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Best downgrades to B++ on news of changes

Converium retools U.S. business

By SARAH VEYSEY

ZUG, Switzerland—Executives of Converium Holding A.G. hope that raising additional capital and restructuring the reinsurer's North American operations will mean continued profitable business at renewal, in spite of ratings downgrades.

Converium said last week that, due to adverse loss development on its U.S. business and resulting reserve increases, it plans to raise $420 million in a share issue and to place its North American reinsurance unit into runoff.

Following the announcements, A.M. Best Co. downgraded its rating of Converium Group to B++ from A-, and Moody's Investors Service Inc. lowered its rating to Baa1 from A2, actions that spurred some reinsurance commentators to express concern about the company's ability to attract business going forward. Many ceding companies will place business only with reinsurers carrying an A rating.

Executives of Zug, Switzerland-based Converium acknowledge the reinsurer will lose some clients but contend that the runoff and other changes will enable its ongoing entities to operate profitably.

In July, Converium announced that it was boosting its reserves by $384.7 million, primarily to address adverse claims trends for U.S. liability business written between 1997 and 2001. The reinsurer was spun off from Zurich Financial Services Group at the end of 2001.

Following an actuarial review of its loss reserves by Tillinghast-Towers Perrin, Converium said last week that it may need to inject a further $50 million to $100 million into reserves before year end, and it announced plans to raise $420 million in a share issue. Converium also reported that it would place Converium Reinsurance (North America) Inc. into runoff.

Other steps to reorganize the company's U.S.

See CONVERIUM/page 42

California law lets state gain from punitives

By MARK A. HOFMANN

SACRAMENTO—Erstwhile supporters of a budgetary measure that would give the state of California three-quarters of any punitive damage award hope that the law will expire without causing any further turmoil in the state's civil justice system.

Tort reform advocates had supported the initial split-verdict proposal offered by Republican Gov. Arnold Schwarzenegger because it contained significant tort reform provisions, including permitting only one punitive damage award for any single "act or omission." Tort reform proponents held that the provision would help curb litigation costs.

The original proposal also held that plaintiffs attorneys' fees could be based only on the 25% of the award granted to their clients. The state would have received its entire share of the punitive damage award.

But the measure underwent significant changes in the legislative process before receiving the governor's signature last

See PUNITIVE/page 41

PHOTO: NOAA

Cat modelers say Frances could be worse than Charley

By MARK A. HOFMANN

As Florida residents and their insurers braced for the impact of Hurricane Frances late last week, catastrophe modeling firms projected that claims from the storm could surpass those from last month's Hurricane Charley.

By Friday afternoon, millions of people in Florida had been told to evacuate certain areas, with the storm then projected to make landfall on the state's east coast Saturday. On Friday afternoon, Frances was pounding the Bahamas with maximum sustained winds of 115 mph, according to the National Weather Service's National Hurricane Center.

According to a projection released Friday by Oakland, Calif.-based EQECAT Inc., insured

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Late News

Softening continues in P/C market

The property/casualty market continued to soften in August, according to Internet insurance portal MarketScout. The average rate increase for property/casualty coverage placed through the portal was 4% in August, compared with 5% in July and 12% in August of 2003. But Richard Kerr, chairman and chief executive officer of Dallas-based MarketScout, noted that Hurricane Frances, expected to hit Florida on Saturday, could reverse the softening trend. "If Frances pounds Miami and southern Florida, insurers could suffer the Big One and, if so, all bets are off, because insurer stability will be the leading concern," Mr. Kerr said in a statement.

Class status upheld in suit against HMOs

The 11th U.S. Circuit Court of Appeals has upheld class action certification of a lawsuit that alleges a group of major health maintenance organizations conspired to commit racketeering activities and systematically underpay physicians. The court rejected insurers' argument that individual determinations were necessary to determine the extent of damages allegedly suffered by each plaintiff. Defendants include: Woodland Hills, Calif.-based Health Net Inc.; Louisville, Ky.-based Humana Inc.; Cypress, Calif.-based PacifiCare Health Systems; Newark, N.J.-based Prudential Insurance Co. of America; Minneapolis-based UnitedHealth Group and Thousand Oaks, Calif.-based WellPoint Health Networks Inc.

HRH acquires Milwaukee broker

Hilb Rogal & Hobbs Co. has acquired Milwaukee-based broker

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NEWSPAPER

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LARGEST REINSURERS WORLDWIDE

Ranking on page 12

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Consensus proves elusive on cash balance plan rules

By JERRY GEISEL

WASHINGTON—An effort by a U.S. senator to develop a consensus between employers and participant groups on cash balance pension plan rules has so far not produced any tangible result, with one major employer group already pulling out of the talks.

Washington pension observers have written off this year as providing any chance for Congress to act on cash balance plan legislation, as legislators focus on other issues in the remaining few weeks of the session.

"It is virtually certain there will be nothing this year," said Ron Gebhardstbauer, senior pension fellow at the American Academy of Actuaries in Washington.

In March, Sen. Tom Harkin, D-Iowa, invited employer and participant groups to meet to try to find a common ground and end the legal uncertainty that has enveloped cash balance plan conversions.

At the time, Sen. Harkin said, the debate over cash balance plans had reached a "critical point," adding that he wanted ideas from a variety of interest groups, "so that we might seize this moment together" and resolve apparent conflicts (*BI*, April 5).

Earlier this year, Sen. Tom Harkin sought ideas from various groups 'so that we might seize this moment' and resolve conflicts.

The failure to adopt sensible policy requirements for plan conversions would increase the likelihood that employers would freeze or terminate defined benefit plans and offer only defined contribution plans, Sen. Harkin said.

To date, several meetings have occurred, with each attracting roughly 25 to 30 individuals representing business groups such as The ERISA Industry Committee and the National Assn. of Manufacturers, as well as participant groups including the Pension Rights Center and the AARP. In addition, groups representing benefit service providers, such as the American Society of Pension Actuaries and the American Academy of Actuaries, have attended, as have a number of employee benefit consultants.

See **CASH BALANCE**/page 40

Legislator groups find fault with modernization proposal

By MEG FLETCHER

One of the most controversial aspects of the comprehensive federal proposal to modernize insurance regulation is its fundamental restructuring of the current system by transferring power from state legislatures to the National Assn. of Insurance Commissioners.

State insurance legislators initially were pleased that the recently released discussion draft of the State Modernization and Regulatory Transparency Act explicitly affirms the state-based system of insurance regulation established by the 1945 McCarran-Ferguson Act, said Tim Tucker, the Washington-based director of state-federal affairs for the Albany, New York-based National Conference of Insurance Legislators.

After closer analysis of the draft's more than 300-plus pages, though, they realized that the framework of the discussion draft significantly undercuts the existing authority of state legislatures.

Rep. Richard Baker, R-La., chairman of the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, released the draft last month (*BI*, Aug. 30). It reflects a joint effort with Rep. Mike Oxley, R-Ohio, chairman of the House Financial Services Committee that oversees the subcommittee's activities.

"The fundamental flaw in the draft is that it emphasizes uniformity at the expense of state flexibility to meet local needs," including responding to market conditions and consumers' complaints, said Cheye Calvo, the Washington-based committee director for the National Conference of State Legislatures' Financial Services Committee.

In addition, "many of the provisions of the bill are fundamentally problematic, and some are simply out of line with how the U.S. Supreme Court has interpreted the 10th Amendment of the U.S. Constitution," which allows states to exercise all powers not regulated by the federal government, he said.

The discussion draft proposes three approaches to regulating a broad spectrum of insurance-related coverages and market practices, according to Craig Berrington, senior vp and general counsel of the Washington-based American Insur-

See **MODERNIZATION**/page 42

PHOTO: KRT

A group of California pharmacies is suing pharmaceutical companies, alleging the drugmakers are conspiring to fix prices and prevent reimportation of less expensive drugs from Canada.

Pharmacies charge drugmakers colluding to bar reimportation

By GLORIA GONZALEZ

SAN FRANCISCO—A lawsuit accusing pharmaceutical companies of charging artificially high prices for U.S. prescription drugs and preventing reimportation of less expensive medicine from Canada is likely to fail unless proof of collusion among the companies is presented, lawyers say.

The complaint, which was filed on behalf of 14 California pharmacies, accuses 14 drug manufacturers of engaging in anti-competitive acts designed to prevent the reimportation of prescription drugs, including allegedly placing foreign wholesalers and retailers on artificial quotas and refusing to distribute their products to companies that ship into the United States. The lawsuit was filed Aug. 26 in the Superior Court of California for the County of Alameda in San Francisco and a hearing is scheduled for Oct. 8.

The pharmacies also accuse the drugmakers of colluding to maintain artificially high prices in California and the rest of the United States. The complaint seeks an injunction barring the drug companies from charging prices to California customers that are higher than those they charge foreign customers.

"We hope to get the same cheaper prices that everyone else gets and (the pharmacies) want damages for the past overcharges," said John Boone, a San Francisco-based sole practitioner and one of the lawyers for the pharmacies.

"While Pfizer hasn't had an opportunity to review this lawsuit in detail, any allegations of price fixing are totally without

See **PHARMACIES**/page 40

Inside Business Insurance

Consumer-driven plans luring healthy: Study

A report finds that consumer-driven health plans are attracting mainly healthy enrollees, which may hurt traditional plans. Page 4

Colorado above nation in health care quality

Preliminary data from a national study gives Colorado high marks in several quality measures. Page 4

Hurricane highlights lessons to be learned

Hurricane Frances appears poised to test the lessons many should have learned from Andrew in 1992, Paul Winston writes. Page 6

Retiree health care rule now long overdue

The EEOC needs to finalize a long-awaited rule on retiree health care, a editorial says. Page 8

U.K. risk managers addressing absences

As U.K. employers target absenteeism as a business risk, risk managers increasingly are working to tackle the problem. Page 37

Online

• The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add information about your own event.

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

• New **Opinion Poll** for readers: Should a portion of punitive damages awards be paid to state or local governments rather than to individual plaintiffs?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Few taking steps to safeguard employees' personal information

Employers slow to recognize identity theft

By MEG SHREVE

Payroll records, client files and employment applications littered with personal information—including Social Security numbers, residential addresses and birthdates—are becoming increasingly tempting resources for identity theft in the workplace.

According to recent data, the main ways to commit identity theft are no longer stealing purses, retrieving credit card applications from the mail or trash or engaging in computer hacking. Instead, a 2002 study conducted by the Chicago-based credit bureau TransUnion Corp. indicates that a leading source of identity fraud is the employee theft of personal information.

"Workplaces are rich in potential information sources," said Jay Foley, co-executive director of the nonprofit San Diego-based Identity Theft Resource Center. Identity thieves look for sensitive data such as Social Security numbers, driver's license numbers, birthdates and residential addresses that can be found in employee and customer paperwork. The ITRC cites a 2003 study by Stamford, Conn.-based Gartner Inc. that found 7 million individuals became the victims of identity theft within a 12-month period.

According to Mr. Foley, most employers aren't thinking about identity theft. Business practices typically respond slowly to trends in crime and laws, he said, and identity theft has been recognized as a federal crime just since 1998.

Businesses should be aware that identity theft can take place in a variety ways, observers say.

Often, thefts are committed by individuals who are authorized to be on company property but who do not have access to such sensitive data, pointed out Joanna Crane, manager of the identity theft program at the U.S. Federal Trade Commission. The commission, she said, has seen a trend among temporary workers who seek to be hired in order to steal personal data. At other times, she added, long-term employees attempt to sell personal information to crime rings, which then make use of the stolen data.

Companies "have to think about where information is, how it's stored and who has access to it," she said.

Judith Collins, director of the Michigan State University Identity

See **IDENTITY THEFT**/page 32

The growing problem of identity theft is helped in part by access to personal information in the workplace, experts warn.

Adolescent immunization is one area where Colorado is above the national average in care quality, an NCQA report found.

Colorado outpacing nation on quality of health care

By JOANNE WOJCIK

DENVER—While many of the nation's health maintenance organizations and point-of-service plans are showing improved quality, according to the 2003 quality assessment conducted by the National Committee for Quality Assurance, Colorado's managed care plans are outperforming the national average.

Overall, the nation's managed care plans showed improvement in 27 of 35 of the NCQA's clinical measures of health care performance, indicating a greater percentage of plans are following the quality care guidelines. In fact, the percentage following the guidelines in 2003 was about 50% greater compared with 1996, the year NCQA started collecting data for its Health Plan Employer Data & Information Set (HEDIS) program, according to Phyllis Torda, vp for product development at the Washington-based organization.

But Colorado's performance was even more impressive, Ms. Torda told a group of the state's health care leaders during the State of Our Health Colorado Leadership Forum on Healthcare Quality Measurement and Improvement, held Aug. 27 in Denver.

While NCQA will not release

See **NCQA**/page 39

Consumer-driven health plans attracting healthier members

By JOANNE WOJCIK

Consumer-driven health plans may result in adverse selection when offered as an alternative to traditional plans, driving up the cost of those other plans, a study concludes.

The study, done by researchers at Kaiser Permanente's Institute for Health Policy in Oakland and at Louisville, Ky.-based Humana Inc., examined a total of 500 members of both consumer-driven and traditional health plans.

Researchers found that, when looking only at age, gender and other demographic characteristics of enrollees, consumer-driven plans do not appear to attract healthier individuals than other plans.

However, when more sophisticated measures of risk are considered—such as prior use of health services, health care spending and pharmacy utilization—employees who enrolled in the CDHP offerings appear healthier than those who remained in the more comprehensive, higher-premium plans, the researchers found.

Overall, the consumer-driven health plan enrollees appear 25% to

See **CDHP**/page 43

Bush expresses his support for HSAs, pension plan reform

By JERRY GEISEL

NEW YORK—If re-elected, President Bush says he will work for enactment of legislation to increase the appeal of health savings accounts.

In his acceptance speech last Thursday night at the Republican National Convention in New York, President Bush said he would propose legislation in his next term to provide tax credits to encourage small employers to set up HSAs.

The accounts, which were authorized under legislation Congress passed last year and that must be linked to high-deductible health insurance plans, "give workers the security of insurance against major illness, the opportunity to save tax-free for routine health expenses, and the freedom of knowing you can take your account with you whenever you change jobs," the president said.

President Bush also reiterated his support for legislation—now stalled in the Senate—that would make it easier for employers to band together through trade associations and buy health insurance on a group basis, largely free of state regulation.

He affirmed his support for medical malpractice liability reform to help make "health care more affordable and accessible" while also endorsing broader tort reform to "protect small business owners and workers from the explosion of frivolous lawsuits that threaten jobs across America."

He also pledged reform of pension laws, saying that most of the nation's fundamental systems, including pension plans, "were created for the world of yesterday, not tomorrow," where workers will change jobs many times in their careers and not remain with one company for a lifetime.

PHOTO:KRT

At the Republican National Convention last week, President Bush said he supports HSAs as well as reform of pension laws.

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Superfund rule would clarify property buyer responsibilities

By BRUCE GEISELMAN

The federal government, in an effort to encourage revitalization of contaminated property, has proposed a rule that would assure property buyers protection from lawsuits under the Superfund hazardous waste cleanup law.

The U.S. Environmental Protection Agency proposed a policy, which appeared in the Federal Register late last month, that would protect owners from lawsuits if they conduct specific inquiries into previous ownership, uses and environmental conditions of the land prior to purchase.

If the inquiries are performed properly, the EPA will assure property owners they will not be sued. However, purchasers that do not conduct the inquiries properly may lose their protection from Superfund liability, according to the EPA.

The Superfund law authorizes the EPA to negotiate with parties that were involved in creating hazardous waste sites to get them cleaned up. If the parties fail to cooperate, the EPA can sue them to force the cleanup, and the EPA can seek to recover any costs it incurs.

PHOTO: AP/WIDE WORLD

The U.S. Environmental Protection Agency wants prospective property buyers to inquire carefully about prior owners, uses and environmental conditions.

The existing Superfund law provides some protection to land purchasers who unknowingly buy contaminated property, but the language is ambiguous, according to the EPA. The proposed rule clarifies the steps that prospective property owners must perform and reduces a barrier to cleanup and redevelopment in communities across the nation, according to the agency.

The proposed rule was developed in collaboration with representatives of state, tribal and local governments, environmental groups, lenders and real estate developers.

Details about the proposed rule and how to submit comments are available at *www.epa.gov/brownfields/regneg.htm*.

Bruce Geiselman is a reporter for Waste News, a sister publication of Business Insurance.

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Paul Winston

Frances refreshes memories for now

Every so often, a natural catastrophe comes along that forces people to reconsider the wisdom of living so close to the edge of nature's fury. This can occur in locations prone to disasters like flooding or earthquakes, and in structures there that are not well suited to taking a pounding, such as mobile homes or waterside residences.

As this week's issue goes to bed, it appears that Hurricane Frances will soon strike Florida and the southeastern United States, causing extensive damage only a short time after people in the same region were visited by the fury of Charley and Gaston.

