fail to meet its liabilities.

The vast majority of SISF's members are individual self-insured companies. Risk managers for large corporations such as San Ramon, Calif.-based Chevron Texaco Corp.; Burbank, Calif.-based The Walt Disney Co.; Bethesda, Md.-based Marriott International Inc.; and Pleasanton, Calif. based Safeway Inc. serve on the security fund's board of trustees.

In contrast, SIGs are attracting smaller companies such as restaurant owners, construction entities, truckers, plastic manufacturers, private schools, and community banks, according to information from the Self Insurance Plans office.

A Senate bill introduced earlier this year would have required SIGs to submit financial reports to regulators annually instead of biannually. But S.B. 187, supported by SIGs and sponsored by state Sen. Charles Poochigian, R-Fresno, would also have loosened requirements for security deposits that SIGs must now post with the state in case they are unable to pay claims.

Supporters say the bill's intent was to make self-insurance available to more California companies.

The bill, which was opposed by the security fund, has been shelved for now. But with SIGs continuing to grow, the SISF plans to meet July 21 with the Self Insurance Plans office to discuss ongoing regulation needs, Mr. Pettegrew said.

John Kalb, administrator for the six-month-old California Restaurant Mutual Benefit Corp., said he can understand the security fund's concern with the rapid rise of SIGs and isn't opposed to regulations that ensure SIGs' viability.

But his group is financially strong, he said. It sets its rates about 10% above actuarial recommendations and was launched with a core group of 30 members. It now has a net worth of $40 million to $50 million and has 135 members, who own nearly 800 restaurants.

Mr. Kalb also points out that self-insurance groups have the same requirements that individual self-insured funds have for financial reporting. SIGs also must purchase excess coverage just as individual self-insureds are required to do, and they have the same investment restrictions as insurers, Mr. Kalb said.

While Mr. Pettegrew acknowledged SIGs have reserve requirements and comply with other regulations, the security fund has questions about the consistency of their management from group to group.

Some SIGs are managed by out-of-state entities and not enough may be known about their qualifications or potential decision-making, Mr. Pettegrew said. He said he is concerned, for example, that pool members could pressure their administrators to pay out a dividend that could exhaust the funds necessary to pay long-tail claims.

But there are safeguards against such a scenario, Mr. Stafford of ABD Insurance said. He noted that regulators must first approve any dividends paid out by SIGs. Additionally, SIG members are joint and severally liable and would be assessed and a security deposit posted with the state would be tapped in case of a fund's inability to meet its obligations, Mr. Stafford said.

Captive: Members to stop sharing information

Continued from page 3

out the country" whose work includes actuarial services to employee benefit plans, according to the complaint filed by the Justice Department's antitrust division.

The complaint, which was filed on the same day as the settlement, charged that the captive acted to facilitate the sharing of information regarding limitations of liability that restricted competition for the employee benefit plan business. In agreeing to the settlement, PCIC did not admit to guilt and settled in order to end the costly and distracting litigation, according to Mr. Bowland.

Among the charges was one that PCIC organized a series of meetings in 2000, 2001 and 2003 at which the captive's members exchanged information not only among themselves about efforts to limit liability in contracts with clients but also with other actuarial firms.

PCIC members historically did not limit clients' rights to recover damages suffered as a result of actuarial errors or omissions, the complaint states. But as early as 1999, an increasing severity and frequency of claims led the captive members to consider imposing the limitations, according to the court document.

Employee benefit plan clients that have accepted the limitations after the consulting firms shared information on imposing the restrictions have been deprived of the benefits of competition for their business, the complaint alleges.

Limitation of liability terms in actuarial service contracts have become "significantly more prevalent than would have been the case in the presence of unrestrained competition among the PCIC members and other actuarial consulting firms," the complaint says.

Insurer antitrust exemptions did not come into play regarding the complaint. The McCarran-Ferguson Act, which grants insurers limited exemptions from federal antitrust laws, "applies only to the business of insurance," Mr. McDonald said. "It's not part of the business of insurance to facilitate the exchange of information" among a captive insurer's members, he added.

Mr. McDonald said the Justice Department is not interested in regulating insurers but wants to restore competition in the actuarial consulting market by preventing PCIC from facilitating the sharing of competitive information.

Mr. Bowland said, though, that "if we had gone to trial, the issue of antitrust exemptions might well have been raised. We just didn't get that far."

