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Business Insurance

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SCOR regains A-level rating

By SARAH VEYSEY

PARIS—SCOR S.A.'s turnaround efforts paid off last week when Standard & Poor's Corp. upgraded the reinsurer back into the A level, an unusual move that observers say should help SCOR increase its business while giving cedents another source of highly rated capacity.

SCOR has experienced nearly three years of turmoil since ratings agencies downgraded the reinsurer out of the A level following large losses and reserve increases. During that time, the Paris-based reinsurer has made several changes designed to improve its financial condition, in-

Chief scores a victory



Denis Kessler, who was named CEO of SCOR S.A. in late 2002, has led the reinsurer through its turnaround efforts.

cluding raising capital and shutting down a loss-plagued operation (see timeline, page 30).

In a statement announcing S&P's decision to raise its financial strength rating from BBB+ to A-, SCOR thanked clients for their loyalty and shareholders who have helped to finance capital raisings during the past three years. SCOR said that the upgrade recognized the success of the company's turnaround work and of refocusing efforts instigated by Chairman and Chief Executive Officer Denis Kessler since his appointment in late 2002.

The reinsurer said the upgrade would assist it in its "risk selection process and focus on prof-

itability in what is already a very competitive underwriting environment."

Marcus Rivaldi, a credit analyst at S&P in London, said the upgrade was prompted by SCOR's "appropriate corporate strategy," its reduced exposure to further reserve problems and the expectation of improved financial performance, among other factors.

Mr. Rivaldi said that S&P now views SCOR's competitive position as strong and noted that the reinsurer had shown resilience during its recent difficulties. SCOR, he said, has worked hard to maintain longstanding business relationships with brokers and clients, he said.

And while many cedents reduced their exposure to SCOR when it was downgraded, cedents' desire to have a wide spread of reinsurers on their

See SCOR / page 30

Late News

Gray team ups hurricane estimate

Hurricane forecaster William Gray and his team have increased the number of hurricanes they expect will form during the current hurricane season to 10 from eight. In addition, the Gray team from Tropical Meteorology Project at Colorado State University in Fort Collins, Colo., increased the number of tropical storms they expect will form to 20, up from the 15 forecast on May 31. Earlier in the week, the National Oceanic and Atmospheric Administration revised its forecast, calling for 18 to 21 tropical storms to form, nine to 11 of which will become hurricanes.

Canada's high court stays health insurance ruling

The Supreme Court of Canada has delayed implementation of its decision to overturn Quebec's ban on private health insurance for one year. In a June 8 decision, the court ruled in *Chaoulli vs. Quebec (Attorney General)* that Quebec's ban on private insurance for health care services that are already provided by the province is unconstitutional. On Thursday, the Supreme Court said it would grant the government's request for a stay of its decision. The attorney general of Quebec had argued that the government needs time to comply with the court's ruling, a spokeswoman for the Supreme Court said.

Pricing signals mixed, RIMS survey finds

The latest RIMS Benchmark Survey finds general liability and property rates moving in different directions. The second-quarter survey, produced by Advisen Ltd. for the Risk & Insurance Management Society Inc., showed that general liability

See LATE NEWS/page 31

If TRIA lapses, would a pool meet needs?

By MARK A. HOFMANN

The idea of forming some sort of insurance industry-funded pool to create private capacity for catastrophic terrorism insurance may be picking up support as an alternative to the current federal backstop provided under the Terrorism Risk Insurance Act.

In part, that's because the Bush administration has already announced it would oppose the extension of TRIA in its present form, holding that TRIA is hindering the creation of a private terrorism insurance market. Insurers have responded that terrorism remains an uninsurable risk that requires federal financial guarantees.

The current version of TRIA is slated to expire on Dec. 31, opening the possibility that the current federal backstop will vanish with nothing to take its place, causing affordability and availability problems in the insurance marketplace.

One way to head off such a problem would be to develop an insurance industry funded pool to

See POOLS / page 28

Decision limiting FMLA waivers creates employer headaches

By JUDY GREENWALD

RICHMOND, Va.—A federal appellate court decision barring the waiver of employee rights under the Family and Medical Leave Act without prior court or Department of Labor approval undermines the validity of the claims release forms often used in layoffs and employee terminations, and could ultimately hurt employers and employees, attorneys say.

The decision is "a land mine for employees as well as employers," said Paul Mollica, a plaintiff attorney with Meites, Mulder, Burger & Mollica in Chicago.

But because the July 20 decision by the 4th U.S. Circuit Court of Appeals in *Taylor vs. Progress Energy Inc.* disagrees with another appellate decision, the U.S. Supreme Court may ultimately decide the issue, say observers.

Plaintiff Barbara Taylor was incorrectly told she was ineligible for FMLA leave for several medical-related absences because she had not been absent from work for more than five consecutive days at any one time, according to the decision.

She subsequently received a poor productivity rating because of her health-related absences and

was terminated. Ms. Taylor agreed to sign a general release and severance agreement in exchange for additional pay. The release did not explicitly mention the FMLA, but referred to claims under "any other federal, state or local law," said the opinion. She later sued her former employer, alleging violation of the FMLA.

Crossed circuits

With the 4th and 5th Circuits issuing conflicting rulings on whether employees can waive their right to file claims under the FMLA, the U.S. Supreme Court may have to resolve the issue, experts say.

The decision cited a Labor Department regulation that employees "cannot waive, nor may employers induce employees to waive, their rights" under the FMLA. "The regulation's plain language prohibits both the retrospective and prospective waiver or release of an employee's FMLA rights," without a court or the Labor Department's prior approval, the unanimous three-judge panel held in overturning a lower court decision.

"Without the regulation's non-waiver provision, the unscrupulous employer could systematically violate the FMLA and gain a competitive advantage by buying out FMLA claims at a discount rate," says the decision.

The opinion said it disagreed with a 2003 decision by the 5th U.S. Circuit Court of Appeals in *Faris vs. Williams*, which held that the Labor De-

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Ramani Ayer
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SPOTLIGHT



Catastrophe Management

How to cope with havoc
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2005 wildfire losses spreading, may worsen

The true costs of wildfire may be higher than many realize.

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AIG subsidiary hit with bad-faith charges

Schering-Plough, Lexington disagree over interpretation of policy wording.

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NIOSH relaxes contact lens ban for some workers

Agency issues safety guidelines for contact lens wearers near chemicals.

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Garamendi should check facts before issuing report

The California Insurance Commissioner's report on consumer-driven health plans gets the facts wrong, an editorial says.

Page 4

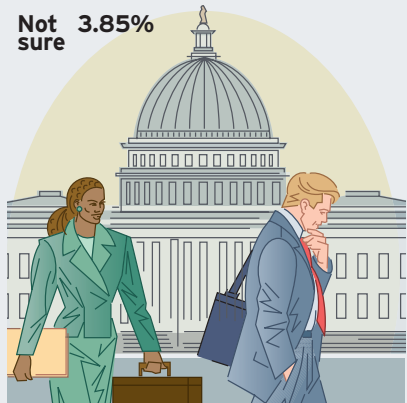
Online poll - [8/1-8/5]

Will the Senate follow the House's lead and pass medical malpractice liability reform this year?

Yes 46.15%

No 50.00%

Not sure 3.85%



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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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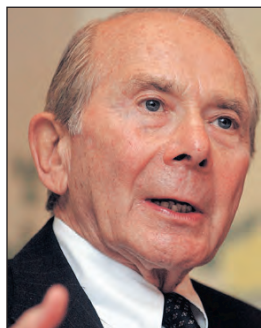
Greenberg challenges AIG restatements

Former CEO says several items 'exaggerated and unnecessary'

By RUPAL PAREKH

NEW YORK—American International Group Inc.'s move to restate more than five years of earnings by nearly \$4 billion was unwarranted, and that decision by current AIG officials—along with the role of the company's outside auditor in any alleged improper accounting—warrants scrutiny, say attorneys for former AIG chief Maurice R. Greenberg.

In a white paper prepared by Mr. Greenberg's legal team and recently sent to regulators, AIG's former chairman and chief executive officer formally challenges the insurer's



Mr. Greenberg

decision to restate its earnings.

The effect of that restatement was to cut reported net income between 2000 and 2004 by \$3.92 billion and to reduce its shareholder equity for year-end 2004 by 2.7%, to \$80.61 billion (BI, June 6).

According to the paper, "Mr. Greenberg disagrees with many of the accounting changes made and believes that many of the changes are damaging to the interests of AIG and its stockholders." Several items restated as part of the company's 2004 10-K report are "exaggerated and unnecessary," the paper states.

The document goes on to say that "the

alacrity with which current management confessed error or 'corrected' the purportedly wrong judgment of prior management warrants critical review," as does the role played by AIG's longtime outside auditing firm, New York-based PricewaterhouseCoopers L.L.P.

A spokesman for AIG said, "we have not been given access to the so-called 'white paper,' and we have no comment on it." He added, "we do stand by our decisions, as fully disclosed in our recent 10-K filing."

"We haven't seen it and cannot comment," said a New York-based PwC spokesman.

In the paper, Mr. Greenberg maintains that he has followed proper accounting rules and

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Gallagher TPA unit appealing ruling on school property coverage dispute

By DAVE LENCKUS

PITTSBURGH—Gallagher Bassett Services Inc. is asking a full Pennsylvania appellate court to toss out an appellate panel ruling that the third-party administrator argues would saddle it with brokerage or insurer liabilities.

If upheld, the 3-0 panel ruling also would require the TPA subsidiary of Itasca, Ill.-based Arthur J. Gallagher & Co. Inc. to pay for property damages that its client's insurers already have covered, the TPA asserts in a motion for rehearing or reconsideration filed on July 27 in Pennsylvania Superior Court. The court is Pennsylvania's first-level appellate court.

An attorney for the client, however, says the appellate panel decided on July 13 to reinstate a reduced jury award against Gallagher Bassett because the TPA created insurance recovery problems for the property owner.

The case centers on the loss of a school owned and operated by the Roman Catholic Diocese of Greensburg, Pa. In 1999, the diocese was forced to close—and later demolish—the school because of the structural damage it sustained when pyrite in the soil under the school's foundation created unstable conditions and caused the soil to shift.

After the insurers initially refused to cover the loss, the diocese sued them and Gallagher

Bassett. The diocese argued that the TPA was negligent and breached its contract by failing to conduct loss investigations and provide claims adjustment services after the school was closed. That failed to ensure that the diocese was fully insured for its loss, the diocese claimed.

Shortly before trial, the insurers settled for about \$2.1 million. The insurers that denied coverage are Diamond State Insurance Co., Hartford Fire Insurance Co., The Travelers Insurance Co. and Zurich Insurance Co.

The case against the TPA proceeded to trial but only on the breach-of-contract claim, be-

See GALLAGHER / page 27

Work/life no longer a 'woman's issue'

More men taking advantage of employer programs

By SALLY ROBERTS

The desire to balance work and life, once considered more of a women's issue, now is prompting more men to finally take advantage of the work/life programs that their employers have long made available.

While traditional work/life benefits such as flexible work schedules, telecommuting and child-care assistance have always been offered to both men and women, few men have taken advantage of them, in many cases out of fear of reprisal from managers, experts say.

But times are changing. With more dual-career families today, men are sharing more of the home-related, child-care and elder care responsibilities and are feeling the work/life conflict as a result.

At the same time, there has been an overall attitude shift among younger male employees who are seeking more of a life outside of work and want to spend more time with their family, experts say.

In some cases, employers are beginning to recognize this trend and are fostering a more family-friendly environment for their male employees and are even revamping existing work/life programs to address their needs.

"What's exciting about this...is it stops being a woman's issue, and that's what we work/life people have been insisting forever," said Kathleen M. Lingle, director of the Alliance for Work-Life Progress, the Scottsdale, Ariz.-based association for work/life professionals.

"These are not women's issues; these are issues that confront everyone in the workplace. And now, that looks like it's becoming true."

Indeed, according to a 2005 job satisfaction survey conducted by the Alexandria, Va.-based Society for Human Resource Management, work/life balance is almost equally important to both male and female employees.

On a scale of one to five—one being very unimportant and five being very important—the 334 men polled ranked the importance of "flexibility to balance work and life issues" to job satisfaction as 4.43 on average. Similarly, the 266 female employees surveyed ranked flexibility 4.59 on average.

Afraid to ask

Work/life benefits, in general, have always been offered to both men and women, experts say. But while it's fairly commonplace

Caring time

Comparison of workday hours fathers spend caring for and doing things with their children.



Gen X fathers: spend an average of **3.4 hours** per workday

Baby boomer fathers: spend an average of **2.2 hours** per workday

Source: 2002 Generation & Gender in the Workplace study from the Families and Work Institute.

and acceptable for women to take advantage of such programs, corporate culture has not always been as accepting for men.

"If you actually cut back to a four-day workweek as a man 10 years ago, you would have been considered kind of weird and...it would have been looked at as a factor in whether you were committed to the organization and whether you were promotable mate-

See WORK/LIFE / page 27



PHOTO: AFP PHOTO/ROBYN BECK

More than 39,000 wildfires have broken out this year, claiming 4.85 million acres, according to the Interagency Fire Center.

Wildfire losses in 2005 spreading and may worsen with months left in season

By MICHAEL BRADFORD

Wildfires are taking lives and consuming property on millions of acres across the United States this summer as a new study reveals that the true costs of the blazes are much higher than many realize.

More than 39,000 fires have scorched 4.85 million acres this year, with 23 wildfires burning as of late last week, according to the Interagency Fire Center in Boise, Idaho (see box, page 27).

Things could get worse as the fire season continues through the fall.

"The season here in California is pretty much year-round," said Armando Gonzalez-Caban, a research economist with the U.S.

Department of Agriculture Forest Service's Forest Fire Laboratory at the Pacific Southwest Research Station in Riverside, Calif. "But we also have the Santa Ana conditions in October and November," he added, and when those seasonal winds begin is "when we have the worst fires."

Mr. Gonzalez-Caban contributed to a recent report that sheds light on the enormous costs of wildfires, much of it rarely publicized.

The report examined the true cost of the Old, Grand Prix and Padua wildfires that joined and swept across southern California in the fall of 2003.

The report found that the fires

See FIRES / page 27

AIG unit hit with bad-faith charges

Schering-Plough, Lexington disagree over interpretation of liability policy wording

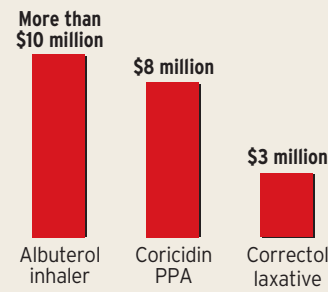
By DOUGLAS McLEOD

NEWARK, N.J.—Pharmaceutical giant Schering-Plough Corp. is leveling bad-faith charges against an American International Group Inc. unit for its alleged refusal to pay more than \$21 million in product liability losses on three groups of Schering products.

Schering filed suit against AIG's Lexington Insurance Co. in U.S. District Court in Newark, N.J., alleging that Lexington has misinterpreted a loss notification provision in order to deny claims under a \$25 million excess policy.

Schering claims paid

Schering has paid more than \$21 million in claims on three losses from these products, in excess of its self-insured retention.



Under Lexington's reading of the provision, Schering's losses would be allocated to one policy year—and would be subject to a single annual aggregate limit—while under Schering's reading, the claims would trigger two aggregate limits

over two policy years, the suit says. Under either reading, Lexington would be liable for at least some of the losses, but the insurer has failed for more than two years to pay anything, the drug company charges.

An AIG spokesman declined to comment on the litigation.

The dispute stems from a trio of Schering product liability losses, comprising claims that Schering asthma inhalers did not contain enough of the active ingredient, albuterol, to control symptoms; that an over-the-counter laxative product caused dependency, was used improperly for weight loss and was carcinogenic; and that cold remedies containing phenylpropanolamine caused strokes.

Schering had claims-made excess liability coverage in force with Lexington from June 1996 through

See BAD FAITH / page 30

Marsh bid-rigging probe nets more pleas

NEW YORK—Three more former Marsh Inc. brokers and a former Zurich North America underwriter pleaded guilty to criminal charges last week in New York Attorney General Eliot Spitzer's investigation of bid-rigging at Marsh.

In their pleas, the three defendants admitted to participating in a Marsh scheme to rig excess casualty renewal bids in favor of incumbent insurers by generating inflated quotes from competing insurers.

Appearing Wednesday in New York State Supreme Court were:

- James Spiegel, a former Zurich senior underwriter and manager of the insurer's specialties excess casualty division, which dealt exclusively with Marsh's Global Broking unit. Citing e-mails Mr. Spiegel sent in 2003 and 2004, prosecutors

charged that he aided Marsh with bogus quotes, known as "B quotes," on business Marsh intended to renew with other insurers.

According to court papers, in a Sept. 30, 2004, e-mail—sent shortly before Mr. Spitzer filed fraud and antitrust charges against Marsh—Mr. Spiegel ordered his staff to halt the practice: "Please do not provide B quotes to (Marsh). Only provide an (alternate) quote when we know we have a real shot at getting the order to bind."

- Regina Hatton, a former broker in Marsh's Global Broking unit, who was charged with soliciting B quotes from Zurich.

