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Big outage but small insured losses

Few policies, unclear origin, short duration limit claims

By MICHAEL PRINCE and ALLISON REYNOLDS

As the lights came back on following the worst electrical power outage in U.S. history, businesses began tallying their losses and filing claims.

Because most businesses suffered no physical damage and the cause of the outage has still not been determined, the number of claims has not been large.

Loss adjuster GAB Robins North America Inc. has received about 130 to 150 claims so far, said Art Kirkner, senior vp for field operations in Parsippany, N.J. That, Mr. Kirkner said, is a small number considering how many businesses were affected by the outage, which struck several major cities in the United States and Canada.

"We have not seen a lot of losses, given the geographic breadth of the outage," he said.

One factor limiting the number of claims is that not every organization that suffered a loss had purchased a separate service interruption policy, Mr. Kirkner said. "Not many people tend to pay extra for that coverage," he said. Such policies provide coverage for losses stemming from shutdowns at utility services, such as electricity or water providers.

Factory Mutual Insurance Co., which does business as FM Global, had received notices of loss from about 50 policyholders as of last Thursday, said a spokesman for the Johnston, R.I.-based property insurer. Most of the claims are from food producers and retailers reporting

See **CLAIMS**/page 17

Coverage continues on page 18

PHOTO: AP/TINA FINEBERG

Among the few businesses filing insurance claims after the massive power outage were food producers and retailers reporting spoiled inventory. Here, a New York meat market worker surveys spoilage from the blackout.

International Paper seeks OK

Captive benefits on a faster track

By JERRY GEISEL

WASHINGTON—International Paper Co. hopes to be the first company to receive fast-track approval from the Labor Department to use a captive to reinsure group life insurance benefits.

Stamford, Conn.-based International Paper wants to use its nearly 3-year-old captive, Vermont-domiciled CircleTree Insurance Co., to reinsure life insurance policies currently written by Metropolitan Life Insurance Co. New York-based MetLife would issue the policies and reinsure 70% of the risk with CircleTree.

If approved, International Paper's application to fund life insurance benefits through its captive would be the first of its kind to take advantage of an expedited review process in which the Labor Department must act on an application with 45 days of receipt.

To qualify for that fast-track procedure, an applicant must cite two "substantially similar" exemptions approved by the Labor Department within the past five years.

See **FAST TRACK**/page 17

Near North begins piecemeal selloff

By SALLY ROBERTS

CHICAGO—After two failed attempts to sell substantially all of its brokerage operations in one large deal, Near North National Group is hoping its parts will prove more attractive than the whole.

Near North agreed late last week to transfer its Chicago office accounts and employees to Chicago-based Mesirow Insurance Services Inc. The deal represents the first move under Near North's new strategy to sell its brokerage operations on piecemeal basis, rather than as a complete package.

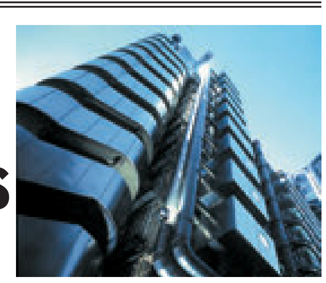
In addition, Near North's wholesale brokerage operation, Chicago-based DMI Brokerage L.L.C., last week reached an agreement with Near North owner Michael Segal to transfer his roughly 50% ownership in DMI back to the company's two managing directors.

The future of Near North was again cast in doubt earlier this month, when Chicago-based Hub International Ltd. announced Aug. 15 that it had terminated negotiations to purchase most of Near North's brokerage assets. Hub provided little explanation for scrapping the deal, saying only that it was unable to come to agreement

See **NEAR NORTH**/page 19

International

LLOYD'S MAY CURB QUOTA-SHARE DEALS



Begins on page 13

Late News

Managed care companies win federal contracts

Three companies have won Department of Defense contracts to manage the government's Tricare health care program for military personnel, their families and military retirees, which covers 8.7 million people. The largest contract—initially valued at $2.2 billion—went to Health Net Federal Services Inc., a unit of Woodland Hills, Calif.-based Health Net Inc. Phoenix-based TriWest HealthCare Alliance Corp., which is owned by 11 Blue Cross & Blue Shield plans and two university hospital systems, received a $2.1 billion contract; and Humana Military Healthcare Services, a unit of Humana Inc. of Louisville, Ky., was awarded a $2 billion contract.

FASB proposes more pension disclosure

Publicly held companies would have to disclose more information about pension plan costs, benefits and investments under a Financial Accounting Standards Board proposal. Under FASB's proposal, employers would have to disclose annually how much their plans expect to pay in benefits in that year and how much they expect to pay out in five-year brackets over the next 20 years. Employers also would have to disclose how much they expect to contribute to the plans, as well as the percentages of plan assets in four categories: equity securities, debt securities, real estate and other investments.

Merck completes spinoff of PBM Medco

Prescription benefit manager Medco Health Solutions Inc. last Wednesday finalized its separation from pharmaceutical manufacturer Merck & Co. Inc., its former corporate parent. The Franklin Lakes, N.J.-based PBM's stock began trading independently on the New York Stock Exchange on Wednesday. On Friday, its shares closed at $26.20, up 2.5% for the day. Merck bought Medco in 1993 but began seeking to spin off the PBM early in 2002. That plan, though, was delayed last year amid a weak market for new stock offerings and Medco's disclosure that it had reported more than $12.41 billion in revenues over three years that it never received.

See **LATE NEWS**/page 19

NEWSPAPER

Insurers may get to rescind Adelphia's D&O coverage

By DOUGLAS McLEOD

NEW YORK—Directors and officers liability insurers of bankrupt Adelphia Communications Corp. may be able to proceed with a previously stayed lawsuit seeking to rescind coverage, following a ruling by a federal judge.

U.S. District Judge Harold Baer Jr. last Tuesday threw out a bankruptcy court's 2002 order halting a recision suit filed by D&O insurers Associated Electric & Gas Insurance Services Ltd., Federal Insurance Co. and Greenwich Insurance Co.

The bankruptcy court ruled that the D&O policies, which included entity coverage, were assets of the Adelphia estate, making the recision action subject to an automatic stay under the U.S. Bankruptcy Code.

Judge Baer overturned the ruling on an appeal by former Adelphia Chairman John Rigas and three of his sons, all former Adelphia officers.

Judge Baer found that Adelphia does not have a property interest in the D&O liability policies because it has not yet made any payments for which it would be entitled to entity coverage.

While the coverage dispute is not subject to the automatic stay provisions of the bankruptcy code, a separate provision that gives bankruptcy courts wider latitude to stay litigation that could affect an estate may still apply, Judge Baer concluded.

That provision, Section 105, allows a bankruptcy judge to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions" of the code.

Judge Baer remanded the case to the bankruptcy court to determine whether the coverage litigation should continue to be stayed under Section 105.

Coudersport, Pa.-based Adelphia collapsed last year after disclosing huge off-balance sheet debts. The company and its shareholders later sued Mr. Rigas and other former officials for allegedly looting Adelphia of hundreds of millions of dollars. Mr. Rigas, two of his sons and another Adelphia officer also face criminal fraud and conspiracy charges filed by New York federal prosecutors, while a fifth former officer pleaded guilty to federal fraud charges last year.

AEGIS, Adelphia's primary D&O liability insurance company, sued to rescind coverage of Mr. Rigas and several other officers, while excess insurers Federal and Greenwich have sought to void their coverage of all Adelphia directors and officers.

In response, Mr. Rigas and his sons have threatened bad-faith claims over the insurers' refusal to cover their defense costs.

Claim settlements often factor political impact

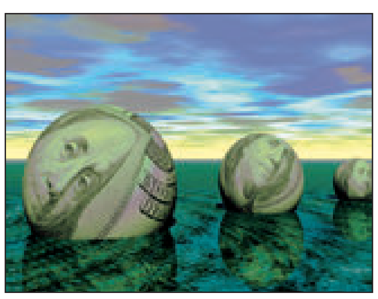
Public entity risk pools face a variety of challenges

By JOANNE WOJCIK

Public entity pools are facing many of the same issues as the commercial market, but they also have to deal with a risk inherent to the public sector: politics.

For example, political considerations often affect how public entity pools pay claims, in some cases forcing them to pay more than is required under state-mandated caps on governmental liability. And, in some states, tort caps may not apply when public entities purchase excess insurance coverage.

Whatever the reason, a steady increase in claim payments is putting a strain on the pools, which were formed as an alternative to insurance to help public entities collectively manage and finance their risks.



"Pools are generally saying, 'We want to help you solve your problems, not walk away from them,'" explained Michael Kaddatz, managing director of ARM Tech in Irvine, Calif., a unit of Aon Corp. that provides consulting services to pools.

And, since the pool's policyholders are also its owners, they might step up to protect an individual entity to keep it from leaving the pool, Mr. Kaddatz added.

"We're really trying to create solutions to help everybody, not just have precise contractual limitations be the only consideration," he said.

The Colorado Intergovernmental Risk Sharing Agency, for example, recently paid a claim that otherwise would not be covered to avoid having its policyholder municipality

See **POOLS**/page 15

PHOTO: MARIO TAMA/GETTY IMAGES

Two years after the terrorist attacks brought down the World Trade Center, policyholders are facing a deadline for filing property loss claims.

More Sept. 11 claims expected by deadline

Some pacts permit later filing

By ROBERTO CENICEROS

NEW YORK—More lawsuits over Sept. 11-related property and business interruption coverage disputes are expected to emerge as a key deadline for such suits nears.

Under New York regulations, property insurance policies must set a two-year deadline for suing insurers over the recovery of a claim. The clock for the deadline typically begins ticking with the inception of a loss, making the two-year anniversary of the Sept. 11, 2001, terrorist attacks the deadline for suing over related claims, policyholder attorneys say.

More suits still could come after that deadline passes, though. Many policyholders and their insurers have entered into pacts, known as tolling agreements, that delay deadlines for filing suits over claims, brokers and attorneys note.

Sept. 11-related claims settlements have been dragging out for several reasons, mostly related to the cost and complexity of property damage and business interruption claims, said Curtis Anderson, managing director of national property claims for Aon Risk Services in New York.

In some cases, policyholders still can't quantify their claims. In other cases, though, they are frustrated because insurers, acting under the advice of attorneys, are being cautious about settling claims, Mr. Anderson said.

While some policyholders are expected to file suit before the deadline, many more will continue negotiating with their insurers by obtaining tolling agreements, attorneys say.