Explosion: St. Louis blast prompts fire safety concerns

Continued from page 4

at the facility and in debris outside the plant. Asbestos was used to line cylinders containing acetylene until 1985, the company said. Praxair does not manufacture the containers.

The amount of asbestos found on the ground is not considered hazardous and tests conducted by the Missouri agency for airborne asbestos did not detect unacceptable amounts, according to Praxair.

Mr. Selk said in the statement that the fire served to "launch what we estimate was a barrage of dozens of gas containers, which flew like missiles from Praxair's facility as they exploded. Pieces landed on roofs, in gardens and other locations in a neighboring community, and it was fortunate no one was injured by the flying debris."

The board does not issue citations or fines but does make safety recommendations to plants and other organizations.

Praxair issued a statement last week saying it could not provide an estimate of the damage. Products were being shipped from the facility last week as the cleanup continued, the company said.

A spokeswoman for Praxair confirmed that the company has insurance in place to pay for damage to the plant and in the neighborhood near the facility. She was unable to provide the name of the insurer.

The company's 2004 annual report states that Praxair at that time retained between $1 million and $5 million in per-occurrence property losses. The company purchases insurance above those amounts "at what it believes are reasonable coverage levels," the report says.

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AIG: Insurer to eliminate executive compensation from Starr affiliates

Continued from page 1

pensation from two AIG-affiliated companies, C.V. Starr & Co. Inc. and Starr International Co. Inc.

Under a plan operated by SICO since 1975, senior employees were entitled to million of dollars of post-retirement payments in the form of AIG common stock and cash, allotted on top of base salaries and bonuses paid by New York-based AIG.

For example, in 2004, payments credited under the SICO deferred compensation arrangement for Mr. Sullivan, AIG's president and CEO, totaled approximately $4.2 million.

Payouts promised under the plan in 2004 for 11 current and former AIG officers listed in the proxy statement total $42.4 million. That figure includes $10.1 million for Mr. Greenberg and $4.2 million for Howard I. Smith, the insurer's former chief financial officer, who was dismissed earlier this year for refusing to cooperate with authorities investigating AIG.

In the wake regulatory probes and mounting litigation against the insurer, AIG has promised to replace the plan with one that allows executive compensation costs to be borne solely by AIG.

The insurer stated in the proxy that although it intends to maintain the benefits it grants to top executives under the plan, it is "currently in the process of unwinding and resolving various relationships with Starr and SICO" and will instead "provide new or enhanced compensation opportunities to AIG employees in order to reflect compensation and benefits previously provided by Starr and SICO."

An AIG spokesman declined to comment on why the company has opted to unravel the arrangements with Starr and SICO.

In a letter to shareholders filed with AIG's annual report last week, Mr. Sullivan stated: "We intend to steer clear of conflicts and any relationships that could lead to, or give the appearance of, a conflict. Our property-casualty companies will not enter into placement service agreements or similar incentives to insurance brokers, and we are insisting that brokerage commissions or payments are disclosed to customers. Although our historical ties with Starr International Co. Inc. have benefited AIG shareholders over many years, we are working to restructure them to avoid any potential conflict."

AIG's relationships with the affiliates are also the subject of pending litigation.

The Baton Rouge-based Teachers' Retirement System of Louisiana

Continued on next page

TRIA: Treasury report says changes needed if terrorism backstop is extended

Continued from page 1

porting the industry during a transitional period and stabilizing the private insurance market."

Findings questioned

A brokerage expert on the terrorism insurance market questioned some of the report's findings.

"Aon would view the report's conclusions as not being fully supported by Aon's market data or current market behavior," said Aaron Davis, vp at Aon Risk Services in New York. "The report is making some general conclusions about the market without taking into account what we're currently seeing in the market in terms of carrier behavior for risk-exposed lines of business, specifically commercial property. We are certainly seeing the impact being felt now for the potential expiration of TRIA, and we're seeing 80% or more of the property markets adopting some form of terrorism exclusion for risks extending beyond 2005. Again, this is specific to the property market for risk-exposed classes of business; however, this is the market that has been benefiting the most from the TRIA backstop."

"My opinion is that the report leaves some room for developing a public/private solution, but no one is surprised by the findings that said the government doesn't want to continue the program without changes," said Alexandra S. Glickman, area vice chairman and managing director-practice leader for Arthur J. Gallagher & Co.'s Gallagher Real Estate & Hospitality Services in Glendale, Calif. "The most immediate concern is taking the pulse of the markets and determining under what conditions they are willing and able to provide coverage without the federal government's current support of TRIA."