- Nicole Michaels, another Marsh broker who dealt with Zurich. In a 2003 e-mail to a Zurich underwriter, Ms. Michaels outlined a lead quote

provided by American International Group Inc. and said, "the coordinator (wants) a fake quote from you to protect the lead before we quote the excess," court papers show.

The three pleas follow the Tuesday guilty plea of a former Marsh senior vp, Todd Murphy, to a misdemeanor fraud charge related to the bid-rigging.

Mr. Spiegel and Ms. Hatton pleaded guilty to felony fraud charges and face up to four years in jail. Ms. Michaels pleaded guilty to a misdemeanor restraint-of-trade charge and faces up to one year in jail.

Representatives of Marsh and Zurich declined to comment.

Mr. Spitzer's investigation has so far produced 14 guilty pleas, including six from former Marsh officials.

—By Douglas McLeod

BI names panel of judges for Benefit Manager of the Year honor

CHICAGO—Business Insurance has assembled a panel of leading experts in employee benefits to judge the magazine's inaugural Benefit Manager of the Year award competition.

The independent panelists represent top benefit consulting firms, insurance brokerages, managed health care companies and other benefit service providers. Judges will review and score nominations for the award on seven criteria reflecting innovation and leadership in administering employee benefit programs (see box, page 26).

The candidate receiving the highest overall score will be named Benefit Manager of the Year. Business Insurance will announce and profile the winner in the Dec. 5 issue.

Judges for the 2005 Benefit Manager of the Year are:

- Brent Bannerman, founder and chief strategy officer of IE-Engine, a benefit technology services company based in Woburn, Mass. IE-Engine specializes in streamlining employee benefit procurement and cost management for large employers. Mr. Bannerman previously directed the Northeastern U.S. accident and



Mr. Bannerman



Ms. Burmeister



Ms. Darling



Mr. Elliott



Mr. Glickstein



Ms. Keaveney



Mr. Klein



Mr. North



Ms. Obourn



Ms. Olson

See JUDGES / page 26

NIOSH sees fit to relax ban on contact lens wear

Agency issues guidelines to protect workers near hazardous chemicals

By MEG FLETCHER

WASHINGTON—National safety and health regulators are relaxing their quarter-century ban against contact lens wear while working with hazardous chemicals.

The latest research by the National Institute for Occupational Safety and Health concluded that contact lens wear should be permitted if

employers implement NIOSH's 10 new safety guidelines, according to an e-mail bulletin that was released last week.

Representatives of employers, workers and researchers who participated in or reviewed the study said that they generally support the conclusions. An employer reviewer, however, cautions that it is "unrealistic" to expect that employers will

conduct a thorough hazard evaluation for all chemicals in the workplace and recommends a more targeted approach.

Bill Kojola, a Washington-based industrial hygienist with the AFL-CIO, said, "I support the conclusions that NIOSH reached; that a blanket prohibition against contact lens use in a chemical environment was not supported by the research."

Since 1978, NIOSH had recommended that "workers not wear contacts during work with chemicals that present an eye irritation or injury hazard," according to

NIOSH's new Bulletin 59.

That previous recommendation stemmed from a concern that contact lenses might trap chemicals in the eye or inhibit a person from detecting a problem before it was too late, said Larry L. Jackson, a NIOSH injury epidemiologist in Morgantown, W.Va. He is one of five co-authors of the bulletin.

Since then, a number of professional medical associations—including the American College of Occupational and Environmental Medicine—have removed most restrictions for wearing contact lenses in the industrial environment, he said. In addition, some foreign countries as well as employers have relaxed their restrictions, other sources said.

NIOSH also conducted a review and concluded that "in general, injury data are lacking" to support its previous ban, the bulletin said.

NIOSH acknowledges the limitations of its research, though, by saying that "the risk is unknown" for many hazardous chemicals.

The bulletin notes that the Occupational Safety and Health Administration "recommends" against contact lens use when working with specific chemicals. The use of contact lenses by workers dealing with those chemicals, however, "is not precluded by law," an OSHA spokesman said.

The new NIOSH recommenda-

tions "are excellent guidelines" for employers to follow, Mr. Jackson said. Increasing eye safety awareness should be cost-effective by preventing incidents or injuries, he said.

In addition, workers who can wear contact lenses may be more comfortable, have improved visual acuity and be able to more easily wear a broader range of personal protective equipment such as goggles and face masks, sources said.

Optometrist Robert Ford, who is director of Eastman Kodak Co.'s vision care program for its 50,000 workers worldwide, generally supports the guidelines. However, he said it is "unrealistic" to expect that employers will do a thorough assessment of the impact of all chemicals in the workplace on contact lenses, especially because of a lack of data.

Mr. Ford said Rochester, N.Y.-based Kodak's approach is to perform assessments on an as-needed basis and then to take steps to prevent any worker from being exposed to hazardous chemicals through the use of variety of techniques, including venting workites or requiring workers to use personal protective equipment, he said. Currently, Kodak bans the wearing of contact lenses only due to dust, not chemicals, Mr. Ford said.

For additional information, visit the NIOSH Web site at www.cdc.gov/niosh/docs/2005-139 or call 800-356-4674.

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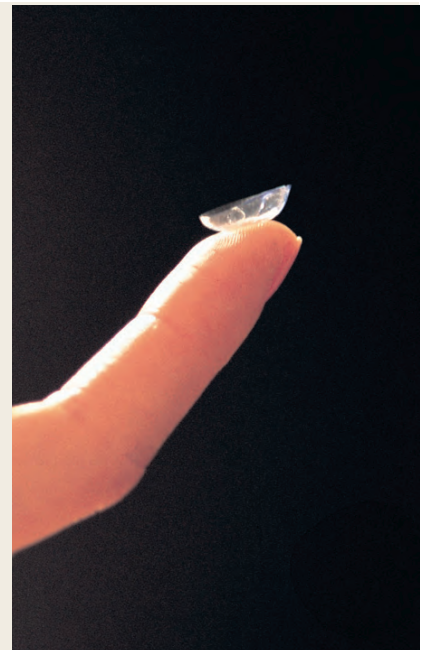
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NIOSH guidelines

Guidelines for contact lens use in a chemical environment:

- Conduct an eye injury hazard evaluation that assesses chemical exposures, contact lens wear and appropriate eye and face protection.
- Provide suitable eye and face protection for all workers exposed to eye injury hazards.
- Establish a written policy documenting general safety requirements for wearing lenses by location and task, including appropriate protection and restrictions.
- Comply with current Occupational Safety and Health Administration regulations regarding lens wear and protection.
- Notify workers and visitors of any areas where contact lenses are restricted.
- Identify contact lens wearers to supervisors to ensure that hazards are properly assessed and that appropriate eye protection and first aid equipment are available.
- Train medical and first aid personnel in the removal of contact lenses.
- In the event of a chemical exposure, begin eye irrigation immediately and remove contact lenses as soon as practical.
- Instruct workers who wear contact lenses to remove the lenses at the first sign of eye redness or irritation.
- Evaluate restrictions on lens wear on a case-by-case basis.

Source: National Institute for Occupational Safety and Health



Editorial

Terrorism pool an idea worth a try

KEY MEMBERS OF CONGRESS have said they want to work on the problem of terrorism insurance during their August recess, and we certainly agree that would be time well spent.

In fact, doing so has more than a little urgency—the Terrorism Risk Insurance Act's current federal terrorism insurance backstop expires Dec. 31, and the Bush administration has already said it doesn't want the program extended in its current form. Unfortunately, there's nothing in place to provide any sort of backstop, and with Congress slated to adjourn in early October for the rest of 2005, having something in place quickly becomes imperative to avoid market dislocations.

But even if Congress comes up with a short-term solution, the question of how to deal with providing terrorism coverage on a long-term basis remains unanswered. One possible answer, outlined by Lawrence Mirel, the District of Columbia's insurance commissioner, at a congressional hearing late last month, deserves serious attention.

Mr. Mirel advocates creating a privately funded, government-backed pool to provide capacity for terrorism insurance. As the pool grew, the federal government's exposure

would be reduced correspondingly—thereby answering TRIA critics who have complained that the current backstop shifts too much risk to taxpayers.

Mr. Mirel suggested that Congress approve the creation of such a pool and the government set rules and regulations for the pool's operation, and then let the insurance industry put it together.

Mr. Mirel pointed out that such public/private approaches to insuring the uninsurable risk presented by terrorism have worked elsewhere. There would, of course, be some unique challenges to adopting such a course in the United States. Not least would be how a federally chartered insurance entity would be treated under a state-based system of insurance regulation. There's also the question of how the tax system would treat interest earned on the pool's holdings as it built up capacity.

Those are questions for lawmakers to ponder. While we're not ready to take the plunge of endorsing a pool as the only long-term solution to the problem of assuring adequate affordable terrorism insurance, we do believe nothing can be lost—and possibly much gained—by testing the political waters regarding its viability now.

Schillerstrom



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Editorial

Garamendi misinformed on CDHP designs

WE HAVE A SIMPLE MESSAGE for California Insurance Commissioner John Garamendi: Before denouncing consumer-driven health plans, such as health savings accounts and health reimbursement arrangements, he would be wise to examine how the plans operate in the real world.

In report issued last week, "Priced Out: Health Care in California," Mr. Garamendi, who candidly acknowledges that the facts are not presented neutrally, takes aim at consumer-driven plans.

The arrangements—in which accounts,

funded by employees or employers or both, are linked to a high-deductible health insurance plan—result in patients forgoing needed care, Mr. Garamendi asserts.

This occurs, according to the report, because the financial disincentives in the arrangements are "likely to cause many to forgo necessary treatment at early stages when detection and intervention would allow less expensive and more effective treatments."

Whoa. It is time for Mr. Garamendi to have a reality check, at least when it comes to consumer-driven plans.

It is the norm, not the exception, for consumer-driven plan sponsors to offer low-cost-

sharing requirements, such as waiving the deductible that normally would apply, in favor of low or even no employee cost-sharing for preventive services.

Additionally, many employers with consumer-driven plans encourage employees to enroll and participate in programs to help spot health conditions early on, as well as to participate in programs to reduce the likelihood of health care conditions worsening into more serious and expensive-to-treat medical problems.

To cite one example, Fujitsu America Inc. gives employees a \$100 HRA credit if they complete an online health risk appraisal, while another \$100 is credited when employ-

ees enroll in a program to treat certain conditions identified by the appraisal and a further \$100 is credited when employees successfully complete the program.

That encouragement to identify and treat health conditions is just about totally lacking in traditional plans.

We'd be the last to say that consumer-driven plans are, by themselves, a panacea for all that ails the nation's health care system. But more than any other design, they do encourage employees to use health care services carefully, and that can only be in everyone's best interests, a point on which Mr. Garamendi obviously needs a reminder.

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AMERICAN BUSINESS MEDIA



By Gerald L. Maatman Jr.

Perspectives

Workers score trifecta in Supreme Court

Trio of decisions during last term creates challenges for employers

The manner by which risk managers, human resources professionals and corporate counsel mitigate legal risks is influenced significantly by U.S. Supreme Court decisional law.

As the Supreme Court prepares to convene its 2005 fall term and the Senate considers the pending nomination of Judge John G. Roberts Jr., employers are licking their wounds from key employment law rulings by the Supreme Court during the last term.

While there is a silver lining for risk management of workplace liabilities in at least one of those rulings, the scorecard this past year was decidedly pro-plaintiff.

Disparate impact

The biggest ruling for employers—and workers and their lawyers—was the Supreme Court's March 30 decision in *Smith vs. City of Jackson*. In a 5-3 opinion, the Supreme Court held that the Age Discrimination in Employment Act authorizes "disparate impact" claims, which do not require a showing of discriminatory intent (and instead focus on whether an employer's policies and practices adversely impact members of a protected-category group).

The Supreme Court's decision came as a surprise because a majority of lower federal courts had refused to entertain ADEA disparate impact claims, while a minority of lower federal courts allowed such claims but only in narrow circumstances. Most courts subscribed to the view that workers had to prove intentional age discrimination to make a viable ADEA claim. The contrary minority view has now become the law of the land. In practice, it tilts the litigation landscape in favor of plaintiffs.

The Supreme Court, however, planted some risk management seeds in construing the ADEA to afford employers a defense based on "reasonable factors other than age," or RFOA.

Unlike the well-established Title VII disparate impact theory—where the challenged policy or practice with adverse impact can be defended only by showing it is based on an essential or indispensable business necessity—the RFOA defense is broader. An employer need only show the policy or practice is based on an RFOA, for it is immaterial if an alternative policy or practice is available that would have avoided the adverse impact.

The *Smith* decision is one of the most significant age discrimination rulings in decades and is apt to have profound implications over a wide

The contrary minority view has now become the law of the land. In practice, it tilts the litigation landscape in favor of plaintiffs.

range of corporate decision-making. While it significantly increases the risk of liability for age discrimination claims (because disparate impact discrimination is easier to allege and prove than disparate treatment discrimination), decisions by employers in situations involving multiple employees—such as a layoff, a reduction in force or a change in employee benefit programs—are more easily attacked by plaintiff's lawyers under a disparate impact theory.

Sound risk management now counsels that employers undertaking personnel decisions that may have a disparate impact on employees over the age of 40 should thoroughly review and document the legitimate reasons for their personnel decisions and "run the numbers" to ensure that statistically, the personnel decision is free of adverse impact.

Protecting whistleblowers

In the March 29 decision in *Jackson vs. Birmingham Board of Educa-*

tion, a deeply divided Supreme Court ruled 5-4 that Title IX of the Education Amendment Act of 1972, which promotes general equality in educational programs, protects victims of alleged retaliation who complain of discrimination. The Supreme Court rejected lower court rulings which interpreted the law to preclude a cause of action for retaliation by whistleblowers complaining of discrimination. The decision has significant ramifications for all employers because it opens a window for plaintiffs' lawyers to argue for expansion of causes of action under analogous statutes.

As a result, employers can expect an increased emphasis by workers and their lawyers on "pushing the envelope" of workplace rights to achieve the broad remedial purposes underlying civil rights and employment discrimination laws.

Workers scored a trifecta in the aftermath of the third employment law ruling by the Supreme Court on Jan. 24, *Commissioner vs. Banks*.

At issue was whether the portion of a settlement for a plaintiff's attorneys fees under a contingent fee agreement in an employment discrimination lawsuit should be taxed as income. The Supreme Court reversed lower court rulings which had deemed the monies non-taxable.

However, this result was essentially rendered nugatory as a result of the amendment to the Internal Revenue Code effective Nov. 22, 2004, which now allows a tax deduction for amounts a plaintiff pays for attorney's fees and costs (after October 2004) in connection with a claim of unlawful discrimination.

In practice, the resolution of this issue clarifies the typical calculus of settlement dynamics when settlements are negotiated and brokered.

With Justice Sandra Day O'Connor's announced retirement and additional retirements likely over the near term, the balance of coalitions is likely to shift on the Supreme Court in 2005 and beyond. This undoubtedly will impact future employment law rulings and shape the resolution of issues in the Supreme Court's future interpretation of workplace laws.

Gerald L. Maatman Jr. is a partner in the Chicago law firm Seyfarth Shaw L.L.P.

ERISA administrator not bound by Social Security determination

An ERISA plan administrator was not bound by a Social Security Administration determination when reviewing a participant's claim for disability benefits under the ERISA plan, according to the 6th U.S. Circuit Court of Appeals.

Betty Whitaker, an employee of Gray Communications Systems Inc., resigned from her job in 2001, stating that her physical and mental impairments prevented her from continuing her employment. She then applied for long-term disability benefits from her employee benefit plan, operated by Hartford Life & Accident Insurance Co. and governed by the Employee Retirement Income Security Act.

Hartford denied her claim concluding that she was not "disabled" within the policy's definition because she was not precluded from performing her job duties for another employer. Ms. Whitaker brought this suit seeking an award of benefits.

The trial court found the insurer's denial of benefits was not arbitrary or capricious. Ms. Whitaker appealed.

On appeal, Ms. Whitaker argued that the insurer should have accorded greater weight to Ms. Whitaker's successful SSA disability claim. The court said that entitlement to Social Security benefits is measured by a uniform set of feder-

al criteria. But a claim for benefits under an ERISA plan, the court said, often turns on the interpretation of plan terms that differ from SSA criteria.

Thus, the court agreed with the trial court that an ERISA plan administrator is not bound by an SSA disability determination when reviewing a claim for benefits under an ERISA plan.

Whitaker vs. Hartford Life & Accident Insurance Co., 6th U.S. Circuit Court of Appeals, Jan. 24, 2005 (BI/01/S.-\$10)

Fee attachment violates ERISA

The 3rd U.S. Circuit Court of Appeals ruled that an equitable set-off of pension benefits in order to recoup attorney's fees violated ERISA policy.

Michael Martorana had been covered under an ERISA plan while employed by a steamfitters' union. He worked until he sustained a serious injury while performing work as a union member. He did collect worker's compensation benefits and, subsequently, was also awarded Social Security disability benefits. Also, Mr. Martorana became entitled to a disability pension from the union's pension plan.

In 2000, Mr. Martorana contended that the union's board had im-

Legal Briefs

properly calculated his disability pension benefits. The board denied his claim and demanded that he pay back \$4,400 in past-due health care contributions. This led Mr. Martorana to filing this suit against the board, which ended up in federal court. The federal trial court ruled for the board and also awarded the board \$8,217 in attorney's fees and costs. The trial court allowed the board to collect this award by reducing Mr. Martorana's disability benefit by an amount not to exceed \$160 per month. Mr. Martorana appealed.

