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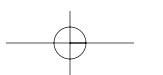
September 9, 2002

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\$4



## Aftermath of a tragedy



**Reinsurer results signal continuing rate hikes / 2**

**Survey sees little relief to rising care costs / 3**

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\$4

## Medicare PPOs seen as plus

Project expected to benefit both employers and retirees

By JERRY GEISEL

**WASHINGTON**—A new government demonstration project to allow Medicare beneficiaries to receive coverage through preferred provider organizations will give retirees a new benefit option and employers another vehicle for cutting retiree health care costs.

But whether the project will permanently reverse a steady decline in the number of retirees opting out of the traditional Medicare program and into managed care—and truly aid employers in controlling costs—will depend on how much money Congress is willing to pump into the program, benefit experts and



managed care companies say. Late last month, the Department of Health and Human Services announced a three-year demonstra-

tion project, starting in January, in which 17 health plans will offer preferred provider organizations to Medicare-eligible retirees. In all, the plans will be available in 23 states where 11 million Medicare beneficiaries live.

Those PPOs will join HMOs as coverage alternatives to Medicare's traditional indemnity program. Until now, HMOs were the only major coverage option under what is known as the Medicare+Choice program. About 5.2 million people, or nearly 13% of the nation's 40 million Medicare beneficiaries, have left the traditional Medicare program and joined HMOs, which

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## Late News

### Zurich to cut jobs in turnaround effort

Zurich Financial Services Group will eliminate jobs and poor-performing business units in an attempt to improve its results. ZFS also said it has added \$1.76 billion to its liability reserves. To cut costs, the insurer will eliminate about 4,500 jobs from its workforce of 75,000. ZFS also will exit several noninsurance areas, including asset management and the Internet-based bank it established earlier this year. ZFS also intends to increase its capital through a \$2.0 billion to \$2.5 billion share issue. A.M. Best Co. cited the reserve addition among other factors in downgrading ZFS last week to A from A+.

### COBRA rates rise, participation falls

COBRA health care continuation premiums are soaring, and fewer eligible beneficiaries are opting for coverage, a new survey shows. Charles D. Spencer & Associates Inc.'s survey found that COBRA premiums charged by employers averaged \$501.71 per month in 2001, up 22.3% over 2000. The average combines premiums for single and family coverage. The results, based on responses from 180 employers, found that 16.2% of eligible beneficiaries opted for COBRA last year, down from 19.5% in 2000. Employees who opted for COBRA due to termination of employment or reduction in the number of hours received COBRA for an average of 10.4 months.

### 9th Circuit OKs arbitration pacts

Employers may require employees to sign agreements to arbitrate Title VII of the Civil Rights Act discrimination claims as a condition of employment, a federal appeals court has ruled. In reversing its own 1998 decision

See LATE NEWS/next page

## Insurers sue Boeing, others Dispute may signal subrogation changes

By DAVE LENCKUS

**LOS ANGELES**—An escalating product liability battle between a group of commercial airline insurers and Boeing Co. over a 1999 passenger jet crash in Hong Kong may signal a change in insurers' subrogation strategy.

Subrogation efforts by insurers against aircraft manufacturers are not unusual after a crash, but most disputes do not head to court, attorneys say.

The litigation stems from the Aug. 22, 1999, crash of China Airlines Flight 642 while landing during a typhoon at Hong Kong's Chek Lap Kok Airport. Three people on board were killed and more than 200 others were injured when the MD-11 aircraft flipped over while landing.

The aircraft inverted after its main right land-

See SUBROGATION/page 38

## Lloyd's facing vote Market expecting approval of reform proposals

By SARAH VEYSEY

**LONDON**—Major reforms at Lloyd's of London are expected to be approved this week despite opposition from several groups representing individual members of the more than 300-year-old market.

The roughly 16,000 members of Lloyd's—both individual and corporate—on Sept. 12 will vote on whether to enact the proposals of the Chairman's Strategy Group, which were circulated to market participants earlier this year.

The reform proposals are intended to modernize and improve the performance of the Lloyd's market, which has seen a series of marketwide losses in recent years, including its largest-ever loss of £3.11 billion (\$4.53 billion) for the 2001 year of account.

Among the plans are a move to annual accounting from Lloyd's three-year system, the closing of the market to new unlimited liability names, and the creation of a franchise system intended to improve regulatory oversight.

In unveiling the proposals, Lloyd's Chairman Sax Riley said: "Our aims are profitability, modernity and transparency.... Investors and policyholders have a choice of where they go, and we want them to be able to compare us easily, and

favorably, with our competitors."

But not all of the market's participants have lined up behind the plans. In particular, various groups representing Lloyd's names have sought to block the reform package. Until the introduction of corporate membership in the 1990s, individual names underpinned the entire capacity of Lloyd's with their own fortunes.

The impact of names' objections on the vote remains to be seen, but market sources expect the resolution to pass. That is because the vote will be weighted according to capacity underwritten at Lloyd's, with each member being granted one vote for each £500,000 (\$775,000) of capacity underwritten. Corporate capital providers—which supplied about 80% of the market's total capacity in 2001—are generally thought to support the reforms.

As the vote neared, the Assn. of Lloyd's Members—the largest names association, with around 5,400 members—last week called on its members to vote against the resolution. And its call was echoed by the Australian Names Assn.; the High Premium Group, which represents names underwriting more than £1 million (\$1.55 million) individually; the Lloyd's Private Capital Assn.; and the two largest Lloyd's members agencies—CBS

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### Spotlight on Sept. 11:

## AFTERMATH OF A TRAGEDY

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## COSTLIEST MAN-MADE LOSSES

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## TYPHOON RAVAGES SOUTH KOREA

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## Inside

### Award reduced in ERISA case

A federal appeals court has ordered a fiduciary liability award against John Hancock Financial Services as the administrator of Unisys Corp.'s pension plan to be reduced. The court upheld breach of fiduciary duty charges under ERISA but struck down several other charges against John Hancock.

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### Preparedness has positives

In uncertain times like these, a lack of control over risks such as terrorist attacks shouldn't prevent people from taking steps to plan and prepare for disaster—before it strikes, Editor Paul Winston writes.

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### Time for remembrance and giving thanks

As the anniversary of the horrors of Sept. 11 nears, sadness lingers for those lost. As rebuilding efforts begin, there is some comfort in the knowledge that life continues, one of this week's editorials says.

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### Victims' litigation raises questions

A suit over the Sept. 11 terrorist attacks that seeks \$1 trillion in damages makes a strong statement but raises questions on whether the plaintiffs may be able to collect compensation.

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### Terrorism insurer forms in Germany

A new insurer backed by the German government is offering nearly \$10 billion in terrorism coverage for property risks.

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

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**CONTINUED FROM PAGE ONE**  
that a lower court relied upon, the 9th U.S. Circuit Court of Appeals in San Francisco said its previous ruling "no longer remains good law." Its Sept. 3 decision in *Equal Employment Opportunity Commission vs. Luce, Forward, Hamilton & Scripps* is now in line with the closely watched March 2001 U.S. Supreme Court decision in *Circuit City Stores Inc. vs. Saint Clair Adams*.



### Calif. lawmakers approve med mal disclosure bill

The California Legislature has approved a measure that would require medical boards in the state to inform inquiring consumers if a doctor has had multiple medical malpractice settlements of more than \$30,000 within the previous 10 years. S.B. 1950 would not be retroactive and would apply to settlements reached on or after Jan. 1, 2003.

### CIGNA reserve boost to result in charge

CIGNA Corp. will record a \$720 million aftertax charge to strengthen reserves related to certain reinsurance contracts, now in runoff, related to annuity products. CIGNA's reinsurance operations, discontinued and placed in runoff in 2000, reinsured a guaranteed minimum death benefit under certain variable annuities issued by other insurers.



# Late News



Mr. Stone

### A founder of Aon dies at age 100

W. Clement Stone, 100, a noted entrepreneur and philanthropist who founded a company that is now part of Chicago-based Aon Corp., died last week. He began working at an insurance agency at age 16 and shortly after founded Combined Insurance Co. of America. Combined eventually merged with the Ryan Insurance Group in 1982 to form what today is known as Aon. Mr. Stone also wrote self-help books based on his personal motto of "positive mental attitude" and with his wife built a foundation that has awarded more than \$275 million to charities and civic groups in recent decades. In 1981, Mr. Stone was

nominated for the Nobel Peace Prize.

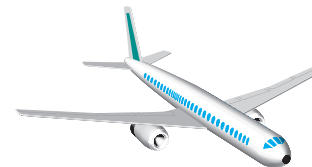
### Moody's outlook negative on life insurers

Moody's Investors Service Inc. has changed its outlook on the U.S. life insurance industry to negative from stable, following outlook changes on several large life insurers last week. New York-based Moody's, which plans to release a report this week on the life insurance industry, cited increasing pressure on insurers' capital and earnings ability, particularly on equity-based products such as variable annuities. Credit losses on investment portfolios and continuing turmoil in the stock market are among the major forces affecting U.S. life insurers, the rating agency said in a statement. Moody's warned that continued negative trends could result in downgrades.

### INSpire files reorganization plan

INSpire Insurance Solutions Inc. has filed a proposed reorganization plan with the U.S. Bankruptcy Court for the Northern District of Texas in Fort Worth. INSpire offers policy administration and claims administration services for property/casualty insurers, managing general agents and

insurance brokers. As part of the company's bankruptcy reorganization plan, INSpire's operating assets would be acquired by CGI Group Inc., a Montreal-based information technology services company.



### Allianz unit buys Cox aviation book

Allianz Marine & Aviation, a unit of Munich, Germany-based insurance giant Allianz A.G. Holding, has taken over the general aviation business of London-based Cox Insurance Holdings P.L.C. Terms of the transaction were not disclosed. Cox, which underwrites through syndicates at Lloyd's of London, said it sold the aviation business to concentrate on personal lines business.

### Brown & Brown to buy agency

Daytona Beach, Fla.-based Brown & Brown Inc., the world's ninth-largest broker, has acquired Dunn-Murphy-White Insurance Agency of Russellville, Ark. Dunn-Murphy-White, which has annual revenues of about \$1.3 million, serves commercial property/casualty clients throughout Arkansas. Terms of the acquisition were not disclosed.

### Briefly noted

London-based reinsurance brokerage **Benfield Group P.L.C.** is setting up an office in Bermuda. A spokesman for the company said the office would open later this year....**Commercial insurance premiums** increased by an average of 28% for annual policies renewed in August, according to a survey of business placed through MarketScout Inc.'s Internet portal. Increases were down slightly from the 33% hikes seen in July, according to MarketScout.

## Check out Businessinsurance.com

To get breaking news as it occurs, visit *Business Insurance's* free online Daily News, at [www.businessinsurance.com](http://www.businessinsurance.com). Sign up for your daily e-mail of breaking news. All the material in the Late News column, as well as other content in this week's issue, is generated from daily news postings that appeared on the *BI* Web site in the previous week.

### Online this week:

- Visit the **Online Forum** to share your remembrances and thoughts on Sept. 11 with other readers.
- Check the **Datebook** calendar for upcoming industry meetings and events or add your own.
- Vote in the latest **Online Poll**: Do you expect consolidation in the P/C industry to increase?
- Sign up to receive a **weekend e-mail alert** of the highlights from each new issue of *BI*.

## Combined ratio grows, while net premiums decline: RAA

# First-half results signal more rate hikes

By JUDY GREENWALD

Reinsurance rate hikes will continue as the industry struggles to overcome the combined impact of years of soft market conditions, massive losses from Sept. 11, low investment income and reserve strengthening.

These price increases—which insurers eventually will pass on to buyers—can be expected for at least the next year, particularly for casualty lines, observers say.

The 30 reinsurers that reported their first-half results to the Washington-based Reinsurance Assn. of America posted a 117.4% combined ratio, compared with a 115.3% ratio reported by a comparable group of

U.S. reinsurers for the first half of 2001.

The 20 largest reinsurers, based on net premiums written, reported a 119.0% combined ratio, up from

Reinsurers

2002 first-half

RESULTS

114.6% reported by 19 of the reinsurers for the same period a year ago. Included in the latest RAA survey for the first time are the results

of Berkshire Hathaway Inc. unit National Indemnity Corp., which did not provide 2001 data.

First-half net premiums written for the RAA reinsurers totaled \$14.61 billion. Premiums declined 3.1% from the comparable period in 2001 if National Indemnity's results are excluded.

The top-20 reinsurers reported a total of \$13.54 billion in net premiums written. That group's premiums decreased 4.7% from the prior-year period, excluding National Indemnity's results.

Rick Smith, president and chief executive officer of global property and casualty reinsurance at Overland Park, Kan.-based Employers Reinsurance Corp., said the results

"reinforce the fundamental need for massive transformation of this industry. The pain is continuing. They were terrible results."

The reinsurance industry must focus on making an underwriting profit, rather than planning to make money on investment income, in this low interest rate environment, said Mr. Smith. He noted that with this philosophy in mind, ERC has not renewed 35% to 40% of its total book of business this year, which resulted in a 6.8% decline in its net premiums written, to \$2.1 billion.

George O'Shaughnessy, chief financial officer and executive vp at Princeton, N.J.-based American Re-

See RAA/page 37

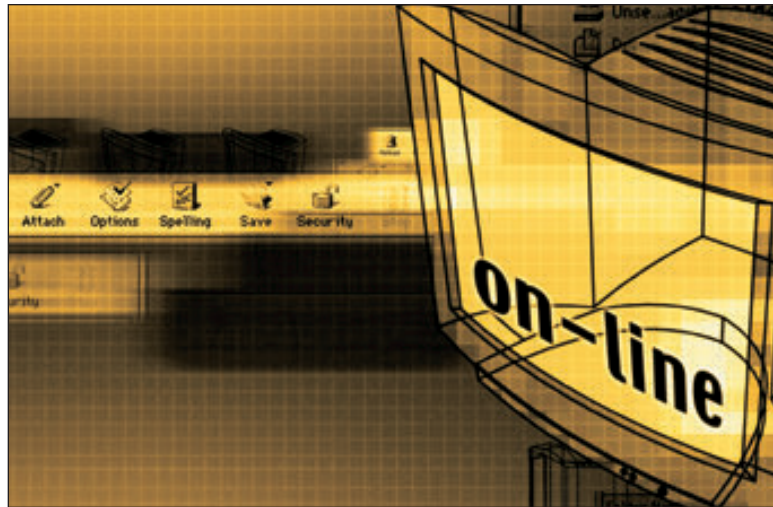
# Online benefits management growing

By JOANNE WOJCIK

Within three years, the Internet will become an important tool for employers in the management of their group health care benefits, according to a recent survey of employer health care coalitions and benefit managers.

An increasing number of employers will use the Internet for enrollment and to educate employees on the use of their health plans, coalition executives forecast in a report released this summer by Health2 Resources, a health care research and strategic planning firm based in Vienna, Va.

Employers also are expected to tap the Internet to conduct disease management programs and to provide assistance to employees in



making health care purchasing decisions, according to the report.

But few, if any, Internet vendors

currently are capable of performing all of the benefits management functions that employers require,

according to findings of the report, "How Employers are Using the Internet in the Management of Health Benefits: The eHealth Promise."

The report, produced in association with the National Business Coalition on Health with a grant from Schering-Plough, is based on responses from 27 employer coalition directors and one-on-one interviews with the benefit managers at four major employers: AOL Time Warner Inc., General Electric Co., General Motors Corp. and R.R. Donnelley & Sons Co. Health2 Resources also drew from other polls, including those conducted by Harris, The Pew Foundation, the California Health Foundation and The Commonwealth Fund.

The chief goals of the research are

to understand the factors motivating employers to use the Internet in administering and managing their health care benefits, to determine the characteristics that employers value in an "eHealth" vendor and to offer guidance to employers seeking to purchase online health care benefit products and services.

Although they do not consider it important now, 77% of coalition directors responding to the Health2 Resources survey said that within three years the Internet will become an important tool for their employer members in managing health care benefits.

The coalition directors estimate that about 40% of their members already conduct enrollment online and that a greater percentage—

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## NAM urges focus on health care quality

By MARK A. HOFMANN

**WASHINGTON**—The Department of Health and Human Services should set up a clearinghouse for information on the quality of health care providers and facilities, according to the National Assn. of Manufacturers.

That was one of seven recommendations made in a NAM study, "Health Care at the Crossroads: Manufacturers' Agenda for Lower Costs and High Quality," released last week.

"I can think of no issue more critical" than rising health care costs and the need to maintain quality health care, said NAM President Jerry Jasinowski.

Low productivity, redundancy and waste within the health care industry are driving up the costs to employers, he said.

NAM members typically pick up about 80% of their employees' health care costs, but cost-shifting has grown more common and employees are likely to eventually pay a higher proportion of the costs, Mr. Jasinowski said. He added, though, that most employers want to maintain the current employment-based health care system.

Neil Trautwein, NAM's director-employment policy, said that about one-third of NAM's 14,000 member companies have seen health care premium hikes of 26% or more during the past year. About 97% of NAM members currently provide health benefits, and "affordability is of critical importance," he said.

According to the NAM report, "only the federal government has the resources and reach necessary to disseminate" widely information about health care quality, particularly to smaller employers. Mr. Trautwein said that the Washington-based manufacturers' group had spoken

See **QUALITY**/page 37

## Survey finds employers shifting costs, cutting benefits

# Cost of health benefits to keep rising

By MARK A. HOFMANN

The cost of employer-provided health care benefits is increasing at a double-digit rate and is unlikely to abate in the near future, a survey reveals.

As a result, employers are asking employees to assume more of their health care coverage costs and, in some cases, are reducing their benefit offerings, according to the survey, published by the Kaiser Family Foundation and the Health Research & Educational Trust.

"Pretty much every rock we looked under, we found another problem for employers," said Drew Altman, president of the Menlo Park, Calif.-based Kaiser Family Foundation, as he and others released the report at a Washington news conference on Sept. 5. The foundation is not affiliated with managed care company Kaiser Permanente.

"Health care costs are rising sharply again, workers are starting to pay the price, and employers are telling us we can expect more of the same next year," Mr. Altman said.