A risk manager who has been active in the effort to extend TRIA called on Congress to move quickly on the issue.

"For the many policyholders who already have terrorism exclusions that become effective on Dec. 31, they can only hope that the legislators will not ignore the market realities," said Bradley R. Wood, senior vp-risk management for Marriott International in Bethesda, Md. "TRIA is an important ingredient to our nation's economic business continuity plan, and Congress should schedule hearings immediately to reopen the debate."

The Risk & Insurance Management Society Inc. in New York also called for swift congressional action. In a statement issued shortly after the report's release, RIMS President Ellen Vinck said, "The recommendations issued in the Treasury Department report on the future of TRIA do not reflect the reality of the current environment. The removal of a federal backstop for terrorism insurance needlessly puts our nation's economy at risk. RIMS therefore renews its call to Congress to pass legislation to extend the terrorism risk insurance program without further delay."

Insurer groups weigh in

Insurer groups stressed that while Treasury opposes extension of the existing program, they did not oppose creating some sort of less expansive federal backstop.

"We still believe it's absolutely critical that we continue with the public/private partnership, especially to manage what we believe is significant catastrophe risk that could arise in a major terrorism event," said Ramani Ayer, chairman and chief executive officer of Hartford Financial Services Group in Hartford, Conn.

"Secretary Snow noted that TRIA has been effective in achieving its objectives. I believe he's also kept the door open for administration support for continuation of a public/private partnership. I believe in the wake of the report, the chairman of both the House and Senate committees are going to hold hearings. Sen. Shelby said it's possible that Congress will craft a temporary extension and he intends to hold hearings on July 14," said Mr. Ayer, referring to Senate Banking Committee Chairman Richard Shelby, R-Ala.

He noted that House Financial Services Committee Chairman Mike Oxley, R-Ohio, "said that he's confident that a comprehensive as well as fiscally responsible solution by the end of this year. I believe the task in front of us is that policyholders, insurance regulators and insurance company executives need to strengthen the case for a terrorism risk insurance program. What's interesting is that the Treasury report concedes that capacity could decrease and rates could increase if the program were just to simply expire. I believe very strongly this is a key to our economic security as a county."

"The good news is not so much what the study says than the fact that the study is out," said Leigh Ann Pusey, senior vp-government affairs for the American Insurance Assn. in Washington. "It frees up Congress to move forward. The fact that Treasury is acknowledging the need for some program really is a silver lining. We think that's good news. For us, the most important thing is making sure there is a program in place by the end of the year, and this study frees up Congress to explore how best to get that done."

"Despite TRIA's success, we agree with the administration that a short-term extension of the current program is not the most effective solution to the terrorism insurance problem," said Ernie Csiszar, president and chief executive officer of the Des Plaines, Ill.-based Property Casualty Insurance Assn. of America in a statement. "Instead, it makes more sense to establish a long-term program that stimulates more private-sector participation while maintaining the high-level federal participation necessary to foster a functional terrorism insurance market."

Ken Crerar, president of the Council of Insurance Agents & Brokers in Washington, called the Treasury recommendation "very disappointing," particularly given the current state of the global terrorism reinsurance marketplace. But "the recommendations from the administration present new challenges," Mr. Crerar said. "It is important to keep in focus that they are not opposed to a federal role in providing a terrorism reinsurance backstop."

"We expect that this willingness of the administration to work with Congress will now set off a flurry of events in Congress, which we hope will lead to a successful conclusion by the end of the year," he said.

Franklin W. Nutter, president of the Washington-based Reinsurance Assn. of America, addressed the reinsurance aspects of the Treasury report and recommendation in a July 1 statement. He said, among other things, that "the expiration of TRIA would lead to an increased demand for terrorism reinsurance but not a significant increase in supply. The private reinsurance market has provided modest capacity to cover terrorism risk, but it is our observation that the expiration of TRIA is not likely to stimulate much additional capacity."

"Reinsurers continue to view terrorism as a risk that is uninsurable unless there are limits to protect against catastrophic exposure," Mr. Nutter said in his statement. "A federal backstop is necessary to provide coverage for catastrophic losses above the capacity that the private insurance and reinsurance markets can reasonably bring to bear."