On appeal, Mr. Martorana argued that the trial court's order effected an attachment or equitable set-off of his pension benefits that contravened ERISA policy. The court said that a trial court does have the discretion to award attorney's fees to either party in an ERISA suit.

However, the court emphasized that in so doing, the trial court must consider several factors before awarding such fees, including the ability of the offending party to satisfy an award of attorney's fees. The court said that in this case the trial court's failure to consider Mr. Martorana's ability to pay without the possibility of equitable set-off was an error. The court reversed the or-

der granting the attorney's fees. *Martorana vs. Board of Trustees of Steamfitters Local 420*, 3rd U.S. Circuit Court of Appeals, April 14, 2005 (BI/03/S.-\$10)

Insurer not obligated to defend plan

The 9th U.S. Circuit Court of Appeals ruled that a commercial general liability insurance policy insurer had no duty to defend and indemnify a policyholder's profit-sharing plan in a suit brought by employees seeking recovery of profit-sharing monies.

In 1985, Columbia Falls Aluminum Co. implemented a profit-sharing plan, which provided that the board of directors would determine each year the amount of profit available for distribution. Pursuant to the plan, employees agreed to a reduction in their base wages in exchange for a substantial portion of the profits when business was good. From the period 1986 through 1994, CFAC was covered under CGL insurance policies covering fiduciary responsibility for various wrongful acts arising out of and relating to the profit-sharing plans.

In 1990, 1992 and 1994, lawsuits were filed by or on behalf of current and former CFAC employees seeking recovery of profit-sharing

monies that CFAC allegedly withheld by failing to adequately fund its ERISA plans. The CGL insurers refused to indemnify CFAC in the suits. CFAC sued the insurers alleging coverage under the policies. The trial court ruled for the insurers. CFAC appealed.

The appeals court concluded the acts the employees alleged against CFAC, seeking recovery of profit-sharing monies that CFAC allegedly withheld, did not involve the "administration" of the plans covered by the employee benefits liability coverage of the CGL policies.

According to the court, the wrongful acts alleged by the employees in the underlying complaints involved the extent and calculation of profits, not the giving of counsel to employees with respect to those benefits. The trial court decision was affirmed.

Travelers Casualty vs. Wausau Underwriters Insurance Co., 9th U.S. Circuit Court of Appeals, April 28, 2005 (BI/04/S.-\$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. Please provide the listed number for each opinion ordered.

Spotlight

Catastrophe Management

Northeast's hurricane exposure is a 'nightmare,' experts say / page 18

Mold can creep in after the wind stops blowing / page 20

Unintended release of hazardous material can follow disaster / page 21

PHOTO: NOAA



2004's Hurricane Ivan slammed into the Southeastern United States.

Hurricane onslaught of 2004 reinforces lessons of Andrew

By MARK A. HOFMANN

Four unwelcome visitors named Charley, Frances, Ivan and Jeanne left Florida with about \$22 billion in insured property damage last year.

But that wasn't all those four hurricanes did. They also taught some lessons that should leave risk managers and insurers in a better position to deal with future onslaughts. And with this year's hurricane season off to a very early, destructive start, heeding those lessons could be critical.

In some cases, the lessons are not so much new as a reiteration of what was already known. For example, improved building codes in South Florida after Hurricane Andrew meant less damage in 2004 than might have been suffered in 1992. Newer buildings tended to fare better than older ones.

Yet the fact that four hurricanes struck in such a short period of time placed a new emphasis on making sure power was available. The great demand for contractors and materi-

See HURRICANES / page 14

More risk managers turning to modeling to mitigate the risks of terrorist bombing

By DAVE LENCKUS

Fears of terrorist bombings have prompted a small but growing number of risk managers to embrace a risk identification tool that property risk consultants describe as the next logical step in risk modeling.

Just as earlier modeling tools have helped risk managers better understand their facilities' vulnerabilities to fire, hurricane, earthquake and tsunami risks, now bomb blast modeling can demonstrate potential losses from a variety of explosive charges, say property risk consultants, structural engineers and modeling experts.

For example, bomb blast modeling can help risk managers evaluate the damage that could be caused by a briefcase bomb that detonates near a major supporting column in a building or by a truck bomb that is triggered in an underground

garage or across the street from a particular site, experts say.

With a detailed understanding of what likely would happen to a facility, critical equipment and personnel in those scenarios, risk managers could implement measures specifically designed to prevent and mitigate losses, experts say. Certain models also would demonstrate the expected effectiveness of those measures, experts say.

Risk managers also could model the bomb blast risk for a portfolio of properties spread out nationally or internationally, though that kind of analysis would not be as detailed, experts say.

Modeling results, combined with loss mitigation measures, also give risk managers more marketing clout with insurers, said Bob Siner, director of the natural hazards unit at Aon Risk Services Inc. of Chicago.

See MODELING / page 22

Wind-driven rains create peril on par with high winds, debris

By MARA LAZDINS

A well-crafted catastrophe plan can help risk managers deal with one of a hurricane's most destructive elements: wind-driven rain.

While high winds are often the center of attention as a hurricane makes landfall, the rains that accompany it can cause costly damage as well.

The rain can also lead to mold, another expensive byproduct of hurricanes (see story, page 20).

"Wind-driven precipitation forces a lot of moisture deep into the building's core because of the velocity of the actual droplets that strike the surface," said Al Draper, director of restoration at LVI Services, a New York-based environmental services company. "These

droplets moving at 110 mph and impacting into a wood or drywall surface is a whole other animal. Materials affected require more extensive drying than regular water damage."

Because the rain blows horizontally, it can get into gaps behind gutter systems, under roof decking and can blow through weatherizing seals around doors and windows.

When roofs are not properly secured or walls break and let water in, risk managers have to determine which building materials are so wet that they don't want to take the time and effort to dry them. According to Mr. Draper, drying can take up to 96 hours and can be a costly process. However, if materials can be salvaged, the potential problem of mold growth is eliminated.

"Eliminate materials from turning from wet to mold," Mr. Draper said. "You have to bite the bullet and rip out the real wet stuff and get rid of it."

In order for companies to pre-

See WIND / page 20



Plywood and sandbags can help mitigate the possible damage from hurricane-driven rain.

PHOTO: FEMA

RANKING: Property Loss Control Consultants / Page 12

Coming next: Global Benefit Trends / Aug. 15

Largest professional staff

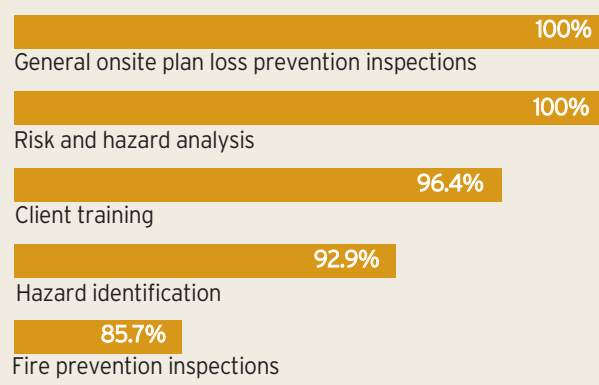
By number of professional property loss control staff

Company	Professional staff
ABS Consulting Inc.	510
Marsh-Risk Consulting Practice	300
Zurich Services Corp.	250
Schirmer Engineering Corp	183
Global Risk Consultants Corp.	181
Regional Reporting Inc.	168
Hughes Associates Inc.	130
GE Global Asset Protection Services	127
TVA Fire & Life Safety Inc.	100
Gallagher Bassett Services Inc.	52

Source: BI survey

Common consulting services

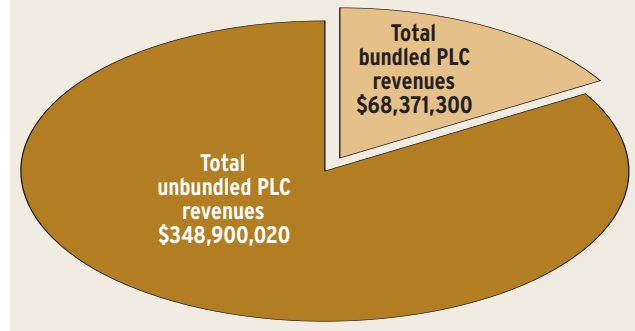
Most common services by property loss consultants



Source: BI survey

Bundled vs. unbundled

Total bundled property loss control revenues vs. total unbundled property loss control revenues.



Source: BI survey

Largest property loss control specialists

Ranked by 2004 gross revenues from unbundled property loss control consulting ¹

Rank	Company/Address	Phone/Fax/Web site	Unbundled property loss control consulting revenue	% of property loss control consulting revenues from unbundled services	Total staff	Professional property loss control staff	Branch offices	Unbundled clients	Principal officer
1	ABS Consulting 16800 Greenspoint Park Drive, Suite 300 S., Houston, Texas 77060-2393	281-673-2800 Fax: 281-673-2801 www.absconsulting.com	\$111,500,000	100%	730	510	20	1,800	Frank J. Iarossi, chairman/CEO
2	Global Risk Consultants Corp. 100 Walnut Ave., Fifth Floor, Clark, N.J. 07066	732-827-4400 Fax: 732-827-4490 www.globalriskconsultants.com	\$42,337,000	100%	289	181	29	690	William F. Ramonas, chairman/CEO
3	GE Global Asset Protection Services 20 Security Drive, Avon, Conn. 06001	860-507-1506 Fax: 860-507-1510 www.gegapsservices.com	\$30,600,000	100%	139	127	11	322	Dan Eudy, president
4	Schirmer Engineering Corp. 707 Lake Cook Road, Deerfield, Ill. 60015	847-272-8340 Fax: 847-272-2639 www.schirmereng.com	\$27,000,000 ²	100%	250	183	25	680	Carl Baldassarra, president
5	Hughes Associates Inc. 3610 Commerce Drive, Suite 817, Baltimore, Md. 21227-1652	410-737-8677 Fax: 410-737-8688 www.haifire.com	\$21,000,000	100%	145	130	31	500	Phil DiNenno, president
6	TVA Fire & Life Safety Inc. 9740 Scranton Road, Suite 300, San Diego, Calif. 92121	858-795-1000 Fax: 858-795-1001 www.tvafiresafety.com	\$16,000,000	100%	155	100	10	65	James W. Tomes, CEO
7	ACE USA Property Engineering 1601 Chestnut St., Philadelphia, Pa. 19103	215-640-1380 Fax: 215-640-4090 www.aceapex.com , www.ancelimited.com	\$6,212,000	98%	36	36	5	78	Michael Schmidt, vp
8	Matrix Risk Consultants Inc. 3130 S. Tech Blvd., Miamisburg, Ohio 45342	937-886-0000 Fax: 937-432-2099 www.matrixrc.com	\$3,384,000	100%	21	15	1	21	Walter P. Luker, CEO
9	Risk Logic Inc. 93 Apple Ridge, Woodcliff Lake, N.J. 07677	201-930-0700 Fax: 201-930-8795 www.risklogic.com	\$1,650,000	100%	8	7	4	49	John Durante, president
10	Allrisk Engineering Inc. 1909 28th St., S.E. Auburn, Wash. 98002	253-735-0554 Fax: 253-735-3008 www.allriskengineering.com	\$600,000	100%	6	5	4	7	Jesse Wilson, president

¹ Only those companies that derive a majority of their total revenues from unbundled property loss control consulting are ranked. ² BI estimate
Source: BI survey

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Most costly hurricanes in the United States

By estimated insured losses, in millions of dollars

Rank	Hurricane (landfall)	Year	Category	Loss*
1	Andrew (Fla., La., Miss.)	1992	5	\$20,869
2	Charley (Fla., N.C., S.C.)	2004	4	\$7,475
3	Ivan (Ala., Fla., Ga., Ohio, Pa., N.Y., N.C., eight other states)	2004	3	\$7,110
4	Hugo (U.S. Virgin Islands, Puerto Rico, Ga., S.C., N.C., Va.)	1989	4	\$6,391
5	Frances (Fla., Ga., S.C., N.C., N.Y.)	2004	2	\$4,595

*Adjusted to 2004 dollars by Insurance Information Institute.
Source: Insurance Information Institute, National Hurricane Center

Hurricanes: Onslaught of 2004 reinforces lessons

Continued from page 11

als underscored the importance of having pre-existing reconstruction contracts signed, sealed and delivered well before the hurricane formed off the coast.

The storms also re-emphasized the need for reliable communications systems before, during and after landfall.

"We think we got a confirmation of something we already knew," said Mike Burke, vp and manager of catastrophe exposures for Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. "Customers who really understood what their vulnerabilities

were and addressed them did enormously well."

"We think we've taken the loss prevention attitude we've used for fire for 150 years and applied it to hurricane, and it's paying off in exactly the same way," said Mr. Burke. For example, because roofing is most vulnerable at the corners, "we can have the customer focus on 100 square feet at corners and save 100,000 square feet of roof, and prevent \$10 million or \$20 million of damage," he said.

"The bottom line is this stuff works—the straight engineering assessment. Once people respond to it and respond to that challenge, they

eliminate hurricane as a major threat," he said.

"After these hurricanes, we did a post mortem to see if there were new lessons to learn. There were very few surprises—mostly relearning what we knew in the past," said Ralph Tiede, vp-loss prevention at Liberty Mutual Property in Weston, Mass. Findings from the post mortem included: a significant amount of hurricane damage is caused by flying debris; buildings built to new codes "outperformed" older buildings; and construction that was poorly maintained sustained more damage, he said.

The frequency of the hurricane hits demonstrated the need for enhanced modeling, said Samira Barakat, chief risk officer at GE Insurance Solutions in Kansas City, Mo. "The events themselves were not that severe. It was the frequency of nearly equal events that made it so severe. Among other things, it

"Customers who really understood what their vulnerabilities were and addressed them did enormously well."

Mike Burke
Factory Mutual Insurance Co.

highlighted that we don't have very strong cluster modeling in the industry."

Atul Khanduri, manager of wind risk modeling for the Insurance Services Office Inc.'s AIR Worldwide Corp. subsidiary in Boston, said last year's hurricanes "provided us modelers with a real-time laboratory."

"Ironically speaking, it gives us a very good viewpoint on how buildings are designed in various regions in Florida" and how to improve vulnerabilities, he said. "We were able to verify that South Florida, with much better building code requirements, fared better than the panhandle," he said. "We could clearly see the difference in construction quality."

"It helps to retrofit, because in the long term it is going to pay off," said Mr. Khanduri.

Having four hurricanes strike so close together underscored the importance of maintaining access to a reliable source of electrical power, as well.

"There are all kinds of loss lessons from the hurricanes themselves last year. We talked in the past about dealing with the loss of power as being a new and major consideration, particularly for Florida and areas of high humidity," said Wayne Klocko, vp-claims for Liberty Mutual Property. "The lack of power and the accompanying lack of being able to control the environment in the building cause mold and other problems that only tend to increase the damage," he said.

Risk managers "really need to make" preparations for the provision of temporary power. "You had locations that were out for two or



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NATIONAL FLOOD INSURANCE PROGRAM

PHOTO: FEMA



Widespread damage from Hurricane Frances and the other three storms that hit Florida last year created a surge in demand for good and services related to repairs.

Hurricanes: Risk managers learn from storms

Continued from page 14

three weeks at a time," said Mr. Klocko.

The unusually heavy hurricane activity also demonstrated the necessity of having agreements with contractors for reconstruction service finalized long in advance of losses.

"Before the thing even hits, you should have already done your RFQ for the emergency restoration construction," said Franklin Horowitz, president of Claims International Inc., a Voorhees, N.J.-based adjuster.

"We've learned this year that particularly for the larger losses, you

have less than a year to make repairs before we're back in the hurricane season again," said Mr. Klocko of Liberty Mutual. "It's crucial to expedite your repairs."

"In hurricane situations, capable contractors for commercial buildings get committed early, and it's better to be at the front of the line than the back of the line," said Mr. Klocko.

In addition, four hurricanes striking the same state so close together created a "demand surge" for goods and service, said Kevin Campion, executive vp of Benfield Inc.'s Property Solutions practice in Minneapolis.

"The expected insured loss due to hurricanes in Florida is about \$2.5 billion to \$3 billion annually," said Paul Budde, senior vp of Benfield's Catalyst team in Minneapolis. "In 2004, the insured loss of about \$22 billion represents an annual total that is expected to occur about once every 35 to 40 years," said Mr. Budde.

"The demand for \$22 billion in rebuilding puts upward pressure on pricing," said Mr. Campion.

When dealing with insurance claims, having one go-to adjuster can be valuable as well. "If you're a big enough risk, when you're going through your renewals you can state your druthers. One of the druthers is assign an account adjuster from the insurer," said Mr. Horowitz. "At some point, it's so much easier to manage to have one guy that all of the individual adjusters funnel their information through," he said.

Maintaining and upgrading communication is key to weathering the storm, say risk managers.

"The fact that we had a record-breaking year for hurricanes and tropical storms, and the size of them, caused us to think about how we approach managing potential crises," said John Phelps, director of risk management for Blue Cross & Blue Shield of Florida Inc. in Jacksonville. "As a result, there were several improvements that we made to our existing emergency plans.