See **DEADLINE**/page 15

Inside Business Insurance

Ward's 50 list shows top-performing insurers

Ward Group's annual analysis of property/casualty and life/health companies looks at the traits that set the top performers apart. Page 4

Creative responses help in surviving crises

Editor Paul Winston notes that even the best-laid plans have a way of going astray. Page 6

Blackout underscores need for planning

Risk managers can prove their value by applying the lessons from the recent power failure, one of this week's editorials says. Page 8

Lloyd's taking stock of quota-share deals

Lloyd's of London is seeking to limit syndicates' reliance on quota shares to boost capacity. Page 13

U.K. insurers pull back from aviation risks

Some underwriters are putting flaps down on aviation business, claiming rates are too low for the risks assumed. Page 13

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.
- Searchable **directories** of all the listings of industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Has the recent blackout led your organization to review its emergency preparedness?

Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

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House to examine PBGC financial woes

By JERRY GEISEL

WASHINGTON—The House Education and the Workforce Committee will hold a hearing Sept. 4 to examine the financial condition of the Pension Benefit Guaranty Corp.

Over the last year, the federal pension agency has recorded its biggest losses ever.

As of Sept. 30, 2002, the PBGC's $7.7 billion surplus had been replaced with a $3.6 billion deficit. The deficit has since swelled to $5.4 billion, agency officials estimate.

And more large losses may be in the offing. The PBGC estimates that financially ailing companies have promised—but not funded—more than $35 billion in pension benefits, a potential liability that could become the agency's responsibility if those companies go out of business.

"This poses a serious question of whether a taxpayer bailout of the PBGC would be necessary if the alarming trend of company pension plan failures continues," according to a committee news release.

The principal income sources for the PBGC—used to pay benefits to participants in failed plans the agency has taken over—are premiums paid by employers with defined benefit plans and earnings from PBGC investments.

The PBGC also has authority under law to borrow up to $100 million from the U.S. Treasury, if necessary.

Testifying at the hearing will be PBGC Executive Director Steve Kandarian and David Walker, comptroller general of the General Accounting Office, which recently placed the PBGC on its list of "high-risk" programs requiring additional federal oversight.

3M wins coverage battle over implant liability losses

By DOUGLAS McLEOD

ST. PAUL, Minn.—Minnesota Mining & Manufacturing Co.—better known as 3M—said it expects to recover about $250 million from 29 excess liability insurers for breast implant injury claims, following a Minnesota Supreme Court decision last Thursday.

The state Supreme Court affirmed a ruling that 3M's high-layer excess policies in force in the 1970s and 1980s were triggered by implantation of silicone gel breast implants. The court overturned lower court rulings allocating the losses to the time each insurer was on the risk, however, finding instead that insurers on the risk at the time of each implantation are liable for all loss arising from that implantation.

3M Senior Vp and General Counsel Richard Ziegler said in a statement that the company is "very pleased" with the ruling, which largely ends eight years of litigation between 3M and the company's 29 excess insurers.

A unit of St. Paul-based 3M manufactured silicone gel implants that were used between 1977 and 1985. Starting in 1992, the company became a target of bodily injury claims arising from the implants,

and it notified insurers that had written occurrence-based liability coverage in the 1977-1985 period. In 1995, 3M agreed to a class-action settlement of the claims. While excess insurers consented to the reasonableness of the settlement, they filed a declaratory judgment action in a Minnesota state court to resolve coverage trigger and allocation issues, leading to last week's state Supreme Court ruling.

The high court panel first affirmed lower court rulings that "bodily injury" in the underlying cases occurred at the time the silicone implants were inserted, triggering occurrence-based policies in force at that time.

Excess insurers asked the court also to affirm a lower court's finding that leaking silicone gel caused continuous injuries over extended periods and that losses should thus be allocated pro rata among the liability insurers based on their time on the risk.

The panel rejected this argument, though, finding that the continuous injuries arose from a "discrete and identifiable event"—implantation—and that pro rata allocation is not appropriate. The court ruled instead that each policy in force at the time of a particular implantation is liable to its full limits for losses resulting from that implantation.

Northwest Airlines Inc.'s plan is designed to help it meet minimum pension funding requirements while maintaining financial liquidity.

Northwest gets OK to use affiliate stock for funding pension

By JERRY GEISEL

WASHINGTON—Northwest Airlines Inc.'s plan to contribute stock of a regional affiliate airline to its three underfunded pension plans in lieu of cash has been approved by the Labor Department.

The approval of an exemption to federal benefit laws, published in the Aug. 19 Federal Register, allows Northwest to contribute shares of Pinnacle Airlines Corp. to satisfy all or part of Northwest's minimum funding requirements to the plans. The arrangement will help the Minneapolis-based airline satisfy funding requirements while maintaining financial liquidity.

Labor Department approval was required because the transaction otherwise would have violated certain Employee Retirement Income Security Act rules.

ERISA says an employer's securities can be held by its pension plans only if no more than 25% of the outstanding shares of the stock are held by its pension plans and at least 50% of the shares are held by independent parties.

Northwest said that nearly 100% of the Pinnacle shares may ultimately be held by the pension plans, with any remainder being held by Northwest.

In approving the exemption, the Labor Department set a number of conditions. Among other things, Northwest will use an independent fiduciary, in this case Washington-based Fiduciary Counselors, a former Aon Corp. unit, to determine the fair market value of the Pinnacle shares that will be contributed to the plans and to manage the holdings and disposition of the Pinnacle shares for the plans.

A Labor Department official described its approval of this arrangement as fact specific.

Ward's 50 analysis

Best-performing insurers tend to blaze their own trails

By JUDY GREENWALD

The insurance industry's best performers do not follow the crowd.

They do things their own way, even if few others follow. But their way often turns out to be the best way, according to the annual analysis of the insurance industry's top-performing companies conducted by the Cincinnati-based Ward Group.

For instance, top insurers use a centralized quote unit to provide rapid response to requests for quotes on commercial business from the field, but relatively few others do so.

Insurers must survive a thorough analysis to become one of the Ward's 50, the list of the top 50 life/health and 50 property/casualty insurers compiled by the Ward Group.

The Ward Group begins by reviewing the statutory filings of 2,700 property/casualty and 1,200 life/health insurers. The 100 insurers that eventually emerge from its rigorous process are those that over the past five years have excelled at balancing safety, consistency and performance.

To identify best practices, Ward conducts a more extensive analysis of just the 300 companies in its own database, all of which are Ward clients. Ward analyzes data from those insurers in its database that are in the top quartile in the three categories of lowest expense ratio, lowest combined ratio and highest return on average equity.

The business and operating practices of these 30 property/casualty and life/health insurers are then compared against those of the other insurers in Ward's benchmarking database, which is far more detailed than the publicly available statutory information. "We get into what they do that makes them different," said Mr. Ward.

"I'm very confident that, with the level of analysis that we do on Ward benchmarking, that if a practice is identified as a best practice that we have enough coverage of the industry to know that there's good credibility in the analysis and in the data," said Mr. Ward.

Best practices do not change drastically from year to year, though, he noted. "We're always on the lookout for refinements to best practices, or new best practices, but we have a solid foundation," he said. "They don't go away and get replaced with new ones. They're time-tested."

Best practices fall within areas including operating model, distribution effectiveness and premium audits.

Operating model

Top performers that decide to implement a decentralized operating model establish minimum "critical

See WARD/page 15

Errors & omissions

• Due to a production error, text was omitted from the ending of an Aug. 11 story, "Benefits Administration Changes Create Staffing Issues." The missing text and introductory paragraphs follow:

Indeed, employers that are outsourcing or implementing new technology need to be mindful of the transition period and the level of expertise that is needed during that time, which helps prevent gaps in service delivery, consultants say.

"In an extreme case, I had a client that both took steps to immediately reduce (staff) and also had some involuntary turnover that led to a lack of sufficient expertise to effect a good transition," said Jeffery Lanzet, executive vp with Aon Consulting in Winston-Salem, N.C. "So, organizations need to consider how are they going to make sure the people that they need to ensure a smooth transition are in place through the transition," he said.

There are a variety of ways employers can do this, Mr. Lanzet said. "The best incentive is if these people know there is a position with the firm after their current responsibilities" have been transferred, he said. But financial incentives work, too, he noted. "Stay bonuses are commonly used."

Comings & Goings

Agents/brokers

Calco Insurance Brokers & Agents Inc. has named **Darryl C. Vroman** as president and chief executive officer of Calco. Mr. Vroman succeeds **Don Fey**, who retired. Before joining San Mateo, Calif.-based Calco, Mr. Vroman was national property and casualty sales leader for Marsh Advantage America.

Arnol B. Kaplan has been promoted to executive vp and chief operating officer of New York-based Bertholon-Rowland Corp. Previously, he was senior vp and chief financial officer.

Insurers

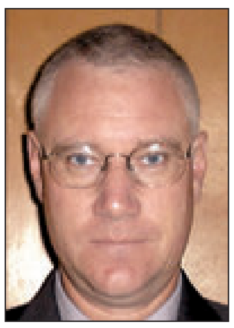
Thomas McMahon has been named executive vp in charge of the Northeast region of Hamilton, Bermuda-based Arch Insurance Group. Mr. McMahon, who previously was executive vp for Royal & SunAlliance Insurance Group P.L.C., will be based in New York.

RLI Corp. has named **Aaron Jacoby** as treasurer. Before his promotion, Mr. Jacoby was director-corporate development at the Peoria, Ill.-based insurer.

Reinsurance

Norwalk, Conn.-based reinsurance intermediary Carvill America Inc. has named **Sean P. Ryan** as senior vp. Before joining Carvill, Mr. Ryan was national casualty manager-facultative at Swiss Re America.

Other suppliers



Mr. Kadel

Bowman Specialty Services L.L.C. has named **Michael Kadel** as director of technical services, where he will direct loss-control personnel. Before joining the New York-based company, Mr. Kadel was a captain with the Fire Department of the City of New York.

Addison, Texas-based Concentra Operating Corp. has named **Andrew R. Daniels** as senior vp and chief marketing officer. Before joining the health care and disability outsourcing company, Mr. Daniels was president and chief operating officer for Marsh Crisis Consulting.

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

Photos should be sent to: Kathy Barnes, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Electronic high-resolution images are acceptable and should be sent to kbarnes@crain.com.

Paul Winston

When in the dark, co-workers shine

I was in upstate New York on vacation when the power grid serving the Northeast failed and the lights went out.

Inexplicably, the town I was in had power throughout the blackout, and I was blissfully unaware that anything had occurred until watching the late night news on television the evening of Aug. 14. Even then, it seemed like I was witnessing some remote event, as if I were seeing news of a calamity in Santiago, Chile, rather than something that was taking place all around me. The greatest inconvenience to me was that the next morning's delivery of The New York Times to the local newsstand was delayed for several hours by printing and delivery disruptions caused by the outages.

My experience of narrowly skirting disaster illustrates the unpredictability of planning for catastrophes. The various possibilities are endless, and trying to prepare for them all would very likely drive one insane.

Paul Winston

When a disaster strikes, for example, perhaps you will be totally unaffected, as I was, while others nearby suffer huge losses. Or maybe you'll be the one at ground zero, while others are relatively or totally unscathed. Maybe the disaster will cause new and unexpected problems for you, different than those for which you have prepared, or maybe the disaster your plans anticipate won't be the one that strikes you at all.