And, of course, the weather assembly line off the coast of Africa continues to manufacture tropical storms and send them spinning westward. So there will be more.

If the advance notice is any indication, Hurricane Frances is likely to be severe. Last week, millions of people in South Florida were fleeing the approach of the storm. While that's a prudent example of personal risk management, it will be interesting to see whether the property they leave behind is as well protected.

Paul Winston

This storm is likely to again call attention to the risks and costs that accompany choosing to live in such close proximity to natural forces.

It is usually a painful reminder, yet it does not take long for people to forget this shock and return to the same locations and the same structures, or even the same foolhardy practices, again putting themselves at risk.

And for those who do learn their lessons, there are others all too willing to take their place, heedless of the risks.

After Hurricane Andrew, which caused unprecedented devastation to Florida in 1992, many steps were taken to minimize the damage caused by such storms and to place a larger portion of the financial risk on the shoulders of property owners.

Building codes were overhauled and strengthened in South Florida. Existing structures, especially public buildings such as schools, were reinforced to better withstand windstorms. And new construction was designed to achieve the same result.

Insurers and reinsurers also withdrew cheap coverage for wind and flood damage in the state, forcing Florida property owners to pay significantly more to insure structures in harm's way or to retain a greater share of the financial risk. Loss prevention and claims-handling procedures were revised. And new computer models were employed to assess geographic exposures and the risk of catastrophes.

But as the years went by, memories of the destruction and high cost of Andrew no doubt receded in the minds of many Florida homeowners, developers and even insurers, like a sand castle dissolving in the tide.

Both coastlines have grown dense with numerous luxury high-rise condominiums and developments. Mobile home parks have mushroomed into permanent communities that belie their transitory and frail nature. And acres and acres of former pine forests just inland from the shore have been transformed by developers into sprawling retirement villages, golf communities and shopping malls.

Over time, insurers also have returned to the market, sensing opportunity and believing in their improved ability to manage their exposure with technological know-how. For an industry that for years sought to distance itself from Florida's hurricane risk, the insurer loss estimates that followed Hurricane Charley were telling—and they are likely to grow.

And many property owners, though well aware of the size of their premiums, may have forgotten how their coverage is more limited than pre-1992 policies in covering potential losses and the costs to replace everything they stand to lose.

Frances, in all likelihood, will provide a painful reminder of the trade-offs of living in such a beautiful but precarious state. And it will test how well the lessons of previous storms were learned by all with a stake in disaster-prone communities.

Unfortunately, I suspect it will show, again, that many of the same lessons need to be relearned.

Excuses, excuses

Last week, I invited readers to share with me some of the best (or worst) excuses they have heard for accidents and losses. Thanks to all those who have sent their anecdotes; please keep them coming, and I will share them in an upcoming column.

Editor Paul Winston can be reached at pwinston@businessinsurance.com.

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Editorial

Tort reform law takes wrong turn

BE CAREFUL WHAT YOU wish for or you may get it—in a form you neither expect nor want.

Tort reform advocates in California are ruefully relearning the truth of that bit of folk wisdom. As we report on page 1, they're stuck with a law that started out as a much-needed reform of the state's punitive damage law but turned into something quite different.

The proposed reform, offered by Gov. Arnold Schwarzenegger, was designed, in part, to ease the state's budget crisis. It called for paying 75% of any punitive damage award to the state. Putting punitive damage awards toward public rather than private ends has been advocated in the past by some tort reform supporters, who argue that society, rather than individuals, should benefit from awards levied as punishment.

The proposal also would have based plaintiffs attorneys' fees on only the 25% of the punitive award that went to the client. In addition—and this was the key provision for pro-reform forces—punitive damages could have been awarded only once for any given "act or omission," as the initial proposal put it.

But, as is often the case, some twists and turns occurred on the proposal's path through the California Legislature on its journey to becoming law. As it now stands, plaintiffs attorneys can claim up to 25% of the 75% of a punitive damage award that goes to the state, on top of the customary one-third of the award they could receive from their client as a fee. California is now in a situation in which the attorneys actually can receive an award larger than that given to the private client.

And most significantly for reformers, the limit on multiple punitive damage awards for the same act vanished in the legislative process. The result is a law that contains no tort reform yet has a perverse incentive for juries possibly to levy punitive damage awards larger than they might otherwise apply as a means of filling the state's coffers.

Fortunately, the impact of the law may be limited—at least for the short term. It is slated to expire on June 30, 2006, and its provisions have no bearing on actions already in the courts. Given the slow pace of litigation involving punitive damages, it's entirely possible that the state will never collect a penny under the new law before it expires.

Still, there's no guarantee that lawmakers won't decide to extend the law, perhaps even make it a permanent part of the California legal code. That, unfortunately, would turn a wished-for solution for a real tort problem into an aggravating factor that makes a bad situation even worse.

ADEA exemption rule long overdue

HOW LONG SHOULD IT TAKE a federal agency to finalize a benefit rule that it proposed a year ago and that has broad-based support?

Not very long, one would think, but that isn't the case with a vital retiree health care rule awaiting final action by the Equal Employment Opportunity Commission.

One year ago, the EEOC proposed a rule to exempt retiree health care plans from the Age Discrimination in Employment Act. The backdrop to that proposal was a stunning—and, many believe, an incorrect—ruling by the 3rd U.S. Circuit Court of Appeals in August 2000 that the plans were, in fact, governed by the ADEA.

Because the plans were judged to come under the ADEA, an employer that offers coverage to both younger and Medicare-eligible retirees either would have to equalize the benefits for both groups of retirees or spend the same amount of money for health care benefits for the two groups. The EEOC then said it would enforce the *Erie County* ruling.

That put many employers with mainstream retiree benefit plan designs at a considerable risk of being sued by the EEOC. To avoid that, many employers, due to cost pressures, would have opted to cut the benefits of younger retirees to be equal to those provided to older retirees.

The EEOC, amid a flood of protests from employers and organized labor, quickly reversed course. A year after the appeals court ruling in the *Erie County* case, the EEOC said it would stop enforcement of the *Erie County* decision and develop new rules, which it did last year.

In April, the EEOC adopted the new rules, which were scheduled to become final after the agency had received and reviewed comments from other federal agencies.

But five months now have passed, and the EEOC has yet to finalize the retiree health care rule. An EEOC spokesman attributed the delay to a longer-than-expected time to receive comments.

Frankly, it shouldn't take this long to get comments on an issue that has been around for several years. We wonder if the real reason for the delay is political.

The AARP opposes the new EEOC rule, saying its adoption could jeopardize the health care benefits retirees receive from their former employers.

It just so happens that the AARP lent the administration powerful support last year when Congress was considering Medicare prescription drug legislation. Could the delay on the retiree health care rule be an administration payback to the AARP for its support on the Medicare bill?

We hope that is not the case and that the EEOC soon adopts its retiree health rule, because we believe it is truly in everyone's best interest.

Schillerstrom

Letters to the Editor

Scrutinize PBM invoices for contract adherence

To the editor: It appears the financial honeymoon that PBMs have long enjoyed is receiving some well-deserved scrutiny. However, the Aug. 16 article by Joanne Wojcik, "Benefit Managers Seeking Greater Info on Workings of PBMs," enforces the reality that peeking behind the scenes at any PBM is probably an exercise in futility at this point in time. Until PBM contractual arrangements become agreements beneficial to both sides, the PBM will continue to hold the upper hand.

While the battle for more information from PBMs should continue, there is an immediate process that anyone who has contracted with a PBM can utilize to verify that their contract terms are being adhered to by the PBM. This includes verification that their pharmacy invoices cover prescriptions dispensed to only those persons eligible under

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***Business Insurance* welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to: Letters to the Editor, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: *pwinston@crain.com*.**

Reinsurance: International Markets

Spotlight Editor: Rodd Zolkos

Bermuda startups exploring options for using capital

By MICHAEL BRADFORD

Bermuda's so-called "startups," those highly capitalized insurers and reinsurers formed in the months after the 2001 terrorist attacks in the United States, are now considering ways to use that capital to keep their investors happy.

Set up quickly in the last months of 2001 and early 2002 with around $10 billion in capital to meet the demands of a suddenly shrunken insurance market, the Bermuda companies are now watching rates decline in many areas for the first time since their underwriters took up their pens.

Set up in late 2001 and early 2002, the Bermuda companies are now seeing rates decline in many areas for the first time since their underwriters took up their pens.

The startups, of which there are 10 if those that entered the market after the initial rush are counted, are finding that while it may have been easier to please investors with returns on capital unencumbered by old losses in a high-premium market, it is more of a challenge now that prices have cooled. As a result, the startups are thinking of ways to deploy their capital to produce the returns that their investors are used to.

It's a situation that has analysts taking notice.

"We're watching the startups closely" to see how they handle their capital, said Peter Dickey, managing senior financial analyst at A.M. Best Co. in Oldwick, N.J.

So far, the most common way the startups—nearly all of which are public companies—have used capital to keep investors happy in the softening market has been to

See BERMUDA/page 20

GLOBAL CONDITIONS CHANGING

Low losses for reinsurers fuel market softening

Most rates flat to down, but some casualty lines still firm

By SALLY ROBERTS

Following two years of relatively low losses, higher rates and tighter terms and conditions, the global reinsurance market has begun to soften.

With the exception of a few casualty lines that remain difficult, reinsurance rates are flat—and, in many cases, dropping—following the lead of the primary market, global reinsurers and reinsurance intermediaries report.

And despite an estimated $6 billion to $10 billion in insured damages from Hurricane Charley, the Florida storm is not expected to significantly affect the softening trend. Reinsurers and brokers note, though, that it is still early in the hurricane season, and another catastrophe, natural or unnatural, this year could usher in a hardened market.

In addition, many observers are concerned that if the current softening trends prevail, reinsurers may not be able to maintain underwriting discipline and profitability, especially as premium volume levels decline. Year-end renewals, they note, will be telling.

Overall, reinsurers and reinsurance brokers describe the current reinsurance market as stable.

"I think what has happened over the last few years is that the international reinsurers have become far more disciplined in many, many ways, both in use of their capital and also in the way they go about underwriting their business," said James Vickers, managing director of Willis Re in London.

"They have enjoyed—particularly some of the (newer companies) that haven't had any legacy problems—exceptional results in 2002 and 2003, and we're seeing those coming through in the first and second quarters of 2004. The problem is, the results, to some extent and in some lines, are almost too good because there's been...an unusually low loss frequency. That, of course, is pressurizing the market to start to give rate reductions," Mr. Vickers said.

Patrick Thiele, president and chief executive officer of PartnerRe Ltd. in Pembroke, Bermuda, said

See MARKET/page 14

Downgrades, reserve fixes renew buyer attention to security

By SARAH VEYSEY

The reserve boosts and ratings downgrades among even some of the world's largest and longest-established reinsurers have renewed cedents' focus on security, though determinations about what constitutes a secure company are not always clear cut.

A spate of downgrades, caused by what one analyst described as a "perfect storm" of reserve adjustments, the financial market downturn and other factors, hit even the world's two largest reinsurers last year. Standard & Poor's Corp. in 2003 downgraded both Swiss Reinsurance Co., from AAA- to AA+, and Munich Reinsurance Co., from AA- to A+.

2003 saw a spate of reinsurer downgrades, caused by a 'perfect storm' of reserve adjustments, the financial market downturn and other factors.

And last week, Converium A.G.—the rebranded Zurich Re—was downgraded to B++ from A- by A.M. Best Co., following the reinsurer's announcement of a reserve boost and strategic changes related to past liabilities (see story, page 1).

In 2003, S&P Credit Analyst Stephen Searby in London described the year as "unprecedented in the number of rating actions that have taken place" in the reinsurance sector.

After the terrorist attacks of Sept. 11, 2001, and "the adverse impact of weak financial markets on companies' balance sheets, (buyers) have increasingly been looking for security," said Michel Liès, a member of the executive board and head of the Europe division of the prop-

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Ranking of largest reinsurers page 12

Latin America faces data challenge page 24

E.U. regulatory reform gets boost page 28

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OVER AND UNDER

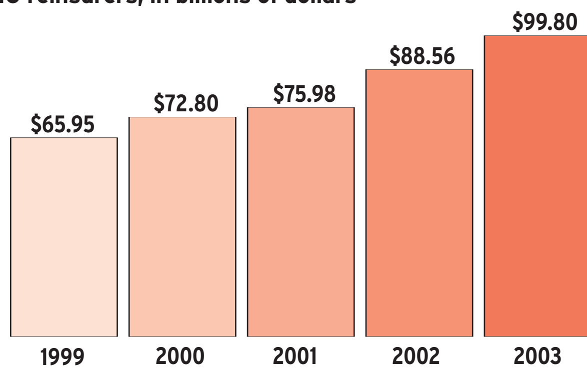
Ranked by combined ratio

Lowest	
RenaissanceRe Holdings Ltd.	43.8%
ACE Tempest Re	71.9%
PXRE Group Ltd.	74.7%
Berkshire Hathaway Reinsurance Group	76.3%
Endurance Specialty Holdings Ltd.	84.4%
Highest	
CCR	124.4%
SCOR	122.7%
XL Re	119.0%
American Re Corp.	102.6%
GE Insurance Solutions	100.1%

Source: *BI* survey

PREMIUM GROWTH

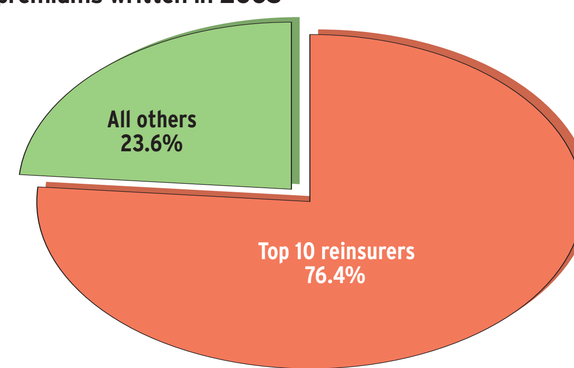
Net reinsurance premiums written by the top 10 reinsurers, in billions of dollars



Source: *BI* survey

SHARE OF MARKET

Market share of top 10 reinsurers by net reinsurance premiums written in 2003



Source: *BI* survey

World's largest reinsurers

Ranked by 2003 net premiums written

Rank	Company/Address	Phone/Fax/Web site	2003 net premiums written	% change	2003 net premiums earned	% change	2003 combined ratio	2003 employees	Principal officer
1	Munich Re Group Koniginstrasse 107, Munich 80802, Germany	49-89-3891-0 Fax: 49-89-3990-56 *www.munichre.com*	$24,168,690,000 [1]	17.3%	$25,708,885,000 [1]	21.6%	96.7 [2]	6,445	Nikolaus von Bomhard, chairman-board of management
2	Swiss Re Group Mythenquai 50/60, Zurich 8022, Switzerland	41-43-285-2121 Fax: 41-43-285-2999 *www.swissre.com*	$22,878,774,000 [3]	18.9%	$22,849,042,000 [3]	22.4%	98.4 [4]	7,949	John R. Coomber, CEO
3	Berkshire Hathaway/General Re Group [5] 100 First Stamford Place, Stamford, Conn.06902-6745,	203-363-5200 Fax: 203-363-5221 *www.berkshirehathaway.com,* *www.gcr.com*	$11,870,000,000	-8.7%	$12,352,155,500	5.4%	NA	3,587	Ajit Jain, president-Berkshire Hathaway Reinsurance Group, Joseph P. Brandon, chairman/CEO-General Re Group
4	GE Insurance Solutions [6] 9201 State Line Road, Kansas City, Mo. 64114	913-676-5200 Fax: 913-676-5221 *www.geinsurancesolutions.com*	$9,729,000,000	23.3%	$10,001,000,000	28.4%	100.1	3,280	Ron Pressman, chairman/president/CEO
5	Hannover Re Group Karl-Wiechert-Allee 50, Hannover 30625, Germany	49 -511-5604 0 Fax: 49-511-5604-1648 *www.hannover-re.com*	$9,231,908,500 [1]	20.0%	$9,228,047,822 [1]	27.0%	96 [7]	1,972	Wilhelm Zeller, CEO
6	Lloyd's of London 1 Lime St., London EC3M 7HA, England	44-207-327-1000 Fax: 44-207-327-2389 *www.lloyds.com*	$7,185,137,700 [8]	12.7%	NA	NA	NA	NA	Nick Prettejohn, CEO
7	SCOR 1 Ave. Charles de Gaulle Paris La Defense Cedex F-92074, France	33-1-46-98-7000 Fax: 33-1-47-67-0409 *www.scor.com*	$3,840,311,000 [1]	-9.3%	$4,183,155,500 [1]	3.6%	122.7	1,162	Denis Kessler, CEO
8	Converium Ltd. General Guisan-Quai 26, Zurich 8022, Switzerland	41-1-639-9393 Fax: 41-1-639-9090 *www.converium.com*	$3,827,000,000	18.8%	$3,676,500,000	16.1%	97.9 [7]	850	Dirk Lohmann, CEO
9	PartnerRe Ltd. 96 Pitts Bay Road, Pembroke HM 08, Bermuda	441-292-0888 Fax: 441-295-1771 *www.partnerre.com*	$3,589,641,000	35.2%	$3,503,442,000	44.4%	94.5 [7]	897	Patrick Thiele, president/CEO
10	XL Re XL House, 1 Bermudiana Road, Hamilton HM 11, Bermuda	441-292-1358 Fax: 441-296-0167 *www.xlre.com*	$3,483,058,000	-1.7%	$3,105,315,000	1.9%	119	522	Henry C.V. Keeling, executive vp-XL Capital Ltd./CEO -reinsurance operations

1 euro=$1.1315(12/31). 2 Ratio is for property/casualty only. 3 Swiss franc=$0.7433 (12/31). 4 Ratio is for property/casualty group only. 5 Combined figures of Berkshire Hathaway Reinsurance Group and General Re Group. 6 Formerly GE ERC Group. 7 Ratio is for nonlife business only. 8 British pound=$1.6341 (12/31).