"We have increased our ability to communicate. We automated communication between team members; we used to have call trees. We now have an automated server outside the company, where we can type in a message to my team and they will get the message in various forms—it may try the office, it may try their home, it may hit their pager."

"Communication is a key objective in achieving our goal," said Ram Basham, risk manager for Glendale, Calif.-based Public Storage Inc. "We make money by our properties being open to the public. We don't like to close them if we don't have to, but safety is first."

Public Storage has 100 properties in Florida, said Mr. Basham. Every one of them suffered some impact—generally minor—from last year's hurricanes, he said.

Many Public Storage tenants are dependent on the facilities opening back up on time because their livelihoods are dependent on the goods they store at the locations, said Mr. Basham. "The goal is to reopen our property" as soon as possible after the storm is over to allow tenants to conduct their business. Unlike hotel guests, storage tenants cannot be sent to another Public Service location if a hurricane cuts them off from their goods at a particular property, he said.

"We're just becoming more and more expert in it," said Mr. Basham. "We have a way to communicate, an 800 number, everybody is online and updated daily all over the country" dealing with the situation, he said.

"In last year's season, no Floridian was unaffected by the hurricanes," said Mr. Phelps.

"RLI has
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Hurricane Floyd in 1999 caused severe flooding in the mid-Atlantic states, but a comparable storm in the Northeast could be devastating, sources say.

Powerful hurricanes pose huge catastrophe exposure for Northeastern U.S. states

By MARK A. HOFMANN

James Lee Witt used to have a nightmare about hurricanes.

"When I was director of FEMA, one of my worst fears was that a hurricane like Floyd or Andrew would come right up the East Coast," said Mr. Witt, who served as director of the Federal Emergency

Management Agency under President Clinton.

"I was really concerned about Floyd, because it, in size, was bigger than Andrew," said Mr. Witt, who is now chairman and chief executive officer of James Lee Witt Associates L.L.C., a Washington public safety and emergency management consulting firm.

Mr. Witt isn't the only one concerned about the impact of a hurricane on the Northeast.

"We see the Northeast hurricane as a big threat. It's an exposure that we actively model and manage, and it's larger than the threat we see in Florida, even though Florida has larger hurricanes," said Mike Burke, vp and manager of catastrophe ex-



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"When I was director of FEMA, one of my worst fears was that a hurricane like Floyd or Andrew would come right up the East Coast."

James Lee Witt
James Lee Witt Associates L.L.C.

posures for Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. "It's been 50 years of lull in the Northeast."

As Atul Khanduri, manager of wind risk modeling at the Insurance Services Office Inc.'s AIR Worldwide Corp. subsidiary in Boston pointed out, only 11 hurricanes have made landfall on the stretch of coast from New Jersey to Maine since 1900, and none since Hurricane Bob in 1991.

Without adequate preparation, "we may get badly surprised," said Mr. Burke.

Perhaps the worst surprise would be a repeat of the unnamed hurricane that ravaged New England in 1938. That "was the most severe Category 3 hurricane to strike the Northeast in at least a century," packing maximum sustained winds of 121 mph with gusts of up to 184 mph, noted AIR's Mr. Khanduri.

He pointed out that even though the area was less populated than it is today, the loss was huge. Because the storm moved inland at the unusually high speed of 50 mph, it

Continued on next page

August 8, 2005

Continued from previous page

caused damage as far as 140 miles inland.

"This was just barreling down, that's why it was called the Long Island Express," he said.

"Losses would be huge today," and even higher if it followed a slightly more westward track, Mr. Khanduri said. In fact, AIR has estimated that an exact repeat of the 1938 hurricane would result in an insured loss of \$24.5 billion. Total economic losses would be much higher because of flooding. Mr. Khanduri also stressed that such flooding would be a major concern if a hurricane like that of 1938 struck, when the maximum storm surge reached 17 feet.

Mr. Khanduri noted the North-

east has less experience with hurricanes and a lower preparedness level than regions farther south.

"Florida's had some practice," said Kevin Campion, executive vp of Benfield Inc.'s Property Solutions practice in Minneapolis.

Even though a Northeast hurricane would probably pack slower maximum sustained winds than the storms that strike Florida, damage could be even greater, pointed out Mr. Burke of FM Global.

"The concentration of property values is so high that even though you throw in a 20-mile-an-hour lower wind speed into them, the damage is still enormous," he said.

Mr. Khanduri noted that buildings in the Northeast are typically designed to withstand lower wind

speeds than those in South Florida, which are designed to withstand gusts of up to 150 mph. In the Northeast, wind-gust resistance of 120 mph is more common.

Florida building codes are more demanding as well, requiring that building owners take steps such as installing hurricane shutters. Further complicating the matter is the fact that Northeast building stock tends to be older than that of Florida, Mr. Khanduri said.

Mr. Burke said that the fact that roofs in New England are built to withstand snow loads could mitigate damage somewhat. "Make sure you've got the roof covering fastened well, make sure you have an emergency team in place," he said.

William G. Chapin, director of

the office of facilities and risk management for the Diocese of Rockville Centre in Rockville Centre, N.Y., said the diocese has a wide-ranging catastrophe plan in place to deal with hurricanes and other natural disasters.

"We try to cover all the bases on as broad a scope as we can," said Mr. Chapin, who was a member of the *Business Insurance* Risk Management Honor Roll in 2003. "We have contractors we use, and we have the ability for 24/7 claims call-in. If a hurricane or disaster hits, everybody's going to be stressed no matter how much planning you did. It's just that those who had some plans in place will be steps ahead of the others."

A potentially dangerous differ-

ence between Florida and Northeast hurricanes stems from the relative speed of the storms, noted Mr. Burke. Even though maximum sustained wind speeds are lower, the forward motion of storms in New England is much faster than in Florida, noted Mr. Burke. When a hurricane is 500 miles off Florida, residents might have 48 hours to prepare. But a similar storm 750 miles off New England might allow only 24 hours for preparation because of the faster pace toward land.

Evacuation could become particularly dicey, said Mr. Witt. "There are only so many bridges and so many roads," he said. "Roads haven't kept up with development—which makes evacuation planning even more critical."

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After the hurricane is over, the risk of mold growth begins

By MARA LAZDINS

Hurricane-generated water damage can mean an additional peril for risk managers: mold.

In some cases, hidden moisture or the failure to remove saturated materials in a building can result in mold growth. Mold can grow on any surface where water or humidity is present; the presence of moisture, therefore, should be an immediate concern because mold devel-

ops and spreads quickly.

"Mold sends out spores that are about 3 to 5 microns small," said Al Draper, director of restoration at LVI Services, a New York-based environmental services firm. "They can stick to the soles of shoes, land on clothing or be carried by air. Mold must be taken care of because when conditions are right in the future—if a water pipe leaks—the spores lay there waiting to take off."

Once mold is located, it can be contained by simply shutting the door and shutting down ventilation to the area or by taping a sheet of polymer over the mold to keep it from spreading, Mr. Draper said. Then the affected area should be cleaned with a disinfectant if mold appears on nonporous materials such as steel or glass. However, if mold is present on porous materials like drywall or wood, it should be removed completely, he said.

Typically, mold can lead to headaches, respiratory problems or loss in ability to concentrate, Mr.

Draper said. According to a May 2004 news release from LVI Services, prolonged exposure to high levels of mold may even cause memory loss or death.

"Some molds have greater allergic potential than others and can cause serious problems and immunal compromise," Mr. Draper said. "This will affect work and productivity and that's what ends up costing business."

Mold also can lead to insurance problems. Dan Lentz, partner and leader of the financial and economic damages practice at Ernst & Young Insurance in Washington, said "Insurers don't include mold coverage because types of claims and losses have been disproportionate to the facts. There has been a lot of money lost on mold claims because cost of clean up is extremely high."

Oftentimes, insurance companies will only cover what is called "resultant mold," which is mold caused by wind-driven rain. The loss is due to the wind and rain, not the mold itself, says Dave Marcus, southeast regional vp at Arthur J. Gallagher & Co., in Boca Raton, Fla.

"Loss from mold is almost always not covered," Mr. Marcus said. "It's a big issue where companies feel like they can't underwrite the risk because they can't get their hands on what the risk is—it's literally hidden."



FM Global uses a wind machine at its research campus that can simulate a category 5 hurricane, generating wind speeds up to 160 mph, to test building designs and materials.

Wind: Hurricane-driven rain can cause major damage

Continued from page 11

pare for hurricanes, they must develop a loss prevention plan before a disaster occurs, according to Dennis Anderson, vp-engineering application training at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global.

Loss control steps

Mr. Anderson explained that the risk manager should first identify issues that could result in physical damage to the building. For example, any loose parts on the roof should be fixed immediately. Then the walls should be assessed. Any faulty walls or doors should be adequately braced so they can withstand water and wind. Plywood should be fixed to windows, with double layers on bottom floors 72 hours before a storm hits. High-story buildings can use laminated glass, which may crack but won't let water in. If the building is vulnerable to flooding, all valuables on lower floors should be removed.

"If these steps are taken, when the hurricane comes, the building will perform as expected," Mr. Anderson said. "There is no damage to (the building), except for something like loss of power."

At FM Global's research campus in West Glocester, R.I., extensive testing of manufactured products helps determine what materials can and cannot withstand the pressures of wind and rain.

"We take typical roof constructions and simulate wind in a hurricane so we will know how (the roof) will fail," Mr. Anderson said. "It will then be installed so that the worst wind we can envision won't do damage and let water in."

There are instances, however, when proper precautions are not taken and water damage becomes a serious issue. Wind-driven rain in a hurricane is the root of the problem.

If damage occurs, photographs should be taken as evidence before any clean up takes place, said Dave Marcus, southeast regional vp at Arthur J. Gallagher & Co. in Boca Raton, Fla. This ensures that the owner has evidence of what oc-

curred and will get the appropriate compensation for damages. The property owner should then perform any emergency repairs to get things up and running as soon as possible.

Materials should be dried out immediately, say experts. However, completely saturated materials should be removed.

"If you don't dry immediately, you'll have longer term damage," said Dan Lentz, partner and leader of financial and economic damages practice at Ernst & Young Insurance in Washington. "Insurance companies demand you to do whatever you can to mitigate the loss."

When the decision is made to attempt to restore losses, a disaster response provider should be present and ready to repair.

"It's very important (to find a disaster response provider) so you can work out a relationship with them," Mr. Draper said. "When there is no emergency, you have time to check their insurance, you have time to look at the company and their experience and work out time and material rates."

When a hurricane does occur, the disaster response provider usually will visit the site and determine the priorities of the property owner to see what needs to be taken care of first. They will then go out and begin restoration by measuring how much moisture is actually in the wood, carpet, ceilings, walls and other areas of the building.

Water is most damaging factor in trying to maintain a structure; it's worse than wind-blown objects and wind itself, says Mitch Cohen, syndicator for Aon Environmental Group in Atlanta. "In a hurricane, steel storm doors and windows can prevent damage, but the best thing is having quick response," Mr. Cohen said.

Not only is having help on hand important, but having a well-constructed building is imperative as well.

"At the end of the day, it's all about construction—residential or commercial," Mr. Marcus said. "Good, solid construction, having wind resistant glass and building to code will save dollars in the long run."

PHOTO: FEMA



After a hurricane's passage, saturated buildings can quickly develop mold, which can cause a range of problems.

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Serious environmental risks can accompany catastrophes

By MEG FLETCHER

Risk managers in some industries need to prepare for unintended release of dangerous materials into the environment following a natural or man-made catastrophe.

They can benefit from the lessons learned in the aftermath of the Sept. 11, 2001, terrorist attacks and the subsequent commitment of governmental agencies and businesses to be better prepared in the future. That commitment includes billions of dollars in funding to improve deterrents.

But more needs to be done, especially by companies with less obvious risks, such as those that have stored mining waste or agribusiness waste, sources say.

There are many sources of hazardous materials, including nuclear plants, chemical plants, and older buildings that could release asbestos during a catastrophe.

An unintended release of danger-

tion," she said.

For example, it is "highly unlikely" that a nuclear plant would not withstand a catastrophe such as a tornado, said a spokesman for FirstEnergy Corp., an Akron, Ohio-based owner of three nuclear plants in Ohio and Pennsylvania.

"Nearly 3 million Americans live within 10 miles of an operating nuclear power plant," which has the potential to leak radiation, which can cause illness and even death,

according to information from the Federal Emergency Management Agency.

First Energy's plants follow "very robust" construction guidelines and are designed to withstand the impact of an airplane strike, a First Energy spokesman said. "Since Sept. 11, FirstEnergy has spent \$25 million to beef up already top-notch security," including measures to re-

See HAZARDS / next page



Nearly 3 million Americans live within 10 miles of an operating nuclear power plant, which can leak radiation and cause illness or death, according to the Federal Emergency Management Agency.

"Post 9/11, there are a lot more resources available for public entity risk managers who must cope with a wide range of catastrophes."

Heather Ripley
Public Risk Management Association

ous materials can occur where those materials are produced or stored, or during transport.

To help prevent environmental accidents, federal and local government officials have taken several steps that require companies to acknowledge their potential exposures and make plans to cope with the consequences should a disaster occur.

For example, the federal Sarbanes-Oxley Act requires publicly traded companies to report their environmental liabilities, said Ray Spudeck, senior research economist and a Florida insurance regulator.

Once hazards are acknowledged, companies and public entities must take steps to prepare to deal with potential accidents.

For example, hurricane-prone Florida "has one of the most advanced and tested disaster plans in the United States. Florida, like other catastrophe-prone states, is generally willing to share its information," Mr. Spudeck said.

"Post 9/11, there are a lot more resources available for public entity risk managers who must cope with a wide range of catastrophes," said Heather Ripley, education and training manager for the Alexandria, Va.-based Public Risk Management Association.

"Everyone is paying more atten-

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Hazards: Companies and public entities must prepare for environmental disaster

Continued from previous page

inforce the perimeter of its plants, he said.

Such nuclear sites "are so redundantly secure, I doubt if anything would happen," said David Dybdahl, president of American Risk Management Resources Network L.L.C. The Middleton, Wis.-based firm is a specialty environmental wholesale broker.

In addition, the establishment of the U.S. Department of Homeland Security has made billions of dollars available for grants and projects to mitigate hazards and has attracted more people to the effort, Ms. Ripley added.

The homeland security department is developing a national response plan to prioritize response to incidents, with an emphasis on local response and coordination among multiple public service agencies at the federal, state and local levels.

According to recent statements from federal sources, the Bush administration has invested more than \$7 billion in biodefense measures. That includes issuing thousands of radiation detection devices to security officials who screen passengers and cargo coming into the United States. In addition, a

"BioWatch" program monitors major cities for any release of a biological contaminant. It also has procured sufficient smallpox vaccine for all citizens and significantly increased stocks of antibiotics against anthrax.

The U.S. Postal Service has spent millions of dollars to isolate and redesign machines to protect workers from anthrax-contaminated mail, said Rod Taylor, managing director of Cedarhurst, N.Y.-based Breystone & Co. Ltd., an insurance broker and consultant. Other companies may want to consider isolating mail-handling functions, including providing separate air conditioning and heating systems to prevent airborne contamination of adjacent areas, he said.

The Homeland Security Department's Federal Emergency Management Agency is providing extensive training to local government officials as well as training materials and risk management publications. Information on assessing and preventing a company's risk to catastrophes is also available to the public online at www.fema.gov/fima/rmsp.shtm.

Some California utility companies and the U.S. Postal Service are using FEMA's free HAZUS-MH software to help them estimate losses

that could result from an earthquake, hurricane or flood, according to Eric Berman, the project's program manager. The program's goal is to identify the population at risk and then to estimate the potential impacts on infrastructure and essential facilities.

In addition, HAZUS-MH can be used in conjunction with other models, including one from the Environmental Protection Agency that uses "plume modeling" to track the spread of a toxic chemical or radiological release that depends upon wind speed and direction, he said.

Already in place are local emergency planning committees that are responsible for developing an emergency plan to prepare for and respond to chemical emergencies, such as a chemical plant explosion or transportation accident where hazardous cargo may be released into the environment.

Several environmental risks may exist at companies whose risk managers aren't aware they exist, Mr. Dybdahl said.

For example, a seismic event such as an earthquake could cause earthen structures holding mining wastes to rupture and the effluent to flow into nearby streams and pollute



The U.S. Postal Service is buying up to 20 SureBeam systems from Titan Corp. The system uses linear accelerators to sterilize parcels.

recreation areas, Mr. Taylor said.

In another example, Florida regulator Mr. Spudeck said Hurricane Floyd damaged tanks containing animal waste at a farm in neighboring state, causing a large quantity of chemically-treated effluent to flow into nearby waterways.