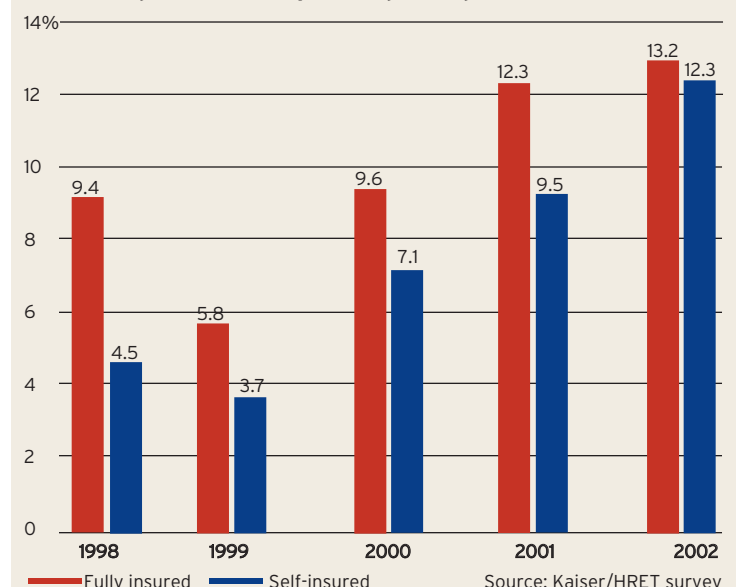
He said he looked hard for good news in the survey but couldn't find any. "Maybe the good news was, it could have been worse," Mr. Altman said.

According to the survey, premiums for employer-provided health care coverage in 2002 increased, on average, by 12.7% from 2001—the largest single-year increase in more than a decade. Survey results were based on responses from 3,262 randomly selected public and private

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### COST OF BENEFITS GROWS

Average Increases, by funding arrangement, 1998-2002



## Court seeks to ban sealed settlements

By MARK A. HOFMANN

**COLUMBIA, S.C.**—A move by judges of the U.S. District Court for South Carolina to ban sealed settlements is drawing a decidedly negative response from businesses and insurers.

The proposed rule, which could be adopted after a public comment period ends at the end of this month, could hamper the discovery process, encourage litigation and set "price floors" for certain types of cases without taking into account the unique nature of each case, say attorneys. In fact, judges already have the power to reject settlement agreements they regard as inappropriate, some point out.

But a prominent consumer advocate counters that sealed settlements can threaten public health and safety and should be abolished.

The controversy began last month when the U.S. District Court for South Carolina in

Columbia issued a proposed amendment to a 2001 local rule on sealing documents. "No settlement agreement filed with the court shall be sealed pursuant to the terms of this rule," reads the proposed amendment in its entirety. The 10 active judges of the federal court unanimously agreed to the change after receiving a letter from Chief Judge Joseph F. Anderson, calling for the change in the wake of recent business and church scandals.

Although the federal district court isn't usually regarded as a trendsetter for other courts, business and insurer groups find the move troubling for a variety of reasons.

"It's an ominous development that they are adopting an absolute ban and it could have serious implications for manufacturers, especially if it's adopted by state courts. It's an absolute ban and you can't get any worse than that," said Quentin Riegel, vp-litigation for the National Assn. of Manufacturers in Wash-

ington.

"What is of concern is that one of the greatest devices for facilitating settlements is to keep the terms secret. This will take that right away," said Victor E. Schwartz, general counsel of the American Tort Reform Assn.

"Also, the fact that settlements can be kept confidential helps facilitate discovery. In other words, the defendant is more likely to hand over documents even if they are embarrassing when it knows those documents can be kept private unless it chooses to litigate the case. And this too will be thwarted by the South Carolina ruling," said Mr. Schwartz, who is also a partner in the Washington office of Kansas City-based law firm Shook, Hardy & Bacon L.L.P.

Despite the South Carolina court's lack of prominence, "other federal courts are likely to see what occurs in the South Carolina courts and see if settlements are truly stifled and weigh independently the benefits of opening up sealed settlements and the risks that might

See **SETTLE**/page 36

# 2nd Circuit trims ERISA award against Hancock

By SALLY ROBERTS

**NEW YORK**—An \$85 million court award to Unisys Corp.'s pension plan for alleged breaches of fiduciary obligations by plan administrator John Hancock Mutual Life Insurance Co. will be reduced following a recent federal appeals court ruling.

Although the 2nd U.S. Circuit Court of Appeals in New York ruled that Boston-based Hancock did, in part, breach its fiduciary duties under ERISA by using non-guaranteed assets in Unisys' pension plan for its own benefit, it was not in viola-

tion of other claims made by the plan, the court said.

The 19-year-old case, *Harris Trust & Savings Bank vs. John Hancock Mutual Life Insurance Co.*, was remanded to the U.S. District Court for the Southern District of New York for further proceedings, including determining a new measure of damages based on the Aug. 20 ruling by the 2nd Circuit.

The case stems from a 1983 suit brought against Hancock by Harris Trust, then the trustee of Sperry Corp.'s pension plan. Sperry Corp. became Unisys Corp in 1986.

In 1941, Sperry bought from

Hancock a group annuity contract to fund a retirement plan. Under the plan, any extra interest income the insurer generated beyond what was needed to pay benefits was credited to the Sperry plan but termed "free funds" and was part of Hancock's general investment account.

In participating group annuity contracts, insurers and plan sponsors share any gains or losses on invested premiums beyond what the insurer needs to pay out the guaranteed benefit to retirees. In 1977, 1979 and 1981, Sperry's pension plan withdrew \$12 million from

the "free funds" to invest elsewhere, according to court papers. In 1982, Sperry again sought a withdrawal from the free funds but John Hancock refused, citing its own cash needs. Harris Trust sued alleging the insurer breached its fiduciary duty.

Following years of appeals, a U.S. District Court judge in New York ruled in November 2000 that Hancock had violated ERISA by breaching its fiduciary duties when it: refused Sperry's 1982 request to roll over free funds; refused to revalue the liabilities of the fund; collected a charge for administering the

fund; and made investment and allocation decisions that placed its own interests ahead of the interests of the plan. The judge awarded the pension plan \$84.9 million in damages, interest and attorneys fees (*BI*, Dec. 4, 2000).

On appeal, the 2nd Circuit threw out the District Court's ruling on the first three charges, ruling that they were contractual issues outside the scope of Hancock's fiduciary duties under ERISA.

The appeals court, however, did affirm the self-dealing claim against Hancock with respect to fixed and frozen asset investment decisions and litigation and lobbying expense allocation decisions. It vacated and remanded for further proceedings other self-dealing charges.

According to court papers, from at least as early as 1976, Hancock invested assets of the pension plan in its own home office properties and charged itself rent, thereby generating investment income. The rates of return were consistently lower than the return on other investments it made for other customers, as the insurer was charging itself below-market rent on its properties, court papers say.

Moreover, Hancock chose not to allocate any of these investments to the portion of the general account for which it bore the investment risk. Instead, it allocated the investments to the pension contract, so that policyholders bore the investment risk, court papers say.

The appeals court also affirmed the lower court's finding that Hancock improperly allocated litigation and lobbying expenses to the plan, rather than from its own funds, the court ruled.

"It's a mixed bag," said Lawrence Kill, a partner with Anderson Kill & Olick P.C. in New York, referring to the appeals court decision. "It does reduce the amount of damages that the plan will be entitled to once the dust settles." On the other hand, "we're gratified that it sustained the basic principle that Hancock has violated its fiduciary duties under ERISA in terms of its allocation procedures," said Mr. Kill, who represented the pension plan.

Hancock declined to comment, but in an Aug. 22 filing with the Securities and Exchange Commission, stated: "The matter remains in litigation and no final judgment has been entered."

*Harris Trust & Savings Bank vs. John Hancock Mutual Life Insurance Co., 2nd U.S. Circuit Court of Appeals, No. 01-7608. Aug. 20, 2002.*

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SEPTEMBER 11, 2001

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# Share Sept. 11 recollections

As we approach the anniversary of the tragic events of Sept. 11, 2002, *Business Insurance* invites readers to share their thoughts and recollections on how the terror affected them and the industry at large.

The Online Forum area of [www.businessinsurance.com](http://www.businessinsurance.com) is a feature designed to allow readers to exchange ideas and information. *Business Insurance* has created a special discussion topic, "Sept. 11 Recollections" to allow readers to share their words on the tragedy with colleagues and others. The forum invites such postings as:

- Where you were and what you were doing when the attacks occurred.
- Remembrances of colleagues or loved ones lost in the disaster.
- Your thoughts on how the tragedy has affected you personally and the industry generally.
- Opinions on how well or poorly the insurance in-

PHOTO: IMAGE DIRECT



dustry has responded to this disaster.

Please visit *Business Insurance's* Online Forum in the weeks to come to share your thoughts and please return often to read the thoughts and recollections of others.

"The doors of wisdom are never shut."

*Benjamin Franklin*

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## Paul Winston

### Scouts' motto says it best: Be prepared

It has been almost a year since the terrible events of Sept. 11 opened the eyes of Americans to the risks they face from terrorism.

Over the past 12 months, everyone has no doubt analyzed his or her own personal exposure to the terrorist threat and has mentally, if not physically, made adjustments. I expect that, in most cases, people have simply adapted their outlook to living with the specter of terrorism, reasoning that, on an individual level, they have very little control over predicting or preventing the threat. Or, perhaps, for many, Sept. 11 seemed so unreal they deny it could ever happen again.

For others, though, the presence of such a risk outside of their control is likely a constant source of fear and unease. Relying on other institutions, people or the government to protect them from harm offers little personal comfort. To the complacent, these people seem like worrywarts.

But when businesses face the same quandary and busily prepare for the worst, it is deemed prudent. I wonder about that double standard between how businesses and people respond to the same threat.

If a business were to perform the equivalent of singing "Que sera, sera," they'd face a revolt from employees, shareholders and perhaps even customers.

Even though most businesses have no more ability than individuals to predict or prevent acts of terrorism, that does not prevent them from actively taking steps to analyze their exposure and minimize their potential losses.

In the past year, many businesses have scrambled to dust off and update contingency plans, train personnel for emergency situations and seek ways to shift the potential financial impact of an attack to insurers or alternative mechanisms. They have lobbied Congress for some sort of backstop to encourage insurers to remain and offer more coverage in this market. And they have pressed their insurers not to make any knee-jerk decisions with regard to their coverage.

In short, when faced with a threat, they do what they can to plan for and manage the risk. They take these measures now, even though they cannot predict where the next al Qaeda attack on the United States is likely to

occur, let alone prevent such an attack.

It's this process of crisis planning that puts a business in a better position to respond when a disaster occurs. Part of that is because of the plans and safeguards implemented, but I suspect even more important is simply a recognition that a company cannot afford to be complacent.

Acknowledging that a peril exists and taking action seems more likely to minimize a future peril than the course that I think many Americans are taking. Perhaps, it occurs to me, more individuals should actively plan and prepare to protect

themselves from harm, rather than accept the situation as outside of their power or as the responsibility of the government.

Such personal risk management was certainly seen on a grass-roots level in response to the perceived threat from the so-called millennium bug a few

years ago. While many people ignored that potential computer threat, a sizable number took steps to plan and prepare for the risk that computer shutdowns would throw society back into the Dark Ages. In hindsight, some of the stuff they did may seem nutty, but at the time it made more than a few people wonder whether they were adequately prepared.

In the case of terrorism, it seems as if the majority of the U.S. population is content to rely on the government to protect them from hostile actions. While that is truly the government's role, after the lessons of Sept. 11, such complete reliance on Uncle Sam might be misguided and leave us unprepared.

I'm not advocating forming militia to defend against hostile forces. But, as with businesses, maybe getting people more engaged in the process of planning and preparing will better ready them for whatever threat lies ahead—be it a terrorist attack, an earthquake or a chemical spill. Getting people more involved in community education efforts, emergency preparedness drills and other civil defense-type activities surely would make whatever government response occurs more effective and, at the same time, build on the spirit of community that emerged so notably in the wake of the attacks.

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## Editorial

# Thankful for resiliency

**I**N ANY DISASTER, the stories of survivors are often the most powerful. On Sept. 11, two employees of the Port Authority of New York & New Jersey were still descending stairs several floors above ground when the World Trade Center's North Tower collapsed around them. They survived and were among the few found alive in the wreckage. Thousands more, amid the horrors of that day, escaped before the towers fell—and survived.

It is difficult to know what their memories, to varying degrees terrible or vivid, are like. But they went home to their families and back to their jobs; their lives, at least outwardly, returned to a daily routine.

For many of us who weren't there, Sept. 11 has grown somewhat distant; we've absorbed it as a type of loss that is now, sadly, imaginable. Its impact on everyday life remains pervasive, as demonstrated by ubiquitous security checks, job losses, a damaged airline in-

dustry and—for risk managers—a markedly tougher insurance market and a newly clarified terrorism risk.

But these, in a way, are ordinary problems—problems made worse by disaster but ordinary nonetheless.

The economy was already in recession before Sept. 11, and the insurance market had already begun to harden. Economists now say that with the exception of a few industries like travel and tourism, the terror attacks have been less damaging than initially feared. No one doubts that the economy will rebound; no one doubts that the insurance market will turn. Meanwhile, risk managers will do what they've always done to cope with circumstances.

One of the remarkable things about New York in the weeks after the attack was how quickly the city outside the Ground Zero area resumed functioning.

A year later, this is what we have to be thankful for: the survivors, and life going on.

**A year later, this is what we have to be thankful for: the survivors, and life going on.**

# Don't break the seals

**S**OMETIMES, AN IDEA with a great deal of surface appeal loses a good deal of its luster when subjected to closer examination.

Take, for example, a proposal by the judges of the U.S. District Court for South Carolina to ban the sealing of settlement agreements in civil suits before their court.

As journalists and as citizens, we're for open records. The public has a right to know what its elected officials are up to. But settlement agreements don't fall under the same category as, say, the deals cut between state attorneys general and outside counsel in divvying up the proceeds from tobacco settlements.

Instead, settlement agreements allow parties to reach an agreement without going to trial, an agreement subject to judicial approval.

The reasons for sealing an agreement are legion, and

they're not all favorable to defendants. Details of a plaintiff's personal life may be involved, as may trade secrets.

The possibility that such sensitive information might become public knowledge for little good reason is certain to make defendants and plaintiffs alike think twice before entering into an agreement.

That would mean more litigation, higher costs and in many cases, the same legal outcome. It's also unnecessary—judges can reject settlements they find unacceptable.

By forbidding the sealing of any settlements, the South Carolina judges would be setting a dangerous precedent that could hamper justice in the name of promoting it.

That's a precedent other courts would do well to ignore.

## Schillerstrom



## Letters to the Editor

### Risk managers' response to adversity spurs pride

To the editor: Your coverage of the events over the last year has been informative and imperative for risk managers who are coping with an array of issues since last Sept. 11. Thank you for your excellent efforts on behalf of the risk and insurance world in which we work.

We are one year from the tragedy that shook the world, and it hasn't gotten much easier for many. Personally, we grieve for the families who lost loved ones and for our colleagues at Marsh, Aon and the many others impacted by unimaginable evil. We continue to pray for the victims who survived and for their sustained recovery and attempts to find normalcy in their lives. We worry about the security of our families, and we continue to struggle with the question of "Why?"

In our professional lives we struggle: with insurance markets testing our mettle and our patience, with an economy in recession, with unparalleled corporate scandals, with restricted travel and personal freedoms, with increasing job loss and dislocation, and with the ongoing war on terrorism and the defense of our right to be free.

In the midst of all this that is negative, there are rays of light and hope. The personal sacrifice and commitment to recovery, of so many, at the World Trade Center and the Pentagon is a testament to the human spirit. It speaks to all we are capable of as people. It shows we can work together for good when we put our hearts and minds to it.

I am proud that RIMS was able to launch and maintain a Crisis Resource Center on our Web site, which houses several links to help risk managers stay abreast of the latest information available to them. The Spencer Educational Foundation, administered by RIMS, established a September 11 Memorial Scholarship Fund, in an effort to ensure a continuation of the talent and knowledge lost on Sept. 11, 2001.

RIMS also assisted the Assn. of the Bar of the City of New York by offering advice on specific insurance-related claims. Many of RIMS' chapters donated money and resources as well.

RIMS stands united with all those who continue to work together both personally and professionally to help in the recovery. On behalf of RIMS members and leadership, thanks to all those who try daily to make this world a better place to live and resist the evil that was 9/11/2001.

**Christopher Mandel**  
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# Aftermath of a tragedy

Sept. 11, 2001, was a day of tragedy that redefined, for many, the idea of risk and loss, and its impact continues to be felt.

The terrorist attacks claimed more than 3,000 lives, among them hundreds of people who worked in the insurance industry, and resulted in the largest-ever insured loss.

The attacks also triggered claims across almost all lines, including life, property, liability, aviation, business interruption and workers compensation. Estimates of total insured losses vary widely, but generally are expected to exceed \$50 billion.

The effects of the attacks were almost immediate. Insurance capacity shrank, and a market that was already firming before the attacks quickly hardened. Security and contingency planning took on greater importance for businesses. And concentration of risk became a concern for underwriters and insurance buyers alike.

One year later, *Business Insurance* examines the changes in the industry and the lessons learned.

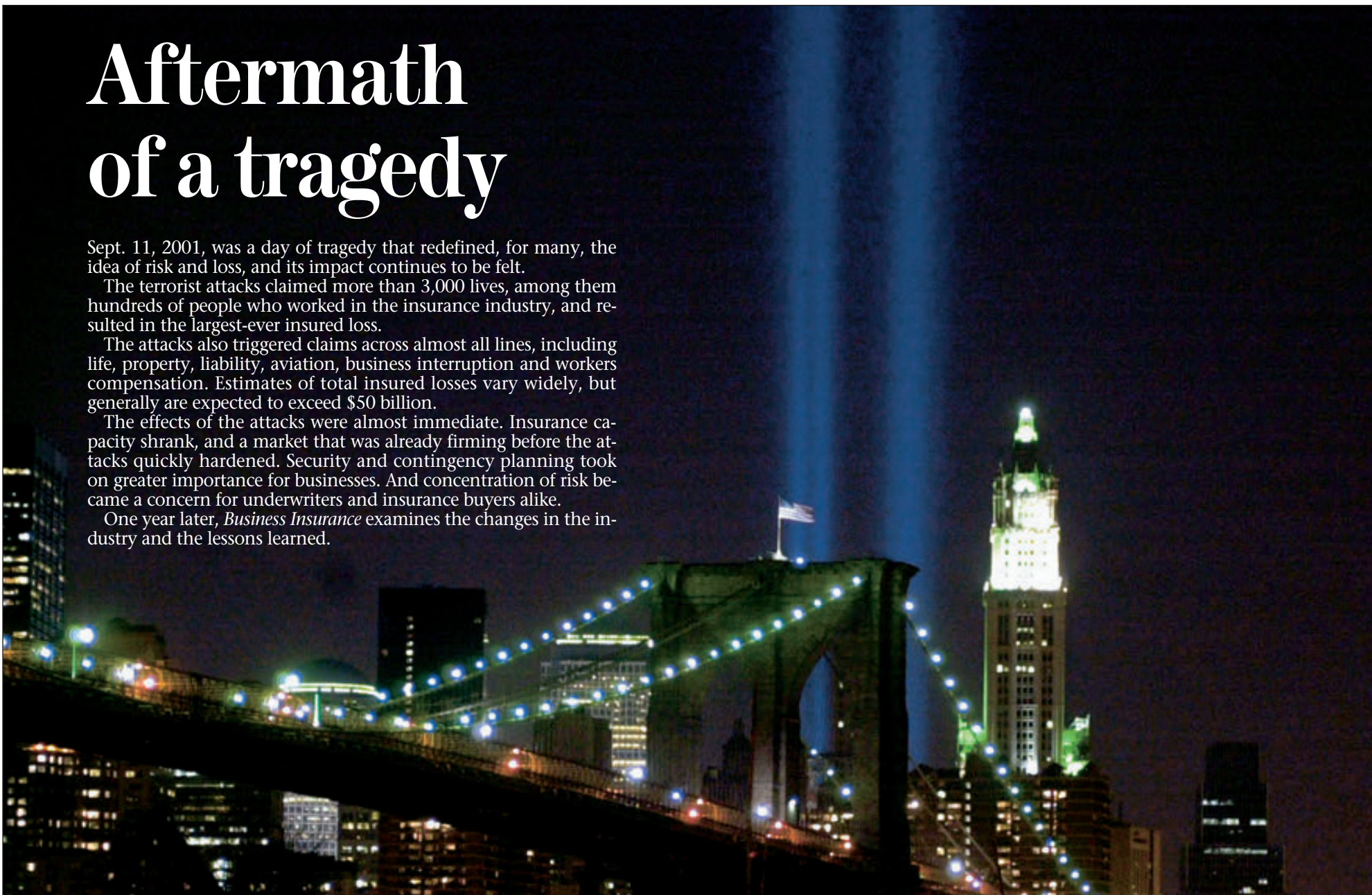


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Cover photo: Zuma Press

## Loss picture still unclear

By **MARK A. HOFMANN**  
and **MEG FLETCHER**

A year after the Sept. 11 attacks, insurers, industry analysts and others are still trying to determine exactly how much the incident will ultimately cost.