Source: *BI* survey

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Market: Reinsurance rates soften across most lines

Continued from page 10

that, indeed, reinsurance rates tend to follow losses.

"If there are, in fact, limited losses, which there have been in the last two years, one would expect some weakening of the price, and that's happened," he said. "I would not characterize it as 'precipitous.' I would characterize it as 'in control and reasonable.'"

"Underwriters have had a pretty good 2003 for the most part, at least in technical terms, and where companies have not produced good results in 2003 this has largely been due to assets-side underperformance rather than underwriting issues," said Clement Booth, chairman and chief executive officer of Aon Re International in London. "You have got a sub-100% combined ratio period, and history shows us that that doesn't prevail for too long before competitive forces increase, and that is certainly the case."

Paul Karon, president and chief operating officer of intermediary Benfield Blanch Inc. in Minneapolis, noted that even though rates are flat to down, ceding companies are not buying opportunistically.

"We've done some large deals that I don't think we've done (just) because the property rates have come down," he said. "But I don't think it would have happened if the rates were still high. In other words, people wanted to buy the reinsurance because it made a lot of sense but they wouldn't have paid a crazy price for it."

Property catastrophe

Most of the reinsurance rate reductions are occurring on the property side.

At the moment, "reinsurers have given ground to some extent on property cat rates—relatively modest reductions like 10%," though reductions vary geographically, Willis Re's Mr. Vickers said.

In "peak areas in the states like Florida and California, the rate reductions have been very modest, and in Northern Europe, it's very difficult to get reductions. But in Latin America and in the Asian markets, where, frankly, the programs are much smaller, one reinsurer being a little bit more aggressive can have a disproportionate impact, and we've seen some rather large rate reductions there," he said.

In the property catastrophe business, "we're seeing premiums level off and come down to a degree," said Edmund R. Megna, vice chairman of Guy Carpenter & Co. Inc. in New York. "We're also seeing increased retentions from both national and regional companies, and we're seeing more limits being bought," he said. "We're seeing larger premium decreases outside the States depending on the region."

Although last month's Hurricane Charley is expected to be the second-costliest storm on record in terms of insured losses, behind 1992's Hurricane Andrew, the reinsurance market is not expected to take a major hit, observers say.

"Obviously, Charley is not going to test the reinsurance industry," Mr. Vickers said. "But it will impact (reinsurers') figures, and it will make them think, 'Gosh, if Charley had gone 80 miles further north, we might have had something really quite unpleasant.' It's a little reminder that the property cat business is not a license to print money."

The impact of Charley "is just not that great to affect the trends that we're starting to see this year," Mr. Megna said. "I expect next year, unless we're hit with another catastrophe, the trend toward further softening in the property cat market will continue."

Casualty

Most casualty reinsurance lines also are beginning to stabilize, after experiencing dramatic rate increases over the last several years.

Some, though, such as European casualty, accountants errors and omissions, and medical malpractice for hospitals and physicians, are continuing to see price increases.

> **'We are seeing greater losses and underlying loss trends going up in the European specialty casualty areas, which is resulting in quite strong pricing.'**
>
> *Patrick Thiele*
> *PartnerRe Ltd.*

"In the U.S., you're beginning to see a flattening of (casualty) pricing— certainly not a decline yet, except in a few narrow niches," PartnerRe's Mr. Thiele said.

Rates remain stable because "specialty casualty losses are still developing in the legal system. As long as those losses continue to mature to be somewhat uncertain as to the magnitude, my guess is, pricing will maintain its relatively robust level," he said.

In Europe, "loss trends are quite high and quite dynamic," Mr. Thiele added. "Something is changing in the legal environment in Europe—it seems to be moving west to east. We are seeing greater losses and underlying loss trends going up in the European specialty casualty areas, which is resulting in quite

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Market: Reinsurance rates soften across most lines

Continued from page 14
strong pricing."

Casualty rates vary by line, but "generally, it's flat to down modestly—5% to 10%," said Robert J. Cooney, chairman, president and CEO of Max Re Ltd., the specialty casualty reinsurer in Hamilton, Bermuda.

"There seems to be more price pressure, from what we can sense, on the very high-up programs—the real capacity layers—excess $200 million to $400 million," he said.

Mr. Cooney said that while lower excess general liability reinsurance rates and general E&O reinsurance rates are flat to down 5% to 10%, reinsurance rates for most directors and officers liability programs are down between 10% and 20%.

In the higher excess D&O layers, prices are coming down even further, Mr. Cooney said. "We've seen a couple of accounts where pricing has come off 30% to 35% up high, and what little activity we do up there, we actually cut off a couple of accounts just because pricing fell just too dramatically in July," he said.

Some casualty lines remain difficult.

"With accountants E&O, it's almost impossible to get a lot of capacity," Mr. Cooney said. "It's a very difficult class."

Mr. Megna noted that medical malpractice is another area "where you're still seeing rate increases, and that's a function of capacity."

"The market is starting to look at med mal, and we're starting to get more interest in writing it now," he said.

Changing programs

Despite a more attractive reinsurance market, ceding companies in general are not lowering net retentions and purchasing more reinsurance, observers say.

"Over the last few years, the cost of reinsurance has been high, and a lot of companies have been easing their retentions upwards," Mr. Vickers said. "Historically, as the market softens and results get worse, people start to buy more reinsurance and drop their retention levels," he said.

"We definitely saw some retention increases at the beginning of this year, and that's still carrying on, but we will see as the market softens whether perhaps that may stabilize or reverse," Mr. Vickers said.

"When business is good, primary companies tend to keep more of their own business and buy less reinsurance," Max Re's Mr. Cooney said.

"But one thing you really want to watch is the amount of net retention that the primary companies are keeping. So far, we haven't seen a tremendous cutting back of net retentions," Mr. Cooney said.

"I think that is one of the most telling signs is when ceding companies say, 'Well, we used to keep 30% of our business, now we only want to keep 15%.' That's a pretty loud statement that business isn't attractive anymore," he said.

"We're not seeing a lot of that yet. Now, it remains to be seen whether we will, and I suspect it will if the trends continue," Mr. Cooney added.

Challenges ahead

As the market continues to soften, many industry executives question whether reinsurers will maintain underwriting discipline and profitability.

> **'Security is critical; there's no doubt about it. But what is looming out there is this whole issue of how reinsurers are going to react' at year-end renewals.**
>
> *Edmund R. Megna*
> *Guy Carpenter & Co. Inc.*

Reinsurers are "not going to achieve the same level of profitable growth as they've enjoyed over the last couple of years, which have been golden years," Willis Re's Mr. Vickers said. "I think a lot of it depends on the losses that come through in the third and fourth quarters."

"I wish I had a crystal ball," Guy Carpenter's Mr. Megna said. "This year end will be pretty critical as far as that issue is concerned," he said, speaking of reinsurers maintaining underwriting discipline.

"Security is critical; there's no doubt about it. But what is looming out there is this whole issue of how reinsurers are going to react" at year-end renewals, he said.

"I'm meeting with reinsurers, and they're telling me that their lines are down. So how are they going to grow? How are the analysts and shareholders going to react when they see a drop-off in premium? And how do (reinsurers) balance that with what they feel adequate rates are?" Mr. Megna asked.

Some reinsurer executives, though, are confident that their companies will remain strong in the softer market.

"We've undergone a very significant transformation internally and significantly strengthened our organization," said Bill O'Donnell, pres-

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Market: Reinsurance rates soften across most lines

Continued from page 16
ident of GE Insurance Solutions' Americas Direct treaty reinsurance unit in Philadelphia.

"I can't speak for other reinsurers, but I think there are some who are operating the same that they were three to five years ago. I think we've examined every aspect of our business and strengthened every aspect of our business to ensure that we have a firm foundation to move forward and that our financial strength processes are extremely strong so we can make good on our promises down the road," Mr. O'Donnell said.

"Sticking to your own convictions and calculations and not following the herd will be the key competitive advantage of a reinsurer in the next (few) years," said Nikolaus von Bomhard, chairman of Munich Re Group in Munich, Germany.

"Munich Re is committed to risk-adequate pricing," he said. "We clearly put profit before volume and have set clear incentives for the management and underwriters," Mr. von Bomhard noted.

But according to Max Re's Mr. Cooney: "Everybody talks a pretty tough game like we're going to be disciplined underwriters and when prices hit a certain level, we're going to pull back or cut back. I think there tends to be a lot of rhetoric, particularly from guys sitting in my chair, but at the underwriter level...top-line budgetary goals still may motivate people to write business that maybe is starting to get less attractive."

"We're not there yet," Mr. Cooney said, because rates increased so dramatically over the last few years, but, "fast forward 18 months, if you're still seeing 5%, 10%, 15% reductions year on year, at some point, you've got to say it's break even now—let's get out and get off."

Corporate boards are "going to have to be more concerned about the quality of the business and the bottom line, as opposed to just writing for market share or for Wall Street, which tends to like premium growth," Mr. Cooney said.

"It's a lot better to shrink a little bit but be profitable than to just write a lot of volume and then two years later find out that you're losing a lot of money on that business," he said.

PartnerRe's Mr. Thiele remains relatively optimistic.

"I would never hold out hope that disciplined underwriting is going to carry the day and lead to a noncyclical industry," Mr. Thiele said. "That will never happen, because our cyclicality is driven by supply and demand, not by behavior so much."

"But having said that, improved modeling, capital and management techniques should lead to a little more stability in the overall reinsurance market in this next cycle than what you saw in the last cycle," he said.

"It's not going to be dramatic but probably observable," he said.

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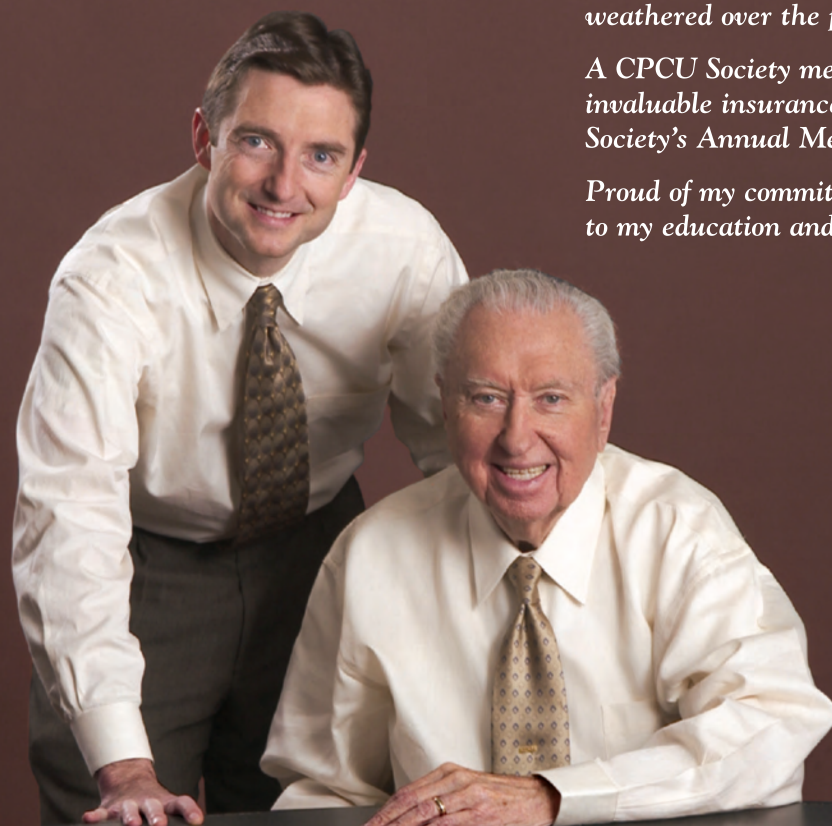

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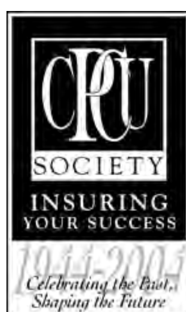

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PHOTO: DAVID SKINNER

Hamilton, Bermuda, is home to several of the companies that formed in response to the recent hard market, as well as to more established players such as ACE Ltd. and XL Capital Ltd.

Bermuda: Startups eye options

Continued from page 10

make stock repurchases, Mr. Dickey said. "It seems to be a popular thing to do," he noted.

"The other thing that we are watching is what they write and how much they write," said Mr. Dickey. "They have told us that they don't mind cutting back if the premiums are not there. But talking that talk and walking that walk are two different things."

As for the stock repurchases, two of the most recent by the Bermuda companies were announced in early August. One company said it would begin buying back shares, and another said it would hold its second such transaction.

Platinum Underwriters Holdings Ltd. initiated a program to buy back up to $50 million of its common shares as a way to "enhance shareholder return through selective repurchases," Gregory Morrison, chief executive officer, said in a statement announcing the program.

Montpelier Re Holdings Ltd. agreed to buy back 625,000 of its common shares from Gilbert Global Equity Partners L.P., an initial investor in the company. It is the second such repurchase from an initial investor since Montpelier began its buyback program in May. Over time, the company plans to buy back up to $150 million of its shares.

"That's one way of returning value to shareholders," said a spokeswoman for Montpelier. The insurer is smaller than most of its competitors and has no plans for expansion into additional lines of business as a way of generating larger returns, she said.

Donald Thorpe, senior director at Fitch Ratings in Chicago, said that the publicly traded startups are under a certain amount of pressure. "They have impatient owners who want to see a return on equity," he said.

Stock repurchases give value to shareholders in a way that is similar to a dividend, Mr. Thorpe said. "The difference is, when you pay a dividend, you pay it equally to all shareholders. In a share repurchase, generally you make an arrangement to repurchase the stock and buy it from those who are willing to sell it."

'We see in Bermuda a pretty good level of discipline. We have walked the walk as well as talked the talk.'

Kenneth J. LeStrange
Endurance Specialty Insurance Ltd.

After a buyback, the remaining unsold shares each represent a bigger stake in the company for shareholders, Mr. Thorpe explained. "But the company is smaller because it gave some cash back to the owners," he said.

Kenneth J. LeStrange, chairman and chief executive officer at Endurance Specialty Insurance Ltd., said he thinks that what his company and other Bermuda startups are doing "is a very active process in terms of capital management."

Endurance is among the public companies that have instituted stock repurchases, buying just more than two million shares owned by Lightyear Capital L.L.C. in New York, an initial investor in Endurance, for $64.7 million. Endurance also began a program to buy back up to two million of its ordinary shares and share equivalents by May 2006.

Mr. LeStrange said Endurance is resisting any urge to seek returns through undisciplined underwriting and he believes other Bermuda startups are doing the same.

"There does not appear, in my view, to be anything but very rational thinking about the market, and what growth and returns should be," he said.

"We see in Bermuda a pretty good level of discipline," Mr. LeStrange said. "We have walked the walk as well as talked the talk."

Other startups agreed that their underwriting decisions are not being driven by the need to generate returns.

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Bermuda: Startups explore options for using capital

Continued from page 20

Tom Kemp, Montpelier's chief financial officer, said in a conference call discussing second-quarter earnings earlier this year that Montpelier has been "growing capital at quite an accelerated rate—faster than we believe we need for supporting our business plan....Our plan has always been and will remain to write business that we understand and believe will make an attractive return on allocated capital."

"Right now, the market is changing a bit, but we don't see dramatic changes in what we are doing or in pricing," said Jim Ansaldi, president of Arch Insurance (Bermuda). "The key to continued success is to remain focused and stick to your knitting, not looking for new ways to make money. Our main criteria is to focus on underwriting and the bottom line, which is what we have done."

'Our plan has always been and will remain to write business that we understand and believe will make an attractive return on allocated capital.'

Tom Kemp
Montpelier Re Holdings Ltd.

Mr. Ansaldi said Arch does not put "undue pressure on underwriters to make unreal returns in a softening market." Underwriters are not given assignments to meet in terms of writing premium to capital, he noted. "Anyone can meet a premium hurdle," Mr. Ansaldi said.