TRIA report draws mixed response from legislators

WASHINGTON—As expected, the Treasury Department's conclusion that the Terrorism Risk Insurance Act should be not be

PHOTO COURTESY OF NAMIC

Rep. Oxley

extended in its present form drew a mixed response on Capitol Hill.

Although the initial enactment of TRIA was a bipartisan effort, and although as recently as last September, the House Financial Services Committee unanimously passed a bill that would have extended TRIA through the end of 2007, reactions to Treasury's report broke on party lines.

In fact, Financial Services Committee Chairman Mike Oxley, R-Ohio, issued a statement praising the report, saying "a simple extension of the program is not in the best interests of American consumers or the economy." After calling for greater private sector involvement and narrowed federal involvement, he added, "I am confident that we can achieve a comprehensive, fiscally responsible solution to deal with terrorism insurance by the end of this year."

But Democratic members of the committee made public a letter they sent to Rep. Oxley. They disagreed with Treasury's call for a narrower program and instead called for expanding TRIA's backstop to include group life insurance. In fact, they called on the chairman to "schedule a hearing and markup on H.R. 1153, which we sponsored, as soon as possible." H.R. 1153 would extend an expanded TRIA through the end of 2007.

Enactment of the measure, however, is a long shot at best. It has only one Republican cosponsor.

—By Mark A. Hofmann

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charges in a lawsuit that Starr and SICO received "hundreds of millions of dollars" in payments from unnecessary or undisclosed transactions with AIG, which ultimately wound up in the pockets of AIG directors and executives.

The suit, which was filed in Chancery Court in Delaware, charges current and former AIG directors with breaches of fiduciary duty and seeks to have C.V. Starr's assets placed in a trust by the court. The lawsuit amends a complaint originally filed in 2002.

Out in the open

Observers say the compensation arrangement offered certain advantages to AIG.

"It is an extraordinarily unusual provision, and AIG had never disclosed any information over the years about it," said Alan Johnson, managing director of Johnson & Associates, a New York-based executive compensation consulting firm. The structure of the SICO compensation plan worked to "hide how much they were really getting paid," Mr. Johnson added.

The SICO plan was a "great benefit" for AIG investors, said Cliff Gallant, an equity analyst with Keefe, Bruyette & Woods Inc. in New York, because "somebody else other than the AIG shareholder was paying" for the company's most highly compensated individuals.

AIG's shift to an internally funded executive compensation plan is a positive sign and is feasible financially for the company, observers note.

"I think people should think of it as AIG moving toward normal corporate American compensation practices," Mr. Gallant said.

AIG is a "big enough and successful company" that the costs of its new compensation plan can "absolutely" be absorbed, said Mr. Johnson. "Over the long term, I don't think the executives will make as much money as they were under the current system," Mr. Johnson estimated, "but they will still be well paid."

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>
> **Alan Johnson**
> **Johnson & Associates**

As part of the proxy, AIG also noted that interim Chairman Frank G. Zarb intends to serve at the helm of the board of directors "for only a limited period" and has asked that a successor be chosen before the end of 2005. Mr. Zarb was appointed interim chairman in April, following Mr. Greenberg's exit from the position amid a growing inquiry into the insurer's accounting practices.

Meanwhile, Mr. Greenberg has unwound a transfer of 41.4 million AIG shares to his wife. AIG disclosed the transfer, which occurred three days before Mr. Greenberg resigned as CEO, in an April 12 SEC filing. The shares have returned to joint ownership.

A spokeswoman for Mr. Greenberg's legal team said that the transfer had been "completely misunderstood and caused needless distraction and wasteful litigation."

First-quarter results

AIG last week also reported its delayed first-quarter 2005 results, posting net income of $3.68 billion for the first quarter of 2005, up 44.1% from its restated profit for the comparable period in 2004.

AIG announced in May that, following an internal review of its accounting, it needed to restate its financial results for 2000 through 2004 (*BI*, May 9). In its restated accounts, AIG recorded profits of $2.56 billion in the first quarter of 2004, compared with $2.66 billion before the change.

New York-based AIG posted net written premiums of $10.79 billion for the first quarter, up 7.6% over its restated figure. Net investment income, meanwhile, was up 29.6%, to $1.03 billion.

In a statement, Mr. Sullivan said the first three months of 2005 had been "a good quarter for AIG, with all of our business segments contributing to the growth in net income."

AIG's combined ratio for the first quarter of 2005 was 93.4%, down from 94.8% for the prior period.