And, say observers, the final tally may not be known for years.

"I keep seeing estimates being thrown out, but I don't think anybody really has a clue as to what the total bill will be," said Sandy Vietor, deputy chairman of global risk solutions at Willis of New York.

The attacks led to "multiple claims from multiple insureds, and the fact is that there's no one entity that collects all the claims data," said Mr. Vietor. "Two of the biggest unknowns are business interruption claims and liability claims, and certainly liability may take years to resolve and business interruption involves the incredibly complex negotiation and evaluation of what was the actual business losses to any one business."

In general, loss estimates have not changed significantly in recent months, even though estimates differ by tens of billions of dollars.

For example, Matthew T. Coyle, director at Standard & Poor's Corp., said, "We're still at the \$30 billion loss estimate." He added, "clearly you're seeing some insurers increase their estimates....Certainly, business interruption is a wild card."

Matt Mosher, a financial analyst at A.M. Best Co. in Oldwick, N.J., said Best is still projecting ultimate losses of \$30 billion to \$40 billion.

The New York-based Insurance Information Institute said on Sept. 5 that it estimates insured losses will reach \$40.2 billion.

Chicago-based consulting firm A.T. Kearney continues to project losses in New York at more than \$50 billion, an estimate released in late November based on data the firm and Morgan Stanley gathered. This includes losses of:

- \$10 billion in business interruption.
- \$20 billion in liability.
- \$3.5 billion in aviation liability.
- \$3.5 billion in property loss to the World Trade Center if the attack is deemed a single occurrence and double that if it's two occurrences.
- \$5 billion to other property.
- \$3.5 billion in workers compensation.

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## Buyers decry coverage woes

By **MICHAEL BRADFORD**  
and **ROBERTO CENICEROS**

Risk managers are venting some frustrations with the performance of insurers a year after the Sept. 11 terrorist attacks.

Many of their complaints focus on coverage availability problems, which some risk managers claim is due to an overreaction by underwriters. Some insurers have become opportunistic, using the attacks as an excuse to raise rates, some buyers charge.

"There has been a sort of stampede to take advantage of the scenario, to some degree," said Wayne Salen, director of risk management for Niagara County in New York. The reality is, the bulk of the industry didn't suffer Sept. 11 losses, he said. Yet many insurers are using it as a justification of why they are raising rates and curtailing coverage in a market that already was hardening before the attacks, he said.

"To a large degree, I think the carriers that suffered the least are the ones that are taking advantage of it more than anyone else," Mr. Salen said.

While he is not charging price-

gouging, Mr. Salen said price hikes have gone beyond what he considers appropriate. Increases can be justified on the basis of past losses and cash-flow underwriting cycles, but most insurers don't need to blame the Sept. 11 attacks, he said.

"I think they are more focused on restricting coverage" rather than providing new coverages or improving existing ones since the attack, said Steven W. Sachs, senior vp and practice manager for the real estate practice group of Hobbs Group in Columbia, Md. "I start my underwriting meetings challenging them to really underwrite."

But he encounters frustration, Mr. Sachs said, dealing with an insurance market in which no underwriter gets fired for saying, "No."

It is the lack of terrorism coverage, in particular, that has chafed risk managers.

Niagara County can't get the coverage on its property because insurers won't provide it, Mr. Salen claimed. It's frustrating for risk managers, he said, when there's no competition for your account. And if only one insurer is willing to look at the risk, then you can't test one

See **RESPONSE**/page 21

The underwriters, brokers and staff of the Lloyd's of London insurance market offer their deepest sympathies to everyone involved in the tragic events of September 11.

They struck at the heart of our community, and our thoughts are with all those who lost family, friends and colleagues.

LLOYD'S

# Underwriters adjust to terrorism risks

By **RODD ZOLKOS**

Contrary to the beliefs of some insurance buyers, more goes into underwriting stand-alone terrorism property coverage than insurers simply setting a high price, crossing their fingers and hoping for the best.

Though it's a new area of underwriting for most insurers, the approach has much in common with underwriting other catastrophe risks.

"I'm pretty impressed with the degree of thought and analysis that

I see going into the underwriting," said Richard S. Betterley, president of Betterley Risk Consultants Inc. in Sterling, Mass.

"To some extent, there's a price that the market will bear," said Mr. Betterley, who has studied the market for terrorism coverage. But beyond that, "I'm seeing care in underwriting that I'm happy to see," he said. "That doesn't mean the price isn't too high, but at least the care is being applied."

That care involves "as much skill as there can be in the private sector, as opposed to the CIA, the (Nation-

al Security Agency) and that," the risk management consultant said. "It's not just throwing darts at a dart board."

"Many people think we're just reaching for price," conceded John F. Graham, senior property executive with American International Group Inc. in Boston, one of the markets that is providing the stand-alone terrorism coverage.

But, in fact, his company has a rigorous approach to underwriting terrorism risks, and has staff dedicated to terrorism coverage. "The product is limited to a select group

of underwriters whose primary responsibility is to underwrite terrorism," Mr. Graham said.

That staff is broken down into four areas: pure North American business, pure foreign business, U.S. multinational companies and energy-related exposures anywhere in the world.

In considering a submission, the first thing AIG's underwriters ask for is a schedule of the values at the site. The underwriters are less interested in the construction of the building or how it might be protected against fire than whether the

building is a potential target, Mr. Graham said.

"The next question is how vulnerable you are," he said. "We've actually developed a threat-assessment questionnaire." The online questionnaire was developed in conjunction with a class at the U.S. Military Academy at West Point.

After examining the questionnaire responses, "we'll actually send somebody from AIG out to the site" to examine potential vulnerabilities, Mr. Graham said.

The company also considers such issues as, "Are you a mid-range high rise next to a high-rise building that might be a target?" he said.

"We also keep track, of course, of multiple occupancies at a site," Mr. Graham said. "We might have 20 insureds at one site." And AIG limits its own exposure within a geographic area, committing no more than \$1.5 billion in limits within a one-half mile radius.

Mr. Betterley said that, in general, the insurers writing stand-alone terrorism coverage seem to be "doing a pretty good job of recognizing that the little guy in the vicinity of a (target) property is at significant risk as well."

Because the stand-alone terrorism covers are site specific, policy language generally is crafted individually for each case.

Terrorism policies are "one-offs," said David Attisani, a partner with the Choate Hall & Stewart law firm in Boston.

That specificity in the language of stand-alone terrorism policies is the flip side of the breadth in the language of standard terrorism exclusions now widely included in standard property policies.

"Obviously, the art of underwriting, in part, is the art of imagining risk," said Mr. Attisani, who is chairman of his firm's insurance and reinsurance group. "And here, we have underwriters trying to imagine what terrorists are thinking next."

"I think that's why these exclusions are so broadly written," he said. "This is a peril that's very difficult to anticipate, it's very difficult to exclude in a very narrowly tailored way, and it's also very difficult to price."

As insurers come to grips with terrorism risk, modeling the exposure is becoming a key element in the process, much as it is with natural catastrophe risks.

"It's absolutely critical to us because, obviously, I can tell you what I have and where it is and what a building looks like, but none of us can tell you what a 200-pound bomb can do on a certain floor at a site. That's what modeling can do for us," AIG's Mr. Graham said.

"The modeling is no different than what we've done over past years with earthquakes and hurricanes," he said. "It's just that this time, it's a risk of terrorist attacks."

Last week, Boston-based AIR Worldwide Corp. released its AIR Terrorism Loss Estimation Model, a probabilistic model designed to estimate the financial impact of in-

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## Underwriting: Adjusting to terrorism risks

Continued from page 12

sured property and workers compensation losses from potential future terrorist attacks in the United States.

"The model itself is based on the fact that we've been doing modeling of natural catastrophes for 15 years," said Jack Seaquist, terrorism model product manager at AIR Worldwide. "It keys around trying to understand the full range of things that could happen."

"We try to enumerate all the possible events that could happen, and we key those to landmarks, landmark properties," Mr. Seaquist said.

In the next step, "you have to look at the issue of frequency and severity of attacks," Mr. Seaquist said. "Then, down to each of those landmarks, you have to look at what is the likelihood that that landmark would be the target of an attack and what would be the likely method of attack."

The AIR model relies on opinions provided by terrorism experts—people "who have many years of field work, some of them with the government," said Mr. Seaquist, noting that the experts were previously involved in counter-terrorism with organizations such as the FBI, the

CIA or the U.S. Department of Energy.

"Ultimately, we can take the information that we get from them and allocate that down to the individual landmarks and give extra weight to the trophy landmarks," Mr. Seaquist said. Comparing that data to an insurance company's exposure information, the model can determine the company's property and workers compensation terror exposures.

Modeling firm Risk Management Solutions Inc. will release its terrorism model this month. Like the AIR product, RMS' model relies on opin-

ions provided by terrorism experts, according to Robert Muirwood, head of the global risk modeling unit at RMS in London.

Mr. Muirwood said the RMS model ranks potential targets, examines their levels of defense, analyzes various "attack modes" and assesses the likelihood of certain types of attack. In addition, it considers the impact of various attacks.

Ultimately, the tool will help insurers determine the appropriate price for a line of coverage in a particular location, Mr. Muirwood said, as well as helping them identify accumulations of exposures.

## EAP use surges after 9/11

By MICHAEL PRINCE

Despite their widespread devastation and far-reaching negative effects on the U.S. economy, last September's terrorist attacks have led to few changes in employee benefit plans.

The use of mental health and counseling services increased greatly immediately after the attack, and some employers continue to see more use of employee assistance programs. In general, though, employees have not been demanding additional benefits and employers have not been making significant alterations to their benefits programs in response to the attacks.

"It hasn't had an impact like you might expect it would," said Bob Lawrence, senior vp of human resources and services at Empire Blue Cross & Blue Shield in New York. Empire lost nine employees in the attacks that destroyed its World Trade Center headquarters.

"From the benefits perspective, I would say it's a non-event," said Arlene Soto Baltrusitis, vp of benefits at American Express Co. in New York. American Express lost 11 employees in the attacks and had to move out of its headquarters, located near the World Trade Center, for nearly a year.

Charlene Edwards, vp of employee benefits at Lend Lease Real Estate Investments Inc. in Atlanta, said she has seen "no tangible difference in terms of use of benefits."

Perhaps the one benefits area that was significantly changed by the attack was employee assistance programs. Immediately following the Sept. 11 attacks, EAP use surged, especially among employers located in the New York City area.

At Empire, for example, the spike in EAP use continued through 2001. By early 2002, though, activity had returned to pre-Sept. 11 levels and has stayed there every since, Mr. Lawrence said.

At American Express, EAP use similarly rose last fall, but "it trailed off very quickly," Ms. Baltrusitis said.

Among some employers, though, EAP use has continued at high levels, said Shirley Repta, director of operations for Harris, Rothenberg Int. L.L.C., a New York-based EAP. One year after the attacks, EAP use by Harris Rothenberg clients is about 10% to 20% above pre-attack levels.

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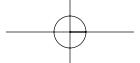
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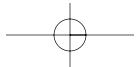
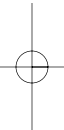
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See EAP/page 16



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# EAPs: Employers promoting programs to employees

Continued from page 14

Ms. Repta noted that, surprisingly, many of the callers are just now dealing with the emotions raised by the attacks. "There is still a steady group of people dealing with the trauma for the first time," she said.

At Magellan Health Services Inc., the largest U.S. managed behavioral health care company, use of the company's EAP services increased after Sept. 11 and has not returned to pre-Sept. 11 levels, according to Bill Barr, executive vp of Magellan's workplace group in St. Louis.

The increased use of assistance services has greatly raised the profile of EAPs as a benefit both for employees and employers.

**'There is still a steady group of people dealing with the trauma for the first time.'**

*Shirley Repta  
Harris, Rothenberg  
International L.L.C.*

"It raised awareness that you had these benefits and people weren't using them," said Edward Kaplan, national health practice leader for The Segal Co. in New York.

Employers now have a greater appreciation for EAP services such as onsite trauma counseling and treatment for employees' emotional and mental health concerns, and they are promoting them more often to employees.

"Employers want to make sure they are keeping the EAP services visible to employ-

ees," Mr. Barr said.

And employees now value EAP services more and are less hesitant to use them.

EAPs are "a benefit that has really come to the forefront for employees," said Charlie Montreuil, vp of corporate human resources for Carlson Cos. Inc., a hotel and restaurant company based in Minneapolis.

The whole field of mental health benefits has undergone a similar shift in the way it is perceived by employees.

For example, the number of visits to the Magellan Health Web site for information on mental health concerns jumped by 400% following the terrorist attacks, according to Mr. Barr. The number of visits slowly declined, then picked up again in early 2002 and has increased each month, he said.

The increased use of mental health benefits has also led to growing dissatisfaction with the lack of parity for such services under most benefits plans, said Eric Wurzel, a partner with Travers, O'keefe & Associates Inc. in New York.

Employees are now more aware that the mental health benefits they receive are less generous than are the benefits that their employers provide for other health care, he said. Many plans, for example, place a limit on the annual number of visits to mental health providers, though they place no similar limits on provider visits for other health care.

"When you're never using benefits, you don't see a lot of problems with the system," Mr. Wurzel said. Employers that are now facing increased costs for health care coverage, though, are probably reluctant to raise costs

PHOTO: GETTY IMAGES



**Employer-sponsored programs such as EAPs are reaching out to help people come to terms with the horrors of Sept. 11.**

further by extending mental health benefits, he said.

Despite the widespread lack of parity for mental health benefits, employers are doing more to inform workers about available EAP services, said Veronica Hellwig, senior consultant at Watson Wyatt Worldwide in Wellesley Hills, Mass.

"Employers realized they are not just coverages that get shoved to the side, that employees care about them," she said. "Employers realized how important they really were."

For example, at Carlson Cos., the EAP services have been promoted through e-mails and newsletters to ensure that people know of their availability, Mr. Montreuil said.

The company is also promoting its vacation and paid-time-off benefits during this year's upcoming open enrollment season to help employees cope with stress over terrorism.

"Spending more time with your family and taking time off is important," Mr. Montreuil said.

## CNA Remembers

### September 11



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# Policy terms focus of WTC cover battle

By DOUGLAS McLEOD

**NEW YORK**—There is little consensus over the likely outcome of the legal brawl between World Trade Center leaseholder Silverstein Properties Inc. and its insurers over the complex's \$3.55 billion insurance program.

Most observers agree on one thing, though: The crucial step in resolving the dispute will be deciding which of two sets of possible coverage terms governs a program for which final policies were not issued on Sept. 11.

**'I would think it would be extremely hard for Silverstein to prevail if (the Willis form) or something like it is found to be the governing form.'**

*Michael F. Aylward  
Morrison, Mahoney & Miller*

U.S. District Judge John S. Martin, who is overseeing the litigation between Silverstein and its insurers, decided last month to split the litigation into two phases. A previously scheduled November trial will now resolve which policy form controls the program—one prepared by broker Willis Group Holdings Ltd. or one issued by Travelers Property Casualty Corp. after the attack—and whether the attack was one occurrence or two.

A second trial to be held next

PHOTO: IMAGE DIRECT



**World Trade Center leaseholder Silverstein Properties Inc. and its insurers are locked in a legal battle over whether the twin towers' destruction was one occurrence or two under Silverstein's property program.**

year would determine how much the program's 20 insurers must pay Silverstein.

The critical issue will be tackled in the first trial, and "that's what makes this case so different from other occurrence cases," noted Michael F. Aylward, a lawyer with Morrison, Mahoney & Miller in

Boston, who is not directly involved in the litigation.

Principal insurer Swiss Reinsurance Co. and other WTC insurers contend that they bound coverage on the basis of the Willis form, which defines occurrence as losses "directly or indirectly attributable to one cause or to one series of sim-

ilar causes." The insurers argue that under this definition the WTC's destruction was a single occurrence.

Silverstein, however, says that the entire program was in the process of being shifted at the time of the attack to the form used by Travelers—one of several participants on a primary layer—and that the Travelers' terms should govern the program. The Travelers form contains no occurrence definition, meaning under New York law that the destruction of each WTC tower would be a separate occurrence, entitling Silverstein to two policy limits, the leaseholder claims.

In June, Judge Martin denied Silverstein's request for a summary judgment that Travelers must treat the loss as two occurrences, finding the occurrence issue too uncertain for such a ruling. In that decision, he also noted that the court should not "blind itself to the wealth of extrinsic evidence concerning the parties' intentions" about the program's terms.

Much of the legal maneuvering so far has involved that extrinsic evidence: For example, Judge Martin earlier this year rejected Silverstein's effort to block Swiss Re from obtaining testimony and documents from Willis on the grounds that its communications with Willis were privileged.