Mr. Thorpe pointed out that there are other, less likely, approaches that the startups could take in deploying their capital besides repurchasing their shares or increasing their writings.

"One thing that you could do—not to say that any would—is that you could intentionally overcapitalize your company to seek higher agency ratings," Mr. Thorpe said. "That would make sense if you perceive a competitive advantage" in offering higher security that could command a higher price for coverage, he said.

Another tactic could be to add value to the company by using capital for acquisitions, Mr. Thorpe noted. But "there is a sort of mixed track record of acquisition success" among companies that have taken that route, he said. "Some have ended up with large reserve charges, in some cases, some years later. It does entail some risk," he said.

Few other options exist, sources point out.

Mr. Dickey of A.M. Best said that "the shareholders that came in with the new guys are used to extraordinary numbers." The Bermuda companies can "prepare them by saying that the numbers are not going to be there," he said.

"The other thing is to write more business, and we're concerned there about the quality of that business" if the companies choose that route to generate returns, Mr. Dickey said.

Nearly as soon as the startups were established, speculation arose as to whether there would be mergers among the companies. While that hasn't happened, the softening market does lead some to wonder whether mergers make sense now.

"We have our opinions," Mr. Dickey said, declining to elaborate. "It seems a logical extension as prices soften and it becomes more difficult to have those returns."

"There is a history of startups being acquired or making acquisitions," Mr. Thorpe noted. Several were completed among Bermuda startups that were formed after Hurricane Andrew tightened the market in 1992, he said.

Even so, there have been no indications that mergers are on the horizon, he said.

"Certainly, anything is a possibility," acknowledged Mr. LeStrange. "But I would not deem it to be likely," he said of mergers among the startups.

"The startups are all kind of different and are being executed differently," he said.

"I could imagine some complementary mergers, but I don't see anything driving that at this point," Mr. LeStrange said.

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PHOTO: MICHAEL MARCOTTE

A new tool helps model accident and health exposures, such as those arising from concentrations of employees at conferences.

Tool reveals 'unknown accumulations'

Catastrophe modeling system designed to aid accident/health insurers

By REGIS COCCIA

Ceding insurers writing accident and health business have a new, sophisticated modeling tool to gauge accumulated exposures they might not have realized exist.

Built around the principle that people move around but buildings don't, Guy Carpenter & Co. Inc. has unveiled software, dubbed CASUS, that aims to show cedents where their underwriting portfolios may have "unknown accumulations" and need more diversification.

For example, certain industries and employees tend to cluster geographically or may have a propensity for gathering at large conferences or meetings, perhaps even routing through the same airports in a short timeframe. A catastrophe, such as a terrorist attack or earthquake, in any of these locations could result in a far greater loss than insurance underwriters might have envisioned.

For accident and health and workers compensation insurers, "the best risk management tool today is not (probable maximum loss) for terrorism as a peril but to know where your exposure is," said Kevin Griffiths, managing director at New York-based Guy Carpenter. Underwriters issue ratings based on a physical address, but "people may not be at that address" when a disaster occurs, he noted.

CASUS, which is Latin for "accident," is designed to put analytical parameters around specific industries using data that is updated at least quarterly, he said. Currently, Guy Carpenter is using CASUS as just one part of its analysis of U.S. and U.K. risks but intends to roll it out in other markets over time. While the tool has a loss component to calculate probable maximum losses, CASUS is intended to complement—not duplicate—predictive modeling programs, such as those offered by catastrophe modeling companies, Mr. Griffiths said.

"A segment strategy can bring more risks than you might think," Mr. Griffiths said, referring to some insurers' plans to grow by focusing on a few specialized fields. Underwriting one or two industries may not yield adequate diversification of the risks assumed, he explained.

> **'The best risk management tool today is not (probable maximum loss) for terrorism as a peril but to know where your exposure is.'**
>
> *Kevin Griffiths*
> *Guy Carpenter & Co. Inc.*

The concept behind CASUS was born after the Sept. 11, 2001, terrorist attacks, said Nigel Guillaume-Smith, underwriting director in accident and health at Wellington Underwriting P.L.C. in London. The Lloyd's of London underwriting agency was one of a handful of companies that Guy Carpenter approached to help test CASUS.

Until the attack on the World Trade Center, "major catastrophes just weren't a norm for our business, and people became complacent," Mr. Guillaume-Smith said. "After the World Trade Center, everybody started asking questions." Much like the property/casualty insurance market, which did not rely on modeling until about 15 years ago, "the accident and health market hadn't had any modeling done," he said.

Guy Carpenter looked at improving analytics to help cedents find the best pricing on treaty reinsurance, Mr. Griffiths said. "What reinsurers and what cedents want is a fair price. To do that, they have to come to agreement on underlying exposure," he said. That's where CASUS came in.

Wellington volunteered to take part in the pilot program and now is using CASUS as part of a three-pronged strategy, Mr. Guillaume-Smith said. Wellington is using the tool in analyzing not only the primary insurance and reinsurance treaties it underwrites but also in purchasing "outwards reinsurance" to show reinsurers the dynamics of Wellington's portfolio, he said.

CASUS "will be a very useful tool, able to help us understand our exposures," Mr. Guillaume-Smith said. While other cat modeling programs are helpful, "CASUS goes a step further by looking at unknowns."

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Reinsurers face data challenges in Latin America

By ROBERTO CENICEROS

Reinsurers covering risks in Latin America may soon see better underwriting information from cedents in some countries, but, as a region, Latin America still lags behind several other areas of the world when it comes to underwriting data, several market participants agree.

A lack of sophisticated catastrophe models developed for the region, reinsurers' tolerance for limited information and the unwillingness of policyholders to provide extensive data all contribute to the issue.

Still, despite the shortage of data, cedents in Latin America continue to see a softening in rates as international reinsurers compete for business in the region.

Cedents in Latin America generally provide less extensive underwriting information to reinsurers than do cedents in North America and Europe, said Aidan Pope, regional head for Latin America at Benfield Group in London.

There is a long-held belief by Latin American policyholders and their brokers that providing insurers with too much information is likely to lead to higher, rather than lower, rates, he said. Therefore, insurers often don't have much detailed information to pass on to reinsurers, Mr. Pope said.

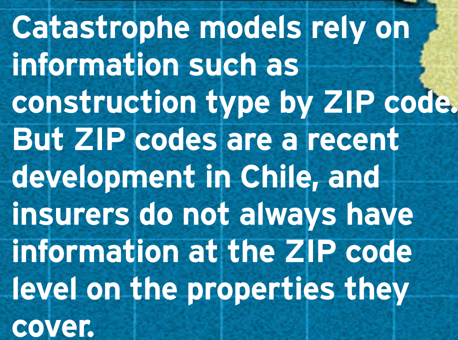
To compensate for the lack of data, international reinsurers often charge higher rates than they might if they had more extensive information, said Klaus Gebhardt, executive vp, chief underwriting officer for ACE Latin America in Miami.

"Reinsurers are highly cynical when it comes to the region in terms of believing the information they actually do receive," Mr. Gebhardt said.

Part of the reason why underwriting information is so limited is a lack of catastrophe models for the region, said James Grieve, vp and regional manager of Latin America and the Caribbean for Employers Reinsurance Corp. in Coral Gables, Fla.

Reinsurers, though, have recently grown more interested in modeling Latin American risks, Mr. Grieve said.

"Those demands will start coming though, and the modeling companies will take note at some point and start upgrading the models for those territories," he said.



Some modeling companies have already started producing upgraded models for Latin America.

Oakland, Calif.-based model company EQECAT Inc., a subsidiary of risk management consultant ABS Group Inc. of Houston, for example, recently released an updated earthquake model for Mexico and is completing work on a hurricane model for the country, said Bob Healy, vp of sales.

EQECAT is also in the midst of upgrading its earthquake model for South America, Mr. Healy added.

Last year, Newark, Calif.-based Risk Management Solutions Inc. licensed a catastrophe model to two insurers in Chile, according to Laurie Johnson, vp of technical marketing for RMS. The insurers sought the models after they received capital investments by two international insurers that then encouraged the local insurers to adopt the technology, Ms. Johnson said.

Acknowledging that there historically has been little demand for catastrophe models in Latin America, Ms. Johnson said that RMS is set to release an upgraded catastrophe model for Chile in October on expectations that demand will grow. Model upgrades for other Latin American countries will follow.

"We're hedging that things are going to improve and there will be more demand for our product," Ms. Johnson said.

One difficulty in developing models in the area has been a lack of input data, she said. Catastrophe models rely on information such as construction type by ZIP code. But ZIP codes are a recent development in Chile, and insurers do not always have information at the ZIP code level on the properties they cover, Ms. Johnson said.

When data down to the ZIP code level isn't available, the catastrophe maps produced by the models are of a lower resolution, Ms. Johnson said. The maps then average potential losses over a wider region, which can lead to undervaluing some risks while penalizing others.

"Over the next five years, we believe that the (Latin American insurance) market will be capturing data at higher resolutions," Ms. Johnson said. "We will be able to access it and use the information at that level of detail to distinguish risks. But they are not there yet."

Insurers are making greater efforts to capture more detailed underwriting information, said Mr. Gebhardt of ACE.

For example, in 2003, ACE hired college students in Colombia to vis-

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Latin: Underwriting data improving in region

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it insureds' facilities with instruments that precisely determine the latitude and longitude of their locations, he said.

Also, when ACE's loss inspection engineers visit clients' sites, they collect additional information that can help the insurer fill in information gaps, such as business interruption values, contents value and construction type, Mr. Gebhardt said.

"We're just resigned to the fact that we have to do it on our own, that it will not come from the insureds," Mr. Gebhardt said. Such efforts can help ACE win favorable treatment from reinsurers, he added.

There have been some improvements and growing sophistication, though. More insurers are becoming aware of the need for good risk management practices, and, in the recent hard market, reinsurers, in some cases, demanded better information, said Mr. Pope of Benfield.

ACE tries to counter reinsurer skepticism about the quality of Latin America account data by carefully showing reinsurers how it collects the information, Mr. Gebhardt said. One of the main reasons why reinsurers are skeptical about Latin American risks is a history of underreporting values by policyholders. In the past, reinsurers have learned of their real value only after a loss, he said.

'Latin America was probably one of the earlier markets to start softening. There is a lot of aggressive reinsurance capacity available for Latin America.'

James Grieve
Employers Reinsurance Corp.

"As a result," Mr. Gebhardt said, "everybody is taking everything that gets reported with a grain of salt. They say, 'That may be true, that may not be true. Let me make my own assumptions.'"

But that leads to market inefficiencies, with reinsurers bumping up their rates in hopes of making up for potential underreporting rather than just basing rates on loss experience, he said.

"The pricing should reflect some sort of adjustment for a lack of data," said Mr. Grieve of Employers Reinsurance. But currently that may not be the case; both insurance and reinsurance markets in Latin America are soft, he added.

Some reinsurers will not compete for certain Latin American risks because of a lack of data in the precise format required by their catastrophe models, said Steve Jackson, managing director for Latin America for Cooper Gay in London. The more competition, the more downward pressure on price.

But "I wouldn't say that it's easy to correlate just a lack of information to a pricing load," Mr. Jackson said. "There are all sorts of other dynamics that come into play...when it comes to pricing a Latin American risk as compared to a U.S. risk."

For example, many of the large oil entities throughout Latin America are government owned, Mr. Jackson explained. They are among the largest Latin American accounts seeking insurance and reinsurance in the international marketplace. But because they are government-owned, these accounts usually go out for bid every year rather than renewing coverage with their incumbent insurers.

"That is one of the key drivers in Latin America as far as pricing is concerned," Mr. Jackson said. "A lot of reinsurers say, 'We can only make money in the long term,' and it's very difficult to do that if every single year you are competing for some client merely on price."

Yet several observers agree that there is ample reinsurance capacity for Latin American risks.

"Latin America was probably one of the earlier markets to start softening," Mr. Grieve said. "There is a lot of aggressive reinsurance capacity available for Latin America."

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Security: Receiving renewed attention

Continued from page 10

erty and casualty business group at Swiss Re in Zurich.

"Especially looking at long-tail business, demand for financial solidity has been on the rise for some time now," he added.

Indeed, a key concern for cedents is the existence of such "legacy issues" at many of the longtime reinsurers.

For example, Zug, Switzerland-based Converium's reserve boost stemmed mainly from adverse claims development for liability business written in the United States, principally between 1997 and 2001. In addition, Munich Re of Munich, Germany, in 2002 added around $2 billion to the reserves of its American Re-Insurance Co. unit to address deficiencies in various liability reserves, including those for asbestos claims.

"What we have seen, with some of the reserving issues, is that they have concentrated cedents' minds even more on security," said Chris Waterman, a senior director of Fitch Ratings' European Insurance Group in London. "And we certainly perceive that there has been a flight to quality in terms of the larger, higher-rated reinsurers (being) able to attract more business away from those smaller companies that have lower ratings and, potentially, legacy issues," he added.

One London-based reinsurance buyer noted that recent events at Converium would reinforce cedents' awareness of security.

In recent years, some reinsurance buyers' "eyes have been off the security ball," as they were lured by the promise of lower rates in a hardened market, said David Foreman, chief underwriting officer for Wellington Underwriting P.L.C. But now, he said, buyers are more concerned about the security of their reinsurance coverage than on price.

With regard to legacy issues, Mr. Foreman said that Wellington tends to use reinsurers with historically good performance. And while even some of the longest-established reinsurers have, in recent years, suffered from adverse loss development, this has forced some to reassess the way they handle risk, he noted.

'Especially looking at long-tail business, demand for financial solidity has been on the rise for some time now.'

Michel Liès
Swiss Reinsurance Co.

Indeed, news of reinsurer reserve boosts and downgrades tends to renew cedents' attention to security concerns, noted Robert Chase, underwriting director of Kiln P.L.C. in London. He said that while Kiln generally buys reinsurance for short-tail business, its threshold of acceptable security would be even higher for long-tail lines.

Reinsurance buyers "are becoming quite discerning" about whether reinsurers are "going to be around to pay the claims when they occur," said Clement Booth, chairman and chief executive offi-

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Security: Renewed attention

Continued from page 26
cer of Aon Re International in London.

But ratings, he said, are only one measure of reinsurer security. Other important considerations, Mr. Booth said, include: "How long have you been doing it? Who are your underwriters? What is your business mix? And so on," he said.

"The easy way to segment the market is to say, 'Well, there are those with legacies and those without legacies,' but I think that is just one possibility. You have to look far more in detail at companies than to simply say, 'Well, one is an old company and one is a new company,'" Mr. Booth said.

Although older companies may have legacy issues, they can also be viewed positively because they have longevity and have dealt with the concerns, Mr. Booth said.

"Legacy is fundamental to the reinsurance contract. There is always a legacy, whether it is positive or negative or neutral," he said. "And the newer companies will have to deal with legacy issues in the future; the older companies have already and so have developed a fairly good knowledge of how to deal with these issues."

Mr. Waterman noted that while large reinsurers are not immune to adverse reserve developments or financial market hits, they do have the benefit of starting from very strong capital positions.

The longevity of a reinsurer can entail trade-offs for cedents, some say.

"The new Bermudians that came in since 2001 don't have

'Legacy is fundamental to the reinsurance contract. There is always a legacy, whether it is positive or negative or neutral. And the newer companies will have to deal with legacy issues in the future.'

Clement Booth
Aon Re International

those legacy issues, and if they have the capital and are managed by professional reinsurance people, they may be as well regarded as the old—if not better— because they don't have the legacy issues," said Callum Stewart, managing director for nonmarine reinsurance at Heath Lambert Group Ltd. in London.

"There is no question about it that unencumbered capital is well-regarded," he said.

And buyers are willing to place business with newer reinsurers, particularly those domiciled in Bermuda, said Jeremy Goodman, managing director of intermediary Cooper Gay North America in New York.

"They have operated very successfully and very profitably in the past few years" and, in terms of legacy issues, "they have a clean sheet," he added.

What is less certain, though, is how the newer companies will respond to large losses or a softening market, observers note.

When new reinsurance companies are set up, they often have small teams of staff and rely heavily on vendor catastrophe models, as they often haven't had time or resources to develop their own models, said Mr. Searby of S&P.

"What is difficult to predict is how the underwriting models of these new players will respond to large losses," he said.

In addition, he noted that the newer companies' portfolios are often very concentrated, adding that one of the critical measures of their success in a softened market will be the extent to which they can diversify their business lines.

Market changes on Dutch agenda

Regulatory reform in E.U. gets boost

By CAROLYN ALDRED

The long-awaited passage of a European reinsurance directive received a boost this summer when the Dutch government specifically mentioned the harmonization of reinsurance regulation as one of its priorities during its six-month presidency of the European Union, which began in July.

Reinsurance, unlike direct insurance, has no E.U. framework for supervision, despite several years of lobbying from the industry, particularly the London market, for a single European market in reinsurance.