Well before the invention of devices and entire societies dependent upon electricity, the Poet Laureate of Contingency Planning, Robert Burns, wrote: "The best laid schemes o' mice an' men/Gang aft a-gley."

Substitute "astray" for the 18th century's poetic "a-gley" and he's nailed the modern challenges of preparing for unknown disasters. This insight could also explain why Robert Burns' countrymen invented Scotch whisky.

Before the Blackout of 2003, I wonder how many contingency plans assumed that electricity would remain in abundance for implementing the details of the plan? How many relied on cell phones to execute "calling trees" to communicate with employees? How many relied on easy ingress and egress to and from an affected area, free from throngs of pedestrians walking home? How many—especially those in Canada—ever considered that an Ohio utility could adversely affect their operations?

I suspect that, in light of the power outage (no pun intended), many contingency plans will be significantly revised. That's not a bad thing, as I suspect that many plans not tested by 9/11 were outdated and in serious need of being dusted off and updated by the time the power went out.

When I returned from vacation last week, some of my co-workers expressed surprise and concern that our own company—which has extensive operations in Cleveland, Detroit and New York—did not have its own contingency plan.

Nonsense, I said, informing them that Crain Communications, the company that publishes *Business Insurance*, did indeed have a plan. The company crafted a formal contingency plan in the wake of Sept. 11 to protect employees and preserve our ability to gather, organize and publish information during a crisis. In fact, I assured them, even though I was out of the office during the outage, that crisis plan was always as close as my desk, should it be needed.

And now that they know of its existence, it should be even more valuable should disaster strike in the future. If I can find it on my desk, that is.

In our Detroit offices, they not only were able to locate the plan but they put it into action. Bob Allen, deputy managing editor of Crain's Detroit Business, wrote an inspiring column on the challenges of implementing a disaster plan that I suspect are more universal than he knows. He recounted the experience of having several staff members drive 25 miles to a designated offsite operation center in Farmington, Mich., only to find the place closed and the doors locked. Then there was the backup generator that soon began to spew fuel oil, necessitating the hasty construction of a levee with landscaping rocks to keep the fuel out of a nearby storm drain. And there was the thunder, lightning and rain that occurred in the midst of the outage, adding insult to injury.

Despite the various ways in which the plan broke down, Bob wrote, he discovered that such plans stay on track in a crisis thanks to the tenacity and creativity of people involved.

"No doubt the system will continue to work here—and probably in your own workplaces—by 1,001 individual acts of calm in the face of panic, by employees who stare into the maw of hysteria and say, 'What if we do this?' Large and small actions propelled by quiet resolve and a curse word or two. Or three," he wrote.

It's a helpful reminder that planning for the unknown can take us only so far. It's the often-unspoken factor of human involvement and commitment that gets us through the dark times.

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Editorial

Outage brings opportunity

NOW THAT THE LIGHTS are back on, businesses can look closely at the lessons from the massive blackout across the Northeastern United States and eastern Canada.

The sudden power failure on Aug. 14 affected an estimated 50 million people in a broad area. Insured losses from the outage, however, are expected to be moderate—largely because of standard policy exclusions and the time deductibles in most business interruption policies. With businesses likely having to retain most of the losses, it's obvious that careful crisis planning is vital.

But the unexpectedly widespread outage also taxed many risk managers' backup plans. For example, what happens if the fuel needed to run auxiliary electric generators runs out? Similarly, a "hot site" set up to keep business operations going is of little use when the alternate location also lacks power.

Even when a business can operate, it may be unable to reach all of its customers. This was the case for *Business Insurance* and some of its sister publications, which were delayed in distributing magazines in the affected area this week because both postal service and transportation systems were disrupted.

We think the recent power failure presents an excellent opportunity for risk managers to show their value in helping their organizations to cope with such catastrophes. Planning and preparation, ensuring that backup plans themselves are not compromised, not only will aid business survival in the future but also win risk managers support in the boardroom.

Captive obstacle removed

SEVERAL YEARS AGO, we questioned why employers should be denied the opportunity to fund their employee benefit plans through captive insurance subsidiaries.

The advantages of such arrangements are numerous, including broadening a captive's premium base, spreading out fixed captive expenses over a larger book of business and potentially—based on certain court decisions and an Internal Revenue Service ruling—increasing the likelihood a parent can deduct property/casualty premiums paid to its captive.

These advantages meant little, though, because the Labor Department imposed such stiff, unnecessary requirements as to make this approach virtually unworkable.

For more than two decades, the Labor Department clung to a 1979 rule which said that in order to use a captive to fund benefits, at least 50% of the captive's business had to be unrelated to the parent. Although the goal of the 50% rule was to protect employees, one is hard-pressed to see how it achieved that. Indeed, one could see the opposite result occurring if, for example, an employer used a low-rated fronting insurer and took on very risky third-party business to reach the 50% threshold.

Fortunately, common sense prevailed. While it did not scrap the 50% test, Labor Department officials said there were alternatives. Simply put, the department would approve funding benefits through captives if the arrangement were in the best interests of employees, used top-rated fronting insurers and involved an independent fiduciary to monitor the arrangement.

Since that change in position was put in place in 1999, the department has approved captive benefit funding arrangements by Columbia Energy Group and Archer Daniels Midland Co., while approval of a new application by International Paper Co. seems likely.

This is one of these rare win-win-win situations in which employees get better benefits security and improved offerings, while employers can expand the scope of their captives.

Surely, more employers will seek to use this approach. And we are glad that the Labor Department will facilitate, not discourage, these arrangements.

Schillerstrom

Letters to the Editor

Health care crisis solution requires accountability

To the editor: Having returned from vacation and a backlog of mail and issues of *BI*, my comment is late, but I felt compelled to share it with you.

In your June 23 editorial, "Consider Ways to Cure Health Care," there are several additional elements that must be addressed. The consumer must not only be included via design features (higher deductibles/copays, etc.) but also the personal accountability and responsibility of said consumer must enter this discussion. Although this might be a more serious uphill battle, especially when one considers the present reality of "we the people." Smoke cigarettes for 30 years, get cancer and sue the tobacco companies as the responsible party? Granted, they didn't play by the rules, but who smoked the damn things?

The truth be told, we are not good animals and do not do the things necessary to care for our bodies. Why? We seem to care less about our bodies and more about our pleasures and bad habits. And why should we? I can sue, I can seek medical care, I can do what I damn well please. Not so, methinks.

I feel better, thank you.

W. Patrick Hughes
President
WP Hughes & Co. L.L.C.
Portsmouth, N.H.

Risk managers advised to weigh in on ERM

To the editor: The Risk & Insurance Management Society Inc. will be providing input and commentary to the Committee of Sponsoring Organizations' Enterprise Risk Management Framework document in the near future and on behalf of its members' interests in this topic. Your editorial highlight of the draft framework in the Aug. 4 issue is appreciated, as I think it represents some well-grounded thinking around what ERM should be and how it might be implemented.

As you point out, there has been much confusion and even skepticism over the concept by many for too long. Now, in the wake of 9/11 and two years of major business management failures, it is high time for a more comprehensive approach to effective risk management to be more widely and consistently practiced. And now, more than ever, risk managers have the opportunity to step up to the plate and play a leadership role in moving their organizations to this end. If they don't, others will, and then they face the personal risk that they may not even find a seat at the table.

Chris Mandel
Chief Risk Officer
Risk & Insurance Management Society Inc.
Assistant Vp-Enterprise Risk Management
USAA Group
San Antonio, Texas

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Ward's: The best are innovators

Continued from page 4

mass" thresholds to justify its higher cost, said Mr. Ward.

"We're not saying you have to be decentralized to be a high performer," said Mr. Ward. But there is normally an incremental cost associated with being decentralized because it involves operating more branch offices and having more people out in the field. As a result, "the way to make a decentralized model work is to have a minimum critical mass," he said.

For instance, insurers with decentralized underwriting and claims processing operations have a lower loss ratio because they are closer to the marketplace. But, to keep the expense ratio down, a branch office should generate at least $100 million in annual premium "or else the cost to be decentralized is generally more than the advantages to be had in the loss ratio," said Mr. Ward.

Distribution effectiveness

Although some companies consider multiple distribution systems a key to success, "our conclusion is that you do not have to utilize multiple distribution channels to be a high performer," said Mr. Ward.

The top performers have also implemented an effective agency segmentation program to better align agency management efforts with agency performance, according to the Ward study. Insurers evaluate agents based on a set of objective, weighted criteria, such as profitability and retention, then use this data to rank them.

If a company wants to slow its rate of growth but improve its profits, it may assign more value to agents "that deliver profitable business even if they haven't grown that rapidly," said Mr. Ward. Or, insurers whose strategy is to use the Internet to service their business will credit those agents willing to work over the Internet. "The segmentation is a way of defining what's important to the company," said Mr. Ward.

This approach puts agents into categories "that determine how you will manage them going forward," said Mr. Ward. "You want to compensate your top-performing agents, and you want to work more closely on remedial action with the segment of agents that are not growing as fast as you would like, or are not growing profitably as fast as you would like," he said.

"It's also a way to become objective in evaluating your distribution system," said Mr. Ward. "In the past, companies have revised base commission structures, profit-sharing commission structures, very subjectively, and it was more like, 'Do we like the agent? Have we worked for a long time with the agent?'" said Mr. Ward.

Premium audit

Another best practice followed by top companies is to focus more on premium audits' revenue potential than on their cost. Premium audits enable companies to see whether the assumptions they originally made in charging premium were correct. They are most often conducted for workers compensation risks, where the actual payroll is compared to the original projections. While a payroll may be, in fact, less or more than originally estimated, the audit "generally is a source of additional premium," said Mr. Ward.

Premium audits may also be conducted on general liability, commercial auto, commercial package and inland marine lines of business, said Mr. Ward. In general liability, for instance, a premium audit could scrutinize factors such as employee count, sales and payroll. These lines often represent missed opportunities for insurers "because they are not audited, and they can and should be," said Mr. Ward.

High performers will have about 2.8 full-time premium audit employees per $100 million of commercial premiums vs. 2.4 employees for average performers. But among high performers, premium audits can generate income of six to seven times the expense involved in conducting them, compared to just two to three times for average performers, he said.

The Ward study also reveals that top performers implement effective follow-through procedures to ensure the additional premiums identified through premium audits are actually collected. "A lot of companies will not collect the premium, or they will waive it, or the insured is no longer an insured and they just don't collect it," said Mr. Ward.

"One-third doesn't know how much they collect, and of those that do know, some collect less than 50% of what is owned the company," he said. In contrast, "a high performer is collecting 90% or more of the additional premium due as a result of the premium audit function," said Mr. Ward.