And each side has cited evidence that it says bolsters its case. Swiss Re has pointed out that a Silverstein official faxed the Willis form to a lender on Sept. 12 to show the policy language "we are working with," and that a Willis official told brokerage colleagues after the attack that he believed the loss was one occurrence. Silverstein, on the other hand, has cited a Sept. 12 internal memo from WTC participant SCOR S.A. that appears to acknowledge that coverage is based on the Travelers form.

Mr. Aylward and other observers are unwilling to predict who will win the policy form dispute.

Silverstein will have trouble with its two-occurrence theory, though, if the court adopts the Willis form's definition of occurrence, observers say.

"I would think it would be extremely hard for Silverstein to prevail if (the Willis form) or something like it is found to be the governing form," Mr. Aylward said.

On the other hand, if the Travelers form is adopted, the two sides will engage in a duel of conflicting legal precedents over whether the Travelers form's absence of an occurrence definition supports the one-occurrence or two-occurrence theory.

In this case, Silverstein's two-occurrence position would likely prevail, according to a research paper published by the Alexandria, Va.-based Independent Insurance Agents & Brokers of America Inc.

"These losses were caused by two separate aircraft controlled by two separate groups that struck two separate buildings," the paper concludes. "Even if these losses arose out of a single plan of attack...the originators of the plan are too remote for this to be considered a single occurrence."

Silverstein's ultimate recovery will be affected by other complications in the case. For example, Allianz Insurance Co., which wrote \$432.6 million of the program's \$3.55 billion limit, is seeking a summary judgment that the loss was one occurrence. Unlike most or all of the other WTC insurers, Allianz issued an actual policy before the attack, and its definition of occurrence is similar to that used in the Willis form, the insurer says.

**'Even if these losses arose out of a single plan of attack...the originators of the plan are too remote for this to be considered a single occurrence.'**

*Independent Insurance Agents  
& Brokers of America Inc.*

Two other WTC insurers—ACE Ltd. and XL Capital Ltd.—have already settled with Silverstein on a one-occurrence basis. Both insurers issued binders that specifically cited the Willis terms as governing their participations.

Meanwhile, Judge Martin is pushing the two sides to settle, so far without success. Earlier this summer, he ordered Silverstein and the insurers to evaluate the loss and submit settlement offers to the court. The offers came in several billion dollars apart, though, and the leaseholder and insurers now say they're preparing to litigate.

In splitting the trial into two phases, Judge Martin expressed hope that a resolution of the policy form dispute will trigger a settlement before the second phase of the case gets underway next year.

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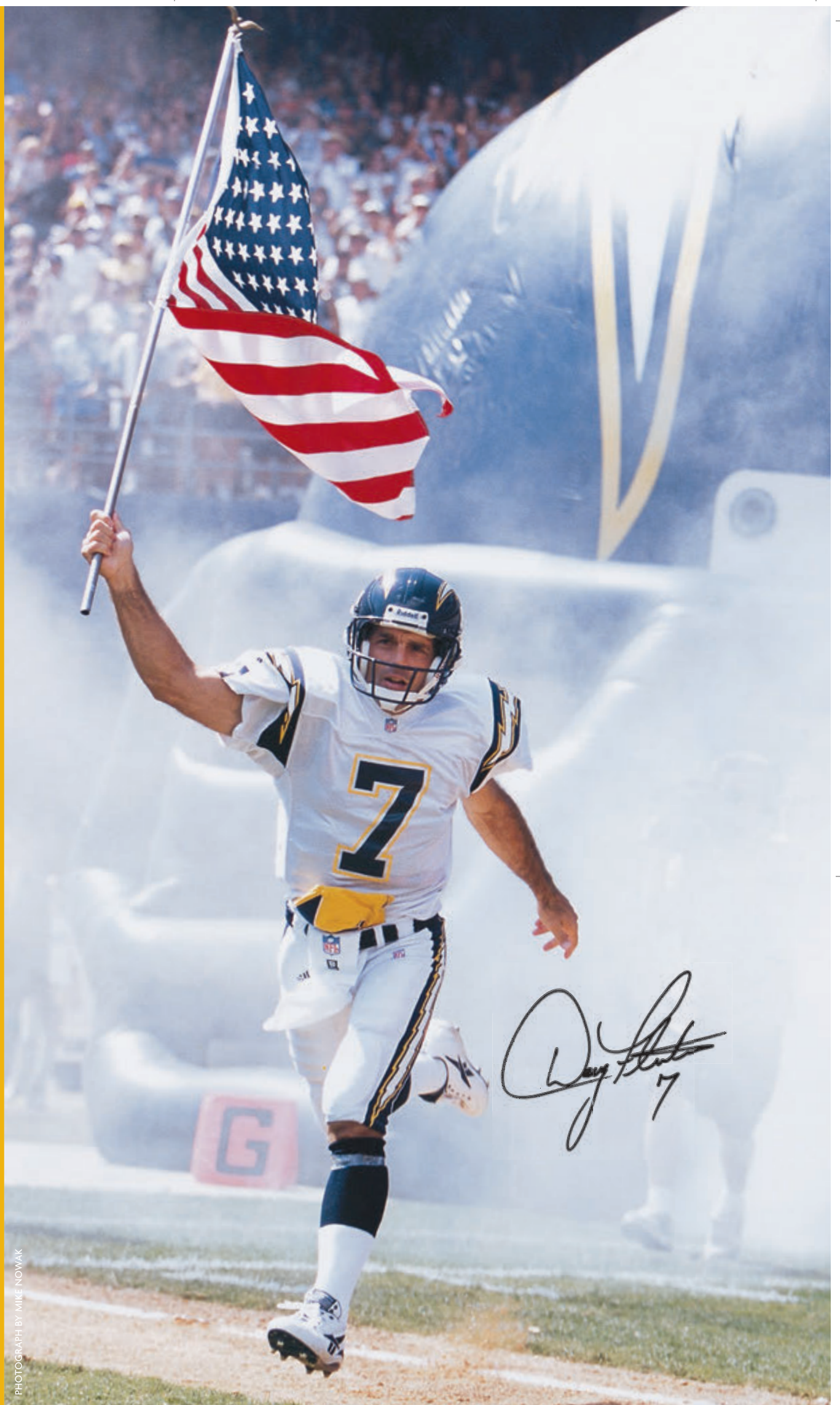
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# Losses: Final tally may not be known for years

Continued from page 10  
sation.

- \$500 million in aviation hull.
- Anywhere between \$3.5 billion and \$4.5 billion in life insurance.
- \$2 billion in other insured losses, including personal lines.

Tillinghast-Towers Perrin's estimate covers a wide spread—between \$30 billion and \$58 billion—a spread that hasn't been changed since initially offered late last year.

The New York Insurance Department, relying on data provided by the New York State Disaster Coalition, which includes insurers that write about 90% of property/casualty insurance business in that state, reported on Aug. 7 that \$16.65 billion in World Trade Center-related claims had been paid or reported. That included \$3.57 billion in business interruption claims and \$316 million in workers comp claims.

**'We all know the risk landscape has changed.... Previously, in the U.S., we looked at terrorism as something far away. Sept. 11 woke us up in a very terrible way.'**

Mark Lescault  
Swiss Re Americas Division

Economic losses to New York City alone will total \$83 billion to \$95 billion, according to estimates released last week by the New York City Comptroller's office.

The Insurance Services Office Inc.'s Property Claim Services unit, in its most recent update, issued June 17, put insured property claims including business interruption from the New York attacks at about \$20.35 billion, with an additional \$6.5 million in losses in Virginia resulting from the attack on the Pentagon.

"We're continuing to monitor the reports, but given the circumstances surrounding a lot of claims, particularly on the commercial side, we're extending the time period on which we report on a follow-up basis from 60 days to 120 days," said Gary Kerney, assistant vp at PCS in Jersey City, N.J.

He said that the claims flow isn't following the pattern of other catastrophes. For example, fewer personal lines claims have materialized than had been anticipated. On the commercial lines side, some policyholders have yet to present a claim, Mr. Kerney said. Some are having difficulty separating the impact of the attack from that of the general economic downturn, he said.

Overall, the losses had "a very widespread impact on the industry," because so many lines of insurance were affected, especially property and workers compensation, said Mark Lescault, chief underwriting officer for Swiss Re Americas Division in Armonk, N.Y.

"We all know that the risk landscape has changed," he said. "There is no question that we do have to factor terrorism in. Previously in the U.S., we looked at terrorism as something far away. Sept. 11 woke

us up in a very terrible way."

## Workers comp losses

The financial impact of the Sept. 11 terrorist attacks are percolating through the workers compensation system in a variety of ways that increase costs for buyers, both now and in the future.

Tillinghast-Towers Perrin is now estimating overall insured losses related to workers compensation at \$1.5 billion to \$2.5 billion.

Reinsurers, which bore the brunt of the losses, have withdrawn capacity from some workplaces with

large concentrations of workers and increased their scrutiny of nearly all others, along with charging higher premiums. In some cases, they also have capped coverage limits for self-insured risks, observers say.

The ultimate impact on primary workers comp insurers was less than Tillinghast's estimates—\$1.3 billion to \$2.0 billion—Dennis Mealy, chief actuary with the National Council on Compensation Insurance in Boca Raton, Fla., said earlier this month. Estimates recently rose slightly due to an increase in the fatality count, which now stands at more than 3,000. About 4,000 were

injured, according to the NCCI.

Several factors lowered the state-based workers comp system's ultimate exposure. For example, about 15% of the losses—police and firefighters—were covered by self-insurance. New York City self-insured the workers comp claims for the 403 uniformed personnel killed—343 firefighters, 37 Port Authority police and 23 city police officers.

Meanwhile, primary and excess insurers have followed in reinsurers' footsteps, shying away from high risks and charging more for coverage.

These lower-level insurers are

nearly always required to provide coverage equal to full benefits under states' statutory limits—and without terrorism exclusions—though a few excess insurers are imposing terrorism exclusions on large self-insured employers in about a dozen states where excess coverage is not required.

As a result, there has been an increase in the number of employers moving into state-sponsored residual markets, in which they can obtain statutory limits of coverage, though generally at a higher cost, according to the NCCI (*BI*, May 27).

See **LOSSES**/next page

**Life is unclear**

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September 9, 2002

# Losses: Tally may not be known for years

Continued from previous page

Sept. 11 losses will not have a direct impact on employers' workers comp rates in the future, because the industry agreed to exclude those extraordinary losses from employers' experience rating calculations.

Insurers, however, are beginning to include catastrophe factors in employers' rates, which may increase workers comp costs in the future. The New York Compensation Insurance Rating Board received approval to include a 3% factor in its rate beginning Oct. 1, even though the overall rate did not increase (*BI*, July 15). In addition, a subgroup of

the NCCI board is developing a catastrophe factor for broader use.

**While more claims may be reported in the coming year, 'there has not been an enormous wave of stress-related claims.'**

*Robert Hartwig  
Insurance Information Institute*

According to the New York rating board, insurers have paid or re-

served \$1.08 billion for Sept. 11 losses, including about \$985.8 million in death and wage-loss benefits as well as nearly \$91.5 million for medical costs.

While more claims may be reported in the coming year, "there has not been an enormous wave of stress-related claims," said Robert Hartwig, senior vp and chief economist with the Insurance Information Institute in New York. About one-third of injury claims in New York involve some type of stress-related claim, according to a spokesman for the New York State Workers Compensation Board. Vir-

ginia has also received about a dozen claims, a spokesman said.

The "industry's looking to see if there's going to be any significant stress exposure rising out of the events," said David W. Ives, chief executive officer of NiiS/Apex Group, a Salem, Mass.-based claims management unit of Arthur J. Gallagher & Co. He said that claims seem to be coming in at less than initial industry estimates.

"I think there's a certain element of patriotism" where people go back to work earlier because they've put their own injury into the context of the larger tragedy, he said.

# Response: Attacks changed outlooks

Continued from page 10

insurer against the other to see who will provide the best deal, he said.

Because the county's risks include properties near Niagara Falls and power generating facilities that are considered a potential terrorist target, Mr. Salen has had to scramble to renew coverages. "It has pushed prices up like crazy, not to mention it has been an absolute nightmare from the standpoint of information. For every single building I have, I must now list how many people work there during every shift, and how many buildings are within a mile of each other."

While some terrorism coverage is available, Mr. Sachs said the market is "very difficult" on property risks. "It's a little more reasonable now, but I would be less than honest if I said it's what I want," he remarked.

**'There were some smart carriers who saw that terrorists would have to be awfully busy to do as much damage as a hurricane.'**

*Kevin O'Reilly  
Lucent Technologies Inc.*

Kevin O'Reilly, risk manager at Lucent Technologies Inc. in Murray Hill, N.J., agreed that terrorism exclusions are a problem, particularly among European insurers. Even when Lucent agrees to the exclusions, the insurers sometimes refuse to write the coverage because laws in many states won't allow insurers to exclude damages from events, such as fires, that follow terrorist attacks (*BI*, Sept. 2; Feb. 11).

He did note, however, that some insurers have begun to realize that they can write terrorist coverage. "There were some smart carriers who saw that terrorists would have to be awfully busy to do as much damage as a hurricane," Mr. O'Reilly said.

Some risk managers have taken a softer stance on insurers' decisions to back off from the terrorist exposure.

"I think insurers are being helpful to a point," said Millicent Workman, director-risk management at Mueller Industries in Memphis, Tenn. "They are still feeling their way through some of these issues."

Ms. Workman said there is some justification for rate hikes on many coverage lines that have followed the attacks because "we all knew rates were extraordinarily low. But it's the degree of change." Insurers historically have not been able to resist the temptation to raise rates rapidly and followed that pattern

See **RESPONSE**/next page

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# Response: Attacks change outlook of buyers, insurers

Continued from previous page

after Sept. 11 by implementing huge increases in many areas, she said.

John Pinner, assistant treasurer at Mattel Inc. in El Segundo, Calif., said he gives insurance companies "basically good marks. Sometimes they overreact a little bit. But that depends on how good a risk manager you are. You have to sit down and say, 'Hey fellows, that's overreaction.' I really have not had that problem."

Insurers can't be expected to give coverage away, Mr. Pinner noted. He said property coverage costs were increasing before Sept. 11 because of insurers' losses and poor investment returns. Increases in other lines are due to factors other than terrorism, he added.

"Our service and pricing have stayed pretty constant," said H. Robert Hoy, risk manager for Wailea Golf Resorts Inc. in Wailea, Hawaii. While most of the coverage quotes he received from brokers for the company's February renewal contained substantial price increases that were attributed to insurer reactions to the attacks, Mr. Hoy was able to renew property, automobile, marine and other coverages at about the same price and limits with the incumbent insurer, Dai-Tokyo Royal State Insurance Co.

In many cases, brokers rather than insurers are the ones offering additional services following the terrorist attacks, according to Mr. Sachs, of Hobbs Group.

"There certainly have been some brokers trying to drum up business by doing consulting," he said. Insurers appear to be so focused on other matters that they are not able to of-



The massive damages from the Sept. 11 attacks, including those at the Pentagon, made insurers more aware of the possibility of huge losses due to terrorism. This led to a more quickly hardening market and to shrinking capacity.

fer those kinds of services, Mr. Sachs said.

Mr. O'Reilly said insurers are, however, showing more interest in Lucent's own loss control measures. "They certainly have been interested in our security," he said.

"We've always had extremely tight security here," because Lucent holds government contracts.

Mr. Sachs said his risk management strategy is to make security measures so stringent

that terrorists won't even think of attacking. "We've done things to make us a harder target," he acknowledged, putting in systems and controls that will make terrorists consider finding easier targets to attack.

Risk managers also are debating the government's possible role in providing coverage for terrorism risks.

Mr. Sachs said he thinks the government should be involved. "We could all pay a little bit," he said of providing government-sponsored insurance. "It doesn't matter if it's in South Dakota or New York, it's a national issue. I think there's a place for the government in that."

Mr. Salen, who is on the Risk & Insurance Management Society Inc.'s external affairs team, said a government backstop is "absolutely imperative" because policyholders can't get the coverage limits they need. "It is not a bailout, it's stabilization for the economy."

Insurers have been low key about lobbying for a backstop because they consider the legislation that bailed out airlines following the attacks as poorly written and don't want to duplicate that experience, Mr. Salen pointed out. And, he noted, insurers have to be careful how much they push for legislation because of a possible backlash from Congress and insurance consumer groups that don't understand commercial lines.

RIMS, therefore, has moved to the forefront of the lobbying effort rather than leaving it to insurers, according to Mr. Salen. "If it appears insurers are asking for money, that won't be well received."

PHOTO: IPHOTO INC.

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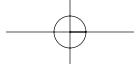
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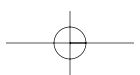
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# Lawsuits over 9/11 losses still to come

By JOANNE WOJCIK

Although only a few civil suits have been filed so far in connection with the Sept. 11 terrorist attacks, that doesn't mean more aren't waiting in the wings, attorneys warn.

Many potential plaintiffs still have time to decide whether and whom to sue, as statutes of limitations vary, with some states—including New York—allowing two years for the filing of wrongful-death suits.

And because only individuals can make claims against the government-sponsored fund that was created to compensate victims of the attacks, some businesses, especially those lacking insurance, are likely to seek civil damages, attorneys say.

But the proverbial "deep pocket" that is often the target of such civil litigation has been cropped by the Air Transportation Safety and System Stabilization Act, a federal law that capped the liability of the airline industry for Sept. 11 losses to the limits of their insurance.

And though there may be other litigation targets with greater resources—such as the Saudi royal family, which was accused of aiding the terrorists in a \$1 trillion suit—it would be difficult, if not impossible, to enforce a judgment against such parties if they reside outside the United States, attorneys say.

Meanwhile, all civil proceedings against the airline industry have been consolidated under Judge Alvin K. Hellerstein in the U.S. District Court for the Southern District

of New York in Manhattan, under the case *Ellen Mariani vs. United Air Lines Inc.* The Justice Department has intervened, and the court last month granted the government's motion to have all of the court documents in the case sealed for national security reasons. A Sept. 20 hearing has been set for the court to consider a global discovery plan.

Although Judge Hellerstein's clerk was uncertain as to the exact number of complaints that have been consolidated, as of last week, American Airlines had been served 12 suits—nine for personal injury and three for property damage—while United had received "seven or eight," the airlines' attorneys say.

While the number of civil actions against airlines is small compared with the number that usually follows an air crash, most attorneys said they are not surprised, given the nature of the incident.

"Ordinarily, the plaintiffs bar will sue everyone and anyone if something bad happens," said Bob Gasaway, a partner at Kirkland & Ellis in Washington, who is not directly involved in any of the cases. However, this time, "the trial bar has recognized there are differences between the 9/11 events and other mass disasters." Furthermore, he said, "the victims themselves regard it differently than other disasters."