In April, though, a proposed directive finally was published by the European Commission and will now be taken to the European Council of Ministers and the European Parliament.

Under the directive, every pure reinsurer—including captives—with its head office in the European Union would need to obtain a license from its home state regulator.

Under the so-called "passport system," which has been applied to direct insurers for the past decade, a reinsurer, once authorized at home, would be able to carry on reinsurance business throughout the European Union without the need for further authorization.

According to the European Commission, "the lack of an E.U. regulatory framework for reinsurance has resulted in significant differences in the level of supervision of reinsurance undertakings between different E.U. member states. These different national rules have created uncertainty for direct insurance companies and their policyholders and led to barriers to trade within the internal market, as well as giving rise to administrative burdens and costs."

In addition, "the lack of a European framework has also weakened the E.U.'s position in international trade negotiations aimed at opening up the insurance market worldwide," according to an E.C. guidance paper.

The reinsurance directive would have a positive impact on policyholders, according to E.U. Internal Market Commissioner Frits

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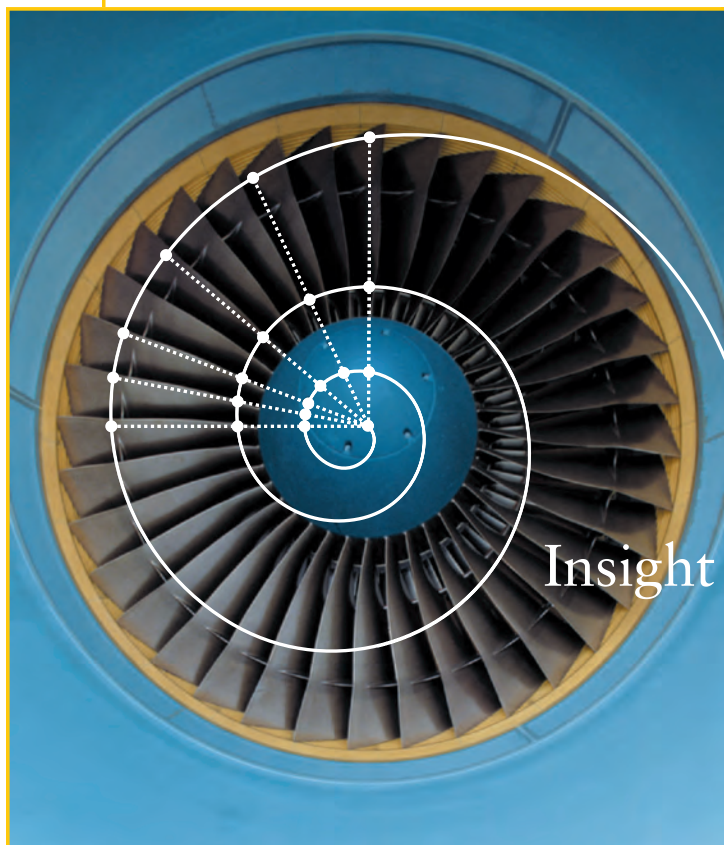

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E.U.: Regulatory reform directive gets boost

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Bolkestein.

"If insurance companies can be fully confident that reinsurance operators are properly regulated and hold sufficient capital to cover the risks they take on wherever they are based in the E.U., they are more likely to seek reinsurance across borders and to get the best deal available in Europe for themselves and their policyholders," Mr. Bolkestein pointed out.

"The proposal would give reinsurers greater flexibility to operate throughout the E.U. with a minimum of red tape. Customers of insurance companies will benefit from the increased competition and a more efficient market," he noted, adding that the directive "would also contribute to international financial stability and address the concerns raised in this respect by international bodies such as the International Monetary Fund."

Although hopes have been dashed that the reinsurance directive would be in place before E.U. enlargement added 10 new member countries in May, the adoption of the directive remains on a "fast-track" approach, observers say.

Marie-Louise Rossi, chief executive of the London-based International Underwriting Assn., said she hopes that the Dutch government's support of the directive will lead to approval by both the European Council of Ministers and the European Parliament next year.

Ms. Rossi said she is an advocate of single European supervision for reinsurance, which she believes will:

- Raise the regulatory standards in European countries with inadequate supervision.
- Ease the worries of bodies such as the Financial Stability Forum, set up by the G8 finance ministers, which have raised concerns about the lack of regulation of reinsurers.
- Stem the growing tide of piecemeal regulation and supervision of the reinsurance industry.
- Ease international trade between European reinsurers and insurers outside the European Union, such as those in the United States.

"The reinsurance industry has been working with the commission for many years to introduce Europeanwide regulation for reinsurers," said Ms. Rossi. She added, though, that reinsurers never expected the regulation to be as stringent as that laid down for direct insurance.

"We always believed that business-to-business transactions should be more lightly regulated than retail transactions. However, events of recent years such as Worldcom and Enron have made regulators aware that even the most sophisticated institutions have had problems," said Ms. Rossi.

The Comite Europeen des Assurance, a Paris- and Brussels, Belgium-based organization that represents insurers and reinsurers across Europe, also maintains that a harmonized E.U. framework for supervising reinsurance business would improve cross-border operations in Europe and boost the European industry's international competitiveness.

Despite welcoming the directive proposal, the CEA expressed concerns in published responses that reinsurance would be regulated to the same or an even higher degree than is direct insurance.

'The (regulatory) proposal would give reinsurers greater flexibility to operate throughout the E.U. with a minimum of red tape.'

Frits Bolkestein
European Commission

The CEA welcomed the commission's decision to tone down its earlier proposal to set solvency margins for nonlife reinsurance up to 50% higher than those for nonlife insurance. Reinsurers argued that reinsurance was no riskier than insurance and that many reinsurers were able to use risk management capacity and techniques not available to direct insurers because of their international portfolios and expertise (*BI*, Sept. 1, 2003).

The proposed directive instead has included a mechanism for increasing the solvency requirements for certain classes of nonlife reinsurance by up to 50% should it see a need to do so in the future.

The CEA's main outstanding concern is the proposed directive's application of the same solvency margins to life reinsurance that are applied to life insurance—4% of mathematical reserves plus 0.3% of the sum at risk.

"CEA strongly opposes this proposal, which would represent a major increase not reflecting the needs and specificities of the business. It is indeed significantly higher than what was presented in the latest public draft of the proposal issued by the Commission on 17 September 2003, which had CEA's support," the CEA states in a response paper published this summer.

"If implemented, this proposal would lead to more business being written outside areas complying with the E.U. reinsurance directive. This would significantly reduce the availability of reinsurance capacity and raise its price, forcing primary writers to retain a higher percentage of risks," the CEA adds.

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The Risk Manager of the Year Award was created in 1977 by *Business Insurance* to increase recognition of the risk management profession and to recognize outstanding performance in the practice of risk management. The Risk Management Honor Roll was added in 1980 as a way to recognize worthy risk managers and risk management programs in industries not represented by the annual Risk Manager of the Year award winner.

Executives anywhere in the world who are involved in risk management for a corporation, not-for-profit institution or government entity can be nominated.

The nominations will be judged by a panel of executives representing all aspects of risk management and the commercial insurance industry.

Honorees are announced and profiled in the annual Risk Manager of the Year feature issue published by *Business Insurance* which is distributed at the RIMS annual Conference and Exhibition each spring.

DEADLINE FOR NOMINATIONS: November 22, 2004

For nominating forms and instructions, call 312-649-5319 or e-mail: ktucker@BusinessInsurance.com or visit BusinessInsurance.com/RMOY

www.businessinsurance.com
Business Insurance

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Identity: Employee theft a leading source of fraud

Continued from page 4

Theft Partnership in Prevention in East Lansing, Mich., trains law enforcement organizations, provides victim advocacy and researches identity theft cases.

She called identity theft a "borderline crime," often perpetrated by individuals who might not otherwise commit a crime. When someone has access to personal information in the workplace, identity theft can become a "low-risk crime" that can be committed in the privacy of that person's home, she said.

While identity theft threatens the security of the workplace, it also leaves companies open to liability should they fail to take reasonable steps to protect their workers and clients, said Philip L. Gordon, shareholder and partner at the Denver office of the employment and labor law firm of Littler Mendelson.

Employers need to be cognizant of the statutes that hold them responsible for protecting their records, Mr. Gordon said. For example, the federal Health Insurance Portability and Accountability Act of 1996 requires that businesses safeguard the privacy of personal medical information such as employee benefit and health insurance records.

Some states also provide regulations that companies must follow. For example, California prohibits Social Security numbers from being displayed or used to identify employees. California, Georgia and Washington state also mandate that companies shred paperwork before disposing of it.

Businesses also need to consider what kind of theft their crime insurance policies cover.

Stephen Leggett, senior vp at Willis Group Holdings Ltd. in New York, stressed that such policies typically cover the employee theft of "tangible property," such as money and securities, but are not intended to cover the theft of confidential information.

Employers can take a number of steps to protect their workers and clients, Mr. Gordon said.

He suggested companies have data protection policies in place, analyze how their information is collected and disclosed and establish systems that audit compliance. Businesses should also look closely at their vendors, discussing with them the kinds of controls they and their subcontractors have in place. All documents with personal information should be shredded if they are no longer needed, and all employees should be educated on how to spot fraud in the office, he said.

It is also key to have a plan in place if security is breached, Mr. Gordon said. Measures may include contacting law enforcement authorities and following up with a complaint to the FTC. The affected employees must be notified as soon as possible, and human resources departments should assist those employees as they try to work through monitoring their credit records. The companies may need to give those workers time off and to provide them with contact information for the major credit bureaus and the FTC, Mr. Gordon said.

A number of companies are working toward establishing such safeguards.

The Society for Human Resource Management in Alexandria, Va., found recently that 94.7% of the employers it surveyed lock up employee files, 48.8% conduct background checks on their employees and 23.5% educate their employees on how to spot fraud. According to the study, 54.4% of the businesses surveyed have privacy policies in place concerning confidential information, while 20.6% have policies for dealing with security breaches.

Jim Vaules, vp and fraud consultant with Dayton, Ohio-based LexisNexis, said his company has a chief policy officer who oversees a "strong information policy" concerning who has access to what information and how that data is used. LexisNexis, which provides information verification and other products for law firms, government offices and Fortune 500 companies, also has an audit process that monitors who is accessing and using sensitive data.

Mr. Gordon stressed that companies must be vigilant in monitoring those policies they have adopted.

"If you put these steps in place and then forget about it, then it's worthless," he said.

Products & Services

Hospitality program adds restaurant coverage

WEST CHESTER, Pa.—Venture Programs Inc., a specialty insurance program administrator, has expanded its hospitality program to include a coverage package for restaurants.

The West Chester, Pa.-based Venture Programs' restaurant package provides general liability,

property, liquor liability, crime, automobile and inland marine coverage. The restaurant package is available to family-style and franchised chain restaurant properties that require less than $3 million in property coverage per location. General liability limits are available up to $2 million aggregate, and the liquor liability limits are available up to $1 million, excluding Alabama, Mississippi and North Carolina. The program is available in Alabama, Arizona, California, Colorado, Delaware, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Pennsylvania, Nevada, South Carolina, Tennessee and Virginia.

Venture Program's hospitality package also includes workers compensation coverage available to hotels, casinos, resort properties, spas and restaurants.

For more information, contact Jim Shaffer, vp of program operations, at 800-282-6247, ext. 237, or visit the company's Web site at *www.ventureprograms.com*.

National Union introduces consultants liability cover

NEW YORK—National Union Fire Insurance Co. of Pittsburgh, Pa., an American International Group Inc. member company, has launched a professional liability coverage program for consultants to protect against alleged negligence arising from consulting services.

The new errors and omissions program, Consultants Preferred, provides coverage for alleged negligence claims arising from consulting services, and it can be extended to cover economic losses experienced by others as a result of the alleged negligence. It also covers computer attacks, such as a breach in network security related to a consultant's services. The policy also allows the insured to retain a public relations firm for specific crisis events, such as management crisis, regulatory crisis and bankruptcy, subject to a sublimit.

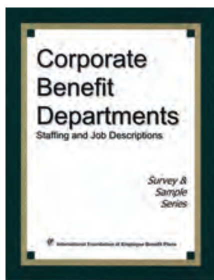
The program is available to consultants in a variety of industries, including technology, marketing and retail. Limits are available up to $25 million.

For more information, e-mail *professionalliability@aig.com*.

IFEBP survey examines benefit departments

BROOKFIELD, Wis.—The International Foundation of Employee Benefit Plans has published a new employee benefits survey that reports information on corporate benefit departments.

The survey, "Corporate Benefit Departments: Staffing and Job Descriptions," consists of data gathered from U.S. and Canadian corporate benefit departments. It includes information from 330 respondents on the responsibilities of their benefit departments, the use of benefit committees, the amount of benefit outsourcing done and the size of departments' staff. The IFEBP report breaks down results by employer size, industry and region.



To purchase a copy of the survey, contact IFEBP's publication department at 888-334-3327, option 4, or at *books@ifebp.org*.

Allied World adds U.S. E&O coverage

NEW YORK—Allied World Assurance Co. (U.S.) Inc. is now writing excess liability and errors and omissions coverages for companies in the United States with revenues up to $1.5 billion.

The New York-based unit of Allied World Assurance Holdings Ltd. of Hamilton, Bermuda, also has increased the size of the directors and offices risks it accepts. Underwriters in the New York office will handle accounts, including privately held companies, with current valuations up to $3 billion. Anything larger than $3 billion will be handled by AWAC's Bermuda-based office.

For professional liability lines coverage, limits are available up to $25 million for U.S. businesses.

For more information, contact Scott Carmilani, president/CEO of AWAC, at 441-278-5414, or visit the company's Web site, at *www.awac.com*.

NIF division offers weather coverage

MANHASSET, N.Y.—NIF Weather Risk Management, a unit of the Manhasset, N.Y.-based NIF Group Inc., has introduced a new

weather coverage program to protect against financial, noncatastrophic weather risks such as rain, snow and drought.

The coverage allows the buyer to set the limits and works in conjunction with a weather modeling system called NORDIX, which sets rates based on deviations from expected or ideal weather conditions.

The program is designed for events coverage, day-to-day weather and seasonal risk and is available for companies, associations and public entities.

For additional information, contact Dan Parker, managing director of NIF Weather Risk Management, at 908-508-9696, ext. 13, or *dparker@nifgroup.com*.

We'd like to report on new risk management and employee benefit products and services offered by your company. Send information about your new offerings to: Carrie A. Brittain, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; telephone: 312-649-5313; fax: 312-649-7801; e-mail: cbrittain@businessinsurance.com.

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Between the Lines

Compiled by Joanne Wojcik

That sinking feeling...again?

As the saying goes, "loose lips sink ships," but, in this case, it was a licentious lawyer who rocked the boat.

A federal appeals court in San Francisco last week upheld the 2002 conviction of a lawyer who got caught trying to sink a 76-foot motor yacht, which would have been his fourth casualty at sea.

Because insurers had pegged Beverly Hills lawyer Rex K. DeGeorge as a bad risk for having collected insurance money on three other boats that he claimed were either lost or stolen, he engaged in a series of sham transactions transferring ownership of the vessel to a film company he owned. The selling and reselling also inflated its value from its original purchase price of $1.9 million to more than $3.6 million, court records say. The film company then purchased a $3.5 million property policy on the yacht from CIGNA Property & Casualty Insurance Co. in the 1990s, before CIGNA sold its P/C operations to ACE Ltd.

But Mr. DeGeorge's scheme foundered when he and two accomplices were arrested by Italian authorities after unsuccessfully trying to sink the yacht in the Mediterranean. After being released from jail, they returned to the United States and filed an insurance claim seeking policy limits, but the insurer denied the claim and handed it over to the U.S. Postal Inspection Service, which won a conviction of Mr. DeGeorge for conspiracy, mail and wire fraud and perjury.

Though a three-member panel of the 9th U.S. Circuit Court of Appeals upheld the conviction, it tossed out an enhancement of obstruction of justice, which may reduce the 90-month sentence Mr. DeGeorge is currently serving.

Coverage for neighborhood nuisances

U.K. homeowners can now buy protection should neighbors' activities or an unsightly cellular phone tower adversely affect their property values.

London insurance broker Lucas Fettes & Partners is selling "Home Value Protection Insurance," underwritten at Lloyd's of London, that will pay up to £100,000 ($178,980), plus moving expenses and legal fees, for a range of nuisances in the vicinity of the policyholder's home, including construction of cellular phone towers, new roads, airports, retail developments—even prisons. It will also pay if those new neighbors turn out to be motorheads who like to rev their engines into the wee hours of the night.

For more information about the coverage, visit *www.lucasfettes.co.uk*.

Benefit statements confusing, poll finds

Explanation of benefits letters from health insurers are among the most confusing documents for vast numbers of Americans, according to the national "Perplexity Poll" sponsored by Siegel & Gale, a consulting firm that promotes the use of plain English in business communications.