Information technology

Top performers effectively use the Internet to extend their organization's servicing reach. A few years ago, the prevailing thought in the insurance industry was "the Internet was going to be used as more of a distribution/sales-type platform," said Mr. Ward.

What has emerged instead, though, is that "the bigger application on the Internet is on the servicing side," including the use of producer portals, where agents and producers can use the Internet to gain access to information about the policyholder base and claims activity, said Mr. Ward.

In addition, there are consumer portals, where policyholders can come on to the Web site and retrieve claims and account balance information, said Mr. Ward.

"The nature and types of applications that are being used for the Internet is really, really exploding right now, and it's fundamentally beginning to change the operating model of the traditional insurance company," he said.

Top performers have also implemented an effective "project management office" process to bridge the gap between technology and business payback, according to the Ward study. PMOs make "sure that large and strategic projects are successfully implemented," said Mr. Ward.

"Companies are spending a lot of money on technology," he said. Among high performers, for instance, this amounts to 3.4% of gross premiums written. "But, I think most companies do not feel that they are getting their money's worth," said Mr. Ward. "There's a feeling in a lot of organizations that the effectiveness side of it is not where they would like to be," which is leading to the establishment of PMOs.

"We've identified it as a best practice because, from our analysis, companies that have implemented effective PMOs tend to get more payback from their investment in technology," Mr. Ward said.

2003 WARD'S 50 PROPERTY/CASUALTY

Accident Fund
Acuity
Alfa Insurance Group
Allstate Insurance Co.
American International Group
American Modern Insurance Group
American National Property and Casualty Co.
Auto Club Insurance Assn.
Auto-Owners Insurance Group
California Insurance Group
Canal Insurance Group
Central Mutual of Ohio Group
Chubb Insurance Group
Church Mutual Insurance Co.
Cincinnati Insurance Group
The Commerce Group Inc.
Everest Reinsurance Group
Federated Mutual Group
Frankenmuth Financial Group
GEICO
Georgia Farm Bureau Mutual
Germania Insurance Group
Greater New York Group
Grinnell Mutual Group
Harleysville Mutual Insurance Co. Group
Hastings Mutual Insurance Co.
IDS Property Casualty Insurance Co.
Interinsurance Exchange, Automobile Club of Southern California
Kentucky Farm Bureau Mutual Insurance Co.
Louisiana Workers' Compensation Corp.
Maine Employers Mutual Insurance Co.
Markel Corp. Group
Mercury Casualty Group
Merrimack Mutual Group
New Jersey Manufacturers Group
New York Central Mutual Fire Insurance Co.
North Carolina Farm Bureau Insurance Group
Philadelphia Insurance Companies
Preferred Mutual Insurance Co.
Progressive Casualty Insurance Co.
Protective Insurance Group
RLI Insurance Group
Selective Insurance Co. of America
Sentry Insurance
Southern Farm Bureau Casualty Insurance Co.
Tennessee Farmers Mutual Insurance Co.
United Fire & Casualty Group
USAA Group
West Bend Mutual
Western World Group

Source: Ward Group

10 have stayed on top all along

The Ward Group examines the statutory results of 2,700 property/casualty and 1,200 life/health insurers every year. But only two life/health insurers and eight property/casualty insurers have made it to the Ward's 50 each year over the past 13 years in which the Ward Group has conducted the survey.

These are the companies that have consistently excelled at balancing safety, consistency and performance over the past five years.

The two life/health companies are Jefferson-Pilot Insurance Co. and Physicians Mutual Insurance Co.

The eight property/casualty insurers are: Alfa Insurance Group, Auto-Owners Insurance Group, Canal Insurance Group, Cincinnati Insurance Group, GEICO, RLI Insurance Group, Tennessee Farmers Mutual Insurance Co. and USAA Group.

"When you look the Ward's property/casualty and the Ward's life and health (insurers), it's a diverse group of companies," said John Ward, chief executive officer of Cincinnati-based Ward Group. The list "supports the notion that to be a good performer is more dependent on superior execution than it is to some kind of unique distribution channel or unique approach and position in the marketplace," because large, small, agency, personal lines and commercial lines insurers are all included.

The 2003 property/casualty and life/health editions of Ward's Results include data from the 2,700 property/casualty and 1,200 life/health insurers' statutory filings. They do not include the benchmarking data developed by Ward from the company's own database.

Copies of the books, which are available for $545 each, can be obtained by contacting the Ward Group at 8040 Hosbrook Road, Suite 100, Cincinnati, Ohio 45236-2908. The telephone number to order the volumes is 513-791-0303; the fax number is 513-985-3442. The volumes can also be ordered online at *www.wardinc.com.*

—By Judy Greenwald

2003 WARD'S 50 LIFE/HEALTH

AFLAC
Alfa Life Insurance Corp.
Allstate Life Insurance Co.
American Fidelity Assurance Co.
American General Life Insurance Co.
American National Insurance Co.
American United Life Insurance Co.
Ameritas Life Insurance Corp.
AmerUs Life Insurance Co.
Auto Owners Life Insurance Co.
Banner Life Insurance Co.
Beneficial Life Insurance Co.
Berkshire Hathaway Life Insurance Co. of Nebraska
Cincinnati Life Insurance Co.
Combined Insurance Co. of America
Country Life Insurance Co.
Farm Bureau Life Insurance Co.
Farm Bureau Life Insurance Co. of Michigan
Federated Life Insurance Co.
Fidelity Investments Life Insurance Co.
Golden Rule Insurance Co.
Great American Life Insurance Co.
IDS Life Insurance Co.
Jefferson-Pilot Life Insurance Co.
John Hancock Life Insurance Co.
Lafayette Life Insurance Co.
Liberty National Life Insurance Co.
Massachusetts Mutual Life Insurance Co.
Midland National Life Insurance Co.
Minnesota Life Insurance Co.
Mutual of Omaha Insurance Co.
National Life Insurance Co.
Nationwide Life Insurance Co.
New York Life Insurance Co.
Northwestern Mutual Life Insurance Co.
Ohio National Life Insurance Co.
Pacific Life Insurance Co.
Penn Mutual Life Insurance Co.
Physicians Mutual Insurance Co.
Protective Life Insurance Co.
RBC Liberty Life Insurance Co.
SAFECO Life Insurance Co.
Security Benefit Life Insurance Co.
Shenandoah Life Insurance Co.
Southern Farm Bureau Life Insurance Co.
Teachers Insurance and Annuity Assn. of America
Travelers Life & Annuity
United Healthcare Insurance Co.
USAA Life Insurance Co.
Western & Southern Life Insurance Co.

Source: Ward Group

Lloyd's eyes quota-share limits

By SARAH VEYSEY

LONDON—As the capacity auction season at Lloyd's of London approaches, and syndicates prepare business plans for the 2004 year, Lloyd's newly created franchise board is seeking to limit the amount of quota-share reinsurance that many syndicates use to raise capital.

Lloyd's has a record capacity in 2003—£14.25 billion ($21.41 billion)—and about 5%, or £713 million ($1.07 billion), of that total comes from so-called qualifying quota-share reinsurance deals.

Under such deals, experts explained, capital providers lend money to Lloyd's syndicates to underwrite business, in exchange for a fee and a share of the profits. The syndicate and the capital provider agree on what business the syndicate will write with the capacity provided by the deal.

The principal investors in qualified quota-share arrangements have been large insurers and reinsurers outside the Lloyd's market. Risks underwritten with the capital vary and mainly are those considered to generate the highest profits.

"Qualifying quota share is relatively easy to come by when the market picks up, because there is lots of demand for profitable business," said Kevin Willis, an insurance analyst at Standard & Poor's in London. "We are now halfway through 2003, premium rates are beginning to flatten off, if not decline, in certain sectors of the market, and what Lloyd's doesn't want to do is to allow the syndicates to have unrestrained access to capital or premium capacity of one sort or another which might prompt businesses to want to write for volume rather than for profit."

Lloyd's moves to curb qualifying quota-share capacity in the market are, in part, likely prompted by a desire to ensure that the market is underwriting good-quality business, Mr. Willis said.

"Ultimately, it is a demonstration of Lloyd's senior management's intent to attempt to control the cycle," he said. "With the new franchise, what they clearly want to be able to demonstrate is that they are influencing the quality of the underwriting that the market is being exposed to."

"What Lloyd's wants is capital in the market to drive the (capacity) of the syndicates up rather than for them to have a lower level of capital and rely on this third-party capital—qualifying quota shares that can come and go quite quickly," said Mr. Willis.

Lloyd's informed syndicates as early as May this year that it would be limiting the amount of qualifying quota-share capital within the market, according to Julian James, director of worldwide markets and a member of Lloyd's franchise exec-

See LLOYD'S/next page

Julian James of Lloyd's of London says the market is reviewing how syndicates use qualifying quote-share deals to boost capacity.

U.K. employers use audits to avoid sexual orientation bias

By SARAH VEYSEY

LONDON—Employers in the United Kingdom need to start preparing for sexual orientation anti-discrimination rules that take effect later this year, employment law experts warn.

To address potential risks, some U.K. employers are conducting confidential audits to determine how many of their employees are homosexual and bisexual, ahead of the new rules.

Under the Employment Equality (Sexual Orientation) Regulations 2003, which take effect Dec. 1, employees can claim unlimited damages for harassment, victimization or unfavorable treatment related to sexual orientation.

The legal rights group Stonewall and the Confederation of British Industry, both of London, said that U.K. employers are interested in determining employees' sexual orientation to curb their liability from the regulations. Stonewall said it is advising about 50 employers on workplace equality issues but stressed that those employers were not forcing employees to reveal their sexual orientation.

In guidance issued earlier this year, the London-based Advisory, Conciliation & Arbitration Service suggested that companies seeking to avoid claims under the new rules could include a question about sexual orientation on equal opportunity questionnaires.

But ACAS warned that "if organizations decide to include sexual orientation in their equal opportunities monitoring processes, staff should be told how it is intended that such information be used.…Staff should be assured of confidentiality and informed that they are under no obligation to give such information."

Employers need to start considering now whether their employment practices are potentially discriminatory on the grounds of sexual orientation, said Rachel Dineley, a partner in the employment department of the law firm Beachcroft Wansbroughs in London.

For example, some employers may extend

See AUDITS/page 16

Hardy, Brit scale back airline business

Underwriter moves don't signal a trend

New capacity that entered the London aviation market after Sept. 11, 2001, has put downward pressure on insurance rates.

By NEIL HODGE

LONDON—Recent moves by two Lloyd's of London underwriters to scale back their aviation insurance business do not signal a wider trend of declining capacity for airlines, market participants say.

Instead, they say, the two entities independently concluded that the prevailing rates in the aviation market did not justify their exposure to airline hull and liability risks.

Lloyd's insurer Hardy Underwriting Group P.L.C. last week said it would reduce its exposure to airline coverage, saying that rates have fallen too low for the risks to be worthwhile.