"I've been surprised at the kind of 'quiet' in litigation," said Victor Schwartz, a partner at Shook Hardy & Bacon in Washington and general counsel to the American Tort Reform Assn. "I do not see this area as

a place where the tort system has run wild."

"It could be that they have so many other things that they're dealing with that there isn't the rush to the courthouse," said Mr. Schwartz. Noting that, in addition to the low litigation rate, "not that many people have made applications to the fund."

**'A suit like that is very popular with the American people. They want to get the bad guys.'**

Victor Schwartz  
Shook Hardy & Bacon

So far, 662 claims have been submitted to the federal compensation fund out of more than 3,000 eligible as a result of the terrorist attacks, said Fund Special Master Kenneth Feinberg, who last month said that 25 awards had been issued in July, averaging \$1.36 million each.

Congress established the Victim Compensation Fund last September as part of the Air Transportation Safety and System Stabilization Act. In exchange for receiving compensation from the fund, victims relinquish the right to sue.

Victims, however, may still file "protective" suits against the Port Authority of New York & New Jersey, the World Trade Center's owner, under a ruling last week by Judge Hellerstein. Victims had faced a Sept. 10 deadline for suing the Port

Authority. While New York has a two-year statute of limitations in wrongful death cases, there is only a one-year statute of limitations on suits against the Port Authority.

Judge Hellerstein will let victims sue the Port Authority, but the suits must remain dormant until the victims decide whether to seek compensation from the fund instead.

Because the fund provides assistance only to individuals, several businesses have sued to recover damages from the airline industry and security companies.

"Some of their businesses were totally destroyed or they had serious interruption," said Charles E. Joseph, a partner with Joseph & Herzfeld L.L.P. in New York who represents four such businesses: Tower Computer, Wall Street Realty, Karoon Capital Management and Barclay Dwyer Co. Inc.

He added that although some businesses did have property insurance, it either did not cover business interruption or the coverage was insufficient.

There is not likely to be a rush to the courthouse, because New York, among other states, has a two-year statute of limitations for wrongful-death suits, said Mary Schiavo, a partner at Baum, Hedlund, Aristei, Guilford & Schiavo in Los Angeles. She is representing lead plaintiff Ellen Mariani in her suit against United. Ms. Mariani's husband, Louis, was a passenger on Flight 175, which was crashed into 2 World Trade Center on Sept. 11.

Although some jurisdictions, such as the District of Columbia, have a one-year time bar, potential plaintiffs in New York "have at least until next year" to file, said Ms. Schiavo, who wrote the 1997 book "Flying Blind, Flying Safe," which was critical of airline security.

Another important deadline for potential plaintiffs is Dec. 21, 2003, which is when the Victims Compensation Fund officially stops accepting claims, she suggested.

When additional suits are eventually filed, the likely targets will continue to be the airline industry, as well as perhaps "the people who guarded the people," suggested Mr. Schwartz, explaining that "there were allegations that the guards in (World Trade Center) Building 2 told people to stay there."

"Some people may sue a multiplicity of defendants—the airlines, the security companies, the guard companies, the people who made the building itself, under the thesis not that this would happen, but that it was foreseeable that a plane might crash into it," the ATRA general counsel added. "In tort law, as long as you understand a risk—i.e., a plane going into the building—you do not have to prove the strange way it might happen. It's enough the risk was foreseeable."

Mr. Schwartz doubted, however, that such suits would be successful.

"I do not believe that jurors, even very pro-plaintiff jurors, are going to be particularly sympathetic with these suits. I've talked to hundreds of people" in various walks of life, "and they almost always say the

ones who were at fault were the terrorists and those who helped them," not the airline industry, security companies or building contractors, Mr. Schwartz said.

Furthermore, the money available to pay victims is limited under the federal act that was passed after the attack to protect the airline industry from bankruptcy, he noted.

Under the Air Transportation Safety and System Stabilization Act, the airline industry will not be required to pay more than the limits of its liability insurance regardless of the size of any judgment.

Although the law does not include the airport security firms, Mr. Schwartz anticipates they will eventually be added, as they are being named in most of the suits so far.

But suing the perpetrators themselves, or any person or organization that may have helped them, will be an uphill battle, he said.

Several such suits have been filed, the most recent seeking \$1 trillion from seven foreign banks, eight Islamic foundations and three members of the Saudi royal family, all of which the suit charges with helping finance Osama bin Laden and his terrorist network. That suit was filed Aug. 15 in Washington by the Mount Pleasant, S.C., law firm of Ness Motley on behalf of 600 relatives of Sept. 11 victims.

"A suit like that is very popular with the American people. They want to get the bad guys," said Mr. Schwartz.

But even if it prevails, there is no guarantee that plaintiffs will receive compensation, he said, because it is not possible to impose U.S. tort law on individuals or organizations not under U.S. jurisdiction.

Such was the case when former Middle East hostage Terry Anderson won a 1999 suit against Iran.

"We got them judgments under amendments to the Foreign Sovereign Immunity Act, but once they had the judgments, there was no way to get them paid," said Karen Hastie Williams, a partner at Crowell & Moring in Washington who represented Mr. Anderson.

"So we went back to Congress to get legislation passed that would allow them to get reimbursed from the equivalent of the frozen military sales fund that Iran had left," she said, referring to an account that held \$400 million deposited by the Shah of Iran in the United States for the purchase of military equipment that was frozen when he was overthrown.

That legislation, enacted in 2000, applies to any victim of state-sponsored terrorism as identified by the State Department. Six countries meet that requirement: Iran, Cuba, Iraq, Libya, Sudan and North Korea.

Although Sudan is named in the \$1 trillion civil suit filed by victims against the Sept. 11 terrorists and their helpers, the amount of that country's frozen assets is not sufficient to cover the damages being sought, said Ms. Hastie Williams. Also insufficient to pay such damages are the total assets of the other individuals and organizations named as defendants, she added.

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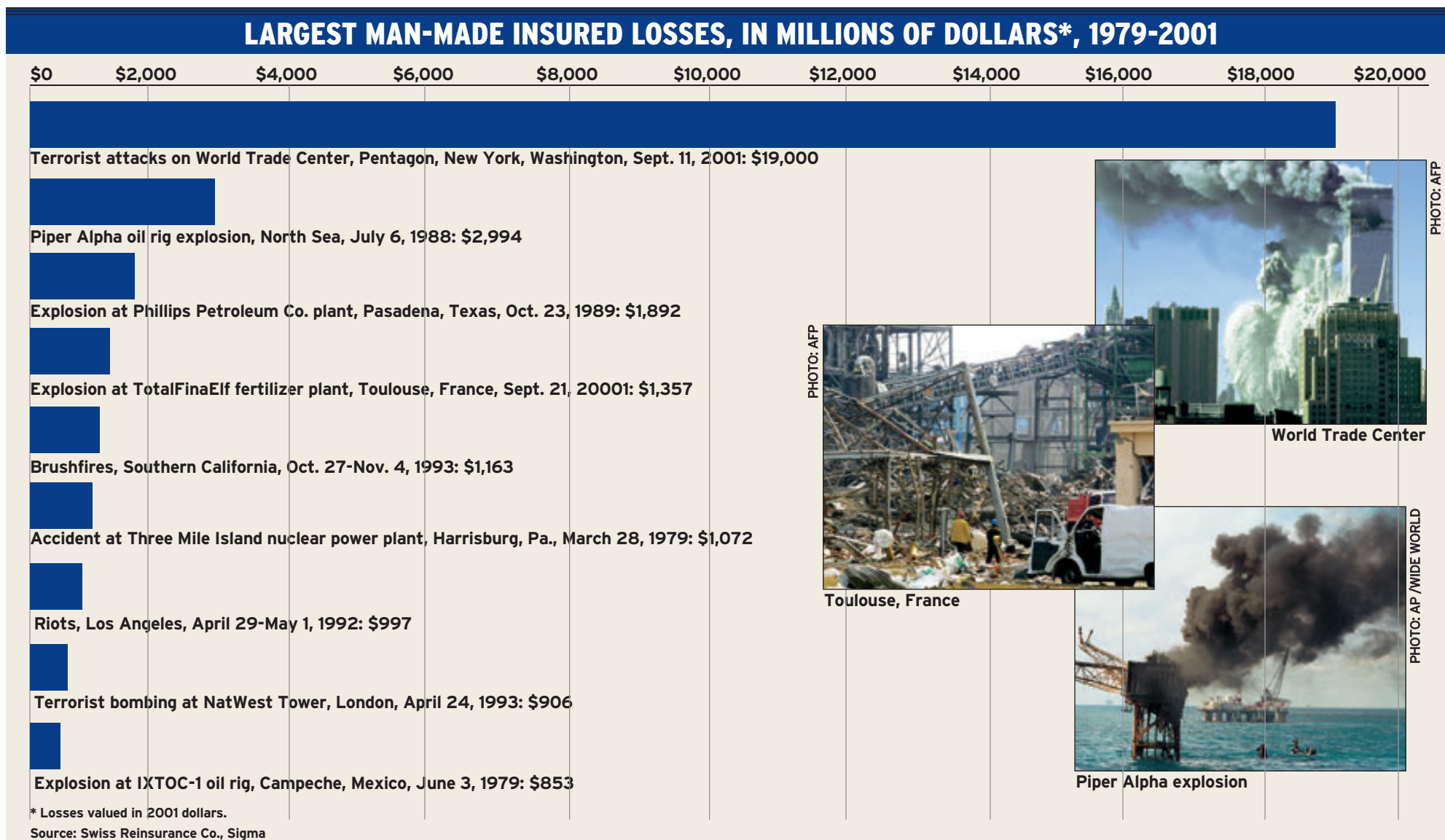
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# Attack raises profile of public entity risk

By SALLY ROBERTS

Although most public entity risk managers were not directly affected by the tragic events of Sept. 11, the terrorist attacks did change their roles in managing risks in the public sector.

Most public risk managers say the factor that has most affected their jobs since last Sept. 11 has been the hard insurance market that merged following the attacks. Shrinking capacity, a lack of adequate terrorism coverage and higher premiums, coupled with tighter budgets at many entities, have public risk managers working overtime to find coverage. And, in some cases, public entities are going bare on certain lines.

At the same time, some public entity risk managers say they are now receiving more community support when it comes to emergency response. Others report that upper management is taking risk management more seriously as a result of the attacks.

And many public risk managers say the terrorist attacks prompted renewed efforts to update and expand existing emergency-response plans, particularly those for bioterrorism threats.

Overall, though, the hardened insurance market has had the biggest impact.

"The thing I hear about most is how the insurance market has changed and how it affects them," said Dorothy M. Gjerdrum, director of public entity and scholastic risk

management for Arthur J. Gallagher & Co. in Minneapolis. "Everyone is saying they have less coverage than last year and are paying more for it now."

And as they struggle with a tougher insurance market, many public entity risk managers also are experiencing budgetary constraints, said Dawne L. Davenport, an Atlanta-based consultant for Tillinghast-Towers Perrin. "In a sense, their hands are tied. They have fewer dollars to work with, yet they believe they are facing higher risk due to terrorism," she said.

"What we've really had a difficulty with in risk management is the planning on what we can do in response to the insurance markets,

and that's been very difficult for the city," said Victor Parker, acting director of risk management for the city of Los Angeles. "Much like many other entities, we've had coverages cut back. With terrorism and war-risk coverage in particular, either we can't get it or it's so minimal it's ineffective," he said.

In addition, "we've been hit tremendously from rising insurance



PHOTOS: TUCSON UNIFIED SCHOOL DISTRICT  
The Tucson Unified School District in Tucson, Ariz., participated in a broad, coordinated drill last December to test the emergency response to a potential bioterrorism attack.



costs on all of our renewals, both on the property and liability side," Mr. Parker said. "Recently, I've been dealing with our convention center and our fire and police helicopter fleet, and in those situations, we're either compromising coverage or seeing tremendous increases."

In the wake of Sept. 11, "the biggest changes overall that have occurred have been financial," said Debra Carson, risk manager for the city of Longmont, Colo., and the immediate past president of the Public Risk Management Assn.

In addition to the "terrible" insurance market that followed the terrorist attacks, the city has seen a lack of home sales and decreases in gas prices and various fees and permits, Ms. Carson said. As a result of reduced revenues from those sources, "we're suddenly in a tremendous financial crunch," she said.

And, at the same time, the city of Longmont is facing a more than 35% increase in total premiums at its October renewals, Ms. Carson said. "This year, when I get my quote, I will have to look to see the overall effect and will have to do a cost-benefit analysis of higher retentions. Some higher retentions are being forced, but in other lines, we might start going bare because we can't afford the insurance," she said.

The terrorist attacks of a year ago also have increased awareness of the importance of public entity risk management.

"As a risk manager, my job is to identify exposures that would impact the city...anything that would adversely affect the city's ability to provide services to its customers," said Ray Sibley, director of risk management for the city and county of Denver.

Part of that job is examining worst-case scenarios, he said. But before the Sept. 11 attacks, upper management often would say, "that's never going to happen" when presented with potential risks, Mr. Sibley said.

"I think the thing that Sept. 11 brought to risk management was a

sense of reality that some of the worst-case scenarios we as risk managers thought up are not as far-fetched as people would have thought a couple of years ago," he said. "There's more willingness today to look more seriously at worst-case scenarios and to look at things that might go wrong."

At the same time, the terrorist attacks have caused many public entity risk managers to revisit and enhance their emergency-response and disaster-recovery plans.

"Everybody has taken another look at their emergency services, their disaster recovery plans and the whole gamut of how they respond to emergency situations," Gallagher's Ms. Gjerdrum said. "The terrorist attacks were so outside of the imagination of any risk manager. None of us would have imagined two buildings of that size going down."

In addition, public entity risk managers also have looked at how they are coordinating these plans with other nearby public entities, Ms. Gjerdrum said. "I'm seeing a lot more initiative to make sure they've got that cooperative effort in place."

The Tucson Unified School District in Tucson, Ariz., is one public entity that has worked to improve its disaster planning.

"Because of Columbine, we were always working on our emergency-response plans," said Lauren Eib, director of risk management and environmental services for the school district, referring to the 1999 school shooting at Columbine High School in Littleton, Colo.

The school district has broadened its disaster planning to include procedures on infection and biological threats, Ms. Eib said. It also has seen greater interest from local fire, police and emergency services in collaborating with the school district on emergency-response plans, Ms. Eib said.

"It actually helped me, because now it's not the school standing alone trying to put our plans together," she said. "We're putting

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## Profile: Public entities eye risks

Continued from page 28

them together as a whole community. I'm right there in the meetings with fire, police and everyone else, because when there is a major catastrophe, people go to their schools. I'm a receiver if there's a major disaster in Tucson," she said.

Ms. Carson of Longmont said that soon after Sept. 11 and the subsequent anthrax scare, all city employees went through bioterrorism training. "We learned about what the risks were, what to look for and, if there was an exposure, how it would manifest and how to react to it," Ms. Carson said. "That set into motion the dusting off of the old Y2K plans," she said.

But no lesson was more valuable than the actual bioterrorism scare Longmont city employees endured last year. An anthrax threat was

called into a city employee, and someone brought a piece of evidence into a city building without double-bagging it, Mr. Carson recalled. Federal authorities were called, and the building had to be decontaminated, she said.

"We put ourselves through a mini-drill, and it was interesting in how we reacted," Ms. Carson said. "When people think they can be exposed to something, it's amazing to see how scared and panicked people get," she said.

"When people get in that kind of a frenzy, you need to take extra steps to communicate," she said. "Those types of things cause you to see where your gaps are. It was a lesson not to be forgotten."

Consultants point out, however, that not every public entity risk manager has improved disaster

planning.

"There seems to be a dichotomy between public sector risk managers," said Lisa Gattel Chanzit, a Boston-based principal with Tillinghast. "Some are very blasé about new risks that we're aware of since Sept. 11, or the potential risks that we're aware of, in that they feel it won't affect them," she said. "They think, 'If I'm a small town in rural U.S.A., I don't have to worry about a potential terrorist attack.'"

"On the other hand, we've seen some very thoughtful emergency-planning analysis happen all over the country," Ms. Chanzit said.

"If I were a public sector risk manager, I certainly would be paying a lot more attention to both prevention and, after some catastrophic event, what the response would be," she said.

## Commentary

### Sept. 11 lawsuit not the answer

When I first heard about the \$100 trillion lawsuit filed against Saudi officials and the Sudan government for allegedly aiding and abetting terrorists, it reminded me of the scene in the second Austin Powers film where Dr. Evil warns the president he will blow up American cities unless he receives \$100 billion.

Since Dr. Evil had traveled back in time to the late 1960s, when \$100 billion was a huge sum, the president and his advisers responded by laughing out loud. "That much money simply doesn't exist," the president said. "I don't think 100 billion is even a number. It's like saying, 'I want a kajillion bajillion dollars.'"

Plaintiffs lawyer Ron Motley of Ness, Motley in Mount Pleasant, S.C., a veteran of the legal battles against Big Tobacco, has since said that the lawsuit would be amended to seek "more than \$1 trillion."

But while \$1 trillion may be more realistic, it is still an outlandish claim. It is doubtful that any of the survivors or the families of the victims of the Sept. 11 terrorist attacks would ever see a dime. In fact, hundreds of plaintiffs who filed suits after the 1993 World Trade Center bombing have yet to receive a cent in compensation.

Is the latest lawsuit frivolous? It depends on whom you ask.

I tend to agree with House Judiciary Committee Chairman James Sensenbrenner Jr., R-Wis., who, during debate over the Air Transportation Safety and System Stabilization Act, said, "traditional tort rules are designed to address slip-and-fall cases caused by banana peels, not terrorists."

The \$1 trillion suit is another example of how the civil justice system is being misused. More and more people are attempting to legislate through litigation.

In a televised press conference, Mr. Motley admitted that the plaintiffs were frustrated by the federal government's lack of progress in apprehending the Sept. 11 perpetrators, so they were essentially taking the law into their own hands. In fact, to gather enough evidence to bring the suit, they even circumvented U.S. lawmakers and sought information from foreign sources, he said.

Although the 258-page complaint says it seeks to cripple banks, charities and some members of the Saudi royal family as a deterrent to terrorist financing schemes, it really is more about vigilantism.

"It's not the money. We want to do something to get at these people," said one plaintiff whose daughter died in the World Trade Center. "There's nothing else we can do."

This attitude has so permeated society that it seems not a week goes by without yet another suit to "punish" someone or something. Last month, the maker of an antidepressant drug taken by Eric Harris at the time of the Columbine High School shootings was sued over allegations that its medication was, in part, to blame for the rampage. The week before, a man who suffered several heart attacks sued four fast-food chains, asserting that their fatty products

were responsible for his ill health. Not long ago, 401(k) plan participants filed numerous suits against their employers because the price of their companies' stock had nosedived.