Other information sources listed by respondents as nearly incomprehensible are "stock market information, mutual funds and money market lingo"; "anything in legalese like contracts, leases and loans"; "instructions for assembling things like grills or cabinets"; and "computer manuals or installation instructions for computer software."

"The degree of perplexity uncovered in the insurance, financial and legal sectors doesn't bode well for a population that is being asked to take responsibility for its retirement and health care decisions," said Alan Siegel, chairman of the New York-based consulting firm.

"This should be a wake-up call for American business. By providing customers simpler, clearer information, they can establish meaningful differentiation that creates stronger relationships and brand loyalty," he said in a statement announcing the findings.

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

Letters to the Editor

Continued from page 8

their plan, that the prescriptions are priced according to their PBM contract, and that the prescriptions dispensed are covered under their PBM contract.

It is amazing that any business would give more scrutiny to an invoice for office supplies than they would to an invoice for prescription drugs. Yet in most cases, PBM invoices are paid without even a cursory review for correctness. This "anomaly" occurs because the tools necessary for verification of drug prices are not available and because the PBMs have defined themselves as "claims adjudicators."

But PBMs are "billers"; they are not claims adjudicators. Their invoices should be adjudicated in the same manner that medical claims for physician, hospital and lab charges are adjudicated. Many PBMs do not even provide itemized invoices to their clients. They are paid whatever they ask for. In an environment where all this suspicion is swirling about PBMs' ethics, wouldn't it seem prudent to verify their charges before writing a check?

Adjudicating pharmacy claims is a simple, cost-effective process that can recoup up to 15% or more of a PBM's invoiced charges. This is a totally different process than PBM auditing. Keep the pressure on for more disclosure from the PBMs, but don't pay another PBM invoice until you know that it is correct.

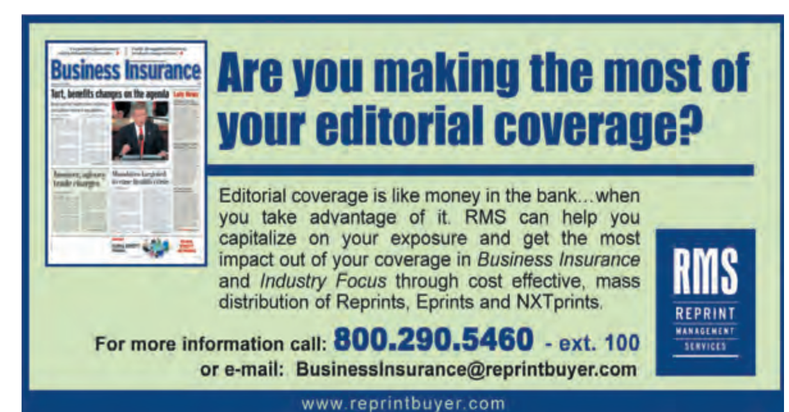
Sharyl J. Rieser
Vp-Operations
RX Audit
Temecula, Calif.

Judge apparently didn't read countersignature law

To the editor: In reference to an Aug. 10 Daily News item, "Nevada Countersignature Law Struck Down," apparently the judge did not actually read the law. It specifically states the insurer, not the agent, is responsible for the fee.

Additionally, nowhere does the statute allude to the fact that out-of-state brokers are incompetent. I have a lot of brokers who are writing business in Nevada but are not licensed to do so. How fair is that to the resident brokers who pay thousands of dollars to be licensed in order to earn their living in Nevada?

Vivian A. Mello
Reno, Nev.



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U.K. employers addressing absence risks

Concerns over lost productivity, costs boost interest in rehabilitation

By CAROLYN ALDRED

As U.K. employers target absenteeism as a major business risk, risk managers say they are increasingly finding themselves on the front line in the battle to tackle the problem.

This summer, a string of private and public U.K. employers announced plans to fight absenteeism—whether it results from work-related injuries or merely a desire to stay home.

As part of that effort, more employers, encouraged by the Health and Safety Executive and rising employers liability insurance premiums, are looking at rehabilitation programs to reduce lost workdays.

Because the state-funded National Health Service often entails long waits for treatment of illnesses and injuries that may keep workers off the job, more U.K. employers are looking at vocational rehabilitation to speed return to work.

Sharp increases in employers liability insurance rates and a growing realization of the costs of absenteeism are forcing employers to manage the risk.

The Confederation of British Industries estimates workplace absence rose 6% in 2003, to 176 million days, and cost U.K. employers £11.6 billion ($18.96 billion). Employers estimated that 25 million days were lost through employees claiming sickness to have the day off work.

Focus on return to work

"Absenteeism is definitely an issue for me," said Reiner Siebert, head of risk management for Virgin Atlantic Airways Ltd. in London.

The airline's occupational health department reports to Mr. Siebert, who is responsible for bringing together various departments—including human resources, legal, health and financial—to manage the risk of absenteeism. "I have been working on coordinating the processes involved when someone has an incident that results in time off work. Meanwhile, the occupational health department is working with staff, particularly cabin crew, to manage and measure short-duration, high-frequency absences," he said.

Mr. Siebert is working with Virgin's insurer to introduce rehabilitation techniques, and he said he believes corporate use of such techniques will grow.

Mike Keating, a member of the Assn. of Local Authority Risk Managers and the workplace health manager for the Belfast City Council, said he believes that rehabilitation is the most effective way to reduce absenteeism, both for genuine illness and for employees simply taking off time. He is trying to persuade the city council to introduce a private health care plan to get sick workers into treatment more quickly, to avoid the long waits in the NHS and to reduce the council's £3.5 million ($6.3 million) annual absence costs. He said he believes more risk managers in the public and private sectors will adopt this approach.

Indeed, the U.K. Department for Work and Pensions plans to publish a report next month to promote vocational rehabilitation services. Earlier this year, the DWP stated that rehabilitation should be at the "heart of the employers liability system."

"If companies aren't looking after their staff in terms of health, employees will tend to use sickness as a weapon back at them," noted David Gamble, executive director of the Assn. of Insurance & Risk Managers.

"There are also other risk issues involved. Look at the business continuity issues faced by British Airways when it was unable to deliver a service because of staffing problems," Mr. Gamble said.

Late last month, the airline was forced to cancel 30 flights due to staff shortages, leaving thousands of furious customers stranded at airports. Amid staff cutbacks, British Airways was unable to cope with unexpected absences. A spokeswoman said the airline now is offering staff pay increases if they agree to a tough new absenteeism policy.

Also implementing a program to reduce absenteeism is Royal Mail Group P.L.C. Among other initiatives, the London-based government-owned employer is offering those employees who take no time off sick for a six-month period

See ABSENCE/next page

PHOTO: REUTERS/PETER MACDIARMID

Staff shortages recently caused British Airways to cancel flights.

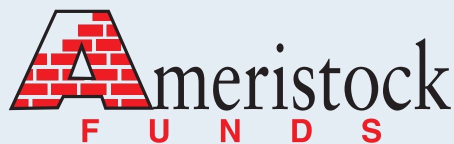
U.S. mutual fund manager forms segregated-cell facility in Bermuda

By DOUGLAS McLEOD

HAMILTON, Bermuda—Mutual fund manager Ameristock Corp. has formed a Bermuda-based segregated-cell rent-a-captive facility to write workers compensation and other casualty reinsurance lines.

Alameda, Calif.-based Ameristock contributed $5 million in initial capital to form Lyon's Gate Reinsurance Co. Ltd., which the Bermuda Monetary Authority approved as a Class III exempt reinsurer earlier this month, the company announced.

Lyon's Gate will initially focus on reinsuring fronted workers comp coverages, including first-dollar coverages and excess layers aimed at filling gaps between client retentions and the attachment points of commercial reinsurance, said Harry Tipper III, Lyon's Gate's president and chief executive officer.



Lyon's Gate will retain portions of these risks for its own account in addition to managing clients' segregated cells, Mr. Tipper added.

The retained business will be written on a net line basis without retrocessional protection, and the reinsurer will not exceed a one-to-one net premium-to-surplus ratio on its retained writings, he said. Within the segregated cells, meanwhile, Lyon's Gate expects to write $20 million or more in its first year, its executives say.

Beyond workers comp, Lyon's Gate also aims to reinsure health care, medical liability and employee benefits-related lines. Its clients here could include managing general underwriters seeking to assume a piece of the business they write for their issuing insurance companies, Mr. Tipper noted.

In addition to Mr. Tipper, Lyon's Gate officials include Ameristock founder Nicholas D. Gerber, who will act as vp and chief investment officer; and Charles W. Kimball, vp and chief underwriting officer.

Lyon's Gate's operations are unrelated to the investment management business of Ameristock, which views the reinsurer's formation as a business opportunity, Mr. Gerber said.

"Reinsurance companies are undervalued these days," he said. "We think there is a need out there for segregated cells."

U.K. employees say pension contributions should be mandatory

By SARAH VEYSEY

Nearly three-quarters of U.K. workers say they favor the idea of making pension contributions compulsory, according to research by the Assn. of British Insurers.

A poll of 2,479 working adults, conducted by research firm YouGov Ltd. on behalf of the London-based ABI, found 73% of respondents believe some form of mandatory pension contributions would be "a good idea."

About half of the respondents, 51%, said they favor contributions being made compulsory for both employees and employers, while 10% said only employees should be required to contribute and 12% said employers alone should make compulsory contributions to pension plans.

Seventeen percent of respondents said they do not support any kind of mandatory pension plan contributions.

Among those respondents who participate in a defined benefit pension plan, 82% said they support compulsory contributions in some form. In the United Kingdom, defined benefit plans are funded by employer and employee contributions.

For those workers with employer-sponsored defined contribution plans, 80% support contribution requirements, according to the research.

The study is available at *www.abi.org.uk.* under "Press and Media Office."

World Updates

Aspen to create aviation account

Aspen Insurance U.K. Ltd., the London-based arm of Bermuda's Aspen Insurance Holdings Ltd., said it plans to recruit an underwriting team for aviation business and to begin writing aviation coverage in 2005. The team will come under the management of Nick Bonnar, who heads Aspen's London market specialty lines division. Chris O'Kane, chief executive of Aspen, said the move was part of Aspen's strategy to grow its insurance business in technical lines.

Former Railtrack execs see charges dismissed

The U.K. Royal Courts of Justice have dismissed corporate manslaughter charges against two former executives of Railtrack P.L.C., the United Kingdom's former rail operator. Gerald Corbett, former chief executive of Railtrack, and Charles Pollard, former director of the London North Eastern unit of the company, had faced corporate manslaughter charges over the October 2000 rail crash at Hatfield, England, in which four people were killed. The accident occurred when a train derailed just outside Hatfield station near Hertfordshire. Further health/safety-related charges against Christopher Leah, director of safety operations at Railtrack, also were dropped. Several executives of engineering firm Balfour Beatty P.L.C. still face various charges in connection with the accident.

Lloyd's team to audit LMP slip compliance

Lloyd's of London has set up a team to audit compliance with a London Market Principles underwriting slip. The slip, which was developed to ensure greater contract certainty, must be used when many forms of business are placed within the Lloyd's market. The team will check about a quarter of the slips placed in the market, Lloyd's said in a statement, and will offer advice on compliance to managing agencies and brokers. It is expected that 9,000 slips will be checked between the start of this month and the end of the year.

SBJ Group buys Miller Financial

London-based SBJ Group Ltd. has acquired Miller Financial Services Ltd., the employee benefits consulting arm of Miller Insurance Investments Ltd., for an undisclosed sum. Graham Clarke, chief executive of Miller, said that the operation fell outside of its core brokerage business.

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Absence: U.K. employers address risk

Continued from previous page

the chance to win a new Ford Focus car.

"Royal Mail employees take an average of 12 days off sick a year, almost twice the national average. This was identified by our business units as a risk that needed to be urgently tackled," said Kevin Fairbotham, Chesterfield-based head of risk management.

While Mr. Fairbotham heads up Royal Mail's group risk management function and is a member of AIRMIC, each operation within the company has its own risk manager, whose responsibilities include reporting to the group center.

Royal Mail's group risk management team ensures that key business risks are reported and that the corporate and business units are responsible for managing the risk, he said.

Because the levels of sickness leave are continuously monitored by the business units and the corporate center, the rise in absenteeism was quickly identified as a problem, and the corporate human resources and operating units were charged with tackling it, he said.

Treating the problem

Managing the risk rather than cutting pay or offering bonuses, though, is a much more effective solution to absenteeism, said Alan Aldridge, managing director of Active Health Partners, which offers a 24-hour nurse contact center for employees as well as case management services.

The York City Council is using AHP to help curb its sickness rates. Starting this month, any local authority employee who calls in sick will speak to an AHP nurse, and AHP will monitor the council's employee illnesses.

Local authorities in particular face high levels of sickness absence, said Barbara Cotton, risk and insurance manager for Oldham Metropolitan Borough Council. "If people go off sick, it creates problems in service delivery, which can impact the community the council is serving," she said.

Although managing absenteeism falls mainly to human resources departments, risk managers have an important role to play in identifying the risk and coordinating management efforts, Ms. Cotton said. She noted that the risk manager often is in a good position to provide the HR department with a cost/benefit analysis to secure funds to address the problem.

Mr. Keating predicted that employers will eventually be required to implement rehabilitation policies and procedures. "By reducing the time that employees have to wait for medical treatment, we can get them back to work quicker," he said.

"Ninety-nine percent of companies have no idea how much absenteeism costs them. They have not done the analysis, and when they do, they are shocked," said Janice Kaye, managing director of Esher, England-based MMS National Ltd., which provides rapid access rehabilitation for employers.

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REQUEST FOR INFORMATION

MTA New York City Transit
Request for Information No. 04RFIN12

Consultant Services for Worker's Compensation Second Injury Reimbursement

New York City Transit seeks comments to the scope of work for consultants who can provide Worker's Compensation Second Injury Fund Recovery Services. In addition, respondents must submit responses to the questions contained in the RFI.

Firms possessing the requisite qualifications and desirous of responding can obtain a copy of the Request For Information at no charge by accessing our website, www.mta.info/nyct/procure/rfipage.htm, Responses are requested no later than October 27, 2004. Following the written submission NYCT may choose to meet or correspond with selected RFI respondents for further clarification.

For information on other procurement opportunities, visit our website at www.mta.info/nyct/procure/nyctproc.htm

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Written requests only for an RFP package should be addressed no later than September 24th, 2004 to:

Property Insurance RFP
Attn: Norman Murray
Town's Attorney's Office
1 Washington Street
Hempstead, New York 11550

REQUEST FOR PROPOSALS

Actuary For Captive Insurer

The City of New York ("the City") has formed a captive insurance company ("the Captive") that will cover certain liabilities of the City and its private contractors and subcontractors arising from their post – September 11, 2001 debris removal activities at the World Trade Center site. The Captive is to be licensed in the State of New York and capitalized through a grant from the Federal Government of slightly less than $ 1 billion. In connection with this effort the Captive, is seeking proposals for an Actuary, from qualified professional firms. In addition to other prerequisite qualifications for consideration, each candidate must affirm that it has served as actuary for at least four other captive insurance companies, including current service as Actuary to a minimum of two US domiciled single parent or group captive insurers with multiple unaffiliated insureds, each captive with capitalization or surplus over $10,000,000. Potentially qualified applicants may request an RFP by emailing **William.J.Kelly@us.pwc.com.** The deadline for completed proposals (unless extended or changed pursuant to the RFP) is September 27, 2004.

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NCQA: Colorado above average on health care quality

Continued from page 4

its full HEDIS results until late September, some preliminary findings were unveiled at the forum, part of a national series of programs—and the first to be held in the western United States—to exchange information and ideas about the value and importance of health care quality measurement.

Developed by AstraZeneca Managed Markets, the educational arm of the Wilmington, Del.-based pharmaceutical giant, other State of Our Health forums have been held in Massachusetts, New York, Tennessee and Texas, and programs are slated for California, Florida, North Carolina and Virginia later this year.

"Pretty much across the board, Colorado outperforms the national average and the regional average on the vast majority of HEDIS measures," Ms. Torda acknowledged, though the NCQA did not analyze the factors behind the higher performance.

IMPROVED PERFORMANCE

A greater percentage of Colorado managed care organizations followed quality performance guidelines in 2003 than the national average, the NCQA found.

Clinical measure	Colorado average	National average
Adolescent immunization	66.3%	58.7%
Cervical cancer screening	85.6%	81.8%
Comprehensive diabetes care/ LDL control	67.1%	60.4%
Beta blocker use	98.0%	95.0%

Source: National Committee for Quality Assurance

For example, while adolescent immunization rates climbed nationally to 58.7% in 2003 from 50.5% in 2002, they jumped to 66.3% in Colorado from 56.7% the year before, according to the NCQA.

This clinical measure indicates the percentage of adolescents who received a second dose of mumps/measles/rubella immunization, three hepatitis B immunizations and one chicken pox vaccination.