Several sources urged risk managers not forget the tragedy in 1984 of the gas leak from Union Carbide

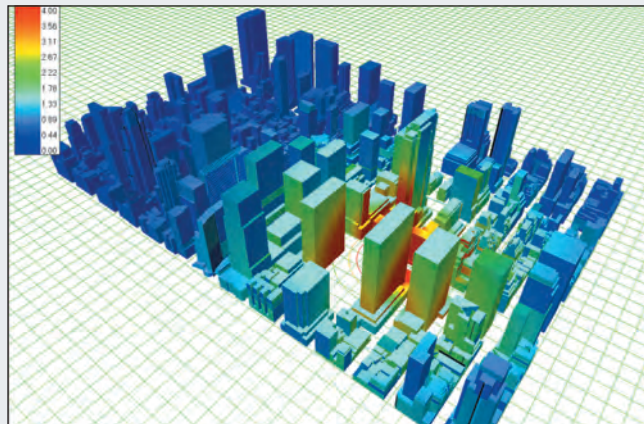
Corp.'s pesticide plant in Bhopal, India, which killed more than 3,000 people, or the Exxon Valdez oil spill in 1989, which contaminated a sensitive environmental area in Alaska.

Such events damage a company's reputation, which can be far worse economically than the pure monetary loss caused by the event itself, said Alan Morton, deputy head of claims for London-based JLT Risk

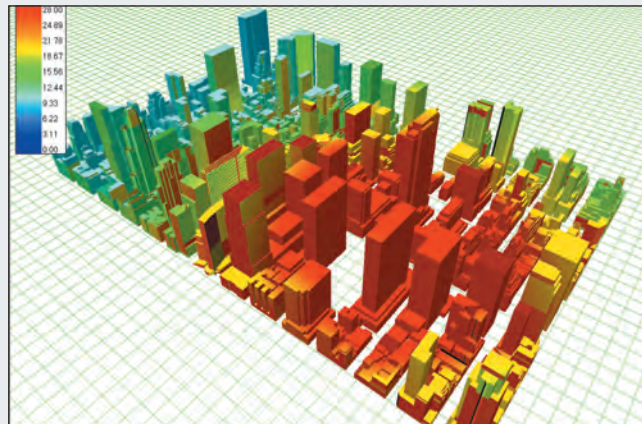
Cutting-edge modeling

These models depict the anticipated large-scale effects of a two-ton truck bomb detonated at Rockefeller Center in Manhattan. The blast is equivalent to the 1995 blast at the Alfred P. Murrah Federal Building in Oklahoma City.

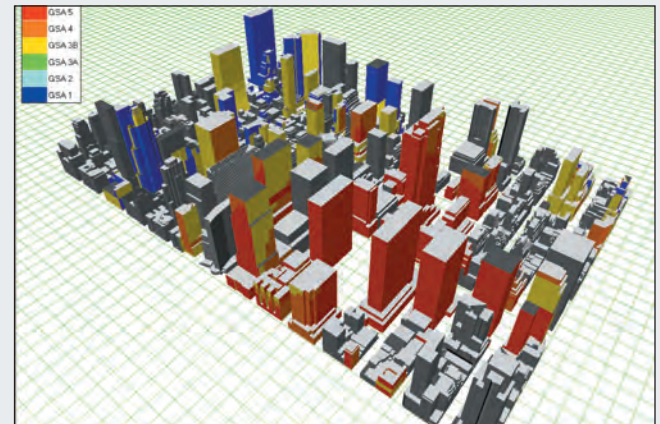
PHOTO: ABSA



PRESSURE: The first image shows how much pressure—measured in pounds per square inch—a blast wave would create.



IMPULSE: The second image shows the blast impulse—a measure of pressure and duration in milliseconds—that is the blast force that causes the most damage.



DAMAGE: The third image, using the General Services Administration's hazard level system, shows where most of the property damage and bodily harm would occur.

Source: ABSG Consulting Inc.

Modeling: Risk managers using high-tech tool to mitigate terrorist activities

Continued from page 11

The modeling tool already has played a role in the war on terror. The U.S. government has long used the technology as part of its efforts to protect its embassies against terrorist strikes, experts note.

Blast data used in the most sophisticated modeling can be traced back to the Cold War era, when the U.S. military analyzed how powerful blasts needed to be to knock out underground Soviet installations, according to William E. Gates, a Los Angeles-based vp at structural engineering firm URS Corp.

But in the domestic commercial property loss control setting, bomb blast modeling is "cutting-edge technology," said property risk consultants and modeling experts. Outside of the petrochemical industry,

where blast modeling is not unusual, "only a handful" of risk managers to date have enlisted the technology and have taken measures to shore up structural weaknesses the modeling has identified, several experts said. For security reasons, though, those risk managers typically do not want their organizations identified.

Referring to the modeling and some associated risk control measures, property risk consultant Deborah L. Freeland said, "There is much that a proactive risk manager can bring to the table that was not even available to most firms as little as one or two years ago."

However, "I would say the vast majority of firms have not gotten their arms around this issue," said Ms. Freeland, area senior vp with

"The vast majority of firms have not gotten their arms around this issue."

**Deborah L. Freeland
Arthur J. Gallagher
Risk Management Services**

Arthur J. Gallagher Risk Management Services, a unit of Arthur J. Gallagher & Co. Insurance Brokers of California Inc.

Mr. Gates agrees. Because the risk often is considered a random peril, risk managers "tend not to do anything" about it, he said.

More risk managers than before, though, are now contemplating the

technology's potential benefits. About one of every four risk managers involved in arranging security for new or existing structures, including transit and airport facilities, is considering using it, said Jeff Kernohan, a New York-based associate with security consultant Kroll Inc., a subsidiary of Marsh Inc.

The decision on whether to use the technology should flow from a terrorism risk assessment, experts say.

While high-risk terrorism targets would top the list of risks that should consider bomb blast modeling, neighboring facilities that are not likely targets also could suffer collateral damage from a nearby attack and could benefit from the modeling, experts say.

Lower-risk sites also could benefit from less extensive and less costly

modeling than that which a high-risk site would undergo, experts said.

The cost of modeling can be trimmed, for example, by not factoring in specific structural engineering data for a site, they said. In addition, single-structure modeling could be limited to evaluating how blasts would affect a building's exterior but not its interior.

Once a site has been modeled, the identified weaknesses can be fortified, according to experts.

For example, in some buildings, destroying or damaging one support column could cause a progressive collapse of the entire structure, experts say. Columns can be reinforced against blasts, and in most cases a "redundant catcher scheme"

See **MODELING** / next page

Modeling: New tools aid risk assessment

Continued from previous page

can be installed to prevent a building from collapsing when one major pillar is damaged or destroyed, Mr. Gates said.

As for mitigating bodily injuries in blasts, Mr. Gates noted "the biggest loss of life is not from the pressure from the blast but from flying debris." Measures that would help minimize bodily injuries in blasts include installing window catchers inside buildings and applying special coatings on walls to enhance their survivability, he said.

Those measures, however, likely would not have been effective in the kind of blast that leveled the federal building in Oklahoma City, Okla., 10 years ago, Mr. Gates acknowledged.

That is why bomb blast modeling and loss mitigation measures have to be combined with security measures designed to thwart terrorist attacks, experts noted.

For example, Ms. Freeland said she has seen clients scan all briefcases and bags carried into their facilities on days the government has raised the terrorism alert level. Some clients have permanently stopped providing underground parking privileges to visitors at their facilities, as well.

Other security measures include accepting only deliveries that arrive at previously arranged times, escorting delivery personnel to their destinations aboard elevators that can be keyed to stop at only the floor where a delivery is expected, installing concrete barriers that keep vehicles a minimum distance from buildings and searching all vehicles that are allowed to approach a building, Ms. Freeland said.

Risk managers who are interested in modeling will have to do some legwork to find the kind of modeling most suitable for their particular risks.

Various firms offer bomb blast modeling software.

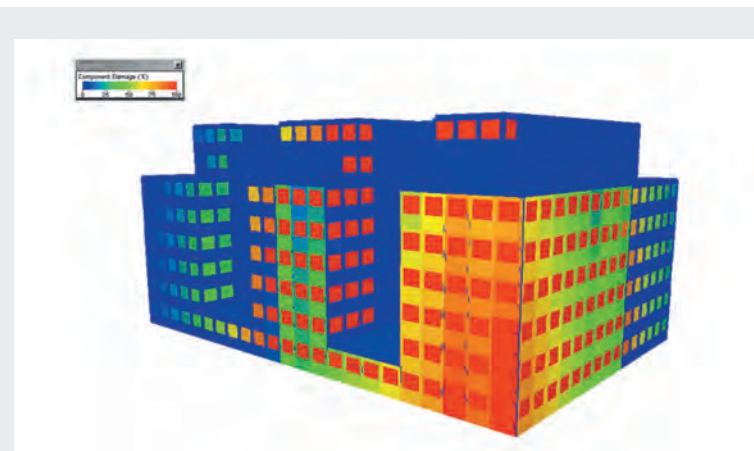
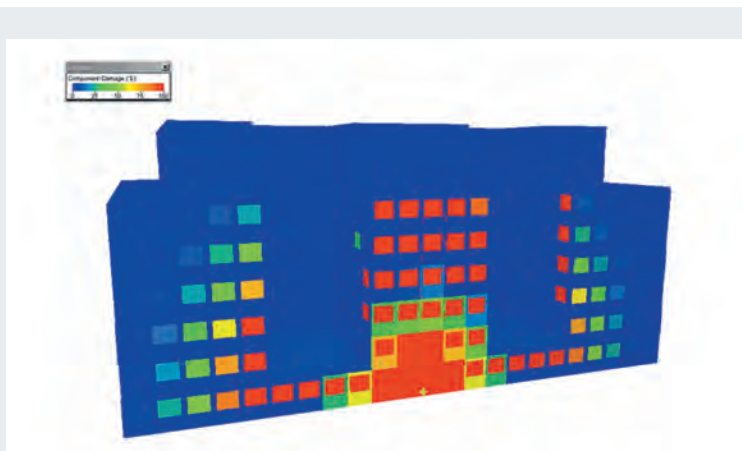
But Mr. Gates asserts that only a limited number of companies have access to the federal government's bomb blast test data to conduct the most sophisticated modeling.

And, while Mr. Gates suggests that risk managers begin their search by contacting a structural engineering firm that understands the ins and outs of their clients' facilities and allow that firm to find a bomb blast modeler, others disagree.

For example ABSG Consulting Inc. can provide both structural engineering and bomb blast modeling services, said Johnny Waclawczyk, a San Antonio, Texas-based technical manager.

The cost of modeling will depend on the complexity of the project and the design and construction of the building being modeled, experts say. Costs could range from \$10,000 for a simple audit to \$200,000 for a detailed threat assessment that includes a structural engineering analysis and multiple blast scenarios, experts said.

But that cost "can go a long way" toward mitigating potential losses and trimming insurance costs, said Aaron Davis, a vp at Aon Risk Services in New York.



These models illustrate how extensively blasts of various severity likely would damage a building's walls and windows or components. The first image illustrates damage from a suitcase bomb either packed with 50 pounds of TNT and detonated within 10 feet of the building or packed with 100 pounds of the explosive and detonated 25 feet away. The second image illustrates damage from a car bomb either packed with 200 pounds of TNT and detonated 200 feet from the building or packed with 500 pounds of the explosive and detonated 500 feet away.

IMAGES: KARAGOZIAN & CASE



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Between the Lines

Compiled by Joanne Wojcik

You've come a long way...babies

The designation of World Breastfeeding Week shows that women have come a long way since their bra-burning days.

The week, officially celebrated Aug. 1-7, is meant to draw attention to the health benefits of lactation. It also provides a great opportunity for employers to show their support for employees who breastfeed, according to Peter G. Burki, chief executive officer and co-founder of Life-Care Inc.

Mr. Burki, whose Westport, Conn.-based company provides work/life benefit services to employers, says that if a woman senses her employer is somehow not supportive of her decision to breastfeed, she will take longer to return to work after maternity leave or she might not come back at all.

Supporting breastfeeding also has benefits for employers: A 2004 report by the American Academy of Pediatrics found that breastfed infants typically have lower health care costs, need fewer sick care visits, prescriptions and hospitalizations. And women who breastfeed are more productive at work and take less time off, Mr. Burki said.

Few statistics are available on the number of employers that support breastfeeding, a LifeCare spokesman said. But according to a 2001 survey by the Society for Human Resource Management, 16% of U.S. employers provide lactation rooms for nursing mothers.

Toast of Hollywood takes on partner benefits

Only time will tell if the creator of the Oscar-winning film "Sideways" will have as much influence over domestic partner benefits as he did over the consumption of pinot noir.

Sales of the red varietal soared in response to the success of Alexander Payne's wry wine-tasting comedy.

Now he's working on a script about two Philadelphia firemen who pretend they're gay to get insurance benefits.

The film, "I Now Pronounce You Chuck and Larry," will be directed by David Dobkin, whose latest movie, "Wedding Crashers," is still in theaters.

"If you do it right, you can open some people's minds. It's all about tolerance and understanding what it's like to be in someone else's shoes," Mr. Dobkin recently told the movie Web site Empire.

Mercury rising on tuna controversy

It's just a coincidence that Chicken of the Sea released a television commercial touting the health benefits of tuna during the same week the Wall Street Journal ran an article on the dangers of mercury in the fish, a company spokeswoman said.

The commercial, available at www.chickenofthesea.com/presskit/campaign, features a sultry, slim woman strutting through an office before she gets alone into an elevator and lets her stomach stick out.

The Aug. 1 article featured a 10-year-old boy who suffered a neurological disorder linked to a daily snack of tuna.

The mercury-in-tuna controversy is especially heated in California, where Attorney General Bill Lockyer has sued tuna companies as well as restaurants and supermarkets, to require warnings on menus and food containers about the potential for mercury poisoning.

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

PHOTO: JOANNE WOJCIK



Caesars Entertainment Inc. in Las Vegas is one of the companies that provides lactation rooms for use by nursing mothers.

PHOTO: ZUMA PRESS



After examining wine in "Sideways," director David Dobkin will take a look at domestic partner benefits in his next film, "I Now Pronounce You Chuck and Larry."

COMINGS & GOINGS - INDUSTRY



Mr. Toth



Mr. McLane



Mr. Martin



Ms. Bright

Insurers:

Houston-based HCC Insurance Holdings Inc. has named **David J. Evans** as managing director of the London operations of its underwriting agency subsidiary, ASU International Inc. Most recently, he was an underwriter at R.J. Kiln & Co. Ltd.

Harleysville Insurance has named **Kevin M. Toth** as senior vp of claims. Before joining the Harleysville, Pa.-based company, he was an attorney at Reed Smith L.L.P.

ACE Ltd. unit ACE Overseas General has appointed **Andrew Peel** chief information officer in New York. Previously, he was a managing director at BearingPoint Inc.

Hamilton, Bermuda-based Arch Capital Group Ltd. has named **W. Preston Hutchings** as senior vp and chief investment officer. Previously, he was senior vp and CIO of RenaissanceRe Holdings Ltd.

Citizens & Hanover Insurance Cos. in Worcester, Mass., has named **Michael R. Christiansen** as president of its New England region. Previously, Mr. Christiansen was executive vp of operations for Liberty Mutual Insurance Co.'s Regional Agency Markets.

Brokers:

Willis Group Holdings Ltd. in New York has made two senior-level appointments.

Paul Primavera, previously a vp of construction claims for St. Paul Travelers Cos. Inc., has been named senior vp, claims management in the company's Hunt Valley, Md., construction practice.

Jack Yelverton is the new managing partner of Willis' San Diego operations. Before joining Willis, he was an industry practice leader for Marsh & McLennan Cos. Inc.

Boston-based William Gallagher Associates has named **John McLane** as senior vp and leader of the energy practice in the Princeton, N.J., office. Previously, he was a global practice leader for Marsh.

Reinsurance:

Glen E. Martin has been named senior vp and controller at Hannover Life Reassurance Co. of America in Orlando, Fla. Previously, he was a vp.

Other providers:

Bensenville, Ill.-based Disaster Kleenup International Inc. appointed **Joseph Caroccio** as national sales director. Previously, he was Northeast district manager for Crawford Contractor Connection.

Third-party administrator Pearl Cos. has named **Dennis Dietrich** chief financial officer. Before joining the Peoria Heights, Ill.-based company, he was chief financial officer of Creatas L.L.C.

Lansdale, Pa.-based Hayes Plus Inc. has named **Joyce Muller** as president and chief operating officer. Previously, she was vp of medical review services.

Global Risk Consultants Ltd. has named **John Rayner** as managing director-U.K., in the Surrey, England, office. Before joining Global Risk, he was director of technical risk for Royal & SunAlliance Risk Solutions.

Managed care:

Eric Reimer has been named chief growth officer of Magellan Health Services Inc. in Farmington, Conn. Before being promoted to the newly created position, he was senior vp for Magellan's Health Plan West unit.

Philadelphia-based Independence Blue Cross has named **Yvette D. Bright** as senior vp of e-business and operations. Previously, she was vp for e-commerce.

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

Business Resources

To place your ad, contact **Tina Vasilakis** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: tvasilakis@BusinessInsurance.com
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August 8, 2005

World

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French pool leads crash cover

By SARAH VEYSEY

TORONTO—Aviation insurance pool La Réunion Aérienne leads the hull and liability coverage for the Air France jet that skidded on landing and burst into flames last Tuesday, the pool confirmed.

The Airbus A340-300 plane, en route from Paris to Toronto with 297 passengers and 12 crew members on board, overran the runway at Toronto's Pearson International Airport by about 650 feet, according to a statement by the Greater Toronto Airports Authority.