When I visited the Web sites of the lawyers involved in the Sept. 11-related litigation, I found that many also were

involved in suits against tobacco companies, drug manufacturers, building product makers, you name it. All told, these suits seek enough money to bankrupt the American economy. Since the 45-day moratorium was lifted on Sept. 11-related lawsuits, hundreds of plaintiffs have come forward to stake their claims against the airlines, the airport security firms, the Federal Aviation Administration, the aircraft manufacturers and now banks, charities and foreign dignitaries.

The first Sept. 11-related suit, filed by a woman whose husband was killed in the WTC, lists Osama bin Laden as the primary defendant. How will the process server find him if the U.S. Special Forces still don't know where he is?

Can we really even the score by suing everyone and everything even peripherally linked to the terrorists?

I think not. We'll never defeat terrorism by turning on our neighbors. In fact, all this infighting could be diverting our resources from fighting the real enemy.

Perhaps Osama bin Laden knew this. All he had to do was fire the first salvo, and the rest would take care of itself.

Senior Editor Joanne Wojcik's commentary appears periodically in *Business Insurance* and on [www.businessinsurance.com](http://www.businessinsurance.com). She can be reached at [jwojck@crain.com](mailto:jwojck@crain.com).



Joanne Wojcik

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May you live in interesting times! The insurance industry is certainly in the midst of such times. The events of 9/11/01 have changed the world and dramatically affected the insurance industry. On the heels of that catastrophe came the Enron collapse and ensuing turmoil in the surety, D&O, and professional liability lines of business. On many fronts changes are ongoing and will continue for some time.

The most direct effect of 9/11 is the enormous losses incurred by the insurance industry. It will take years for the full effect of these losses—variously estimated at \$60 billion to \$80 billion—to be fully recognized by the industry. The hard market in place on 9/11 has been intensified by those losses. How long will this hardening last? Is the new emphasis on quality underwriting just another phase in the cycle, or is it a fundamental shift in how the industry operates? What must the industry do to achieve longer-term stability and profitability?

How will the industry now handle the risk of terrorism? Few expect a return to terrorism coverage as part of property insurance forms at no additional charge. What will the government's role be? What role will the financial markets and other alternatives play?

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#### Panelists

Alice Cornish, senior equity research analyst, Prudential Securities; Tom Tizzio, senior vice chairman, AIG; Shivan Subramaniam, chairman, president, and CEO of FM Global; Paul Karon, president, Benfield Blanch; Gary Prestia, senior vice president and chief underwriting officer—property lines of Converium Reinsurance (NA), Inc.; and David Mair, director, risk management and purchasing of the U.S. Olympic Committee.

#### Moderator

Paul Winston, Editor, Business Insurance

Registration information will follow. For more information, call (309) 438-3021 or (800) 697-8692, or E-mail [katie@exchange.cob.ilstu.edu](mailto:katie@exchange.cob.ilstu.edu).

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## Survey measures European perception of risk

By SARAH VEYSEY

A recent survey by Marsh suggests that in midsize European companies "there is a profound gap between senior management's perception of risk and operational business processes to mitigate risk."

While 71% of businesses surveyed by Marsh in London said that identifying their major risks was a top priority for management, 40% had no formal risk management policy, according to the research published today.

Marsh surveyed 600 midsize companies with revenues of 50 million euros to 500 million euros (\$49.6 million and \$495.8 million) and staff numbering between 50 and 500 in Belgium, France, Germany, Italy, Spain and the United Kingdom from June to December 2001. Companies surveyed came from the manufacturing; transport and distribution; travel, tourism and consumer; chemicals and pharmaceuticals; information technology and telecommunications; retail; and public entities sectors.

Among the companies surveyed, about three-fourths said risk management responsibility lies with the chief financial officer, while less than 10% said that responsibility lay with a dedicated risk manager.

About one-fifth of those companies surveyed indicated they reviewed risk on an "ad hoc" or "as needed" basis. About one-third reported that senior management was likely to review risk less often than once every six months.

The Sept. 11 attacks brought risk management into sharper focus for many midsize companies but also undermined their confidence in their monitoring of risk, said Christopher Lay, a managing director at Marsh in London. "There is a 'below-surface' appreciation of risk, but

See MARSH/next page

PHOTO: AFP



Workers build a log foot bridge across a South Korean river after Typhoon Rusa, which caused an estimated \$835.5 million in property damage, knocked out a bridge.

## Korea's typhoon losses still rising

By MICHAEL BRADFORD

**SEOUL, South Korea**—Typhoon Rusa's deadly swath through South Korea is believed to have caused more than 1 trillion won (\$835.5 million) in property damage and an untold amount of insured losses.

The storm that raked the country late last month and into September left more than 200 persons either dead or missing. The typhoon destroyed or damaged more than 28,000 homes, sank an estimated 126 vessels, downed hundreds of electrical pylons and killed hundreds of thousands of farm animals, according to insurance industry and government sources.

Samsung Fire & Marine Insurance Co. Ltd. was investigating claims last week and expects to incur more than 10 billion won (\$8.4 million) in losses, according to a spokesman for the Seoul-based insurer. Most of the claims are from automobile and other personal lines policyholders, he said.

The insurer is well-prepared for the loss, the spokesman said. He pointed out that such storms are expected during the summer and Samsung Fire & Marine "has taken measures to limit im-

pacts from such disasters." Even so, the amount of claims expected by the insurer is more than the 7 billion won (\$5.8 million) it paid on typhoon claims for all of 2001.

Su Do Choe, managing director with Aon Korea Inc. in Seoul, said most of the damage caused by Rusa will show up as personal lines claims. Commercial losses were being assessed last week, he noted. The extent of damage is expected to worsen, however, and won't be known until inspections of the country's roads, railways and telecommunications systems are completed.

Cleanup is very slow in many areas, Mr. Choe said, because of damage to public roads and utilities.

Mr. Choe said figures compiled by the Korea Non-Life Insurers Assn. show that at least 39 billion won (\$32.6 million) in claims had been filed by victims of the storm as of last week. The figure does not include life insurance claims.

Property damage from Rusa is approaching that caused by Typhoon Olga in 1999. That storm caused 1.7 trillion won (\$1.42 billion) in damage and was the most destructive typhoon in South Korea's history.

## World Updates

### SCOR, Gerling in talks on reinsurance books

Paris-based reinsurer SCOR S.A. is negotiating to buy most of Gerling Group's reinsurance business. The Cologne, Germany-based insurer said it is negotiating the sale of its life reinsurance business and the majority of its nonlife reinsurance business to SCOR. Gerling Global Reinsurance Group reported gross premiums of 5.85 billion euros (\$5.75 billion) in 2001. Of that total, 1.41 billion (\$1.39 billion) was life reinsurance. After the talks were announced, Standard & Poor's Corp. downgraded Gerling's reinsurance unit to BBB from A-.

### ABI calls for reforms in U.K. comp system

The Assn. of British Insurers is calling on the U.K. government to reform the compensation system for workplace injuries and illnesses in the face of a growing employers liability insurance crisis. Long-term reforms should include limiting legal fees in compensation cases and placing greater emphasis on good health and safety practices, the ABI said in a statement. The ABI met Friday with representatives of several industry groups and the government's Health and Safety Executive to discuss the problem of rising employers liability rates.

### AXA flooding losses nearly \$200 million

Paris-based AXA S.A. has said its losses from the recent flooding in Europe will likely total about 200 million euros (\$196.6 million), net of reinsurance and tax. About 70 million euros (\$68.8 million) of this total will fall on the group's German subsidiary, AXA Konzern. Meanwhile, AXA last week confirmed its earlier estimate that its first-half profits declined 32% to 840 million euros (\$825.6 million), due largely to poor investment performance and a boost in reserves for Sept. 11 claims. Bermuda-based reinsurer PartnerRe Ltd. last week revised upward its estimate of flood-related claims to between \$110 million and \$120 million. PartnerRe initially estimated it would face \$100 million in claims.

### SCOR profits drop on declining equities

SCOR S.A. reported profits of 20.7 million euros (\$20.3 million) for the first half of 2002, less than half the net income it reported in the comparable period last year. The drop stemmed largely from declining European equities in the first half of 2002, the Paris-based reinsurer said. Gross written premiums increased to 6.3%, to 2.51 billion euros (\$2.47 billion).

## Lloyd's estimates net Sept. 11 exposures at nearly \$3 billion Special counsel sorts out Lloyd's losses

By SARAH VEYSEY

**LONDON**—The Sept. 11 terrorist attacks in the United States not only created a massive financial loss for Lloyd's of London but also left it with the tough task of sorting out and paying the thousands of claims stemming from the disaster.

To coordinate the market's response and to ensure that the often-complex claims are paid promptly and efficiently, Lloyd's created the Lloyd's Special Counsel for Sept. 11, tapping attorney and former Sedgwick Group P.L.C. executive Jeremy Pinchin for the role.

Mr. Pinchin readily admits that the task is challenging. One factor that complicates the

claims resolution process is that Lloyd's operates as a market, made up of many companies, rather than as a single entity. Other factors include Lloyd's exposure to claims as both a direct insurer and a reinsurer, and that the market "is potentially the greatest insurance contributor" to the payment of Sept. 11 losses.

Lloyd's currently estimates its gross exposure to Sept. 11-related claims at \$8.84 billion, said Mr. Pinchin. He noted that, so far, \$1.42 billion, or 16%, of that total has been paid.

Lloyd's potential exposure is so large because of the number of affected lines of business written in the market, Mr. Pinchin explained. He noted that most losses are concentrated across eight so-called risk codes that cover: property

risk excess, property damage, aviation excess-of-loss, property excess-of-loss, aircraft operators liability, personal accident catastrophe excess-of-loss, personal accident and aviation premises liability. Of these, the largest potential exposures are in property risk excess, which accounts for 22% of gross claims, and property damage, which accounts for 20%, Mr. Pinchin said.

Lloyd's estimate of its net Sept. 11 loss stands at about \$2.8 billion, he said.

Mr. Pinchin noted that claims are being filed more slowly than was at first expected, largely because of the complexity of many of the losses involved. For example, of Lloyd's 10 largest property claims, only one has been paid, be-

See CLAIMS/next page

## Claims: Lloyd's taps special counsel

Continued from previous page

cause loss adjusters have not finished their analysis on others, he said.

"But, in the next six to nine months, claims will get paid very much quicker," as the precise values of claims are calculated, he predicted. "And while all of the claims have not yet been paid, we are pretty certain of the figures," he added.

Mr. Pinchin said that one key aspect of his role has been to closely monitor the development of gross and net loss estimates.

"Lloyd's has been criticized historically—quite rightly—for not having a handle on its gross losses," he said.

But through close monitoring of syndicate forecasts and payouts and of weekly management reports detailing ultimate claims, paid claims, incurred claims and outstanding claims, Mr. Pinchin said he is confident that the market will not be surprised by worsening loss estimates.

Responding to fears of some market observers that the Sept. 11 loss-

es could cause a reinsurance spiral like the excess-of-loss spiral of the 1980s, Mr. Pinchin said that inter-syndicate reinsurance was "well within healthy boundaries."

Mr. Pinchin said that the U.S. government's move to cap airlines' liability for Sept. 11 losses at the airlines' insurance limits has helped Lloyd's to estimate its potential exposure to aviation losses.

Stephen Catlin, chairman of Catlin Underwriting Agencies Ltd., praised the work done by Mr. Pinchin and his team. "The office for Sept. 11 has proved a vital asset

to the Lloyd's market and syndicates in ensuring that claims arising from the terrible attacks are handled speedily and efficiently," he said.

A source at one London-based brokerage, who asked not to be named, welcomed the speed at which Lloyd's has paid claims. She said that some brokers believe that certain reinsurers are intentionally slowing down the claims paying process, while Lloyd's is "doing the opposite."



Mr. Pinchin

## Marsh: Survey spots gaps in views of risk

Continued from previous page

the events of the past year have knocked people's confidence," he said.

The research revealed that, in the United Kingdom, while 74% of businesses said they had formal procedures to address risk before Sept. 11, after that event, only 57% said they believed their plans to be an adequate response to a high-impact event.

One-third of senior managers in midsize European companies are not aware if their company has suffered any significant insured losses in the past three years, according to the research. And in Spanish companies, more than two-thirds of managers said they were not aware of whether their company had suffered a serious loss in the past three years, while for German and Italian companies the figure was more than one-third.

Midsize companies tend to prefer to transfer as much risk as possible, said Michael Turpin, executive director of Marsh's European corporate client practice.

But current geopolitical unrest, turbulent financial markets and the hardening insurance market are creating something of a "perfect storm" that is forcing companies to concentrate harder on risk, Mr.

Turpin said. "Companies are reeling. They are having to retain much more risk than they usually do," he said.

He added that the absence of a risk management job function in most midsize European businesses means that while their chief financial officers may be able to do things more quickly, this structure can leave CFOs with great responsibilities and a "changing landscape that they are not aware of."

While there is reluctance on the part of many midsize companies to recruit risk managers, CFOs and CEOs will likely try to find ways to better use external and internal resources to manage risk, Mr. Lay said.

The role of a "chief risk officer" will likely be encompassed in the CFO role in midsize companies, said Mr. Turpin, and the role of internal auditors may expand.

Brokers must "expand their skill sets" to fulfill a "surrogate risk manager role" for midsize companies, he added. "Lots of risk managers within larger companies will want to grow into the role of chief risk officer," he predicted.

The survey, *Managing Risk in Europe, 2002*, will be available after Sept. 10 at [www.marsh.com](http://www.marsh.com).

## Lloyd's: Reforms facing vote

Continued from page 1

Private Capital and Hampden Agencies Ltd.—which all called for a "no" vote.

Although he acknowledged that the reforms were likely to pass, ALM Chairman Michael Deeny said he hoped enough names would vote against the resolution to cause Lloyd's "enormous problems in progressing the specific proposals to which the ALM now objects."

**'We know we have to change. The world knows we have to change. Now is not the time to demonstrate an unwillingness to change. A protest vote now will do little more than damage Lloyd's.'**

Sax Riley  
Lloyd's of London

Even if the reforms are approved, individual names could still disrupt the implementation process by calling extraordinary general meetings to vote on individual aspects of the reforms, he said.

Mr. Deeny said the ALM approves of "about 90%" of the reforms, and is particularly supportive of the franchise proposal. Under that proposal, managing agents would become Lloyd's franchisees and would have to operate within guidelines set by a new franchise board.

But, Mr. Deeny said, the ALM has three major concerns about the reforms.

The ALM opposes a proposal to pass a new Lloyd's Act by 2004. Pushing such a measure through Parliament would take up too much management time, would be "an enormous distraction" from the key goal of improving Lloyd's profitability and would likely diminish the rights of individual names, he said. Names fear that a new Lloyd's Act would include pro-

visions to end their ability to call EGMs, he said, noting that names would attempt to block the process.

The ALM also opposes a proposal to eliminate the Lloyd's Regulatory Board and the Prudential Supervision Committee—on which names sit—as well as the position of Director of Regulation.

Lloyd's modified its original proposals following a period of market consultation, agreeing to set up a Compliance Committee to monitor the delegation of authority to the franchise board and to ensure that members' interests are protected.

And despite those changes, the ALM fears that the changes would give the Lloyd's executive too much authority, Mr. Deeny said.

In addition, the ALM criticized Lloyd's for failing to address its concerns about the number of overseas corporate capital providers and, in particular, its worries about potential claims against the Lloyd's Central Fund made by those entities.

Mr. Deeny said many overseas corporate capital providers are "direct competitors of Lloyd's," describing them as "effectively, cuckoos in the nest."

But corporate capital providers are vital for the success of Lloyd's, said Mr. Riley in a speech at an ALM meeting last week.

"We know we have to change. The world knows we have to change. Now is not the time to demonstrate an unwillingness to change. A protest vote now will do little more than damage Lloyd's—and damaging Lloyd's will ultimately harm its investors. Which begs the question: What does a protest vote achieve? My answer to you: nothing," he said.

And though Lloyd's does not know how corporate members intend to vote on Sept. 12, it is confident the proposals have enough support, a Lloyd's spokeswoman said.

Bronek Masojada, chief executive of Lloyd's company Hiscox P.L.C., which has significant financial backing from Chubb Corp., said that the reform proposals, par-

ticularly the franchise proposals, would help Lloyd's to better manage the marketplace. That improved oversight would help Lloyd's to weed out poor-performing businesses sooner, reducing losses and, ultimately, relieving pressure on the Central Fund. "I can't see why anybody would not want to vote in favor" of the reforms, he said.

Mr. Masojada added that many market participants who have said they will vote against the reforms are actually in favor of many aspects of the proposals, noting that any concerns could be addressed once implementation begins.

But although the proposed reforms have been greeted positively by most market analysts, ratings agency A.M. Best Co. recently expressed concern that the Chairman's Strategy Group "may have compromised its original objective to increase the simplicity of the market for capital providers."

Best said that implementation of the proposals will be a significant challenge.

**The franchise proposals would help Lloyd's to better manage the marketplace. 'I can't see why anybody would not want to vote in favor' of the reforms.**

Bronek Masojada  
Hiscox P.L.C.

And one Lloyd's of London reinsurance underwriter, who asked not to be identified, said though he broadly supports the reforms, they would radically change the Lloyd's market and, in particular, the type of reinsurance it offers. Granting Lloyd's the power to monitor syndicate business plans and the implementation of risk-based capital allocations, may curb the amount of excess-of-loss reinsurance some syndicates will be able to write, he said.

Government-backed coverage up to 10 billion euros

## German terror insurer forms

By CAROLYN ALDRED

**COLOGNE, Germany**—A new insurer backed by the German government is offering up to 10 billion euros (\$9.83 billion) in terrorism coverage for commercial property risks in Germany.

Cologne-based Extremus A.G., which is a government-backed pool of international insurers and reinsurers, will provide coverage for property and business interruption losses stemming from acts of terrorism, German insurer association Gesamtverband der Deutschen Versicherungswirt-

schaft e.V. announced Tuesday. The GDV led efforts to create the terrorism insurer.

Extremus will write a primary layer of 1.5 billion euros (\$1.47 billion) for individual risks above a self-insured retention of 25 million euros (\$24.6 million). Insurers participating in the primary layer include American International Group Inc., Allianz A.G. Holding, Gerling Group, Haftpflichtverband der Deutschen Industrie Versicherungen, Munich Reinsurance Co., Swiss Reinsurance Co. and other, mainly German, companies.

An excess layer of up to 3 billion euros (\$2.95 billion) will be provided by a separate group of insurers that includes AXA S.A., Gothaer Rueckversicherung A.G., Le Mans Re and SCOR S.A. The German government will provide up to 10 billion euros of coverage excess of 3 billion euros in any one year.