In addition, cervical cancer screening rates reported by Colorado managed care plans jumped to 85.6% in 2003 from 84.3% in 2002, outperforming the national average of 81.8% in 2003 and 80.5% in 2002.

This measure is the percentage of women from 18 to 64 years of age who have had a Pap test performed within the last three years. Current guidelines recommend that adult women have Pap tests to screen for cervical cancer every one to three years.

In the area of comprehensive diabetes care/low-density lipoprotein control, Colorado managed care plans had a 67.1% rate in 2003, up from 59.6% in 2002, while nationally, 60.4% of plans were providing such care, up from 54.8% in 2002.

This set of measures uses a single sample of diabetic members to estimate the percentage of diabetic patients who received LDL control as part of a comprehensive diabetes care program.

Ms. Torda also pointed out that while nationally beta blocker use following heart attack has grown almost 30% since 1996, to nearly 95% in 2003, about 98% of Colorado's managed care plans use beta blockers.

> **While most plans have improved in traditional areas of health care, behavioral health has not improved significantly since the NCQA started collecting data on this area in 1999.**
>
> *Phyllis Torda*
> *National Committee for Quality Assurance*

"It's high nationally, but it's even higher here," she said.

Colorado also outperformed the national average in the area of diabetes testing and control rates, according to Ms. Torda, who did not supply specific figures.

"It is estimated that for every 1% drop in hemoglobin A1c level, the risk of developing renal disease and the risk of lower-extremity amputation declines 40%," she said.

While most plans were showing improvements in traditional areas of health care, by contrast, behavioral health care has not improved significantly since NCQA started collecting data on this area of health care in 1999, said Ms. Torda.

She said this is frustrating, given that "the surgeon general has reported that behavioral health issues account for more than 15% of all health care costs, more than all forms of cancer, it strikes virtually every family at some point or another."

"Across the board, we see no progress in treating depression or the other mental health illnesses," she said.

NCQA collects HEDIS data from 75% of the commercial HMOs and POS plans, which represent approximately 60 million people, or 25% of those enrolled in private health plans nationwide. In Colorado, eight commercial plans, two Medicaid plans and three Medicare plans reported 2003 HEDIS data.

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Cash balance: Consensus on plan rules proves elusive

Continued from page 3

While a diverse group has participated in the meetings, which are continuing, no one can point yet to any concrete results.

"Not only hasn't a common ground been reached, there hasn't been even a glimpse of a common ground," said a benefit consultant who asked not to be identified.

"One side says one thing, the other side says something else, and nothing changes," the consultant said.

Others, while acknowledging that nothing concrete has been accomplished to date, say the meetings could have positive long-term results.

"I think people have learned from each other. When parties understand each other, that could be helpful in the future," said Mr. Gebhardstbauer.

But one major employer group—the Washington-based American Benefits Council—has stopped the attending the meetings.

"This struck us as not the right forum to try to strike a deal. That is what congressional committees are for," said ABC President James Klein.

"We have a good working relationship with members on both sides of the aisle. This is an issue where you can go directly to committee members" and not outside the committee, Mr. Klein said.

"An issue of this political sensitivity has to go through the committee process," agreed Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

Meanwhile, the likelihood that Congress will act this year on any cash balance plan proposal is virtually nil.

"There just isn't enough time, with legislators having to address so many other issues," said Stuart Brahs, vp-federal government relations in the Washington office of The Principal Financial Group.

Still, some are more hopeful that legislators in the next congressional session could, amid the steady erosion of the employer-sponsored defined benefit plan system, craft new cash balance plan rules.

"The committees of jurisdiction are deeply steeped in this issue, and it is an issue they know they will have to confront," said Janice Gregory, senior vp with The ERISA Industry Committee.

"Congress is becoming increasingly aware of the importance of the issue and the need to resolve it," Mr. Brown said.

Employers with cash balance plans, which have elements of both defined benefit and defined contribution plans, have been operating in a regulatory void ever since the mid-1980s.

Employers with cash balance plans, which have elements of both defined benefit and defined contribution plans but legally are the former, have been operating in a regulatory void ever since the first plan was established in the mid-1980s.

In late 2002, the Treasury Department tried to fill that void when it proposed rules that would make clear that the basic design of the cash balance plan—providing participants with pay-related credits and interest on their account balances—does not discriminate against older employees.

Treasury later withdrew the proposal under congressional pressure but earlier this year came up with a new one affirming that the basic design of cash balance plans is not age discriminatory. However, Treasury also proposed a five-year "hold-harmless" period in situations involving the conversion of traditional plans to cash balance plans.

During that five-year period, benefits earned under the cash balance plan by any participant—regardless of age or length of service—would have to be at least equal to what that participant would have earned under the old plan if the conversion had not occurred.

As an alternative to this requirement, an employer could provide every current plan participant with a one-time opportunity to choose between the two plans.

No action has been taken on the latter proposal, which employers say would accelerate the move to defined contribution plans, which would be exempt from any benefit maintenance requirement.

As regulators and legislators have dawdled, courts, though, have been active, creating yet more uncertainty with conflicting rulings. A year ago, for example, a federal judge in southern Illinois said IBM Corp.'s pension plan was age discriminatory because the same credit would buy a much bigger retirement annuity for a younger employee than for an older one. The court is now deciding how much in damages it will impose. IBM has said it will appeal the ruling.

But earlier this year, a federal judge in Baltimore said the design of the plans does not discriminate against older employees. A settlement conference on that suit, involving Annapolis, Md.-based ARINC Inc., a provider of transportation communications, is scheduled for later this month before a federal magistrate (*BI*, June 21).

PARTIES TO PRESCRIPTION DRUG SUIT

A California civil lawsuit accuses pharmaceutical companies of conspiring to fix U.S. drug prices and prevent reimportation of cheaper drugs.

Plaintiffs

- Adobe Drug, Dan Phillips
- Burton's Pharmacy, Mark Horne
- Chimes Pharmacy Inc.
- Clayworth Pharmacy, James Clayworth
- El Camino Pharmacy, Harry Ambrunn
- Golden Gate Pharmacy Services Inc.
- Jack's Drug, Tony Mavrantonis
- Leo's Pharmacies, Julian Potashnick
- Marin Apothecaries Inc.
- Marin Medical Pharmacy, Mark Horne
- Meyers Pharmacy Inc.
- Pediatric Care Pharmacy Inc.
- Tilley Apothecaries Inc.
- Uptown Drug Co., Jerry Shapiro

Defendants

- Abbott Laboratories
- Allergan Inc.
- AstraZeneca Inc.
- Aventis Pharmaceuticals Inc.
- Boehringer Ingelheim Corp.
- Bristol-Myers Squibb Co.
- GlaxoSmithKline P.L.C.
- Hoffmann-La Roche Inc.
- Johnson & Johnson Inc.
- Eli Lilly & Co.
- Merck & Co. Inc.
- Novartis Corp.
- Pfizer Inc.
- Wyeth

Pharmacies: Suit claims price fixing

Continued from page 3

merit, " said a spokesman for New York-based Pfizer Inc., one of the 14 pharmaceutical companies named in the suit.

Under California's Cartwright Act—the state's antitrust law—the plaintiffs must show there was an agreement between the drug companies to maintain higher prices and must prove unfair discrimination between countries, lawyers say. The plaintiffs intend to offer as proof of the alleged discrimination the differences in drug pricing between the United States and the other countries, Mr. Boone said.

'If they're not careful, the pharmaceutical companies are going to be looking at some price control and legislative review of their profit margins.'

Claude Dorais
Dorais, McFarland, Grattan & Polinsky

The case, however, is unlikely to go to trial if it is simply based on the fact that there is a difference in drug prices between the United States and other countries, said Robert Mallory, a Los Angeles-based partner in the law firm McDermott, Will & Emery L.L.P. who specializes in antitrust cases.

"I don't think there's a logical conclusion to reach that there's a conspiracy between manufacturers because they're getting higher prices in the United States than Canada," he said. "If they can get more in the United States for their products than they can in Canada or Europe or South America, there's nothing unlawful about it."

The lawsuit also accuses the pharmaceutical companies of forcing agreements on foreign wholesalers and retailers to prohibit them from selling drugs in the United States, but several lawyers said the companies have the right to take action to prevent their products from being reimported.

"If manufacturers decide it's not in their best interest to sell to Canadian wholesalers, I can't imagine how that can be construed as a violation because the products are illegally entering the country," said Brian Waldman, a partner in the food and drug group of the Washington law firm of Arent Fox.

But another of the pharmacies' allegations—that the drug companies conspired to prevent reimportation of prescription drugs into the United States to protect their U.S. pricing practices—would be illegal, attorneys agree.

The drug companies have regular meetings and send letters in unison to boycott the Canadian companies reimporting into the United States, said Mr. Boone, the plaintiffs' attorney.

Several observers expressed doubt about this claim.

"Those companies are so sophisticated, I would be shocked if there was any collusion," Mr. Waldman said. "Short of some kind of collusion, I don't see how these suits are going to survive. I think it's only a matter of time before they're dismissed."

If the plaintiffs can survive summary judgment, the lawyers can attempt to keep the lawsuit going long enough to negotiate a settlement for their clients, Mr. Mallory said. In his experience, about 90% of these types of cases that survive summary judgment settle before trial, he said.

The real impact of this case, and similar lawsuits filed against drug companies in Minnesota and New Jersey earlier this year, is the focus they place on the inequities in drug prices between the United States and other countries, observers say.

"Hopefully, what we'll see is a reduction of U.S. pricing of drugs," said Sean Brandle, a vp at benefit consulting firm The Segal Co. in New York. "What you don't want to happen is the prices to decrease and not as many research and development dollars being allocated."

A key question is whether the pharmaceutical companies will voluntarily change their pricing practices or whether the government will force them to lower their prices.

"If they're not careful, the pharmaceutical companies are going to be looking at some price control and legislative review of their profit margins," said Claude Dorais, an attorney with Goleta, Calif.-based law firm Dorais, McFarland, Grattan & Polinsky, which specializes in insurance law. "They could win the battle, but lose the war in these lawsuits."

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Punitive: Law gives California a share of awards

Continued from page 1

month. Lawmakers stripped the measure—which was contained in a wide-ranging appropriations bill, S.B. 1102—of all significant tort reform provisions. The limit on multiple awards for a single act vanished, and attorneys were granted the right to receive up to 25% of the state's portion of the awards as their fee on top of what they received from their own clients.

"We supported it in the beginning, when it was first proposed," said John H. Sullivan, president of the Civil Justice Assn. of California in Sacramento. "But when it went through the process, it became less workable, less desirable, and we withdrew our support," he said.

"It had some protections for defendants in it that were removed. The major one was one that would have prevented more than one punitive damage verdict per defendant action," said Mr. Sullivan.

"Initially, we did support this provision," said a spokeswoman for the American Insurance Assn.'s Western Region in Sacramento. "We supported it because within this proposal, there was a provision that said there can't be multiple awards for the same conduct. It would have reduced litigation cost, which would have helped improve California's business climate. But, unfortunately, that provision was taken out." In fact, the final language of the measure stresses that its purpose is budgetary.

The law reads, in part: "The Legislature finds and declares that extraordinary and dire budget needs have forced the enactment of this extraordinary measure to allocate temporarily for the State's Public Benefit Trust Fund a substantial portion of any punitive damages paid from a judgment during the limited time period specified in the statute."

The measure also holds that jurors cannot receive instructions informing them that a portion of the punitive damage award will go to the state, but independent knowledge of the state's potential financial interest in a punitive damage award does not disqualify a juror from serving.

The provision will expire on June 30, 2006, unless extended by lawmakers.

"We're glad there's a sunset provision on this bill because we're concerned that even though there's language that a judge is not to tell a jury that part of the punitive award is going back to the state, eventually it will become known to juries. We're concerned that it is going to actually increase the amount of punitive damage awarded by juries," said the AIA spokeswoman.

A prominent tort reform advocate pointed out that the measure may have minimal practical impact without an extension, because cases involving punitive damages often require years of argument and appeal before reaching final judgment.

"Most civil cases don't go to trial in less than a year's time," said Mark Behrens, partner in the Washington office of the Kansas City, Mo.-based law firm of Shook, Hardy & Bacon L.L.P. and co-author of a recent study of the impact of the California law. It would be "very difficult" for a case in which punitive damages are an issue to reach a final judgment by the time the law expires, Mr. Behrens said.

> **'In California and the handful of other states that have adopted these laws, the version of the bill as introduced almost always looks different than the version that ultimately is enacted.'**
>
> *Mark Behrens*
> *Shook, Hardy & Bacon L.L.P.*

But he noted that, even though it is not the first state to adopt a split-verdict approach to punitive damage awards, other states often follow California's example.

"California has long been seen as a trendsetter in the area of liability law. For example, California was the first major state to adopt strict product liability, and then that concept essentially swept the nation. That's one example of several in the field of torts where California has been a pioneer state," said Mr. Behrens.

"It would be unlikely that other states will limit their time frame in the way California has done," he added.

"A problem with laws that direct punitive damages to the state is the law of unintended consequences," said Mr. Behrens.

"Business groups and legislators are drawn to these statutes because they believe that if money is to go to the state, plaintiffs lawyers may have a reduced economic incentive to pursue punitive damages. When the laws go through the legislative process, the plaintiffs attorney inevitably will be permitted to obtain a fee based on the entire award. The full incentive to pursue punitive damage is restored, and what is enacted is a bill that gives plaintiffs attorneys reason to pursue punitive damages."

"The lesson learned from California for other states is that, in California and the handful of other states that have adopted these laws, the version of the bill as introduced almost always looks different than the version that ultimately is enacted," said Mr. Behrens. "The tort reforms are stripped; the economic incentives for plaintiffs to pursue punitive damages are maintained, and the problem of punitive damages abuse is potentially made worse."

Mr. Behrens noted that, in addition to California, seven other states—Alaska, Georgia, Illinois, Iowa, Missouri, Oregon and Utah—require plaintiffs to share punitive damage awards with the state. The Ohio Supreme Court has also stated that it will decide on a case-by-case basis whether to order a portion of any punitive damages award to be directed to "a place that will achieve a societal good." Six other states had similar requirements that expired by their own terms, were declared unconstitutional or were otherwise abandoned, he said.

An organization representing the plaintiffs' bar hailed the governor and lawmakers for having "publicly recognized and embraced the valuable function punitive damage awards play in punishing and deterring malicious or despicable corporate conduct," but called for a balance between the interest of consumers and the state.

"Over the years, Consumer Attorneys of California has advocated and supported the concept of allocating a fair portion of punitive damages to the state to help ensure access to justice; however, such an allocation involves a delicate balance between maintaining consumers' ability and incentive to fight malicious corporate conduct against the interest of the state in reaping part of the award," said the Sacramento-based Consumer Attorneys of California in a statement released before the law went into effect.

Plaintiff can't choose one claim over another to avoid cap: Court

By JUDY GREENWALD

AUSTIN, Texas—A plaintiff cannot avoid a statutory cap on damages for one claim by taking advantage of another claim for which there is no such cap, the Texas Supreme Court has ruled.

In its unanimous decision in *Hoffman-LaRoche Inc. vs. Joan Zeltwanger*, Texas' highest court reversed a lower court's $9 million award for mental anguish and punitive damages on a claim for intentional infliction of emotional distress.

The case involved Joan Zeltwanger, a Texas-based sales representative who sued her former employer, Nutley, N.J.-based Hoffman-LaRoche Inc., and supervisor for sexual harassment and intentional infliction of emotional distress.

After a trial, a jury awarded Ms. Zeltwanger $8.5 million under her sexual harassment claim and about $9 million under her intentional-infliction claim, for mental anguish and punitive damages.

Because of the award duplication, the trial court allowed Ms. Zeltwanger to take her mental anguish and punitive damages under the intentional-infliction claim, which has no cap. By state law, her damages under the sexual harassment claim would be subject to a $300,000 cap.

The high court ruled, though, that Ms. Zeltwanger could not recover damages under the intentional-infliction claim, because a remedy was available under the sexual harassment statute. The tort "should not be extended to thwart legislative limitations on statutory claims for mental anguish and punitive damages," the decision notes.

"By combining her sexual harassment claim with the intentional-infliction tort, Zeltwanger has circumvented, by more than thirty-fold, the legislative determination of the maximum amount that a defendant should pay for this type of conduct," the decision says.

Hoffman-LaRoche Inc. vs. Joan Zeltwanger, Supreme Court of Texas, No. 02-0120, Aug. 27.

Frances: Large losses possible

Continued from page 1

losses from Frances could be between $3 billion and $10 billion, depending on the hurricane's path and strength.

Risk Management Solutions Inc. gave an even broader estimate, saying that insured losses from the storm could range from $2 billion to as high as $20 billion, based on the most recent information available. Newark, Calif.-based RMS said that losses would likely fall in the higher end of that range if Frances makes landfall toward the north and passes over Orlando.