There were no fatalities, but 43 people were injured, according to the GTAA statement.

The cause of the accident remained unknown late last week, but the incident took place during a severe thunderstorm.

The GTAA said Canada's Transportation Safety Board was conducting an investigation. Two flight recorders have been recovered.

Air France purchased the Airbus jet in 1999, and the aircraft last underwent a maintenance check July 5 at Charles de Gaulle International Airport in Paris, the airline said in a statement.

The plane was valued at about \$131 million, according to an aviation insurance source.

The New York-based Insurance Information Institute said in a statement that the accident could result in hull claims of at least \$40 million.

Air France said in its statement that it would compensate passengers and offer psychological or material assistance to those who needed it.



PHOTO: REUTERS LIVE

A recent Air France mishap in Toronto caused hull damage but no fatalities.

NAPF proposes DC plan governance code

By SARAH VEYSEY

LONDON—As more employers shift to defined contribution pension plans, a governance structure to ensure such plans are being run correctly is needed, according to the National Assn. of Pension Funds.

The London-based NAPF is asking for public comment on its discussion paper and draft code by Oct. 3. The NAPF, which represents the interests of U.K. employer-sponsored pension plans, published its draft code of practice for pension plan governance late last month.

The NAPF recommends that defined contribution plans have a governing board to represent the interests of employers and participants.

Such boards should have written policies about appointments to the governing board and should also have a succession plan in place to enable future trustees to be trained, it recommends.

In addition, the board should set risk management controls and regularly update them. According to the draft, these controls should include monitoring compliance with the law and the strength of the employ-

er's commitment to the plan.

The board should also have procedures for managing conflicts of interest that may arise for plan trustees or governors, and put in place internal controls to monitor the performance of those involved in running the plan, according to the NAPF.

The NAPF's draft code is very much a step in the right direction, according to Gordon Clark, a European partner at Mercer Human Resource Consulting in London.

Mercer already has been encouraging employers that sponsor defined contribution plans to have governance plans and committees in place, he said.

A corporate governance code for defined contribution plans is needed in order to enable sponsoring employers to better identify risks to the solvency of the plan and mitigate them and also to enable employers to maximize the value of their occupational pension plans, said Kevin Stratford, an equity partner at Watson Wyatt Worldwide in London.

Many recommendations included in the proposed code, and which consultants recommend as good

Recommendations

The National Assn. of Pension Funds recommends that:

- Every defined contribution plan have a governing body that manages the plan.
- Boards ensure that there are risk management structures to audit legal compliance.
- Internal controls be established to monitor the performance of those involved in plan oversight.

practice, already have been adopted by employers, according to Paul McGlone, a principal and actuary at Aon Consulting in London.

On the other hand, while there is a need for governance standards for defined contribution plans, the risk of having a formalized code is that trustees will simply adopt a "tick-box" mentality, he said.

Trustees may simply feel that compliance with the governance code is sufficient to ensure a plan is well run, when they should be taking other factors specific to the sponsoring employer of the plan into account, he said.

In its discussion paper, the NAPF suggests that employers could consider setting up a trust board to oversee governance of defined contribution plans.

Such a board would, for example, have trust deeds and rules and have responsibility for appointing external fund managers and controlling communications to plan members, among other things. Its activities would be regulated by the U.K.'s Pensions Regulator.

Alternatively, sponsoring employers could set up pension management committees, which would be made up of plan members, trade union representatives and other independent members, according to the NAPF.

Such a committee would be able to replace the pension provider—normally an insurance company—if the committee thinks it necessary, but would not be subject to sanctions by the Pensions Regulator, according to the NAPF.

Many employers already operate such committees, Mr. McGlone said.

The draft code and discussion paper can be viewed at www.napf.co.uk.

Updates

BAIC to appeal solvent scheme ruling

British Aviation Insurance Co. Ltd. will appeal to the Court of Appeal following High Court Judge Mr. Justice Lewison's refusal to sanction a proposed solvent scheme of arrangement (*BI*, Aug. 1). In a statement, London-based BAIC said it is "proceeding with the first stages of appeal. In the meantime, the company will continue in runoff and pay claims as and when they become due and payable." BAIC entered runoff in 2002.

Omega won't make offer for Hardy

Omega Underwriting Holdings P.L.C. has announced that it will not make an offer for fellow Lloyd's of London company Hardy Underwriting Group P.L.C. Last month, the Panel of Takeovers and Mergers, which enforces London Stock Exchange rules, set a deadline of Aug. 1 for Omega to make a firm offer for Hardy or to announce that it did not intend to make an offer. Talks were called off in July after Hardy rejected an offer by Omega, but Omega at that time said it still was interested in acquiring Hardy.

Pension deficits down for FTSE 100

Rising equity markets and rising bond yields reduced pension deficits by £12 billion (\$21.3 billion) last month for Financial Times Stock Exchange 100 companies in the largest single-month reduction since October 2003. According to Watson Wyatt Worldwide in London, "it leaves the estimated aggregate deficit for the FTSE 100 at the end of July at £55 billion (\$98 billion)." Senior consultant Stephen Yeo said, "Falling real returns and rising longevity mean that the cost of pensions has risen. Some companies have increased the contributions required from members, but these figures show that company pension schemes are now worth more than ever to employees."

Reserve increase drives Munich Re profit loss

Munich Reinsurance Co. reported a profit of 870 million euros (\$1.05 billion) for the first half of 2005, down 27.0% from the profit for the first six months of 2004. The Munich, Germany-based reinsurance giant said that its profits fell largely because of a reserve increase at U.S. subsidiary American Re Corp., which cost 750 million euros (\$907 million) after taxes. The company's combined ratio for nonlife reinsurance for the first half of 2005 was 99.8%—compared with 95.5% for the first half of 2004—chiefly due to the reserve increase.



PHOTO: INDIA TODAY
Rail passengers walk through a flooded train station in Mumbai. Insured losses from the recent floods, which caused at least 1,000 deaths, are still being tallied.

India flood damage estimates vary

By BARBARA COCKBURN

MUMBAI, India—India's insurers are working to estimate the extent of claims from last week's floods that have devastated parts of the state of Maharashtra, including the city of Mumbai, though much of the damage is expected to be uninsured.

Insurers generally say it is too early to determine their losses from the days of rain and floods that have killed more than 1,000 people, damaged commercial and residential properties and restricted access to certain areas. Indian media estimates of the economic damage have varied widely, from 12 billion rupees (\$276.2 million) to as much

as 100 billion rupees (\$2.30 billion).

Natasha Wig, assistant director of the insurance and pensions committee of the New Delhi-based Federation of Indian Chambers of Commerce & Industry, said the figures in reports are only estimates because claims are still coming in and surveyors are still assessing damage. "It is still in a very evolutionary stage at the moment," she said.

The Hyderabad-based Insurance Regulatory & Development Authority has asked all insurers for information "on the extent of damage caused due to the floods and the number of claims each has received," said Deputy Director T.S. Naik. "The extent of loss...can only

be assessed as and when the information is received."

Ramamurthy Chandrasekaran, technology manager of the Mumbai-based General Insurance Corp. of India, which provides reinsurance to general insurance companies in the Indian market, said it would be another two weeks before the company could determine the impact of the flooding on its books.

Property/casualty companies in India have reported that the damage will not be significant, and a Munich-based Munich Reinsurance Co. spokesman predicted "the insurance industry in that region will not be affected because the insured rate of buildings is relatively low."

Judges: 10 to select Benefit Manager of the Year

Continued from page 4

health business lines for Zurich North America.

- Monica M. Burmeister, leader of the global benefits practice at Lincolnshire, Ill.-based benefit consulting company Hewitt Associates Inc. Ms. Burmeister previously was retirement and financial management line of business leader at Hewitt.

- Helen Darling, president of the National Business Group on Health. The Washington-based group represents more than 200 of the nation's largest employers on national health care policy concerns. Ms. Darling previously was a senior benefit consultant at Watson Wyatt Worldwide and before that directed health care and disability benefits at Xerox Corp.

- Richard A. Elliott, president and chief executive officer of Willis Benefits of North America. Mr. Elliott, based in Atlanta, is responsible for the employee benefits brokerage and consulting operations of Willis North America, a division of Willis Group Holdings Ltd. Before joining Willis,

the world's third-largest insurance brokerage, Mr. Elliott was national employee benefits practice leader at Marsh & McLennan Cos. Inc.

- Alan Glickstein, national retirement practice leader for policies and processes at benefit consulting company Watson Wyatt Worldwide. Mr. Glickstein, who is based in Dallas, specializes in the design and financing of compensation programs, with a focus on retirement benefits.

- Cynthia Keaveney, national practice leader, account management, at Aon Consulting, a unit Chicago-based Aon Corp., the world's second-largest insurance brokerage. Ms. Keaveney, based in Conshohocken, Pa., previously was senior vp and national practice leader of Aon Workforce Strategies, a division that provides health, absence and productivity management solutions.

- Dan Klein, U.S. client development leader at Mercer Human Resource Consulting. Mr. Klein is based in the Chicago office of Mercer, a unit of Marsh & McLennan, and helps large, global em-

ployers develop benefits, human resource and compensation programs.

- David A. North, president and chief executive officer of Sedgwick Claims Management Services Inc., a Memphis, Tenn.-based third-party administration company. Sedgwick CMS serves employers nationwide in providing claims and productivity management solutions.

- Noël Obourn, president of the National Account Segment at CIGNA HealthCare in Bloomfield, Conn. Ms. Obourn leads the delivery and servicing of CIGNA medical and dental benefits, behavioral health programs and prescription benefits for large U.S. employers. CIGNA is one the nation's largest managed health care organizations, with more than 9.7 million covered lives.

- Virginia M. Olson, a principal at benefit consulting company Towers Perrin. Based in Atlanta, Ms. Olson works with employers in a broad range of industries in all aspects of employee benefits and total rewards programs.

Choosing the top benefit manager

Business Insurance's inaugural Benefit Manager of the Year™ award is intended to recognize excellence and innovation in employee benefits management.

The award competition 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.

The 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 will honor outstanding performance in managing and administering benefit programs overall. The highest-scoring candidate will be named Benefit Manager of the Year™.

Candidates may nominate themselves or be nominated by a supervisor, colleague, broker, consultant or service provider, but the nomination must include a letter from a superior familiar with the candidate's work.

To nominate a candidate, please download a nomination form at the *BI* Web site, www.businessinsurance.com/BMOY. The deadline for submitting nominations is Aug. 26.

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LEGAL NOTICE

NO. 4562 of 2005
 NOTICE OF EFFECTIVE DATE
 IN THE HIGH COURT OF JUSTICE
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 COMPANIES COURT
**IN THE MATTER OF COMPAGNIE
 EUROPÉENNE DE
 RÉASSURANCES SA**
 (PROVISIONAL LIQUIDATORS APPOINTED)

and
IN THE MATTER OF THE COMPANIES ACT 1985
 NOTICE IS HEREBY GIVEN that by an Order dated 19 July 2005 made in the above matter ("the Order"), the Court sanctioned a scheme of arrangement pursuant to section 425 of the Companies Act 1985 ("the Scheme") between Compagnie Européenne de Réassurances SA and its Scheme Creditors (as defined in the Scheme). This followed a meeting of Scheme Creditors held in London on 7 July 2005 at which the Scheme was approved. An office copy of the Order sanctioning the Scheme was delivered to the Registrar of Companies for registration on 20 July 2005 and therefore the Effective Date of the Scheme is 20 July 2005. Douglas Nigel Rackham, a director in the firm of PricewaterhouseCoopers LLP, and Paul Anthony Brereton Evans, a partner in the firm of PricewaterhouseCoopers LLP, are the Joint Scheme Administrators responsible for implementing the Scheme. Anybody believing themselves to be a Scheme Creditor who has not received notice by post of the Effective Date of the Scheme should contact the Joint Scheme Administrators at the address below.

Claim Forms are being sent to all known Scheme Creditors and are also available upon request to the Scheme Administrators at the address below. In addition, the Claim Form is available to be downloaded from the website www.pwc.com/uk/ceer. Scheme Creditors have until the Bar Date, which is 5:30 p.m. (London time) on 10 November 2005, to return completed Claim Forms to the Scheme Administrators at the address shown below. The Joint Scheme Administrators are not required to take account of any Claim Forms, or to admit Claims, of which they receive notification after the Bar Date. Should you have any questions regarding this notice please address them to:
 The Joint Scheme Administrators
 Compagnie Européenne de Réassurances SA
 c/o PricewaterhouseCoopers LLP
 31 Great George Street
 Bristol
 BS1 5QD
 United Kingdom
 marked for the attention of:
 Claire Barnes
 Email: claire.barnes@uk.pwc.com
 Telephone: +44 (0)117 928 1137
 Facsimile: +44 (0)117 928 1111
 Dated: 20 July 2005

**For 2005 BI Rates
 or Editorial Calendar**

tvasilakis@BusinessInsurance.com

LEGAL NOTICE

**IN THE HIGH COURT OF JUSTICE
 (CHANCERY DIVISION)
 No. 4770 of 2005
 COMPANIES COURT**

In the Matter of THE NORTHERN
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and
 In the Matter of CGU INTERNATIONAL
 INSURANCE PLC
 ("CGUI")

and
 In the Matter of THE OCEAN MARINE
 INSURANCE COMPANY LIMITED
 ("Ocean Marine")

and
 In the Matter of the Financial Services and
 Markets Act 2000

Notice is hereby given that an application (the "Application") for an order sanctioning a general insurance business transfer scheme (the "Scheme") under Part VII of the Financial Services and Markets Act 2000 was on 28 July 2005 presented to the High Court by Northern. The Scheme provides for the transfer of substantially the whole of the general insurance business of Northern to Ocean Marine and the remainder to CGUI.

Copies of a summary of the Scheme and a report on the terms of the Scheme prepared by an independent expert are available on Aviva's website at www.aviva.com/northern. Copies can also be obtained free of charge from Barlow Lyde & Gilbert (the solicitors acting for the Northern, CGUI and Ocean Marine), whose details are given below.

The Application is directed to be heard before the Companies Court Judge at the Royal Courts of Justice, Strand, London WC2A 2LL on 6 October 2005. Any person who believes that he or she would be adversely affected by the carrying out of the Scheme is entitled to be heard (in person or by legal representative) by the High Court at the hearing of the Application. Any person who intends to do so, and any person who dissents from the Scheme but does not intend to appear at the hearing, is requested to notify his or her objections as soon as possible, and in any event before 4 October 2005, to Pollyanna Deane of Barlow Lyde & Gilbert at Beaufort House, 15 St Botolph Street, London EC3A 7NJ or by fax to 00 44 (0)20 7071 9756 or email to northern@blg.co.uk.

August 8, 2005

Fires burning

Information as of 8/03/05

Active large fires	23
Acres burned by active fires	177,600
Total wildfires, 2005	39,817
Acres burned, 2005	4,854,968
States with multiple fires burning	Alaska (5), California (2), Oregon (7), Wash. (2)
States with a single fire burning	Colorado, Hawaii, Idaho, Montana, Nevada, Texas, Utah

Source: Interagency Fire Center, Boise, Idaho.



PHOTO: AP

Wildfires: True costs of blazes much higher than many realize

Continued from page 4

cost more than \$1.2 billion, a much greater expense than the \$61.3 million spent just to extinguish the blazes. Actual expenses are even higher, because some hard-to-quantify costs, such as business interruption losses, are not included in the report, Mr. Gonzalez-Caban pointed out.

The fires caused the evacuation of around 100,000 residents, according to the report. There were 787 homes and buildings destroyed, and 3,860 others suffered damage.

The report could be a catalyst for property owners to become more vigilant about protecting their homes and businesses, Mr. Gonzalez-Caban said. It does not recommend loss-control measures but lays out the staggering cost of the fires, partly to emphasize the importance of prevention and control.

"We are finding that we are spending a lot more than we thought we were" to control wildfires, Mr. Gonzalez-Caban said.

"I think people are going to realize we are really spending a lot of money on these things and we really have some responsibility" to find ways to protect people and property, he emphasized. "People, cities and counties that are allowing development in certain areas need to make sure they understand the consequences of these decisions."

The report's authors also suggest that knowing the true cost of fires such as those in California is necessary "to plan for a future ecosystem that is more resilient to wildfire." Revealing the enormous cost should encourage public agencies to work with each other across jurisdictional boundaries and prompt partnerships among private entities to address wildfire risks, the report states.

Public agencies in California have spent \$121.8 million in recovery and water-quality mitigation efforts since the 2003 fires, according to the report. That figure is estimated to rise as high as \$412.8 million.

Among the highest costs identified in the report was the \$576 million in property claims from 13 California insurers.

The insurance costs, though, do not include those such as the income BNSF Railway Co. lost as dozens of its trains sat idle on lines

connecting the ports of Los Angeles with destinations in the eastern U.S. A spokeswoman for the Fort Worth, Texas-based railroad would not say how much the delays cost the company.

Apart from lost income, BNSF also racked up costs to hire water trucks to hose down its property and fight fires. In addition, BNSF brought in an air-quality testing firm that allowed the railroad to halt work when smoke from the fires reached unhealthy levels, according to the spokeswoman.

Southern California Edison Co. also was hit hard by the fires. A spokesman for the Rosemead, Calif.-based utility said the fires cost the company around \$40 million in damaged property and other expenses, an amount funded with self-insurance.