Tim Griffin, compliance officer and a director with Hardy Underwriting, said that the company "is not getting out of the aviation business altogether" but that "it would continue to write aviation business only if it is worth our while."

Mr. Griffin added that "the pricing of these risks is the only way we can control our profit margins, and if the pricing is not right, then we will not continue to underwrite the risk."

According to Mr. Griffin, by the end of 2002 enough additional capacity had entered the aviation insurance market that within 12 months of the catastrophic losses of Sept. 11, 2001, airline rates had started to decline.

Currently, aviation risks account for about one-third of Hardy's capacity of £100 million ($159.6 million), Mr. Griffin said. Although it is scaling back its air-

See AIRLINES/next page

World Updates

Firm pricing pushes Zurich results higher

Zurich Financial Services Group reported net income of $701 million for the first six months of 2003, compared with a $2.0 billion loss for the comparable period in 2002. Consolidated gross written premiums and policy fees increased 26%, to $26.10 billion for the first half. Zurich, Switzerland-based ZFS said its first-half performance was boosted, in part, by "firm prices in most nonlife markets."

QBE profits increase in first half

QBE Insurance Group Ltd. reported profits of $241 million Australian ($162.9 million) for the first six months of 2003, a 110% increase over the same period in 2002. The Sydney, Australia-based insurer recorded gross earned premiums of $3.90 billion Australian ($2.63 billion) for the first half, up 12%.

UnumProvident to buy Swiss Life group book

UnumProvident Corp. has agreed to buy the group income protection, group life and critical illness business of Swiss Life (U.K.). The U.K. arm of UnumProvident in London will take on about 1,800 group income protection policies and about 6,800 group life and critical illness policies from Swiss Life, the U.K. arm of Zurich-based The Swiss Life Group. The deal will take effect on Jan. 1, 2004.

Hiscox predicts profit for Lloyd's syndicate

London-based Hiscox P.L.C. has announced profit forecasts for its Lloyd's of London multiline syndicate 33 for the 2001 and 2002 years of account. The syndicate forecasts a 17.5% to 22.5% profit on its capacity of £360 million ($524.2 million) for the 2001 year, and a 22.5% to 27.5% profit on its capacity of £504 million ($811.9 million) for the 2002 year. Hiscox said it had upped Sept. 11, 2001-related reserves to $588 million from $475 million because some claims are taking longer to settle than was expected.

FUEDI offers aid to Portuguese adjusters

The Federation of European Loss Adjusting Experts, or FUEDI, has invited Portuguese loss adjusters to make use of its recently formed catastrophe action group to evaluate the cost caused by the country's recent forest fires. FUEDI has previously helped loss adjusters in the Netherlands and France when calculating losses caused by natural catastrophes.

Commentary

Tips for finding execs, pen pals

A couple of items regarding new industry talent and a lesson I learned about managing the risks of e-mail spam:

Item one: Risk managers, insurers and brokers promote thinking outside the box, so I suggest that senior management throughout the industry do the same if they currently have a vacancy to fill. Forward-thinking management should approach John Poindexter, the retired vice admiral who is scheduled to leave his Pentagon position at week's end.

Mr. Poindexter, a central figure in the Iran-Contra arms-for-hostages scandal during the Reagan administration, more recently outraged elected officials and the press with his plan to create a terrorism futures market. This market would have allowed traders to profit by correctly predicting acts of terrorism in the Middle East. In return, the intelligence community supposedly would have benefited, given some evidence that futures markets are relatively successful in predicting events.

Dave Lenckus

Sure, there was a flaw or two with the idea, including that it could have helped bankroll terrorists. But every novel idea has kinks; look at the government's terrorism insurance plan.

Whatever your views about that futures market, you have to give Mr. Poindexter credit: He doesn't just think outside the box—he burns it first and then buries its ashes. He essentially took a basic principle of insurance and turned it inside out. Insurers bet that their risks won't blow up. In the hopes of outfoxing terrorists, Mr. Poindexter wanted to offer investors the opportunity to cover such bets.

I couldn't begin to speculate on the kinds of innovative ideas Mr. Poindexter might generate for your organization. But, at least it would be a good idea to have him working *for* you.

Item two: In a recent thread on the RISKMail e-mail service for the risk management community, several subscribers questioned how they wound up on the e-mail lists of con artists who claim you can make millions of dollars by helping them move their martyred fathers' fortunes out of a Third World country torn by civil war. Just reply with your phone and fax numbers to get started—at being fleeced.

I hate this time-wasting, criminal e-mail clutter, so I'm fighting back. My strategy is a little odd, I admit, but it amuses me. And I think it has been somewhat successful—until about a week ago.

I respond to those con men, though not with any personal information. Instead, I waste their time with a bizarre message, hoping they will cross me off their contact lists.

For example, once I responded that I was the general who overthrew the premier of...wherever...and that my troops now had the writer surrounded. In another reply, I claimed I already had recovered millions of dollars helping the son of a deposed dictator from another country but that I had passed along this latest offer to my brother-in-law. He can't seem to climb out of debt on his measly salary at the FBI.

The pleas from the sons and daughters of Nigeria and Zimbabwe seemed to diminish, but a few still trickled in.

The last one led to my favorite reply. I wrote: "I can communicate only via the Internet. They bugged my phone and fax, so I threw them away. Everywhere I went, they followed me. So, I go nowhere...for now...until the time is right. Then I will disappear into the night as a crystal of sugar dissolves into coffee, though I take mine black, so sugar in my coffee would be quite discernable, unless we're talking about just one little crystal, which I probably wouldn't be able to taste, which is just the point I'm trying to make."

But, in attempting to push the envelope on time-wasting replies, I miscalculated. Instead of writing me off as a wise guy not worth bothering, the writer apparently thought I was nuts. And because you would have to be nuts to agree to cooperate with these guys, the writer replied to me.

Nuts! I didn't want a pen pal.

But at least I succeeded in confusing him. He asked whether my reply meant I planned to help him.

Maybe I'll respond with a phone number—to the local office of the U.S. Secret Service, which is investigating these so-called 4-1-9 scams.

For those of you who want to spend less time than I do trying to discourage such e-mails, you could just forward them to the Secret Service at *419.fcd@usss.treas.gov.*

Senior Editor Dave Lenckus can be reached at dlenckus@crain.com.

Lloyd's: Quota-share reinsurance

Continued from previous page

utive.

"Our thinking has been that we should look more closely at how syndicates are using qualifying quota share. Certain syndicates have had historically up to 30% of their (capacity) through the qualifying quota-share route," said Mr. James. "While we haven't decided on a maximum percentage, we might well bring it down to something like 10%, so people can plan.

"And that is where we stand at the moment. We are just about to get into the business-plan approval process, what we are saying consistently to all the syndicates is that you have to be able to demonstrate that you have a business plan that is built around sense, with a reasonable opportunity to make an underwriting profit," he said.

One concern within the market about qualifying quota-share deals is that while such deals enable syndicates to raise fresh capacity quickly, that capacity is short-term.

Such deals tend to be one, two or three years in duration, said Mark Hewlett, an analyst at Moody's Investors Service in London, with most deals lasting three years.

"So, from Lloyd's perspective, because it is not long-term capital, that means that if they allowed more and more of the market to use qualifying quota share, they run the risk that everybody says they are only doing it for three years, or next year two and then one, and that then there is a sudden dramatic drop in capacity," because capital providers no longer wish to enter into such deals, noted Mr. Hewlett.

> **'What we are saying consistently to all the syndicates is that you have to be able to demonstrate that you have a business plan that is built around sense.'**
>
> *Julian James*
> *Lloyd's of London*

From the insurance buyer's point of view, the short-term nature of qualifying quota-share deals may affect relationships with syndicates, Mr. Willis suggested.

"Syndicates do need to provide continuous levels of service and capacity to their policyholders, and if they are providing that through qualifying quota share and that qualifying quota share suddenly evaporates, then those relationships are going to suffer," said Mr. Willis.

While the 5% of Lloyd's capacity that is currently sourced through qualifying quota-share reinsurance is not so great that its disappearance would cause the market huge problems, noted Mr. Hewlett, Lloyd's franchisers are being cautious and pre-empting any such concerns.

Capital providers are interested in qualifying quota-share deals at the moment because such arrangements allow them to use spare capital and use syndicates as a sort of fronting arrangement, he said.

"Not only can they be restrictive on underwriting and what (the capital) can be used for, but they take a profit commission, they set a fee—so it is certainly not naive capital," Mr. Hewlett said. "And as a consequence, they are using their capital at the best time in the market and getting the best terms that they can negotiate at such a time, and then they are going to take it away as soon as the market begins to look less promising."

Airlines: Changes not a trend

Continued from previous page

line business, Hardy will continue to underwrite private aircraft and helicopters, which account for most of its aviation risks.

Hardy's move follows Brit Insurance Holdings P.L.C.'s announcement earlier this month that it would cease underwriting direct aviation business (*BI*, Aug. 11). In a statement, Brit said that the aviation market had not undergone sufficient restructuring to ensure that the company would see long-term profits.

London market observers do not see the moves as part of a wider trend.

Dave Matcham, director of operations and secretary of the aviation executive committee at the International Underwriting Assn. in London, said that "aviation insurance has always been a niche market, and this decision to cut back on their exposure to airline cover looks like a strategic one on Hardy's part."

Steven Doyle, global practice manager for Aon Ltd.'s aviation and aerospace global practice group in London, said that many companies are currently in their planning stages for the 2004 underwriting year. "Hardy has made a sensible step by announcing that while it is still committed to providing airline cover, it will judge each case by its merits and will not automatically renew or write business which it thinks will be unprofitable," he said.

"These two companies are not major players in the aviation market, so it's not as if there will be a vacuum because they have decided not to write some new business," said a spokesman for one brokerage in London, who asked not to be identified.

A spokesman at another brokerage who asked not to be named said that "aviation rates are not as good as other commercial lines, so it is not surprising that some smaller players are thinking about cutting their exposure to underwriting aviation policies."

One London aviation broker said that 70% of airline renewals and 80% of premiums are written between Oct. 1 and Dec. 31, "which suggests that both Brit and Hardy have made their decisions early on to pull back from providing too much aviation cover for next year."

Pools: Host of exposures challenging

Continued from page 3

face negative local publicity.

In the case, which involved the city of Grand Junction, Colo., the pool elected to pay property damage claims stemming from a flood caused by a contractor to the city, and then subrogate the claims against the contractor's insurer, according to Tim Greer, the pool's executive director.

"We will do that," Jim Jean, director of program administration for the Texas Assn. of Counties, said of subrogation. "That's where we owe our member." The Austin-based association manages five public entity pools.

"I've had a roofing contractor at a hospital do incomplete work, and a heavy rain caused the mammogram machine to be replaced and caused considerable damage in a lab. We paid that and then we subrogated against the contractor's business insurance," Mr. Jean recalled.