The GDV noted that Extremus must collect at least 300 million euros (\$294.9 million) in premiums in the next few months to operate. If that target is not met, participating insurers will dissolve the pool, the GDV said.

## Settle: Court seeks ban

Continued from page 3

flow from such actions," he said.

"We don't think it's necessary; judges already have a lot of discretion in this area and its something that needs to be looked at on a case-by-case basis," said Joyce Kraeger, a staff attorney with the Alliance of American Insurers in Downers Grove, Ill.

"I think it's a terrible idea," said Stef Zielezienski, assistant general counsel for the American Insurance Assn. in Washington. "What the court in South Carolina is essentially doing is adopting a one-size-fits-all approach to fix a particular problem that may arise in only certain cases."

"It's our position is that the power to accept or reject a settlement agreement is currently vested in the judge," he said.

In addition, "there are a variety of cases and a variety of circumstances, including people's privacy rights and trade secrets, that warrant adoption of secrecy clauses in settlements," said Mr. Zielezienski.

The Alliance's Ms. Kraeger added that the practice could also drive up future settlement costs and encourage litigation. "It sort of sets a floor when there are dollar amounts out there that are widely known to plaintiffs and their attorneys. It sort of sets the price for a particular type of case," even though the facts of each case are unique, she said.

A well-known consumer advocate, however, sees the move as overdue and worthy of emulation by other courts.

"We're very opposed to sealed settlements. When there are public health and safety issues involved that the public and government regulators need to know about, they should never be sealed," said Joanne Doroshow, executive director Center for Justice & Democracy in New York.

"We hope the courts follow the South Carolina lead and we hope the legislatures move more quickly to ban confidential settlements."

"I've heard plaintiffs attorneys say that they feel like there's a gun to their

head, that they would prefer not to have to sign these agreements. If the government prohibits them, it relieves the pressure on the victims," Ms. Doroshow said.

NAM's Mr. Riegel stressed that the change is not yet final, and that the judges could change their collective mind.

"It's a proposal at this point and we would hope that they would consider reasonable limitations on disclosing private settlement agreements for a variety of reasons—the foremost being that confidentially facilitates settlements for both sides. Companies may be more willing to settle if their reputation is not impugned publicly," he said.

**'What the court in South Carolina is essentially doing is adopting a one-size-fits-all approach to fix a particular problem that may arise in only certain cases.'**

Stef Zielezienski  
American Insurance Assn.

## Benefits: Online benefit management growing

Continued from page 3

about 70%—are using the Internet to provide health and wellness information to their employees.

According to coalition directors, the most important functions that an Internet-based health administration system should perform are:

- Enrollment.
- Administrative support.
- Benefit selection and changes.
- Eligibility and determination.
- Defining plan information, such as provider directories and centers of excellence.
- Tracking claims and benefits.

Unfortunately, few, if any, online vendors currently have Internet-based systems capable of performing all of these functions, according to the interviews with benefit managers contained in the report.

For example, in reviewing online vendors' capabilities, Donnelley found that they are not making equal investments in multiple product lines, according to M.J. Burg, director of health and welfare benefits in Chicago.

"A lot of employers, like Donnelley, recognize that employees do not want to call several different 1-800 numbers to get information on benefits," she said. Likewise, they do not want to have to visit several Internet sites to obtain such information, she added.

"We would expect that our plans offer employees certain Web-enabled capabilities by

the year 2003, or we will have to make some difficult decisions about whether we will continue to do business with them," Ms. Burg said in the report.

Likewise, GM was unable to find a vendor to provide disease and care management for its salaried employees because of their limited capabilities, according to Tom Weatherup, director of e-health care implementation health care initiatives for the Detroit-based automaker.

"We had a vision of what we wanted, but no one met that vision," he said. As a result, GM was forced to step back and redefine its expectations, he added.

"We want strategic partners who we believe have the bandwidth and the interest to move forward and to help us make things easier for our employees, delivering benefits in an exceptional way," said Harry L. Spencer, vp of global benefits at AOL Time Warner in New York.

"If a plan does not have that capability, we do not do business with them," concurred Francois de Brantes, program leader, health care initiatives, at Fairfield, Conn.-based GE.

Copies of the report are available for \$24.95 for employers and \$74 for consultants and vendors from [www.hin.com/store](http://www.hin.com/store). For more information on the report, contact project manager Katherine H. Capps, president of Health2 Resources, at 703-319-0957 or via e-mail at [health2@aol.com](mailto:health2@aol.com).

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### LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT  
No 4690 of 2002, No 4689 of 2002, No 4693 of 2002, No 4694 of 2002  
IN THE MATTER OF

**TOWER INSURANCE LIMITED  
CONTINENTAL MANAGEMENT SERVICES LIMITED  
CORNHILL INSURANCE PUBLIC LIMITED COMPANY AND  
DOWA INSURANCE COMPANY (EUROPE) LIMITED**

AND IN THE MATTER OF THE COMPANIES ACT 1985, SECTION 425

NOTICE IS HEREBY GIVEN that by four Orders dated 1 August 2002 in relation to each of the above companies (the "Pool Companies" and each a "Pool Company") the High Court of Justice of England and Wales has directed that meetings (the "Scheme Meetings") of certain creditors of the Pool Companies arising in relation to business underwritten through the Dunedin Underwriters (HMT) Limited ("Pool Creditors" as defined in the scheme of arrangement referred to below) be convened for the purpose of considering and if thought fit approving (with or without modification) four schemes of arrangement in identical terms proposed to be made between each of the Pool Companies and their respective Pool Creditors (together, the "Scheme") and that such Scheme Meetings shall be held at The Insurance Hall, 20 Aldermanbury, London EC2V 7HY United Kingdom at 11.00am on 29 October 2002 at which place and time all Pool Creditors are requested to attend. Registration will commence at 10.30am.

Any person entitled to attend the said Scheme Meetings can obtain copies of the Scheme document, which includes the Scheme and the Explanatory Statement, required to be furnished pursuant to Section 426 of the Companies Act 1985 of Great Britain, and copies of the accompanying Forms of Proxy and Voting Forms, from Global Resource Managers Limited (the "Scheme Manager") at 77 Gracechurch Street, London EC3V 0DL United Kingdom during usual business hours on any day (other than a Saturday or Sunday or public holiday) prior to the day appointed for the said Scheme Meetings.

Pool Creditors may vote in person at the said Scheme Meetings or they may appoint another person, whether a Pool Creditor or not, as their proxy to attend and vote in their stead.

It is requested that the completed Forms of Proxy be lodged together with completed Voting Forms at the offices of the Scheme Manager at the above address marked for the attention of Steve Street or Simon Byrne not later than 9.00 am on 29 October 2002, but if they are not so lodged they may be handed to the chairman of the Scheme Meetings at the meetings. Forms may be sent by facsimile transmission to +44 (0) 20 7220 7468 by the same time on the same date provided that the original forms are handed to the chairman of the relevant Scheme Meeting at the relevant meeting or posted so as to be received by the Scheme Manager at the above address no later than 3 Business Days after the date of the relevant Scheme Meetings. Any Pool Creditor returning a Form of Proxy only will have the value of their Pool Liabilities (as defined in the Scheme) determined for voting purposes by the chairman on the basis of the information available to the Scheme Manager in respect of such claims.

By the said Orders the Court has directed that the chairman of the Scheme Meetings shall be Dan Yoram Schwarzmann, a partner in the United Kingdom firm of PricewaterhouseCoopers, or failing him, Stephen Robert Street, a Senior Vice President of Global Resource Managers Limited, or failing him Simon Lees-Buckley Byrne, a Senior Vice President and Finance Director of Global Resource Managers Limited, and has directed the chairman to report the results of the said Scheme Meetings to the Court.

The said Scheme will be subject to the subsequent sanction of the High Court of Justice of England and Wales.

DATED this 9 day of September 2002

### LEGAL NOTICE

IN THE MATTER OF THE COMPANIES ACT 1981  
AND IN THE MATTER OF  
**AMBER INSURANCE  
COMPANY, LTD**  
IN LIQUIDATION

IN MEMBERS' VOLUNTARY LIQUIDATION

NOTICE IS HEREBY GIVEN that the creditors of the above named Company, which is being voluntarily wound up, are required on or before 16 September 2002, to send their full Christian and Surnames, their addresses and descriptions, full particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the undersigned, at PricewaterhouseCoopers, PO Box HM 1171, Hamilton HM EX, Bermuda, being the Joint Liquidator of the said Company, and if so required by notice in writing from the said Joint Liquidators are personally, or by their solicitors, to come in and prove their debts or claims at such time and place as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

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## LARGEST U.S. REINSURERS' FIRST-HALF 2002 RESULTS

Dollar figures in thousands	Net reinsurance premiums written 2002	Net reinsurance premiums written 2001	Policyholder surplus (reinsurers only)	Net income (loss)	Loss & loss adjustment expenses	Loss ratio	Underwriting expenses	Expense ratio	Combined ratio 2002	Combined ratio 2001
Employers Reinsurance Corp. <sup>1</sup>	\$2,100,598	\$2,252,574	\$5,662,351	(\$17,673)	\$1,894,187	89.3%	\$594,105	28.3%	117.6%	108.6%
General Re Group <sup>2</sup>	1,982,663	2,129,025	3,966,453	223,755	1,562,408	80.7	528,970	26.7	107.3	119.4
National Indemnity Co.	1,248,248	N/A	14,802,891	490,461	279,720	44.8	95,936	7.7	52.5	N/A
Transatlantic Re/Putnam Re	1,072,227	840,585	1,471,606	108,743	727,591	71.7	281,854	26.3	98.0	101.5
Everest Reinsurance Co.	993,347	785,056	1,287,961	43,882	621,996	70.2	268,670	27.0	97.2	104.9
St. Paul Re <sup>3</sup>	662,642	702,833	N/A	N/A	460,082	67.4	193,091	29.1	96.5	104.9
Odyssey America Re Corp./Odyssey Re Corp. <sup>4</sup>	677,686	399,534	911,537	42,612	403,831	68.5	198,051	29.2	97.7	101.5
Converium Reinsurance (North America) Inc. <sup>5</sup>	602,099	548,965	682,922	(20,199)	400,590	71.3	184,863	30.7	102.0	102.2
Swiss Reinsurance America Corp.	512,314	832,061	2,188,329	2,535	582,326	82.7	163,504	31.9	114.6	127.1
American Re-Insurance Co. <sup>6</sup>	504,215	1,730,404	681,210	(1,652,499)	2,568,965	320.4	166,614	33.0	353.4	107.2
Partner Re U.S. <sup>7</sup>	395,366	275,638	348,698	(20,378)	229,553	74.5	126,629	32.0	106.5	108.4
Berkley Insurance Co.	386,359	220,823	710,105	8,892	180,301	71.3	94,954	24.6	95.9	106.4
Hartford Re Co.	383,443	470,614	N/A	N/A	261,945	76.3	96,651	25.2	101.5	113.2
CNA Re <sup>8</sup>	347,883	169,098	N/A	N/A	212,853	71.3	83,419	24.0	95.3	405.7
Gerling Global Reinsurance Corp. of America <sup>9</sup>	342,921	451,233	355,376	(144,535)	429,020	112.1	141,324	41.2	153.3	116.5
SCOR U.S. Group/SCOR Reinsurance Co. <sup>10</sup>	310,807	425,749	361,698	(20,467)	204,581	78.9	97,633	31.4	110.3	107.9
Folksamerica Reinsurance Co.	307,700	228,912	617,111	26,415	191,144	68.1	93,568	30.4	98.5	111.0
PMA Capital Insurance Co.	293,275	120,141	513,325	12,763	168,511	68.8	84,351	28.8	97.5	113.8
AXA Corporate Solutions Reinsurance Co.	229,600	184,937	222,220	(14,270)	145,999	69.6	87,931	38.3	107.9	110.5
Trenwick America Reinsurance Corp. <sup>11</sup>	185,462	126,059	354,363	(3,123)	107,301	69.0	62,676	33.8	102.8	130.8
<b>Totals for Top 20</b>	<b>\$13,538,855</b>	<b>\$12,894,241</b>	<b>\$35,138,156</b>	<b>(\$933,086)</b>	<b>\$11,632,904</b>	<b>91.9%</b>	<b>\$3,644,794</b>	<b>26.0%</b>	<b>119.0%</b>	<b>114.6%</b>
<b>Totals for all companies</b>	<b>\$14,609,031</b>	<b>\$13,790,263<sup>12</sup></b>	<b>\$38,156,950</b>	<b>(\$814,393)</b>	<b>\$12,317,256</b>	<b>90.5%</b>	<b>\$3,923,189</b>	<b>26.9%</b>	<b>117.4%</b>	<b>115.3%</b>

\* Results include combined U.S. and non-U.S. affiliate operations.

1. Includes the combined results of Employers Reinsurance Corp., Westport Insurance Corp., First Specialty Insurance Corp., The Medical Protective Co. and GE Reinsurance Corp.

2. All data presented on a North American statutory basis for the General Re Group. Excludes other affiliates from the Berkshire Hathaway Group.

3. Excludes the corporate aggregate cover.

4. Includes the combined results of Odyssey America Re Corp., Odyssey Reinsurance Corp. and Hudson Insurance Co.

5. Formerly Zurich Reinsurance (North America) Inc.

6. On July 10, 2002, Munich Reinsurance Co., the ultimate parent of American Re-Insurance Co., announced it would provide additional financial support to the company calculated on a basis that ensures superior positioning to take advantage of future business opportunities as a function of its strong capitalization. American Re's quarterly results reflect a re-estimation and strengthening of net loss and loss adjustment expenses reserves of \$2 billion.

7. Includes the combined results of Partner Reinsurance Co. of the U.S. and its subsidiary, Partner Re Insurance Co. of New York.

8. Excludes the corporate aggregate reinsurance treaty and first-quarter revisions to the WTC event loss, which were offset on a net-of-reinsurance basis by higher reinstatement premiums and a reduction of return premiums.

9. Includes the combined results of Gerling Global Reinsurance Corp. of America and Constitution Insurance Co.

10. Policyholders' surplus includes surplus note dated July 1, 2002.

11. Represents U.S. reinsurance operations only. Excludes other members of the Trenwick Group that write direct insurance in the United States as well as reinsurance and insurance in the United Kingdom and Bermuda.

12. Total premiums written shown for June 2001 are those reported in the June 2001 Reinsurance Underwriting Report.

Source: Reinsurance Assn. of America

## RAA: First-half signals more rate hikes

Continued from page 2

Insurance Co., said that despite the results, "I think the reinsurance industry is in a very strong position right now. The companies that are left with strong capital will be able to continue to go forward in what we expect to be hard market for the near term, at least."

American Re recently received a \$2 billion reserve boost from parent company Munich Reinsurance Co. (BI, July 15).

Other reinsurers also have recently strengthened general reserves, analysts note.

Todd Bault, a research analyst at Sanford Bernstein & Co. in New York, said that, in looking at the results, "I think the main thing that leaps out is there's a lot of reserve strengthening going on, and that's not really a big surprise. Reserves for reinsurers looked like they were pretty inadequate as early as 2000," and strengthening may need to continue throughout 2002.

"In general, I'd say there are a few companies on the list (of RAA members) that are still wrestling with reserve deficiencies of the past, and some of the companies are increasing their estimates of their 9/11 losses," said Stephen G. Tirney, president of Philadelphia-based reinsurer PMA Capital Corp. But, he added, "I would think that the 2002 accident year should be fairly good for most of the companies."

Ray Sprague, executive vp of reinsurance operations at the Hartford, Conn.-based Hartford Financial Services Group Inc., said that loss development from the 1997-2000 accident years clearly "continues to be a challenge for the industry." However, "underlying the results, many companies are seeing dramatic improvement because of changes—primarily in the property market, with the casualty markets lagging behind," he said, referring to rate increases.

Losses from the Sept. 11 terrorist attacks continue to shape the reinsurance industry, observers say.

John Ward, chairman and chief executive officer of the Cincinnati-based Ward Financial Group, said: "To a certain extent, the (reinsurance) segment is reacting and reeling a bit from

the Sept. 11 attack." As a result, "the current market has gone beyond a hard market. It's hard and very tight," with "a lot of focus on efforts to exclude terrorist coverage," he said.

Gary Ransom, senior vp at Hartford, Conn.-based research firm Conning & Co., said: "It was clear that the reinsurers had some catch-up after (Sept. 11). The primary guys could raise rates fairly quickly. They would tend to have renewals come around throughout the year...whereas the reinsurers either got it all on Jan. 1 or, in some cases, had to wait until July 1 to even get the first

**'The current market has gone beyond a hard market. It's hard and very tight,' with 'a lot of focus on efforts to exclude terrorist coverage.'**

John Ward  
Ward Financial Group

rate increase after Sept. 11."

As a result, reinsurers "were at least temporarily behind the primary companies," though they have "caught up pretty quickly," said Mr. Ransom.

And rate hikes are expected to continue, particularly for casualty lines.

The Hartford's Mr. Sprague said he expects property reinsurance rates to rise by 5% to 10% during the January renewals, while casualty rates should increase in the 20% to 25% range, with even higher rates anticipated for professional liability lines.

"I think you're seeing rate hikes continuing and terms and conditions continuing to harden across most lines and most of the world," said ERC's Mr. Smith. And everything ERC is seeing from the Jan. 1, April 1 and July 1 renewals, as well as its facultative book, indicates the trend is accelerating, he said.

"I think that we're in a prolonged cycle which could last a couple of years," said Cliff Gallant,

an analyst with Keefe, Bruyette & Woods in New York. The extent of increases varies by line. For example, pricing on catastrophe business—a line that has seen several years of increases—is approaching adequacy, he said. "I think a high percentage of the (catastrophe) market is probably achieving rate levels (that are) producing pretty strong results, so there's not much need for further rate increases on that."

But in other areas, including casualty coverages and longer-tail lines of business, hikes are still in their early stages, and "we could have a couple of years of rate increases," Mr. Gallant said.

Analysts also see some changes in market share as business reshuffles and some insurers retain more risk.

Brian Meredith, senior property/casualty insurance analyst with Banc of America Securities in New York, said, "What you're seeing is some market-share shifts" from direct to broker-market reinsurers in light of the poor results that some reinsurers, particularly European direct reinsurers, have experienced lately.

In addition, "premium growth remains below the rate increases that the industry (overall) is achieving, which tells me that primary insurers, especially some of the large national insurers, are increasing retentions just by not buying reinsurance in an effort to reduce their reinsurance costs." This is probably indicative of the move to excess-of-loss business from pro rata reinsurance as well, said Mr. Meredith.

"The other thing curtailing things right now is, the finite reinsurance market has definitely seen a turnaround here, particularly because of increased scrutiny from auditors," he said. It has become "a lot more difficult for these transactions to pass muster."