While the report does not suggest how property owners should protect their property, an expert says such loss control is not complicated.

Mark Gryc, vp and chief engineer at FM Global Engineering & Research in Johnston, R.I., said the "majority of commercial property damage from wildfires is preventable" by using three "simple steps." Two of those steps involve construction.

"First, use noncombustible construction," Mr. Gryc said. "There were several memorable news photographs of noncombustible residential homes that were still standing when surrounding combustible homes in the neighborhood had burned to the ground," he said of the 2003 California fires.

"Second, design buildings with flat surfaces so there is less chance to trap burning embers," said Mr. Gryc.

And, property owners can lessen the risk of damage from wildfires with clearings of at least 100 feet from buildings to grasslands and 330 feet to forests, Mr. Gryc said.

Those tried-and-true fire prevention methods, he noted, "are still the most effective."

A preliminary report on "Expenditures and Discussion of Economic Costs Resulting from the 2003 Old, Grand Prix and Padua Wildfire Complex" is available at www.fs.fed.us/psw.

Work/life: Men taking advantage of programs

Continued from page 3

rial," said Hal Morgan, director of publications and content in the Boston office of Ceridian Corp., which offers work/life benefit services.

"It's not entirely different today, but I think men don't care as much anymore," he said.

In some respects today, "the world is a much tougher place for men than women," AWLP Ms. Lingle said.

However, because men are being driven by more work/life conflict today, "they don't have much choice anymore," Ms. Lingle said. "They are kind of where women were 10 years ago. Some of them are being forced to step forward because they just haven't been able to handle the demands from both sides of the fence. So there has been more active utilization by men of some of these same programs."

Nowhere is this more apparent than with childcare and elder care assistance programs, according to Peter G. Burki, chief executive officer of LifeCare Inc., a Westport, Conn.-based work/life benefits provider.

"I can remember back in the '80s, it was very rare to get a call from a man about child care or adult care. That might have happened in one out of every 100 calls," he said. "Now things are very, very different."

For example, of the calls LifeCare received for elder care assistance or information during the first six months of 2005, 35% were from men, compared with 28% during the first six months of 2000. Likewise, 21% of the calls for child-care information and assistance LifeCare

received during the first six months of 2005 were from men, compared with 15% during the same period in 2000.

"A lot of organizations are taking a more proactive approach to promoting the programs and services, and I think that has fostered a feeling that it's OK (for men) to call organizations like LifeCare and get help," he said.

Indeed, employers that want to address the work/family needs of their male employees need to foster

"I can remember back in the '80s, it was very rare to get a call from a man about child care or adult care. That might have happened in one out of every 100 calls. Now things are very, very different."

Peter G. Burki
LifeCare Inc.

the right culture, according to Jacki Reinberg, a vp with Aon Workforce Strategies, who takes advantage of the work/life benefits her employer offers by working from her home in Turnersville, N.J.

"Just because men don't ask for it doesn't mean that they don't want it. There's that whole fear of reprisal. So creating a community where it's OK to take paternity leave or it's OK to take time off to take

your sick kid to a physician's appointment, that is really predicated on the culture" of the organization, she said.

And that culture-shift is beginning to happen, she said. "Enlightened employers seem to have figured that out," she said.

PricewaterhouseCoopers L.L.P., for one, began revamping its work/family programs in July 2003 to gear them more toward both genders, said Jennifer Duris, national manager of work/life and diversity programs for PwC in Chicago.

Today, for example, PwC's lactation program, which offers prebirth and postnatal consultation with a lactation specialist and reimbursement of an electronic breast pump, is now offered to the spouses and domestic partners of PwC employees, in addition to women employees, she said. "We see a lot of use from the spouses of our men," Ms. Duris said.

But the biggest issue facing men seeking balance, Ms. Duris said, revolves around time. Toward this end, PwC last year extended its paid parental leave policy to three weeks from one. The leave is offered to all employees with a new child at home and is in addition to maternity and adoption leave. While the leave must be taken in the first year after a child is born, employees can take it in single-day or weeklong increments, Ms. Duris said.

"It's been very successful," she said. "It's gotten a lot of mileage within the firm."

In addition, she noted that 40% of the PwC workers taking advantage of its formal telecommuting program are men.

Gallagher: Seeks to overturn Pennsylvania ruling

Continued from page 3

cause Pennsylvania law bars negligence claims in such cases, explained diocese attorney Timothy P. Law, a partner with Anderson Kill & Olick P.C. in Philadelphia.

But the TPA argues that during the trial, the diocese's claim evolved, in violation of rules of law.

Prior to the trial, the TPA says, the diocese argued that it would be entitled to damages from Gallagher Bassett if a court agreed that the insurers were entitled to deny coverage because of the TPA's actions.

During the trial, however, the diocese modified its claim against Gallagher Bassett, arguing that the TPA's actions caused undefined damages that the diocese incurred regardless of whether coverage existed, according to Gallagher Bassett.

Although the TPA asserts that the diocese did not offer proof of those damages at trial, a Westmoreland County Court of Common Pleas jury ordered Gallagher Bassett in April 2003 to pay the diocese more than \$4.5 million. The jury also found that coverage existed under the diocese's policy. The trial judge, President Judge Daniel J. Ackerman, reduced the award to about \$2.4 million to account for the insurance settlement.

After the trial, however, Judge Ackerman set aside the jury verdict altogether. He determined that the diocese failed to prove that Gallagher Bassett's alleged breach of contract resulted in damages and that the diocese was barred from recovering damages it already had collected from its insurers.

The judge also ruled that he had erred both in not allowing the jury to hear the diocese's original claim against the TPA and the insurers, as well as how he instructed the jury to apply the "known loss" doctrine. The diocese knew about the pyrite problem since shortly after the school's construction during the 1960s, and it collected about \$450,000 from its architect and land developer to address the problem. The diocese and Gallagher Bassett disagree over how much of those funds were spent on the problem, and the diocese says it was unaware of any structural problems until shortly before it filed its claim.

Judge Ackerman also said that a new trial would be warranted, according to the TPA's latest motion.

But, in overturning Judge Ackerman's order, the appellate panel mistakenly concluded that the judge based his order on his misinterpretation of the diocese's original com-

plaint and an erroneous conclusion that the diocese's amended complaint had prejudiced Gallagher Bassett, the TPA argues in its motion.

Referring to Judge Ackerman's order, Gallagher Bassett argues that the amount of damages the diocese seeks is inappropriate, given that the TPA neither insured nor placed coverage for the diocese.

By reversing Judge Ackerman's order, "The result was a verdict against a third-party administrator for essentially failing to guarantee coverage on policies obtained and issued by third parties, where coverage decisions made by those entities were based on their own policy language and decades-old facts," Gallagher Bassett argues in its motion.

Mr. Law, a diocese attorney, said the TPA's handling of the claim directly led to a reduced recovery from the diocese's insurers.

In addition, the diocese is not seeking a double recovery, Mr. Law said. Instead, it is seeking additional damages that would help it fully cover its losses, he said.

Diamond State Insurance Co. et al. vs. Most Rev. Anthony G. Bosco et al., Court of Common Pleas of Westmoreland County, Pa., July 13; No. 5170 OF 99.

Pools: Terrorism risk-financing proposal draws interest and questions

Continued from page 1

create capacity, District of Columbia Insurance Commissioner Lawrence Mirel told the House Financial Services Committee's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises late last month (*BI*, Aug. 1). He said letting the pool build reserves would reduce the likelihood that the government would be called to help pay for future attacks. As the pool grew, the government's exposure would shrink, he testified. Such a pool would require congressional action to create, he told the subcommittee, adding that such a pool could be established relatively quickly.

"If Congress can keep it simple, it can be done quickly," he said in an interview last week. The way to achieve that is for Congress to set the rules and then let the insurance industry create the pool, he said.

"Depending on how it's done, it's possible to create the conditions to have a pool and not interfere with state insurance regulation," said Mr. Mirel. "The pool would be sort of like a large guaranty fund, the pool would have to qualify under state law as any other guaranty fund would, the difference would be that this would be a nationwide program rather than a state-by-state program, because it's a national problem."

"I think it's an idea that's getting more attention," he said.

Another witness at the hearing, New York Insurance Superintendent Howard Mills, also cited a pool of private capital to support terror-

ism insurance as a "crucial component to any long-term solution," according to his written testimony.

"It seems to me that there is going to be politics no matter what the Congress does; even if they just extend TRIA, that's going to be a political problem," said Mr. Mirel. "Since they've got to deal with the politics anyway, they ought to use this opportunity to get it right, and this is a good time to do it."

Industry observers say a pooling arrangement has its attractions.

"The pooling arrangement has great merit, particularly because it creates long-term stabilization for the insurance buyers," said Alexandra S. Glickman, area vice chairman and managing director-practice leader of Gallagher Real Estate and Hospitality Services, part of Arthur J. Gallagher & Co. Insurance Brokers of California Inc. in Glendale, Calif.

"We would anticipate that there will be more logic in terms of future pricing based on the individual company retentions and exposures, which is truly the foundation of underwriting. The proposal to include all lines of coverage is clearly the most desirable," Ms. Glickman said.

The ideal pool would contain a number of specific elements, said Robert Hartwig, senior vp and chief economist with the Insurance Information Institute in New York:

- Widespread—if not mandatory—participation by insurers to avoid adverse selection.

- Risk-sensitive pricing in the sense that premiums paid in, which are ultimately collected by policy-

holders, would be tied to the risk.

- A government backstop, "especially as funds build up during the early years" of the pool's existence, Mr. Hartwig said.

- Tax-exempt status for investment earnings, letting funds in the pool grow more quickly.

"Such a plan is relatively easy to administer, has a proven track record in the U.K., and risk is significantly diversified—spread—geographically and across various types of insurance and sectors of the economy," said Mr. Hartwig.

He noted, however, "there would likely be squabbling about how much a business in New York City or D.C., for example, should pay relative to a business in Fargo (N.D.)." Depending on premiums assessed, it could take time before "enough capital is accumulated to handle a mega-attack" causing \$50 billion to \$100 billion in insured losses, he said.

The government would have to set rules and regulations, "as it does now with TRIA," about insurers' retentions, any assessments that might be needed if the pool were exhausted and an official definition of terrorism for certifying that such an event was in fact due to an act of foreign terrorism before access to the pool is permitted, he said.

European pools

Major European terrorism insurance pools:

UNITED KINGDOM

Program: Pool Reinsurance Co. Ltd.

Year formed: 1993

Coverages: All-risk property, business interruption

FRANCE

Program: Gestion de l'Assurance et de la Reassurance des Risques Attentats et Actes de Terrorisme

Year formed: 2001

Coverages: Property, business interruption for terrorism risks in France and its overseas territories

GERMANY

Program: Extremus A.G.

Year formed: 2002

Coverages: Property, business interruption

SPAIN

Program: Consorcio de Compensacion de Seguros

Year formed: 1941

Coverages: Property, business interruption.

A representative of a policyholder group noted that most major industrial countries already have some sort of pool to respond to terrorism.

"That seems to have worked in recent attacks in Spain and recent attacks in London," said Marty DuPoy, who was speaking on behalf of the Washington-based Coalition to Insure Against Terrorism. "It's natural for the policyholder community to look to a pooling mechanism as a possible alternative to TRIA," said Mr. DuPoy, who is also vp-government relations for the Washington-based National Assn. of Real Estate Investment Trusts.

CIAT has not taken a position on a pool, but if it could provide terrorism coverage at reasonable prices, "that would be something our organization could support," he said.

The Risk & Insurance Management Society Inc. "looks forward to working with Congress and the Bush administration...to find the most effective way to extend the TRIA program beyond its sunset date at the end of this year," said Mike Fenlon, who is responsible for the external affairs portfolio of the RIMS board in New York.

A pool is one option, but "it should not be the only option. We...should evaluate whether such a system (as pools in Europe) is best for the United States. RIMS

remains confident that Congress will pass extension legislation that will ensure that terrorism insurance is available to buyers of commercial insurance in a comprehensive and affordable manner," he said in a statement. Mr. Fenlon also is corporate risk manager for United Parcel Service in Atlanta.

A spokesman for the American Insurance Assn. in Washington, however, said, "We're glad to look at all proposals, including pools, but we have yet to see any pooling proposals without significant federal government involvement that could actually work."

Buyers can help TRIA cause: CEO

HARTFORD, Conn.—Risk managers have an important role to play along with insurance industry leaders and regulators in promoting a federal backstop for insuring against terrorist attacks, said the top executive at The Hartford Financial Services Group Inc.

Ramani Ayer, chairman, president and chief executive officer at The Hartford, spoke recently with *Business Insurance* Editor Regis Coccia on the importance of the Terrorism Risk Insurance Act.

Q: What should risk managers be doing to promote a federal backstop for terrorism insurance?

A: "TRIA is very important for the economic security of the country. Post '02, a big reason for the economic revival of the country can be attributed to TRIA. Absent TRIA, my concern is there will be significant uncertainty. Risk managers can ill afford to put business assets, the lives of their employees and their assets at risk.

"The threat of terrorism is very pervasive in our lives. The administration is doing a remarkable job in interdicting events. At the same time, terrorists keep regrouping to find new ways in which they're targeting the American economy to cause loss of life and threaten confidence in the economy. The regrettable thing is they only need to be

right once. We need to be right 100% of the time."

The Risk & Insurance Management Society Inc. "has spoken out, but many risk managers have delegated up to the insurance industry" to explain the importance of TRIA. "The credibility of risk managers and their voice in Washington will



Mr. Ayer

make a material difference, in my view," because risk managers represent the companies that are "the growth engine of the economy."

"Risk managers should be very active in talking to members of Congress; leadership in the House and leadership in the Senate. Absent a public/private partnership, to rely on the private sector (for a market solution) places a disproportionate burden on the insurance industry that cannot be met."

Q: How optimistic are you that a federal backstop will be in place after this year?

A: "I believe that responsible leaders within the chambers of Congress, the House and Senate, are starting to say that re-enactment (of TRIA) is important."

"The administration, I personally believe, is committed to making sure we have a significant aspect of (the TRIA backstop). I would take great hope there's a reasonable likelihood" that TRIA will be reauthorized.

"We all have our part to play: insurance companies, the NAIC, state regulators as well as buyers of insurance, agents and brokers. We all have to be active" in promoting TRIA.

Q: What would happen absent a federal backstop?

A: "People should know that TRIA has worked. We can credit TRIA for the economic recovery we're enjoying. The administration and Congress deserve credit for recognizing that." Without TRIA, "I expect there will be dislocation in the market. (Buyers) would have to assess the impact... on their balance sheets" and plan accordingly, to the extent possible. But, for the insurance industry to absorb terrorism losses, "it's impossible."

Greenberg: Formal challenge

Continued from page 3

"denies that he personally engaged in any fraudulent transaction."

Mr. Greenberg, who stepped down in March, "was forced to resign as chairman and CEO, before any governmental charges were brought against him and without proper deliberation by the full board of directors," his legal team asserts.

In May, New York Attorney General Eliot Spitzer and New York State Insurance Superintendent Howard Mills filed a civil suit against AIG, Mr. Greenberg and former Chief Financial Officer Howard I. Smith, charging them with carrying out various fraudulent transactions that manipulated AIG's results. In June, Mr. Greenberg resigned from the company's board.

The paper states that AIG's motivation to concede wrongdoing is explained partly by current pressure on the insurance industry from Mr. Spitzer and other regulators, and partly by outside directors' desire to legitimize their removal of Mr. Greenberg. Furthermore, the document suggests that the restatement "may be an attempt by new management to set the bar as low as possible on the investment community's expectations of AIG going forward."

Among the specific restatement items being disputed as inappropriate by Mr. Greenberg and his attorneys are:

- The company's decision to boost its net asbestos reserves by \$650 million and its net environmental reserves by \$200 million for the fourth quarter of 2004.

- AIG's move to consolidate Barbados-domiciled reinsurer Union Excess Reinsurance Co. Ltd. into its own financials and restate results to reflect a \$78 million decline in net income and a \$951 hit to its shareholders' equity in 2004.

- The decision to bear some historical and all future expenses related to the Starr International Deferred Compensation Program, a long-standing compensation program for AIG executives that the insurer is unwinding.

In addition, the paper addresses the issue of accounting treatment for finite reinsurance, with regard to AIG's \$500 million retrocessional loss-transfer deal with General Reinsurance Corp., a Stamford, Conn.-based unit of Berkshire Hathaway Inc.

"The process for determining whether a finite reinsurance contract qualifies for reinsurance accounting has historically been complex and highly subjective," the document states. The rules are constantly evolving, and even under new reporting guidelines issued by the National Assn. of Insurance Commissioners, which have yet to be adopted, "the Gen Re transaction would not have been required to be reported by AIG," the paper states.

Tracing SCOR's troubles

SCOR S.A.'s troubles emerged in October 2002, when the reinsurer said it would record a net loss of 250 million euros (\$252.3 million) for 2002.

That loss, SCOR said, would reflect a reserve boost of roughly 225 million euros (\$227.1 million) to address losses at Bermuda-based alternative risk transfer subsidiary Commercial Risk Partners, U.S. workers compensation business written between 1999 and 2000 and program business written in the United States prior to 2001. Following that announcement, Standard & Poor's Corp. lowered its financial strength rating on SCOR to A- from A and A.M. Best Co. placed its A rating on SCOR under review, months later downgrading to A-.