Insured damages from Hurricane Charley, which hit Florida on Aug. 13, will likely total less than $10 billion, according to the latest estimates (*BI*, Aug. 30). The Category 4 storm, which was responsible for at least 23 deaths, destroyed commercial and residential buildings and caused widespread power outages, with the most severe damage occurring in Charlotte and Lee counties, where the storm came ashore.

Meanwhile, as Frances was bearing down on Florida last week, insurers also were sorting out claims from Tropical Storm Gaston, which made landfall in South Carolina early in the week.

The Insurance Services Office Inc.'s Property Claim Services unit last week declared Gaston a catastrophe, meaning that it is expected to cause at least $25 million in insured property damage. The storm caused extensive flooding throughout the Southeast, with parts of Richmond, Va., receiving more than a foot of rain. The Virginia damage led Gov. Mark Warner to declare a state of emergency in much of the state.

Jersey City, N.J.-based PCS had not issued a detailed damage estimate for Gaston at the end of last week.

In addition, the meteorological prediction team headed by William Gray at Colorado State University issued a revised hurricane forecast for the rest of the 2004 Atlantic hurricane season early Friday morning.

The revised forecast calls for five named storms in September, three of which will become hurricanes, with two of the three growing into major hurricanes. The forecast is based "partly on extrapolation of the current September statistics being generated by major Hurricane Frances," said the team.

The Colorado State team, however, projects that October will be marked by below-average activity due to "very warm equatorial sea-surface conditions in the central Pacific."

PHOTO: ZUMA

Last month's Hurricane Charley damaged and destroyed aircraft at Florida's Port Charlotte Airport. The Category 4 storm, which made landfall on Aug. 13, is estimated to have caused insured damages of less than $10 billion.

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Converium: Retools U.S. business

Continued from page 1
operations will include the transfer of underwriting responsibility for U.S. speciality lines long-tail risks to Zurich from New York, and providing an unspecified capital infusion to Converium Insurance (North America), which will become the company's ongoing U.S. carrier for both direct business and reinsurance.

Dirk Lohmann, CEO of Converium, said that the reinsurer would also seek to reduce its exposure to what it considers to be volatile lines of business in the United States, such as lead umbrella, various excess and surplus lines risks and heavy commercial auto written on an excess basis. The company will also likely reduce its underwriting of directors and officers liability risks in the United States, he noted.

'As long as we can write (U.S.) business at attractive prices, we would want to continue to entertain it.'

Dirk Lohmann
Converium Holding A.G.

Converium said it expects its premium volume from U.S. business to drop by about $500 million, representing about one-third of its current U.S. writings.

In addition to planning a restructuring and capital infusion, Converium has purchased a retrocessional stop-loss policy from Omaha, Neb.-based National Indemnity Co., a unit of Berkshire Hathaway Inc.

The policy will provide $150 million of coverage against potential adverse reserve development related to 2003 and prior years for all business written by Converium A.G., Converium Reinsurance (North America) and Converium Insurance (North America).

Converium has paid an upfront premium of $20 million for the coverage, Mr. Lohmann said. It provides $150 million in coverage excess of $100 million over the net reserves of the units as of June 30. If Converium taps the cover, though, it will have to pay additional premiums of 40 cents for every dollar ceded, he noted. "So there is a 60 cents risk transfer, if you will," Mr. Lohmann said.

Impact of downgrades

But despite the raft of measures taken by the Swiss reinsurer to address its reserving situation, Best moved quickly last week to lower its rating on the company to B++.

In announcing the downgrade, the Oldwick, N.J.-based rating agency cited concerns about "the deterioration of Converium's consolidated risk-based capital due to the potential for further reserves development," notwithstanding the stop-loss reinsurance policy and the company's pledge to boost reserves by between $50 million and $100 million before the end of the year.

Those actions, noted Jose Sanchez-Crespo, an analyst at Best in London, were not enough to maintain an A- rating. The downgrade also reflects other factors, such as the potential damage to the company's profile within the reinsurance market, Mr. Sanchez-Crespo explained.

Mr. Lohmann said he was disappointed by Best's decision to downgrade the company.

He said he believes the agency should have focused more on the company's non-U.S. operations, "which have been very profitable over the years and have carried a lot of the reserve earnings drag from the North American business in the last several years."

The decision to run off Converium Reinsurance (North America) was prompted, in part, by a desire to stop those North American liabilities from "bleeding though the earnings," he explained.

Had that entity been kept open, he noted, rating agencies would have wanted to see additional capital pumped into it to counterbalance its volatility, though boosting the unit's capital would not have guaranteed getting a higher rating, Mr. Lohmann added.

"As a consequence, what I am thinking about is the interests of shareholders and the interests of customers who want to trade with us going forward," said Mr. Lohmann. "And their interests would have to be (in having) the highest rating possible for the legal entity. So rating agency considerations did play a part" in the decision to put the unit into runoff, he said.

Another factor in that decision, noted Mr. Lohmann, was the behavior of clients.

"Many of them—even before we made the announcement and made the decision in this direction—were already saying, 'we want to move the business to the parent,'" he explained.

Mr. Lohmann said that Converium is holding discussions with regulators about the possibility of in-force policies being transferred from Converium Reinsurance (North America) into the company's ongoing units.

Timour Boudkeev, a Moody's analyst in London, said that the decision to run off a unit that "had previously been seen as part and parcel of the group" will likely lose the reinsurer some clients at renewals.

Moody's downgraded Converium to Baa1 from A2 and noted that it believes the group "may become prone to adverse risk selection as hitherto profitable clients reassess their relationship with Converium."

While Standard & Poor's Corp. has, thus far, maintained its A- rating on Converium A.G.—albeit under review with negative outlook—it did downgrade its rating on Converium Reinsurance (North America) to BB+ from A- last week.

Rob Jones, an analyst at S&P in London, explained that the agency needs to learn more about certain issues—including the stop-loss arrangement with National Indemnity and potential damage to Converium's franchise—before taking any rating action on the company's other units.

"We'll look at what sort of loyalty they can expect from their client base. If it is pretty thin, then that doesn't augur well for the rating, but if there is a good level of support, then it does," he said.

Chris Waterman, a senior director at Fitch Ratings' European Insurance Group in London, said that Fitch, which currently has a negative outlook on Converium's ratings, would be closely watching how the company's franchise is perceived in the market in the coming months.

He said that although he is not aware of any brokers having removed Converium from their security lists, there may be some "deselection" by clients, and this is something the ratings agencies and other observers will be watching closely.

Cedent concerns

A representative of one broker said that there was concern among some clients about Converium's position, and that Best's downgrade could affect some clients' opinion of the company.

Another broker source said that Converium had not yet been taken off its recommended list, but noted that the downgrade could affect some clients' choice going forward.

Mr. Lohmann said that the company expects to lose some clients because of cancellation clauses in their contracts that allow those contracts to be terminated should a reinsurer's ratings drop below a certain level.

He reiterated, however, that the company would try to work with clients to move any in-force policies to another unit of the group.

The changes announced last week will change the business mix of Converium, noted Benjamin Gentsch, chief executive officer of Converium's Zurich-based operations. Less U.S. speciality lines business will be underwritten by the group, he explained, though certain areas of the business–such as the company's U.S. aviation book–will be maintained.

Previously, the company's premium volume was split roughly into thirds among long-, medium- and short-tail business, said Mr. Lohmann. After the restructuring, the business mix will probably be 40% short-tail, 40% medium-tail, and 20% long-tail, he noted.

North American business currently represents about 34% of the company's volume, he explained, and going forward likely will represent just under 30% or possibly less of the company's book, Mr. Lohmann said.

"We believe that there is good, attractive business to write in the United States, and as a globally active international reinsurer, there are good reasons to write (U.S.) business from a diversification perspective. And as long as we can write that business at attractive prices, we would want to continue to entertain it," he said.

Modernization: Transferring power to NAIC

Continued from page 3
ance Assn.

- For the first time, federal authorities would explicitly pre-empt state rating laws for commercial and personal lines coverages.
- The draft would adopt by text some current NAIC model laws, such as the receivership model law, and pre-empt any state laws that differed with such model legislation.
- The proposal would adopt by reference to title other NAIC model laws and work products.

The third approach "is the most difficult from a policy standpoint," Mr. Berrington said. It would "federalize NAIC models" without Congress or individual state legislatures adopting them, he said.

Currently, many legislatures already automatically incorporate by reference to title updates to NAIC financial regulation rules, such as insurer reporting requirements, noted Robert Zeman, senior vp-industry and regulatory affairs for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America.

But expanding the use of that approach raises several questions about the NAIC—a nonprofit 501(c)(4) organization—and the process by which such regulatory changes are made, Mr. Zeman said. For example, a recurring issue is whether the NAIC gives adequate consideration to interested parties' due process rights, especially given some commissioners' varying interpretations of the NAIC's open meetings policy.

Another provision in the federal draft proposal that is causing general concern is one that considers the adoption of some NAIC models and work products by 10 states to be the threshold for establishing national policy that would apply to all states.

State insurance regulators see the situation somewhat differently, though.

The discussion draft's increased reliance on insurance commissioners is appropriate because most of them are appointed by and act as the representative of a state's governor, said Mike Kreidler, the Washington state insurance commissioner and designated NAIC spokesman. About a dozen commissioners are elected.

Mr. Kreidler expressed misgivings, though, about the draft's proposed creation of a seven-member group—called a "state-national insurance coordination partnership"—to act as a coordinating, rather than regulating, body. The draft calls for three commissioners to be named to that body.

Mr. Kreidler questioned whether the partnership's scope would remain limited. "When you crack that door," he said, "it's one that can't be closed." As state insurance commissioners, "we don't see the need to establish a federal oversight entity."

He said regulators would prefer the use of interstate compacts or memorandums of understanding to increase uniformity in insurance products and processes across state lines.

While state legislators also oppose federal regulation, NCOIL's Mr. Tucker and NCSL's Mr. Calvo expressed concern that legislators have not been invited to participate in the proposed partnership entity.

A spokeswoman for the House Financial Services Committee emphasized that the proposed restructuring of the insurance regulatory system "is still in the draft process" and that Reps. Baker and Oxley "welcome all comments."

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Late News

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Frank F. Haack & Associates Inc. for an undisclosed sum, the Glen Allen, Va.-based brokerage announced. The 87-year-old firm offers a wide range

of property/casualty insurance and employee benefit products and services. Haack affiliate Zywave Inc., an insurance and employee benefits technology and resource provider, is not part of the transaction and will continue to operate as an independent company, HRH said. Separately, HRH said it closed its previously announced acquisition of Chicago-based broker T.J. Adams Group L.L.C.

N.J. guaranty fund retracts RRG assessment

The New Jersey Property-Liability Insurance Guaranty Assn. is telling about 30 risk retention groups to disregard its earlier notification that they must pay into a fund that compensates victims of car accidents caused by uninsured or unidentified motorists. Joseph DellaFera, executive director of the Bernardsville, N.J.-based association, blamed a clerical error, explaining the RRGs appeared on a database of commercial auto insurers that was used to generate the mailing. Federal law permits nondomiciliary states to impose only premium and other taxes on RRGs.

Ohio court upholds asbestos reform

An Ohio appeals court has at least temporarily refused to block implementation of the state's new asbestos litigation reform law. The law, which took effect last week, is the first statewide law that requires plaintiffs in asbestos liability cases to meet specific medical criteria before their claims can proceed to trial. A group of plaintiffs attempted to stop the law from going into effect as scheduled, claiming that it violated the state constitution. Both sides have until Sept. 20 to present further briefs in the case.

Pa. comp claimants satisfied with care

More than 83% of Pennsylvania's injured workers are satisfied with the medical care provided through the state's workers compensation system, found a study by the Bureau of Workers' Compensation. The annual study, mandated under a 1993 reform law, this year received more than 1,900 responses from injured workers. A year ago, only 80.4% of injured workers reported satisfaction with workers comp medical care. Conducted in late 2003, the latest study found that more than 86% of workers said they received treatment within 48 hours of reporting an injury, up from nearly 81% in 2002.

Massachusetts lowers health care surcharge

Massachusetts health care regulators are lowering a surcharge on payments made to hospitals and ambulatory centers to 2.9% from 3.25%. The new surcharge, which applies to bills paid on or after Oct. 1, is imposed on third-party claims administrators, insurers, health maintenance organizations, preferred provider organizations and employers nationwide that administer their own health care plans. Revenues from the surcharge fund a $150 million pool to reimburse hospitals for care provided to the uninsured.

NAIC to fill two posts following resignations

Due to a second unexpected resignation, the National Assn. of Insurance Commissioners' two top leadership posts are vacant. NAIC Vp Jim Poolman, the North Dakota insurance commissioner, resigned his NAIC post last Monday, citing family responsibilities, said Cathy Weatherford, executive vp and chief executive officer of the Kansas City, Mo.-based NAIC. Mr. Poolman had been a candidate to assume the NAIC presidency, which was vacated earlier this month by Ernst Csiszar, the former South Carolina insurance director. Mr. Csiszar resigned both his NAIC and South Carolina posts to become president of the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America.

Mr. Poolman

Many workers exposed to pornography from Web

A three-country survey found 51% of employees have been exposed to sexually explicit material downloaded by co-workers. Employees at 350 U.S., U.K. and Australian companies were polled by London-based SurfControl P.L.C., which provides Internet content-filtering services. More than half of the companies studied were in the United States. The survey found that about 16% of respondents who saw sexually explicit material on a co-worker's computer would consider taking some form of legal action in response. Also, 28% of respondents said they had downloaded such content at work. Employees in the United Kingdom and Australia were more likely to e-mail sexual content, while U.S. workers were more likely to download material, the survey found.

Briefly noted

A New Jersey state court judge has approved a motion by insurance regulators to put into rehabilitation **MIIX Insurance Co.**, a medical malpractice liability insurer now in runoff, reports *Modern Physician*, a sister publication of *Business Insurance*. Executives of the Lawrenceville, N.J.-based insurer have until Sept. 28 to show cause why they should retain control of the company, which once was New Jersey's largest malpractice insurer....Bermuda-based **Platinum Underwriters Holdings Ltd.** has retained Robert V. Deutsch, former chief financial officer of CNA Financial Corp., as a consultant to the reinsurer's board of directors as well as the board's audit and compensation committees. Before joining CNA, Mr. Deutsch was CFO and chief actuary of Executive Risk Inc., a professional liability insurance holding company that Chubb Inc. acquired in 1999....A California state judge has set Feb. 25, 2005, as the trial date for the lawsuit filed by Anthem Inc. against California Insurance Commissioner John Garamendi for his decision to **deny Anthem's merger** with WellPoint Health Networks Inc. The judge also confirmed that there would be an Oct. 5 hearing on Mr. Garamendi's motion to dismiss the lawsuit....Maine officials have selected Anthem Blue Cross & Blue Shield of Maine to administer a plan to provide **state-subsidized health insurance coverage** to the uninsured, including lower-income individuals who work for small employers in the state. Coverage in the so-called DirigoChoice health plan will begin Jan. 1, 2005....William White, director of the **District of Columbia's Office of Captive Insurance** since June 2003, will leave his post Oct. 1 to take a job in the private sector. Assistant Director Dana Sheppard will head the unit until a permanent director is named. The District of Columbia now has 33 captives, with seven applications pending.

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

[8/30-9/3]

Is a taxpayer bailout of the Pension Benefit Guaranty Corp. inevitable?

Yes	73%
No	14%
Do not know	13%

BI Stock Index

[8/30 - 9/3]

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

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

Index	Value	Change
BI Stock Index	2244.96	0.70
Dow Jones	10260.20	0.64
S&P 500	113.63	0.53

Largest gains

ESG Re Ltd.	30.00%
Gainsco Inc.	26.87%
Unico American Corp.	7.21%
WellChoice Inc.	5.69%
Willis Group Holdings Ltd.	5.07%

Largest losses

Trenwick Group Ltd.	-20.00%
EMC Insurance Group Inc.	-6.47%
Vesta Insurance Co.	-5.28%
Fairfax Financial Holdings	-5.14%
SCOR	-4.90%

Weekly change by market segment

Brokers	2.36%
Insurers/Reinsurers	1.09%
Managed Care Organizations	1.60%

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

CDHP: Attracting healthier members

Continued from page 4

50% healthier than all other group members, according to the study, which appears in an August special supplement of the journal Health Services Research that is devoted to consumer-driven health care.

Although the study's sample size "does not allow us to make predictions, there is a concern that (offering consumer-driven plans) could drive up the cost of traditional health plans," said Laura Tollen, senior policy consultant at the Institute for Health Policy.

Ms. Tollen said that the findings do not indicate that consumer-driven plans should not be offered. Rather, she said, the research suggests that "if we're doing it, we need to be careful, monitor them and take steps to mitigate" any adverse selection that occurs, such as implementing risk-adjustment formulas.

The study, titled "Will Consumer-Directed Health Care Improve Health System Performance?" is available on the Web site of the Commonwealth Fund, *www.cmwf.org*. The New York-based nonprofit funded most of the research.

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