In another case involving a sewer backup, a public entity pool in another state picked up a $70,000 tab for mold remediation even though it exceeded a statutory cap of $50,000 because that was easier, and probably less expensive, than having to go to court to protect its governmental immunity.

"For political reasons, it's hard to say, 'Hey, you live with $50,000, because that's what the state law says; I don't care that we were the only negligent party in sight on a $70,000 claim,'" Mr. Kaddatz said. "It creates a problem because the difference has to come out of somebody's pocket, maybe the homeowner's carrier...maybe the city utility decides to pay it for customer-relations, if not political, reasons," he said.

In some cases, public entity pools may pay a little bit more than they are required to by law because they recognize that a state-legislated tort cap may be outdated, according to Mr. Kaddatz.

"In some states, if a law was passed in 1962, maybe even in 1982, in today's dollars maybe it should be raised to allow for today's economic times," he explained.

Indeed, many property damage claims involving public water-main breaks or sewer backups that in the past might have settled well within a public entity's statutory limits today are exceeding that level because of new concern about mold contamination, said Mr. Jean of the Texas Assn. of Counties.

"Because of all the publicity recently on it, because of the rather large claim that was won by a person here in Texas against State Farm, people are becoming more aware of it and making claims" for mold contamination, he said. "Our county facilities, like in most states, are rather old facilities and may not have been maintained in the best of condition, and so there is potential mold."

And although the Texas property pool Mr. Jean manages excludes coverage for mold damage by itself, it will cover mold cleanup if the contamination is caused by another covered peril, he explained.

Another growing exposure for public entity pools are catastrophic incidents such as the recent farmers market accident in Santa Monica, Calif., where an elderly man drove his car through several blocks of vendors, killing 11 people and injuring more than 50 others.

> **'In some states...when you buy insurance, your tort cap automatically becomes whatever the limit of insurance is as opposed to what the tort cap was.'**
>
> *Michael Kaddatz*
> *ARM Tech*

"From a risk manager's perspective, or a pool administrator's perspective, we haven't really been including those kind of losses in our models," said Dan Howell, senior vp at Driver-Alliant Insurance Services in Newport Beach, Calif.

Tort caps are also being tested in some states when public entities purchase excess insurance coverage from pools, according to Mr. Kaddatz.

"In some states...when you buy insurance, your tort cap automatically becomes whatever the limit of insurance is as opposed to what the tort cap was," he explained.

For example, even if a public entity has a $500,000 per occurrence tort cap, if it purchases insurance coverage with $1 million in limits, the tort cap would effectively grow to $1 million, according to Mr. Kaddatz.

Despite that concern, public entity pools still have strong reasons to seek excess protection, he noted.

"The motivation to buy insurance as opposed to relying on the tort cap is twofold. One is, what if the tort cap fails on a given case, and the judge all of a sudden throws it out?" Mr. Kaddatz said. Another possibility is a suit "on something that's not in the state's jurisdiction, like discrimination, which falls under federal statutes" and, therefore, isn't governed by a state tort cap, he said.

"Discrimination is probably the leading thing. That could happen in law enforcement activities. It can happen in hiring practices. It can happen in failure-to-educate claims against schools," Mr. Kaddatz said.

Another emerging risk that pools are becoming increasingly concerned about is terrorism.

There is some question as to whether public entity pools are eligible to participate in the federal reinsurance pool created by the Terrorism Risk Insurance Act.

"A lot depends on how a pool is formed," explained Mr. Kaddatz.

For example, if a pool is formed as a risk retention group or as a mutual insurer, it would be eligible for federal terrorism reinsurance. But, if a pool is formed as a joint powers authority or as an intergovernmental agreement, it may not be, he said.

Deadline: More Sept. 11 claims expected

Continued from page 3

Finley Harckham, a policyholder attorney at Anderson Kill & Olick P.C. in New York, said that many of his firm's clients have obtained such agreements or are seeking them.

"But we also are preparing a number of complaints that are going to be filed, because some policyholders feel they have run the course in terms of negotiations and the only way they are going to get paid is to file suit," Mr. Harckham said. "We will be seeing a spike in the number of filings over the next couple of weeks."

Other observers, though, expect only a few more policyholders to sue before the deadline.

"It has started.... But, to my knowledge, there haven't been that many. I just don't see this onslaught of litigation," said Mr. Anderson. "We don't have it."

> **'Some policyholders feel they have run the course in terms of negotiations and the only way they are going to paid is to file suit.'**
>
> *Finley Harckham*
> *Anderson Kill & Olick P.C.*

About 80% of Aon Risk Services' clients that have outstanding Sept. 11-related claims have obtained tolling agreements, Mr. Anderson said. Some of those lacking such an extension are deciding whether to sue, he added.

Brokers and policyholder attorneys agree that most insurers have been cooperative in granting the tolling agreements. Although the extensions vary in length, insurers often grant only a 90-day extension with an option to renew, Mr. Anderson explained.

For tolling agreements to be valid, they must specify the number of days for which they extend the deadline, said Ed Joyce, a policyholder attorney at Heller Ehrman White & McAuliffe L.L.P. in New York.

Under New York law, a tolling agreement that does not specify the number of days for which it applies has no force, he said.

Mr. Harckham noted that such agreements should also address the state statute as well as the contract provisions regarding deadlines.

In the most recent large action over a Sept. 11 property claim, Deutsche Bank A.G. on Aug. 11 filed a suit against Allianz Insurance Co. and two units of AXA S.A. Deutsche bank's suit seeks to force the insurers to pay their shares of a total-loss claim on an office building heavily damaged in the Sept. 11 attack (*BI*, Aug. 18).

Observers say the lawsuit was filed only recently because of the impending deadline. But a Deutsche Bank spokeswoman said the company filed the complaint on Aug. 11 because the insurers required it to submit other documentation by that date.

The spokeswoman could not say, though, whether the policy's impending deadline for suing the insurers played a role in determining the filing date.

Audits: Confidentiality is key

Continued from page 13

health insurance benefits to employees' spouses. But if those extensions are also available to unmarried partners, those benefits should be offered irrespective of the sexual orientation of the partners, Ms. Dineley said. Otherwise, employers could be open to discrimination claims.

"Employers need to make it very clear to their staff what standards are expected," said Owen Warnock, a partner at the law firm Eversheds in London. "It is a training issue and a policy issue."

Employers must make clear to staff that joking and harassment about sexual orientation are not permissible, Mr. Warnock said.

Conducting surveys to discover the sexual orientation of employees may be useful if it leads to improvements in equal opportunities in the workplace, Ms. Dineley said. But she stressed that such a survey "must be clear that it is voluntary, totally confidential, and can be responded to anonymously."

If employers ask staff to identify their sexual orientation, they might inadvertently run the risk of exposing those employees to discrimination, Mr. Warnock said.

But an anonymous audit, as part of a broader monitoring process, could help employers to check, using statistical analysis, whether, for example, a high proportion of gay or bisexual candidates is being rejected at the recruitment stage. That would enable employers to look again at their recruitment processes and eliminate any discriminatory practices, he said.

"I think that there is quite a strong argument that it would be a good idea to do, at the very least, monitoring at the recruitment stage and, ideally, an audit as well as part of a broader equal opportunities audit," he said.

Ms. Dineley also said that any data about sexual orientation is considered sensitive personal data under the U.K. Data Protection Act and should be processed in accordance with those rules.

Fast track: Company asks to use captive for benefits

Continued from page 1

In its application, International Paper cites Labor Department approval earlier this year of a filing by Archer Daniels Midland Co. and its 2000 approval of a filing by Columbia Energy Group, both of which sought to use their Vermont captives to fund benefit programs.

Like ADM and Columbia Energy, International Paper has agreed to sweeten benefits, to use only insurers with a rating of A or better from A.M. Best Co. to issue life policies funded through the captive, and to use an independent fiduciary—in this case, U.S. Trust Co. of New York—to ensure that all conditions of the exemption are met.

If the Labor Department approves International Paper's application, as is expected, it could mark the long-predicted start of a widespread move to fund benefits through captive insurance subsidiaries.

Gary Langsdale, International Paper's director of risk management in Memphis, Tenn., said there are many advantages to funding benefits through a captive, adding, "This could be the wave of the future."

"This could be the opening of employers really starting to take advantage of their captives to fund benefits," said Henry Saveth, an attorney with Mercer Human Resource Consulting in New York.

Indeed, employers and their advisers have long discussed expanding their captives for a variety of reasons, including reaping benefits cost savings, broadening captives' premium base and gaining potential tax advantages.

Until several years ago, though, that approach had been largely blocked by a Labor Department ruling. In a 1979 ruling, the Labor Department states that for a captive to be used to fund benefits, it must be licensed in at least one domestic state and write no more than 50% of its business for risks related to the parent.

The so-called 50% test effectively prevented nearly all captives from being used to fund benefits, as few employers have wanted their insurance subsidiaries to take on so much unrelated business.

But in 1999, the Labor Department eased its rule. Ivan Strasfeld, director, of the Labor Department's Office of Exemption Determinations, said at the time that the department now would consider alternatives to the 50% test, provided the alternatives were in the best interest of participants.

Among other things, the department would want to see that primary insurers used by the captive to write policies are top-rated, that the benefit plan would be getting quality insurance at a fair price and that the transaction would benefit participants.

> **'This could be the opening of employers really starting to take advantage of their captives to fund benefits.'**
>
> *Henry Saveth*
> *Mercer Human Resource Consulting Inc.*

"We want to see something concrete that this is good for participants," Mr. Strasfeld said at the time (*BI*, Aug. 19, 1999).

Mr. Strasfeld's words have become a blueprint for employers who have structured captive benefits funding arrangements to fit the Labor Department official's guidance.

For example, Herndon, Va.-based Columbia Energy was the first employer to file an application with the Labor Department to use a captive to fund benefits after the department eased the 50% test. In its request to use the Vermont branch of its Bermuda-domiciled insurance subsidiary to fund long-term disability benefits, Columbia energy agreed to improve LTD benefits to plan participants and to use a top-rated insurer to write policies. In addition, it agreed to use an independent fiduciary—Milliman & Robertson, now known as Milliman USA—to ensure that all conditions of the exemption were met and to protect the interests of plan participants. The application of Columbia Energy, which has since been acquired by NiSource Inc. of Merrillville, Ind., was approved about a year after it was filed.

Last year, agribusiness giant ADM, acknowledging that it was following the Columbia Energy model, also sought Labor Department permission to use its Vermont captive to reinsure group life insurance benefits.

ADM also agreed to sweeten benefits to plan participants, to use only top-rated insurers for policies that would be reinsured by the captive and to use Milliman as an independent fiduciary. The department approved Decatur, Ill.-based ADM's application earlier this year.

In its application to the Labor Department, International Paper says it will make several benefit improvements to its group life insurance program once its reinsurance agreement with MetLife and CircleTree, which last year had earned premiums of more than $24.7 million, is approved.