In addition, Fitch Ratings lowered its financial strength rating of SCOR to BBB from A+, and Moody's Investors Service has placed its Baa-2 rating of SCOR on review. The following timeline traces developments at the reinsurer from that point to its upgrade last week back into the A range by S&P.

2002

NOVEMBER

Denis Kessler, former chairman of French insurer association Fédération Française des Sociétés d'Assurances, is appointed chairman and CEO of SCOR. He replaces Jacques Blondeau, who held the post for eight years. Mr. Kessler says SCOR will refocus on life and accident reinsurance; large corporate accounts; and short-tail, nonproportional treaty property/casualty. In addition, he says SCOR will reduce its exposure in the United States.

DECEMBER

SCOR raises 381 million euros (\$396.2 million) through a share issue. SCOR says it will use proceeds to maintain its underwriting capacity.

2003

JANUARY

Commercial Risk Partners stops writing new business.

MARCH

SCOR announces reorganization of central management to strengthen internal control over underwriting policy.

APRIL

Announces loss of 455 million euros (\$496.0 million) for 2002. The loss grew from earlier projections because of additional reserve adjustments.

JULY

S&P downgrades SCOR to BBB+ from A- after "disappointing first quarter results" of 31 million euros (\$33.8 million) in net income. SCOR then announces plans to spin off its life reinsurance business and seek outside investment in the new entity.

OCTOBER

Following a review, Best downgrades SCOR to B++ from A-

NOVEMBER

S&P downgrades SCOR to BBB- from BB+ after the reinsurer announces a loss of 349 million euros (\$401.4 million) for the first nine months of 2003. Best changes the outlook on its B++ rating to "negative" from

"developing," and Fitch downgrades to BB+.

DECEMBER

SCOR raises 751 million euros (\$945.8 million) through a share issue.

2004

FEBRUARY

Announces premium volume in 2003 dropped 26% to 3.69 billion euros (\$4.61 billion), reports that 312 of its 352 largest property/casualty customers have renewed with the reinsurer.

APRIL

Records 314 million euro (\$395.3 million) loss for 2003, due to additional reserve boosts, mainly for pre-2001 U.S. business.

JUNE

Raises 200 million euros (\$230 million) through a bond issue.

AUGUST

SCOR announces that its management board has formally approved a plan to enable the group to regain A-level financial security ratings. SCOR's plan outlines two scenarios for the reinsurance cycle and the company's capital allocation plans by market and line of business.

2005

MARCH

Posts net income of 68.7 million euros (\$70.1 million) for 2004, says it is boosting reserves for Sept. 11, 2001, losses in light of the verdict in World Trade Center coverage dispute.

JUNE

Announces plans to form a wholly owned nonlife reinsurance subsidiary and reduce staff in a bid to cut costs by between 24 million euros and 44 million euros (\$29.3 million and \$53.8 million) by the end of 2007. Later, it raises 202.8 million euros (\$246.1 million) in a share issue.

AUGUST

S&P upgrades SCOR to A- from BBB+, citing its strong competitive position and its reduced exposure to reserve problems, among other factors.

SCOR: Reinsurer regains coveted A-level rating

Continued from page 1

programs meant that many decided to maintain SCOR as a reinsurer, but likely at smaller shares of treaties, Mr. Rivaldi said.

And in some cases, SCOR placed premiums in trust or gave cedents letters of credit or other guarantees to allay fears about the credit risk of dealing with the company, he said.

Despite the fact that many cedents—particularly those in the United States and Australia—are reluctant to use reinsurers rated lower than A-, in February of 2004, SCOR announced that of its 352 largest property/casualty clients, 312 had renewed business with the company.

Mr. Rivaldi said that while rating agencies do not consider that a B-level rating should indicate that buyers should avoid a reinsurer, some cedents do use the A/B line as a cutoff.

In 2004, SCOR reported gross written premiums of 2.53 billion euros (\$3.43 billion), roughly half the 5.02 billion euros (\$5.26 billion) in gross premiums it wrote in 2002, the year its difficulties emerged.

S&P expected SCOR to lose some premium volume because it had been downgraded out of the A level, he said, but the company was probably able to retain most of the clients it wanted to, albeit likely by writing smaller shares of treaties.

Mr. Rivaldi also said the company had "proactively managed its reserving position."

Other rating agencies last week had not changed their ratings on SCOR, but said they thought the company was likely over the worst of its problems.

SCOR's management team has

done a great deal of work to keep the company viable, said Marc-Philippe Juilliard, an analyst at Fitch Ratings in Paris. To reflect SCOR's success in raising capital and retaining its franchise, Fitch in March upgraded its financial strength rating of SCOR to BBB -investment grade-from BB+, he noted.

The management of SCOR "has to be congratulated" for the work it has done in turning the company around in the past three years, he said.

Vasilis Katsipis, an analyst at

vestors Service had not altered its Baa2 rating of SCOR.

S&P's Mr. Rivaldi said he thinks SCOR could increase premium volume by about 10% next year, but he noted that "cycle management is paramount" to the company's success. It is unlikely that SCOR would aggressively pursue top-line growth at the expense of profitability, he said.

Alan Griffin, a partner in the reinsurance unit of Jardine Lloyd Thompson Group P.L.C. in London, said that SCOR's upgrade would get the company back on some brokers' and cedents' lists of potential reinsurers.

Re-entering the A range will likely "open the door" to more business, he noted.

French investment bank Société Générale said in a statement that the upgrade from S&P would enable SCOR to increase underwriting in the United States and also increase nonlife underwriting.

One reinsurance broker, who asked not to be named, said the upgrade would be welcomed by buyers looking for diversity of highly rated reinsurance on their programs.

"I think they will get some good opportunities now to write good business, particularly on the casualty side," he noted.

Indeed, SCOR's upgrade will be good news for reinsurance buyers because it will mean there is more A-rated capacity available, noted another London-based reinsurance broker, who asked not to be named.

But rival reinsurers may consider the news to be badly timed, as it could lead to increased competition at a time when reinsurance rates are already softening, he noted.

In addition to retaining most of the clients it wanted, SCOR "proactively managed its reserving position."

Marcus Rivaldi
Standard & Poor's Corp.

A.M. Best Co. in London, said that although Best has not changed its B++ rating of SCOR, "we have them on a positive outlook." Best's view is that SCOR is "probably over the worst" of its problems, he added.

SCOR has improved its position by focusing more on life business and by achieving some large commutation deals, Mr. Katsipis said.

In 2004, SCOR's nonlife premium volume was 1.32 billion euros (\$1.79 billion), down 41% from 2003. Life/accident premium volume for 2004 was 1.21 billion euros (\$1.64 billion), down 17%.

As of last week, Moody's In-

Bad faith: Drugmaker sues its excess insurer

Continued from page 4

June 2002, providing per-loss and annual aggregate product liability limits of \$25 million excess of a \$5 million self-insured retention, according to the complaint.

The coverage also included a loss-notification provision under which Schering, after notifying Lexington of a given loss, would continue to be covered for claims related to that loss for up to seven years after the first such claim was made against Schering. Claims arising during the seven-year period would be treated as if they had been made in the same policy year as the first claim, according to the suit.

Schering formally notified Lexington of the inhaler, laxative and PPA losses under the loss provision shortly before the policy's June 2002 expiration, though Lexington was aware of the three losses well before the formal notification, according to Gita F. Rothschild, a lawyer with McCarter & English L.L.P. in Newark, representing Schering.

The first asthma inhaler claim against Schering came in November 1999, while the first laxative claim was made in February 2000. Claims related to both losses should thus be allocated to the 1999-2000 policy year, Schering contends.

The first PPA claim, though, arrived in April 2001 and should be allocated to the 2000-2001 policy year, triggering a second \$25 million aggregate limit, the company argues.

So far, Schering has paid more than \$21 million in claims on the three losses in excess of its self-insured retention, including more than \$10 million on inhaler claims, \$3 million on laxative claims and \$8 million on PPA claims, the suit says.

Lexington has taken the position that claims on all three losses should be treated as having been made when Schering filed its formal loss notification in May 2002, meaning that all of the claims would be subject to a single \$25 million limit, the complaint alleges.

In addition, the insurer maintains that claims asserted against Schering before the 2001-2002 period would not be part of the notified loss, and Schering could see its coverage reduced or eliminated for those claims, the suit charges.

"Even under Lexington's tortured reading of the (loss-notification) provision of the policy, Schering is entitled to a partial payment, but it has nevertheless refused to make any payment to Schering despite re-

peated requests," the complaint argues.

Schering seeks a declaratory judgment that its reading of the loss provision is correct, along with damages for alleged breach of contract and bad faith.

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FMLA: Waiver limit may undermine releases

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partment regulation prohibits only the prospective waiver of substantive FMLA rights. The 5th Circuit covers Texas, Mississippi and Louisiana.

Progress Energy's attorney, Zebulon D. Anderson, of Raleigh, N.C.-based Smith, Anderson, Blunt, Dorsett, Mitchell & Jernigan, filed a motion last week seeking a rehearing of the case before the full court.

Broad impact for employers

Observers say the 4th Circuit decision, which technically applies only to courts in Maryland, Virginia, West Virginia, and North and South Carolina, undermines the waiver agreements that employers commonly use in layoffs and terminations, and will impact litigation.

As a result of this decision, employers in the affected states that have FMLA cases filed against them "cannot privately settle those claims for any amount of money," said Mr. Mollica. This means "if the employee decides 'What the heck, I'm going to bring my lawsuit anyway,' the employer has a release that has no value."

Furthermore, FMLA claims are often joined with other claims, including employment discrimination claims, said Mr. Mollica. Employers may now be reluctant to settle at all if they cannot settle the entire suit, said Mr. Mollica.

Francis W. Connolly, an employer attorney with Piper, Rudnick, Gray, Cary in Reston, Va., said with claims releases, the employer "is trying to essentially buy some certainty that it has been relieved of claims for a class of departing employees."

But with this decision, "at least in the 4th Circuit, employers now need to be concerned as to whether they have in fact bought a release of claims or if, in spite of the fact that they've issued severances, they might still be seeing FMLA claims."

"The last thing you want to do is

to settle with an employee for a disability claim and find that you've basically funded another lawsuit against you that can't be waived," said Mr. Connolly.

Attorneys said even when there is a settlement, employers may now offer less. "I think it clearly changes the dynamics of how employers and employees enter into settlement agreements, and it's my belief that the value of a settlement agreement goes down," because it no

"The last thing you want to do is to settle with an employee for a disability claim and find that you've basically funded another lawsuit against you that can't be waived."

**Francis W. Connolly
Piper, Rudnick, Gray, Cary**

longer provides any finality or removal of risk, said John F. Lomax Jr., an attorney with Greenberg Traurig L.L.P. in Phoenix.

Application of the decision also presents employers with some practical problems, say observers. "There are the options the court envisions, and then there's the real world," said Ann Elizabeth Reesman, an attorney with Washington-based McGuinness, Norris & Williams L.L.P.

The court said a release is not valid unless supervised by a court or the Department of Labor, but "there is no vehicle that I know of to get a court to supervise a release when there's no legal dispute," said Ms. Reesman. "In fact, they may not even have jurisdiction to do that."

"They're certainly not going to want to think of what it would do to the dockets, and the DOL certainly has no process for supervising all of the releases that are signed

in this country in a given year, and if they tried, it would overwhelm their administrative process, so those aren't realistic options," she said.

Last week, Ms. Reesman filed an amicus brief in the case supporting the petition for a rehearing before the full court on behalf of the Washington-based Equal Employment Advisory Council, an employer group; the Alexandria, Va.-based Society for Human Resource Management; and the Washington-based National Chamber Litigation Center Inc., the legal arm of the Chamber of Commerce.

Need to revise agreements

Meanwhile, pending a possible U.S. Supreme Court review, the opinion presents potential problems for national employers that must deal with different rulings in different jurisdictions on this issue, and silence from the remaining circuits.

Employers will either follow the more conservative 4th Circuit opinion everywhere, or have different documents in different states, "which is one more level of complication for them," said Mr. Connolly.

Employers everywhere "should take steps to comply with each decision in each respective circuit," said Mr. Lomax. "One thing the employers will want to do, regardless of the form of any releases they might use, is ensure they have severability clauses in their agreements."

These stipulate that the court may strike any impermissible language from the agreement but should try to leave the rest of the agreement intact, said Mr. Lomax. He added that most well-drafted contracts, particularly separation agreements, already typically "have that kind of language in there."

Barbara Taylor vs. Progress Energy Inc., 4th U.S. Circuit Court of Appeals, No. 04-1525; July 20, 2005.

Late News

Continued from page 1

insurance prices were 5.7% higher on average compared with a year ago, while property prices were down 4.3%. Directors and officers liability coverage was down 6.7%, while workers compensation prices fell 2.2%, according to the analysis of information from more than 120 companies.

Differing FMLA rules may entail bias: Court

The city of Albuquerque, N.M., may have engaged in sexual discrimination when it let male police officers use compensatory time for their Family and Medical Leave Act leaves but forced female officers to use up sick days, a federal appellate court ruled. The unanimous decision by the three-judge panel of the 10th U.S. Circuit Court of Appeals in *Orr vs. City of Albuquerque* reversed a lower court ruling. According to the decision, two female officers were required to use sick leave following their pregnancies, while one officer's husband and other male officers were allowed to use compensatory time for FMLA leaves. Under the city's leave program, accrued sick leave can be used toward early retirement, while other types of leave cannot.

California comp insurers' ratios improving

California's workers compensation insurers' losses are continuing to fall this year, the Workers' Compensation Insurance Rating Bureau of California reports in a summary of first-quarter 2005 insurer experience. The WCIRB estimates California insurers' combined ratio to be 64% for accident year 2004, a "sharp decline" from a 1999 peak of 184%. The WCIRB also projects that insurer accident-year loss ratios have declined steadily from 139% in 1999 to 41% for 2004.

Aon to cut staff in restructuring

Aon Corp. last week announced new restructuring initiatives that will lead to a pretax charge of \$200 million to \$300 million during the third quarter. The effort will include staff cuts, particularly in Aon's United Kingdom brokerage operations, company officials said. Aon also will look for ways to cut its information technology costs and reduce real estate expenses by consolidating operations, officials said. Meanwhile, Aon reported that its revenues fell 1.5% to \$5.03 billion in the first half, while its net income jumped 14% to \$390 million, due in part to a larger-than-expected reduction in expenses.

401(k) balances still below 1999 levels

Despite strong investment gains over the last two years, employees' 401(k) account balances, on average, are lower than they were five years ago, a reflection of the beating the

balances suffered during the bear equities market, according to a new study by Fidelity Investments. Last year, the average account balance for plan participants was \$61,000, a nearly 11% increase from the average in 2003 and a more than 38% increase from 2002. But last year's average account balance still was nearly 5% less compared with 1999, when participants' account balances averaged \$64,000, Fidelity said.

PRIMA elects next president

The Public Risk Management Assn. has elected two school district risk managers as its top leaders for 2005-2006. Named as president was James E. Huckaby, risk manager for Mesquite Independent School District in Mesquite, Texas. PRIMA members also chose as president-elect Katherine M. Peeling, the risk management specialist for Anne Arundel County Public Schools in Annapolis, Md.

Florida puts Dennis claims at \$947 million

Insurers are expected to pay more than \$947 million in claims from Hurricane Dennis, Florida's Office of Insurance Regulation is estimating. The Category 3 storm struck the Florida Panhandle July 10, taking lives and damaging property across much of the state. So far, insurers have paid more than \$47 million in claims from the storm, according to the Florida Office of Insurance Regulation.

Concentra buying PPO Beech Street

Concentra Operating Corp. is acquiring preferred provider organization Beech Street Corp. for \$165 million. The acquisition will expand Concentra's offerings in the group health market and enhance its existing lines of service to health plans, insurers and third-party administrators, the company said in a statement. Beech Street has a network of more than 400,000 primary care physicians, 52,000 ancillary providers and 3,800 acute care hospitals. More than 600 clients currently rely on the Beech Street network for health benefits, health care management services, out-of-network cost containment programs and Internet technology solutions, the company said.

At BusinessInsurance.com

New Online Poll: Is your organization offering paid paternity leave?

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

BI Stock Index [8/1 - 8/5]

Up-to-the-minute data for all 85 companies that comprise the BI Stock Index can be found at www.businessinsurance.com

Percentage change of BI Stock Index vs. key indicators

BI Stock Index	
2617.82	-0.24
Dow Jones	
10558.03	-0.78
S&P 500	
1226.42	-0.63

Largest gains

Aon Corp.	14.54%
Humana Inc.	5.50%
WellChoice Inc.	5.30%
Axis Capital Holdings Inc.	5.00%
CIGNA Corp.	4.22%

Largest losses

USI Holdings Corp.	-12.36%
Gainsco Inc.	-7.32%
Baldwin & Lyons Inc.	-7.30%
Zenith National Insurance	-6.22%
CNA Surety	-5.79%

Weekly change by market segment

Brokers	-1.17%
Insurers/Reinsurers	-1.37%
Managed Care Organizations	1.66%

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