Also on the horizon is more consolidation, said Michael Smith, an analyst with Bear Stearns & Co. in New York. There will be "an acceleration of the consolidation as more players head for the exit," he said. "I've got to believe there are some other small players that are going to head for the door soon."

## Quality: Better health info a priority

Continued from page 3

in the past with HHS about providing information about health care quality to employers, but had not yet presented its study to the agency. "We'll be doing that directly," he said.

The report also recommends:

- Increased employee participation in wellness and disease management.

- Employer collaboration with hospitals and physicians to reduce medical errors.

- Internet-based benefits administration systems.

- Promoting the creation of association health plans.

- Lobbying Congress to refrain from adding new mandated benefits or other initiatives that raise costs.

- Using financial incentives to reduce health care costs.

The NAM report was funded by the Robert Wood Johnson Foundation and prepared by Boston-based health research organization JSI Research Training Institute Inc.

# Retirees: Medicare PPO option may help employers

Continued from page 1

provide richer benefits than Medicare, but require enrollees to receive coverage from providers in their networks.

To persuade PPOs to join the demonstration project, the government is providing special financial incentives not available to HMOs. PPOs will receive a payment from the government for each enrollee that is the greater of:

- What the government would pay a Medicare HMO for providing the coverage. Government payment rates to HMOs are set on a county-by-county basis, with a variety of factors used to calculate the rates.

- Ninety-nine percent of the amount the government estimates, based on its own per capita costs, what it would cost to cover enrollees in the traditional Medicare program.

In addition, the government, under an optional risk-sharing program, will absorb a portion of losses, if any, incurred by the PPOs, as well as share in any profits of the plans. Details of this risk sharing arrangement vary from plan to plan.

Health plans and benefit experts applaud the project and many expect it will lead to a surge of enroll-

ment in the PPOs. The very attributes that have made PPOs the predominant form of health care for active employees—a relatively rich level of benefits available to those using network providers but still providing coverage for services outside the network—should also appeal to Medicare beneficiaries.

**Hundreds, if not thousands, of employers and their retired workers have been beneficiaries of the Medicare + Choice program, even while limited to HMOs.**

“People love choice. Individuals want the flexibility to go outside a plan’s network,” said Jonathan Nemeth, a senior vp in Somerset, N.J., for Aon Consulting Inc.

For employers with retiree health plans, much is riding on the outcome of the demonstration project. Hundreds, if not thousands, of employers and their retired workers have been beneficiaries of the Medicare + Choice program, even while limited to HMOs.

The mechanics of that program

are simple. An HMO, in exchange for a fixed payment from the federal government, provides at least the same level of benefits offered by the traditional, fee-for-service Medicare program. These payments are set to be slightly less than what the federal government estimates it would cost Medicare to provide the coverage, resulting in cost savings for Medicare.

Because payments are based on Medicare’s indemnity costs, the theory is that managed care plans can often provide retirees with a richer benefit package than Medicare offers and still earn a profit.

For employers, Medicare HMOs have been an appealing way to reduce retiree health care costs. Employers have found that the cost of offering a Medicare HMO, even after paying any premiums for additional benefits, such as unlimited prescription drug coverage, has been considerably less than what they were spending for indemnity plans that supplemented Medicare.

Given the opportunity to receive a much richer benefit package at little or no cost, many retirees moved out of the traditional Medicare program and into HMOs. Enrollment in Medicare HMOs hit more than 6.3 million in 1999, up from 4.3

million in 1996.

But since then, enrollment in the plans has tumbled as the impact of a 1997 federal budget law began to be felt. The law, among other things, essentially capped at 2% the annual increases in the federal payments to HMOs. That cap on payment increases came as HMOs’ costs, especially for prescription drugs, began to soar.

With government payment increases outstripped by cost hikes, dozens of HMOs left the Medicare market and others sharply raised premiums. The result has been a big decrease in the number of enrollees in Medicare HMOs to 5.2 million from 6.3 million in 1999.

Still, despite the market turmoil, Medicare HMOs remain, in many cases, an attractive alternative for employers and their retired workers. The dollar difference can be as much as \$500 per retiree per year between Medicare HMOs and the traditional plans that employers offer to supplement Medicare, said Steve Coppock, a consultant in the Norwalk, Conn., office of Hewitt Associates Inc.

“The savings still can be attractive,” Mr. Coppock said.

And PPOs could generate savings as well. But whether that occurs de-

pends on how much money—in terms of payment rates—the government gives to the plans.

“A lot will depend on (government) rates,” said Robert Meehan, vp-consumer and commercial markets for Horizon Blue Cross Blue Shield of New Jersey in Newark. Horizon, which will participate in the PPO demonstration project, is New Jersey’s largest Medicare HMO with more than 63,000 enrollees.

“Financing will be a very important” variable, said Mr. Coppock.

As a practical matter, employers, due to the timing of the announcement of the PPO demonstration project, likely won’t consider whether to offer PPOs to their retired workers until the 2004 plan year as most employers already have decided on the health plans they will offer retirees next year.

“If the announcement had been April 1, things might have been different,” Mr. Coppock said.

Aside from Horizon, health plans that will participate in the demonstration project include Anthem Inc., Aetna Inc. Health Net, Humana Inc., PacificCare Health Systems Inc. and United Healthcare.

Benefit levels and premiums charged by the plans have not been announced yet.

# Subrogation: Air crash dispute may signal change

Continued from page 1

ing gear collapsed on landing and its right wing struck the runway and broke away from the plane’s fuselage.

A group of more than 30 insurers that wrote the airline’s hull and liability coverage filed a suit on the eve of the crash’s third anniversary in Los Angeles Superior Court against: McDonnell Douglas Corp., which built the MD-11; Chicago-based Boeing, which acquired McDonnell Douglas in 1997; and five unnamed manufacturers of airplane component parts.

The lead plaintiff is AIG Europe (UK) Ltd., a unit of American International Group Inc. of New York. Many of the other plaintiffs are European insurers, including underwriters at Lloyd’s of London.

The insurers allege that the defendants knew but concealed that the MD-11 was defectively designed and manufactured. The aircraft was delivered in 1992 to China’s Civil Aeronautics Administration, and the Taiwanese agency then delivered the plane to China Airlines Ltd.

The plaintiffs also contend that the defendants failed to comply with a federal aircraft certification process and, therefore, violated Federal Aviation Administration regulations.

The lawsuit seeks at least \$80 million of damages, which was the value of the hull destroyed in the crash. The insurers also seek to recover the damages they ultimately will pay passengers and their families, attorneys’ fees and prejudgment interest.

Boeing does not comment on liti-



**This China Airlines MD-11, which crashed while attempting to land in Hong Kong in 1999, led to a product liability dispute that some say may change how insurers conduct subrogations in the future.**

gation, a spokesman said.

The insurers’ attorney, John C. Holmes of Los Angeles-based Barger & Wolen L.L.P., did not return calls.

Spokesmen for the FAA and the National Transportation Safety Board said the regulatory agencies have not taken action against either McDonnell Douglas or Boeing over any kind of MD-11 certification issue. The NTSB sent investigators to aid in the China Airlines crash investigation, but the agency does not issue reports on foreign crashes, a spokesman noted.

Although the Boeing litigation is a routine subrogation case, it is unusual in some respects for a commercial airline loss, according to an air crash victims’ attorney and an insurer attorney.

The attorneys noted that most of these kinds of disputes have been settled behind closed doors for at

least the past decade.

The insurer attorney noted that one factor that typically discourages insurers from going to court to recover their losses from aircraft manufacturers is a limited manufacturer’s warranty. Warranties usually terminate after six to 12 months or after a specified number of flight hours, said the attorney, who did not want to be identified.

In addition, proving that a product defect caused a crash is difficult when pilot or ground-control error also is a major factor in a crash, the insurer attorney said.

Although the sides in this case probably are too far apart to settle out of court, the insurers also may have a serious product-defect concern, said air crash victims’ attorney Marc S. Moller, a partner with Kreindler & Kreindler in Hackensack, N.J.

The insurer attorney pointed out that the case also is unusual because the airline is not among the plaintiffs. He reasoned that China Airlines has more MD-11s in its fleet and does not want to go on record as being concerned about the planes’ safety.

There are about 195 MD-11s in service worldwide, but airlines may have parked some of them during flight cutbacks over the past year, the Boeing spokesman said. Boeing stopped producing the MD-11 last year.

But the attorneys agree that this case may signal that insurers plan to take more of these disputes to court.

The driving forces would be the same that have triggered the hardening of the property/casualty in-

**‘I think you’re going to see more subrogation actions, because a lot more money is at stake (in airline crash losses), money is tighter and the profit margin is smaller’ for insurers.**

Marc S. Moller  
Kreindler & Kreindler

surance market, the attorneys said.

“I think you’re going to see more subrogation actions, because a lot more money is at stake (in airline crash losses), money is tighter and the profit margin is smaller” for insurers, Mr. Moller said. “So, the need to press for the last dollar is

maximized.”

Mr. Moller also suggested that insurer subrogation against airlines also would be fueled by an international treaty under which airlines worldwide would assume strict liability for crashes. The agreement is still in the ratification process (BI, June 7, 1999).


The insurer attorney said he doubted that the treaty would factor into insurers’ litigation decisions.

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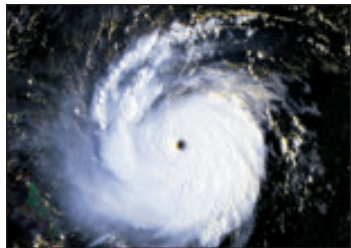


We salute the heroes of September 11 —  
the brave men and women who perished,  
the firefighters, police and workers who  
risked their lives to preserve life and liberty,  
and those who strive to ensure our freedom.

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# For the Record

This roundup of news from the previous week is generated by BI's daily news reporting. To get breaking news as it occurs, log on to [www.businessinsurance.com](http://www.businessinsurance.com), or sign up online for free BI Daily News by e-mail.



## Hurricane forecasters see less storm activity

Colorado State University's hurricane forecast team has again revised downward its prediction for Atlantic and Gulf Coast hurricane activity. In a special September forecast issued Sept. 1, the team predicted that only three hurricanes will form during the current Atlantic basin hurricane season, compared with a 1950-2000 annual average of six hurricanes. Two of those will form this month and another in October or November, the team predicts.



## Calif. passes tort change for construction cases

The California legislature has sent a tort reform measure aimed at reducing construction defect disputes to Gov. Gray Davis. S.B.

800, dubbed "right to repair" legislation, gives builders an absolute right to attempt to fix problems before consumers can file construction-defect lawsuits. The bill also would establish uniform construction standards for certain components, such as structural stability, fire protection, plumbing and electrical systems.

## Indoor pollution covered: Indiana high court

Indiana's Supreme Court has ruled that the absolute pollution exclusion does not bar coverage for indoor pollution claims but that an insurer did not act in bad faith when it invoked the exclusion to avoid defending and indemnifying its policyholder. The ruling in *John Freidline and Donna Freidline vs. Shelby Insurance Co.* overturns a state appellate court's ruling on the bad faith issue but upholds the lower court's decision to award coverage to the policyholders. A trial court had ruled for the insurer.

## Alaska tort reforms ruled constitutional

Broad tort reform legislation adopted by Alaska in 1997 is constitutional, Alaska's Supreme Court has ruled. The court ruled in *Betty Evans vs. State of Alaska* that caps on noneconomic and punitive damages do not violate the constitutional right to a trial by jury. The court also upheld as constitutional a requirement that

half of all punitive damage awards be paid to the state Treasury, as well as a 10-year statute of repose for tort claims.

## PBGC takes over Anchor Glass plan

The Pension Benefit Guaranty Corp. has taken over and terminated a severely underfunded pension plan sponsored by Anchor Glass



Container Corp., which is now emerging from Chapter 11

bankruptcy. The Anchor plan, which has about 14,000 participants, is underfunded by \$219 million, with liabilities of \$555 million and assets of \$336 million. As part of its reorganization, Anchor agreed to make an initial payment of \$20.75 million to the PBGC and it will pay the PBGC \$10 million per year for 10 years.

## Arizona licenses first captive

Arizona's first captive insurer, Triad Commercial Captive Insurance Co., has been licensed to cover the commercial automobile, general liability and inland marine risks of two affiliated sand, gravel and cement companies. Triad is 100% owned by an individual, Grant Goodman, who has ownership interests in the companies Triad is insuring. Mr. Goodman owns all of Phoenix-based G.T.I. Capital Holdings L.L.C., which does business as



Rockland Materials. Mr. Goodman also owns 60% of Drake, Ariz.-based Stirling Bridge L.L.C., which does business as Stirling Bridge Cement.

## New ACE USA unit to focus on difficult risks

ACE Risk Management, a unit of ACE USA, is creating a new insurer that will specialize in general liability and product liability coverages for policyholders with difficult-to-insure exposures. ARM Custom Casualty will write primary and buffer layer limits of up to \$5 million for such risks as consumer goods, industrial equipment, medical products, automobile parts and chemical manufacturing. In some cases, limits of up to \$25 million can be written with support from other ACE USA insurers.



Labor Day, the president said lack of adequate terrorism insurance has delayed more than \$8 billion in construction projects....California lawmakers have sent a bill to Gov. Gray Davis that would provide 12 weeks of annual paid leave for workers to care for an ill child, spouse, parent or domestic partner, as well as for child birth or adoption. The governor has not yet decided whether he will sign S.B. 1661, sponsored by Sen. Sheila Kuehl, D-Los Angeles....Michael J. Cloherty has resigned as chief financial officer of Arthur J. Gallagher & Co. to devote more time to his family real estate business, the brokerage announced. But Mr. Cloherty will continue to work at the Itasca, Ill.-based brokerage as special adviser to the chief executive officer....Lloyd's of London will close briefly on Sept. 11 to mark the one-year anniversary of last year's terrorist attacks. A service will be held in the underwriting room at 1 Lime St. at 10:45 a.m. GMT....Peter Haynes has joined Lloyd's insurer Kiln P.L.C. as corporate development director and a director of the company. He was formerly acting chief executive of Morley Fund Management.

## Briefly noted

President Bush has again called for congressional approval of legislation that would create a federal backstop for terrorism insurance. Speaking at a union gathering in Pittsburgh on

## Online Poll [ 09/02 - 09/07 ]

Who should be responsible for setting punitive damages in trials alleging corporate wrongdoing?

Jurors

39.4%

Judges

31.3%

Regulators

29.3%

Take part in our weekly poll at [www.businessinsurance.com](http://www.businessinsurance.com)

# Health: Benefits costs rising

Continued from page 3

employers ranging in size from three to more than 300,000 employees.

The 2001-2002 increase followed an increase of 11% last year and 8.3% in the year before. This year's survey found that premiums averaged \$3,060 for single coverage and \$7,954 for family coverage.

Jon Gabel, vp-health system studies for HRET, pointed out that the difference in cost increases for fully insured vs. self-insured plans has narrowed, with fully insured plans reporting an average 13.2% increase and self-insured plans a 12.3% increase. In contrast, the 2001 survey showed a spread of nearly three percentage points, with self-insured plans reporting an average 9.5% cost increase, while fully insured plans saw a premium increase of 12.3%.

Mr. Gabel said that the shrinkage shows that increases are being driven by underlying medical costs rather than by health insurers' underwriting. That suggests that pre-

miums and costs are likely to rise for the foreseeable future, he said.

"We are headed for a number of years of double-digit inflation," he said.

The dollar amount that employees pay for their coverage has increased as well, according to the survey. Employees purchasing single coverage paid an average monthly contribution of \$38, up from \$30 in the last survey. Employees purchasing family coverage paid an average monthly contribution of \$174, up \$24 from the last survey. But the percentage of the total costs paid by employees did not change at all for family coverage—amounting to 27% of the premium for the third survey in a row—and only slightly more for single coverage, 16%, in the new survey compared to 15% last year and 14% in the previous survey.

Some employers are responding to rising costs by reducing health care benefits. In this year's survey, 17% of covered workers experienced benefit declines, compared

with 11% last year. Only 10% of the covered workers received enhanced benefits, making the most recent survey period the first time in four years that more workers experienced benefit reductions than enhancements.

The survey asked employers with 200 or more employees how likely they were to make any of several changes to their plans in 2003.

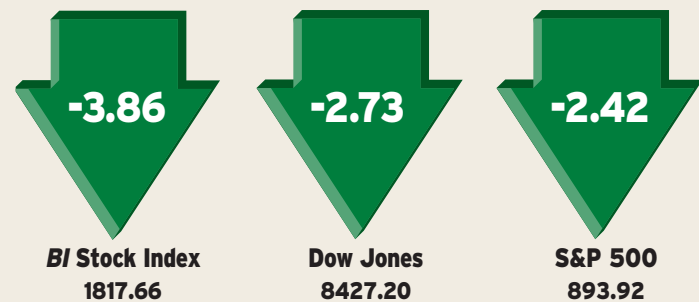
Seventy-eight percent of the respondents said that they were very likely or somewhat likely to increase the amount employees pay for their benefits and a slight majority—51%—said that they were at very likely or somewhat likely to increase the amount employees pay for prescription drugs. But only 2% said that they were very likely or somewhat likely to drop coverage altogether, with 92% saying that they were not likely at all do so.

The report, "Employer Health Benefits: 2002 Annual Survey," is available at [www.kff.org](http://www.kff.org).

## BI Stock Index [ 09/02 - 09/07 ]

Up-to-the-minute data for all 87 companies that comprise the BI Stock Index can be found at [www.businessinsurance.com](http://www.businessinsurance.com)

Percentage change of BI Stock Index vs. key indicators



### Largest gains

Trenwick Group Ltd. 17.65%  
Acceptance Insurance 15.00%  
Unico American Corp. 9.29%  
Aon Corp. 5.52%  
Argonaut Group 5.06%

### Largest losses

ESG Re Ltd. -16.67%  
Gainsco Inc. -14.53%  
SCOR -12.66%  
Travelers P/C -8.05%  
Arthur J. Gallagher & Co. -7.29%

### Weekly change by market segment

Brokers -1.18%  
Insurers/Reinsurers -1.71%  
Managed Care Organizations -3.09%

Source: CNET Investor ([investor.cnet.com](http://investor.cnet.com))

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Richard Anthony Aceto  
Christy Addamo  
Terrance Aiken  
Gertrude Alagero  
Jon Albert  
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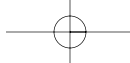
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Paul Zois

# We remember and honor

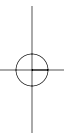


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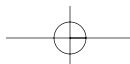


We will always remember  
o u r f r i e n d s a n d f a m i l y

S e p t e m b e r 1 1 , 2 0 0 1



**AON**





~~RISK~~

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