Among other things, International Paper will add, effective Nov. 1, new education and training benefits for children and spouses of active employees. That benefit would supplement the accidental death and dismemberment portion of the life program, covering tuition costs, up to certain limits, for eligible children and the surviving spouse of an employee who dies from an injury covered by the policy.

Claims: So far, number of blackout losses small

Continued from page 1

spoiled inventory, retail stores with closed locations and some manufacturing plans shut down from the loss of electrical power, he said.

The Hartford Insurance Co. had received about 290 claims by last Thursday, which a company spokeswoman said was light considering the number of business affected. The lack of claims stems from the fact that coverage for power outages is excluded in general property coverage and few organizations purchase the applicable coverage add-on, the spokeswoman said.

Even if a business has specific insurance for service interruptions, not every loss stemming from a power outage would be covered, experts say.

For service interruption coverage to apply, the loss of power would have to have stemmed from physical damage at the power supplier and have been a covered peril in the policy, experts say. The cause of the outage has not yet been determined, which is complicating the claims process.

"Nothing about this scenario will be clean," said Robert Barnett, national property manager for claims adjuster VeriClaim Inc. in Los Angeles. "When no physical damage occurred, you have a convoluted set of facts to look at, and it makes it more difficult."

One organization that has service interruption coverage is Domino's Pizza L.L.C. in Ann Arbor, Mich., said Bob Boik, national director of risk management for the pizza chain.

The company is still working to determine losses and figure out how much coverage applies, Mr. Boik said.

Some companies said that their ability to recover from insurers will depend on how the blackout started. Both Chicago-based hospitality company Hyatt Corp. and Louisville, Ky.-based Tricon Global Restaurants Inc. have coverage that is contingent on the cause of the blackout. As a result, risk managers at both organizations said it is too soon to speculate about insurance coverage.

> **'Nothing about this scenario will be clean. When no physical damage occurred, you have a convoluted set of facts to look at, and it makes it more difficult.'**
>
> *Robert Barnett*
> *VeriClaim Inc.*

Insurance coverage for Marriott International Inc. is also conditional upon the origin of the blackout, said Brad Wood, vp of risk management at Washington-based Marriott.

Mr. Wood said he is "closely watching what caused the blackout," because if physical damage—rather than a mechanical failure—is determined to be the cause of the outage, the hotel chain's losses will be covered. Mr. Wood noted, though, that Marriott's losses were not significant.

Another major factor precluding the filing of many claims is the short duration of the blackout, experts say. Service interruption policies often have 48- or 72-hour deductible periods.

"It could very well be that deductibles will knock a lot of claims out," Mr. Barnett said.

Willis Risk Solutions has been receiving claims from clients in retail sales as well as from hotels and casinos, said James Costner, senior vp at Willis in Nashville, Tenn. But Mr. Costner said that nothing so far has come in outside of the deductible period, which is generally three days. In most cases, he said, power had been restored within two days.

"I don't know anybody that went beyond 72 hours," he said.

In a statement, Standard & Poor's Corp. of New York said the three-day deducible will rule out numerous claims from the blackout, resulting in minimal insured losses.

Despite the dearth of claims, Property Claims Services, a unit of Insurance Services Office Inc. in Jersey City, N.J., declared the blackout a catastrophe, indicating that it expects insured losses to exceed $25 million. An ISO spokesman said, though, that it's too soon to determine the amount of insured losses.

Marsh Inc. had received about 70 claims by midweek but cannot yet determine the exact nature and amount of the losses, said Paul McVey, managing director of property claims consulting for the broker in New York.

The claims have been broadly stated by the policyholders, he said, and won't be more specific for a week or longer. As of last week, it still was not clear whether the claims—coming from retail stores, manufacturing plants and fast-food operators—are based on physical damage to their property stemming from the power outage or are based on the closing of the facilities, Mr. McVey said.

PHOTO: KRT

Guests of the Marriott Marquis Hotel in New York's Time Square sleep on the sidewalk Aug. 15 because the building was without power. Marriott did not have significant losses from the blackout.

"We don't have enough detail," he said. "Most of them are still taking a look at the impact of the power outage."

Also keeping claims down have been contingency plans put in place by businesses.

Following the Sept. 11, 2001, terrorist attacks, many businesses in New York implemented emergency business continuity plans, said Doug Brown, area president of Arthur J. Gallagher Co. of New York Inc. These businesses include banks and brokerage houses that have backup generators and systems in place to switch trading activities to other locations.

"Most of them really didn't miss a beat," Mr. Brown said.

Crisis plans were also in place for the Domino's distribution centers. Backup generators kicked in during the blackout in centers that store the dough, pizza sauce and other ingredients, according to Mr. Boik. Also, orders from Domino's stores affected by the blackout were diverted to those that remained open, he said.

Blackout triggers interest in specialty coverage

By SARAH VEYSEY

LONDON—While London-market brokers and underwriters don't expect to see a large number of claims from the recent massive blackout in North America, the event did raise awareness of related risks and is driving new interest in specialty coverages.

The power outage that struck several major cities in the United States and Canada, leaving an estimated 50 million people without power, was a "timely wake-up call" to risk managers, said David Gamble, executive director of the London-based Assn. of Insurance & Risk Managers.

Indeed, the blackout is focusing the attention of commercial insurance buyers on the need for coverage to specifically address power failures and related risks, according to Greg Bond, executive director-project risks at Heath Lambert Group in London.

Most insured losses stemming from the blackout and related business disruptions are likely to fall on U.S. insurers, London market sources say. While London market insurers do offer coverage riders for utility failures in business interruption and revenue protection policies, most such policies would not have been triggered because of deductibles.

"Most of these policies have got deductibles on them," Mr. Bond noted. "Most delay-in-start-up insurances, for example, are going to have something between like 14- to 45-day deductibles."

But, he noted that coverages that involve monetary, rather than time, deductibles could be triggered by the blackouts.

Mr. Bond said that the outages, which left countless businesses without power for several days, are likely to prompt the creation of new policies to cover such losses.

"There has got to be the potential for innovative solutions out there for people that really need them," he said.

The London market already is receiving inquiries from buyers interested in specialty coverages for supply-chain disruptions caused by blackouts, according to Ian Harrison, a broker at Miller Insurance Services Ltd. in London.

For such policies to be triggered, there must be a fairly lengthy break—such as seven days—in the supply chain, he said.

While the blackouts in the United States clearly interrupted supply chains for some companies, supply-chain coverage sold in London tends to have "quite a catastrophic waiting time on it, so it would have to be a very significant time-out to trigger these specialist-type policies," Mr. Harrison explained.

Some Lloyd's underwriters are willing to write tailored consequential-loss coverages for specific events such as a blackout.

"When we write consequential-loss type business, we do so very much on a 'named-event'-type approach," explained Robert Chase, underwriting director at Kiln P.L.C. "So, if people want very specific extensions, or even a very specific stand-alone policy, if they tell us what it is that is worrying them we'll do our best to construct something around that."

401(k) directory deadline approaches

Business Insurance will publish its online Directory of 401(k) Plan Administrators in conjunction with the Sept. 29 issue. That issue will include a chart of the leading 401(k) plan administrators and a benefits management take-out section about retiree benefits. The directory is published as an editorial service, and there is no charge to be included.

The online directory will be available to subscribers on *www.businessinsurance.com* and will be included in *BI's* 2002/2003 Market Sourcebook, a special printed compilation of all of *BI's* directories and rankings that will be published in December.

To be listed in the directory, a company must provide 401(k) plan administration services such as enrollment recordkeeping, daily maintenance of participants' accounts and handling of account activity. Plan administration services must be available on an unbundled basis.

If your company meets the requirements and has not received a questionnaire, please request one immediately by calling Kevin Edison at 312-649-5279.

Copies of the questionnaire also may be printed from the directory area of *www.businessinsurance.com*.

Completed questionnaires must be submitted by the extended deadline of Sept. 12.

Public entities evaluate emergency response plans

Many municipalities hope for federal aid

By MEG FLETCHER

PHOTO: ZUMA

City of Cleveland water department workers fill tanks for water distribution in the city after the blackout shut down four water pumping stations.

The recent widespread blackout in the United States and Canada tested municipalities' contingency plans for utility disruptions, as well as their emergency response systems for the 50 million residents affected by the outages.

Now that full power has been restored in nearly all areas, public risk managers are assessing the strengths and weaknesses of their programs so they can improve them in the future.

Overall, risk managers from five states and one Canadian province reported that most emergency response systems performed as planned during the outage. Typically, the core of the operations consisted of a central command post of key personnel who were aided by essential workers, including police, public works and nursing personnel called in for extra duty.

Risk managers from five states and one Canadian province reported that most emergency response systems performed as planned.

In addition, many risk managers emphasized that they were pleased that the public responded to official orders with widespread cooperation, rather than creating some civil disturbances, as has happened in past outages.

While local officials do not expect their insurance coverage to respond to any losses or extra expenses such as overtime pay, officials have issued disaster declarations for public entities including New York City, New York state and Cleveland. By doing so, they hope that federal officials will provide aid through the Federal Emergency Management Agency. That could help reimburse state and local governments for the extraordinary costs related to emergency protective measures, such as extra police patrols. Such programs also may help make new loans available to businesses—most of them small—to help compensate them for their spoiled food and loss of customers.

As most risk managers in the affected eight states and portions of Canada continue mopping up, others are still facing ongoing problems.

As of late last week, local Canadian officials had asked public entities and businesses in cities such as Ottawa and Kitchener, Ontario, to cut energy consumption by 50%, risk managers for public entities said.

"What we are trying to do is to reduce further blackouts," said Kim Hunton, risk manager for the Canadian capital city of Ottawa, which has 800,000 residents. Officials have said that the power grid is not producing at full capacity, Ms. Hunton said on Thursday. In addition, she said, it is important that the grid not be overloaded as it gradually comes back online.

Ms. Hunton's municipal office, which is located in an eight-story building along with the provincial courts and some commercial tenants, reopened on Wednesday. Meanwhile, some other municipal employees continued to work from home because their offices had not reopened, she said.

In Kitchener, a city of 180,000 located southwest of Toronto, officials have reopened some government buildings, but only between 8 a.m. and 2 p.m. Officials also have urged energy conservation by reducing use of air conditioners and electrical appliances. They have also canceled all sporting events played under lights, the city said in a statement.

While the crisis has passed in Cleveland, the city faced some of the biggest challenges during the blackout. The power outage stopped all four of Cleveland's water pumping stations, and the resulting loss of water pressure—which lasted for about 36 hours—made responding to fires "a major concern," said Assistant Fire Chief Tim O'Toole, who is also in charge of the city's Office of Emergency Preparedness.