Late News

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statement. Mr. Miller in April was named chief operating officer of the insurer, which is a unit of Bermuda's White Mountains Insurance Group Ltd. Prior to that, he was co-COO of St. Paul Travelers Cos. Inc.

Integro adds to executive team

Integro Ltd. has named Robert P. Williams as head of worldwide client development and leader of the startup brokerage's private equity risk management practice. He most recently served as executive vp and chief client officer of Aon Group Inc. Integro also last week named Nancy Aque managing director and head of the brokerage's new Chicago office and Midwest hub. Ms. Aque was most recently managing director, central Midwestern zone leader, for Marsh Inc., where she was also head of the brokerage's Chicago office.

Hardy, Omega end merger talks

Hardy Underwriting Group P.L.C. has ceased merger talks with Omega Underwriting Holdings P.L.C. after the two managing agencies were unable to agree to terms. Hardy, which operates multiline syndicate 382 at Lloyd's, said in a statement Friday that Omega "is not prepared to improve the terms of its earlier offer and, having discussed the matter with a number of Hardy's major shareholders, the board has therefore terminated discussions with Omega and its advisers."

California bill would expand CIGA cover

A bill requiring the California Insurance Guarantee Assn. to help pay workers compensation claims when a self-insured employer's excess insurer becomes insolvent has already passed the state Assembly and is now before the Senate Banking, Finance and Insurance Committee. Under Assembly Bill 817, CIGA would be obligated to pay up to $500,000 per workers comp claim under policies issued by excess insurers that are "pending insolvency or in the future become insolvent," according to the analysis.

Huffy seeks PBGC takeover

Huffy Corp. intends to terminate its underfunded pension plan as part of its efforts to emerge from bankruptcy. The bicycle manufacturing and sporting goods company said it will file a motion in bankruptcy court to terminate its pension plan—which has about 4,200 participants but only 90 active employees—and shift the liabilities to the Pension Benefit Guaranty Corp. The plan, according to the PBGC, has about $72 million in assets and $140 million in liabilities. The PBGC says it will analyze Huffy's motion to the bankruptcy court to determine if Huffy qualifies for a distress plan termination, under which an employer must prove that continuing to operate the plan would prevent the company from staying in business.

Federal workers get FSA extension

The government announced that federal employees will have until March 15, 2006, to spend contributions made to their FSAs during 2005. Additionally, employees will be given until May 31, 2006, to submit reimbursement claims for 2005. Previously, FSA participants had to file reimbursement claims by April 30. The federal government is one of the first employers to take advantage of the U.S. Treasury Department and Internal Revenue Service's recent decision to relax the "use-it-or-lose-it" rule that had required FSA participants to forfeit unused balances at the end of the plan year. About 163,000 federal employees agreed to make contributions to their FSAs in 2005.

Gallagher sets up Vermont captive unit

Arthur J. Gallagher & Co. has opened a captive management office in Vermont. The new operation, Arthur J. Gallagher Captive Services (Vermont), is in South Burlington, Vt., and will provide products and services to single-parent, group and association captives, rent-a-captives and risk retention groups. Previously, Gallagher's main captive management operations were in Itasca, Ill.; Bermuda and Hawaii.

Health plan body names CEO

The California Assn. of Health Plans has named Christopher Ohman president and chief executive officer of the managed care trade group. Mr. Ohman, who previously was senior vp and chief executive officer of Blue Shield of California's commercial business unit, succeeds Steve Tough, who left the Sacramento, Calif.-based organization in January.

BI Stock Index [6/27 - 7/1]

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

Index	Value	Change
BI Stock Index	2550.18	2.17
Dow Jones	10303.44	0.05
S&P 500	1194.44	0.24

Largest gains

Company	Change
United Fire & Casualty Co.	11.71%
Harleysville Group	10.08%
American International Group Inc.	7.46%
Gainsco Inc.	5.92%
Argonaut Group	5.35%

Largest losses

Company	Change
Vesta Insurance Co.	-4.68%
PMA Capital Corp.	-1.90%
Meadowbrook Insurance Group	-1.72%
Citigroup	-1.68%
Health Net Inc.	-1.24%

Weekly change by market segment

Segment	Change
Brokers	1.63%
Insurers/Reinsurers	1.83%
Managed Care Organizations	1.91%

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

At *BusinessInsurance.com*

New **Online Poll**: Without the Treasury Department's endorsement, do you think it is possible for terrorism insurance legislation to be enacted this year?

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