That emergency triggered the implementation of a statewide mutual aid plan, which had other fire departments in the region drive 32 tankers to the area in a matter of hours. The tankers were then positioned around the city to respond to blazes. The new program, which was developed after the Sept. 11, 2001, terrorist attacks, "worked very, very well," Mr. O'Toole said.

He also noted that increased patrols by police, who were aided by state troopers, resulted in fewer street-related incidents than is normal in such situations.

As part of its review, the city expects to consider backups for its pumps as well as improvements in its communications processes, Mr. O'Toole said.

In Macomb County, an area about 10 miles north of Detroit with a population of about 800,000, "everything came to a stop for 25 hours," said Richard Gasowski, director of risk management and safety. A curfew prohibiting nonessential travel helped control the situation, he said.

In the wake of the outage, the county has already made arrangements to purchase an additional auxiliary generator, which will help provide power for a 280-bed nursing home and a 2,400-inmate jail, he said. In addition, the county will reassess its transportation plan to ensure that, for example, a covered truck is available to haul food supplies to the nursing home and jail.

Meanwhile, risk managers in White Plains, N.Y., and Jersey City, N.J., reported that their emergency plans worked as expected without any unusual incidents.

ADVERTISER INDEX

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Late News

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Trenwick files for bankruptcy

Trenwick Group Ltd. and affiliates LaSalle Re Holdings Ltd. and Trenwick America Corp. have filed for Chapter 11 reorganization in U.S. Bankruptcy Court in Wilmington, Del. Following through with previously announced plans, Hamilton, Bermuda-based Trenwick and LaSalle Re simultaneously filed for winding-up under Bermuda law. Meanwhile, Trenwick has agreed to sell London-based specialty insurance and reinsurance unit Trenwick International Ltd.—now in runoff—to Bestpark Ltd., a unit of Litigation Control Group Ltd. Litigation Control will continue to manage Trenwick International's runoff.

Gay employee sues UPS over relocation plan

A gay United Parcel Service of America Inc. employee is suing his Atlanta-based employer, alleging it wrongly rejected his request to participate in a corporate relocation program intended to help keep families together. The suit, filed in a California state court, alleges breach of contract stemming from employment policies that promise protection against sexual orientation discrimination. It also alleges violation of state anti-discrimination laws. The Lambda Legal Defense & Education Fund represents the San Francisco plaintiff, who has worked for UPS for more than two decades. The plaintiff and his partner are registered in California as domestic partners, and his partner is named as a beneficiary for UPS-sponsored stock and retirement plans. UPS contends the relocation request had been approved.

Settlements growing in shareholder suits

A PricewaterhouseCoopers L.L.P. study found securities litigation settlement amounts are still rising but the frequency of lawsuit filings has declined. PwC identified 60 settlements nationwide during the first seven months of 2003, with a combined value of $1.5 billion. The average value was $25.1 million, with several topping $50 million, PwC said. For all of 2002, there were 107 settlements, with a total value of more than $2.1 billion and an average value of $19.9 million. PwC also found that, for the seven-month period ending July 31, 111 shareholder class actions were filed, on pace to total about 190 for all of 2003. That compares with 217 filings for all of 2002.

Monsanto, Solutia to settle PCB cases

Monsanto Co. and Solutia Inc. will pay $440 million of a $600 million settlement of polychlorinated biphenyl claims, with insurers funding the remainder. The settlement ends litigation in two pending cases. Plaintiffs sought to recover damages they said resulted from PCBs made at a Monsanto plant in Anniston, Ala. Monsanto and Solutia, both based in St. Louis, are spinoffs from Pharmacia. Under the settlement, Monsanto will pay $390 million and Solutia will contribute $50 million. The companies' insurers have agreed to pay $160 million. The companies will also pay another $100 million or more to fund cleanup, prescription and other costs.

Cigarette maker not liable for advertising claims

Brown & Williamson Corp. is not liable for the death of a man whose wife claimed he died from smoking cigarettes that were marketed as safer than other brands, a state court jury in Philadelphia ruled. Lois Eiser claimed in the 1999 suit filed in the Court of Common Pleas in Philadelphia that her husband, 54, died of lung cancer after switching to Carlton cigarettes, which were advertised as containing less tar than other brands, because he believed they were safer. Mr. Eiser switched brands after 13 years of smoking Marlboros and Raleighs and smoked Carlton cigarettes at a rate of two to three packs a day for 25 years, the suit stated. A Brown & Williamson attorney, in a statement, said Mr. Eiser knowingly accepted the risk of smoking cigarettes.

Briefly noted

Factory Mutual Insurance Co., which does business as **FM Global**, has moved its East Coast cargo insurance operations to New York from Boston and has opened a cargo office in the San Francisco area....**New York Marine & General Insurance Co.** has bought the new and renewal business of Southern Marine & Aviation Inc.'s primary marine and cargo program. Terms were not disclosed.

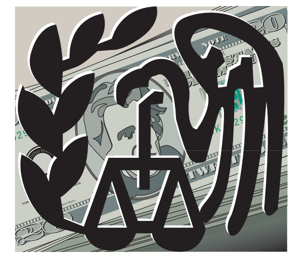
Check out BusinessInsurance.com

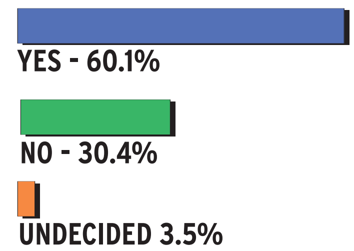
Items in the Late News column originally appeared in *BI*'s Daily News feature on *www.businessinsurance.com*. Visit the *BI* Web site to sign up to receive *BI*'s Daily News by e-mail.

Online Poll

[8/18 - 8/22]

Do you think the unemployed should be given federal tax credits to offset the cost of health insurance premiums they pay?





Near North: Selloff in piecemeal fashion

Continued from page 1

on terms.

The failed Hub deal came on the heels of the collapse of private equity investment firm Frontenac Co. L.L.C.'s attempted purchase of Near North's brokerage operations, which fell through in July for unspecified reasons (*BI*, July 28).

The collapse of the Hub deal surprised some observers—who cited the urgency of Near North's need to find a buyer—but they say the deal's failure did not shock them, given the broker's recent struggles, notably departing accounts and staff.

But while many saw the two failed acquisition attempts as signaling serious problems for Near North, the broker now is banking on its parts being worth more than its whole.

On Friday, Mesirow Insurance announced it would assume the accounts of Near North's Chicago office and take on some of its Chicago-based employees. Under the deal, no payment was made up front, but Mesirow will pay Near North a percentage of commissions on accounts that renew, according to Crain's Chicago Business, a sister publication of *Business Insurance*.

"This is no attempt. This is a deal that is signed, sealed and closed," said James C. Tyree, chairman and chief executive officer of Mesirow Financial, the broker's parent company. "It's a phenomenal opportunity for both Near North and us," he said. "It's a great way for all the folks involved to have a win-win from everybody's perspective."

In a statement on the deal, Mr. Segal said: "This is an exciting opportunity for both associates and clients to be able to blend our cultures. We appreciate the loyalty and dedication that our associates have shown during this very long and difficult time. We will be working with Mesirow Financial to transition as many of our staff as possible, recognizing that there will be some duplication in service and infrastructure."

Near North declined to specify the number of employees and accounts that will be transferred to Mesirow. The deal is likely to enhance Mesirow's scale. It ranked as the 48th-largest broker of U.S. business, based on $37.1 million in U.S. brokerage revenues as of March 31.

In another move last week, Chicago-based wholesaler DMI severed its Near North ties through a management buyout, confirmed Russell DeLuca, a managing director. Mr. DeLuca and Joseph Messina now wholly own DMI.

"There are no changes at DMI other than the ownership," Mr. DeLuca said. "We're excited about it, obviously, and the new opportunities that this is going to present for us."

Whether Near North will ultimately be successful in its new approach to selling its brokerage operations remains to be seen.

Following the unraveling of the Frontenac and Hub deals, a piecemeal sale is "probably one of the few strategies they have left," said Mark Dwelle, an analyst with Ferris, Baker Watts Inc. in Richmond, Va. The key to such efforts is to "pull off the pieces you want and remain sufficiently distant from the stub piece that doesn't get sold or holds the liability," he said. "That's always the trick, to get the assets or things of value without the ability of any of the stub companies to reach back with their tentacles and suck you back in," he said.

Since the brokerage's indictment in June in connection with the federal fraud case against Mr. Segal, several producers and clients have left the firm. Most recently, William C. Bartholomay, the brokerage's president, joined Willis Group Holdings Ltd. as its new group vice chairman.

Both the company and Mr. Segal have denied any wrongdoing.

Near North Insurance Brokerage reported $119.9 million in 2002 brokerage revenues, making it the 18th-largest broker of U.S. business in *Business Insurance*'s annual survey. Just how much of the business that accounted for those revenues remains today is unknown, but analysts and observers estimate that revenues now stand at about $60 million.

Observers speculate that the departures of staff and accounts most likely sank the Hub and Frontenac deals.

When accounts and staff transfer to competitors, companies open themselves up to questions about whether revenues are going to drop and whether there are increased errors and omissions exposures from changes in how remaining producers handle accounts, said Nik Fisken, an analyst with investment bank Stephens Inc. in Little Rock, Ark.

"I think...once (Hub) got into it, they were not 100% confident that they could indemnify themselves of all the risk that was associated with buying the company," Mr. Fisken said, referring to the flight of business. "I think that was the biggest issue."

"Sometimes the wisest deal is the one you don't make," said Mr. Dwelle. "The risk/reward on the Near North deal was pretty high. (Hub) had an above-average level of risk related to doing an acquisition of that nature with the problems Near North has had, but obviously, if they felt they were able to pull it off, the potential was pretty great."

"They were privy to far more than we're likely to ever be," Mr. Dwelle said. "If (Hub), as the second group to go through the doors to do due diligence, couldn't get a deal done, they were probably wise to back off."

"I was surprised, but not shocked," Adam Klauber, managing director at Cochran, Caronia Securities L.L.C. in Chicago, said of the Hub deal's demise. "I was surprised because Near North obviously is in a tough situation and is in need of a buyer. On the other hand, it's a very erratic situation with a lot of moving pieces, which is probably why the first deal fell through," he said.

BI Stock Index

[8/18 - 8/22]

Up-to-the-minute data for all 84 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	1963.74	-1.81
Dow Jones	9348.87	0.29
S&P 500	993.05	0.24

Largest gains

American Safety Ins.	13.75%
SCPIE Holdings Inc.	11.38%
Meadowbrook Ins. Group	10.89%
Vesta Insurance Co.	8.73%
SCOR	8.41%

Largest losses

Trenwick Group Ltd.	-35.90%
Sierra Health Services	-19.75%
Gainsco Inc.	-10.34%
Endurance Specialty	-8.22%
ProAssurance	-6.69%

Weekly change by market segment

Brokers	-1.32%
Insurers/Reinsurers	-0.27%
Managed Care Organizations	-3.35%

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