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Charley, Frances combination not expected to shake insurers, but Ivan looms

Frances adds to Florida hurricane losses

By SALLY ROBERTS

Although property insurers have weathered the first two major hurricanes to hit Florida this year, they are bracing for a third, potentially more powerful storm in Hurricane Ivan.

Insured losses from hurricanes Charley and Frances are not expected to exceed $20 billion in total, in part because of coastal windstorm deductibles increased after Hurricane Andrew in 1992.

But even though the losses, under current estimates, fall within many insurers' net retentions, some will be scrambling to find additional reinsurance coverage because their treaties provide only one reinstatement after limits have been exhausted, experts say.

And while the softening of property catastrophe rates for risks outside of Florida is not expected to end as a result of Charley and Frances, Ivan may change all of that.

As of late last week, Ivan, a Category 4 storm, was projected to hit the Florida Keys Monday af-

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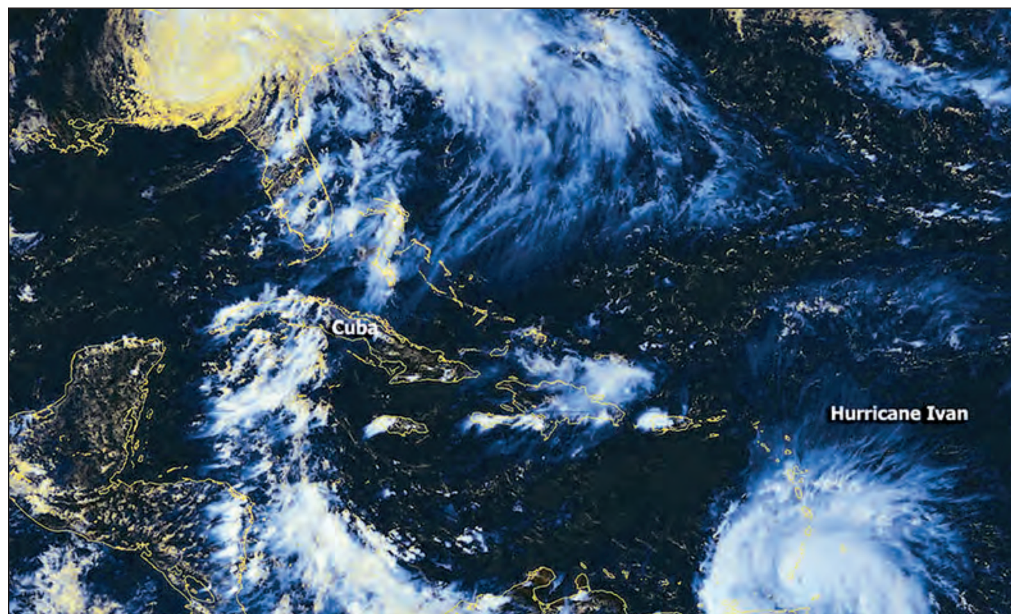

PHOTO: NOAA

A Sept. 7 satellite image shows a weakened Frances over the U.S. Southeast and Hurricane Ivan gaining strength over the Atlantic.

Bush unveils plan to expand health coverage

HSA credit proposed

By JERRY GEISEL

WASHINGTON—A new Bush administration plan designed to tackle the problem of the uninsured could help expand coverage, reducing provider cost-shifting to employers currently offering health insurance, benefit experts say.

Under the proposal, which President Bush outlined at the Republican National Convention in New York, employers with 100 or fewer employees would be eligible for a refundable tax credit for contributions they make to employees' health savings accounts. The credit would apply to the first

See HSA/page 21

House panel approves litigation reform bill

By MARK A. HOFMANN

WASHINGTON—The House appears likely to determine the fate of a bill that would impose sanctions on lawyers who file frivolous lawsuits in federal court as early as this week.

The Lawsuit Abuse Reduction Act—H.R. 4571—won the approval of the House Judiciary Committee on a 18-10 party line vote last week, with the committee's Republicans voting for the measure and its Democrats opposing it. The measure enjoys the support of business and insurance groups. They claim that it could end two tort problems with one stroke—the filing of frivolous lawsuits and the practice of some plaintiffs attorneys of seeking out the most plaintiff-friendly jurisdictions in which to file suits regardless of their appropriateness.

Opponents say, though, that the measure is unnecessary and that bringing it before Congress so late in the term is politics, pure and simple.

The bill, which was introduced by Rep. Lamar Smith, R-Texas, would reinstate provisions in Rule 11 of the Federal Rules of Civil Procedure that require federal judges to sanction attorneys who have filed frivolous lawsuits. The rule was amended in 1993 to give judges discretion over the imposition of sanctions on those who have filed frivolous suits. The committee also approved an amendment to the bill that requires a federal court to forbid an attorney who files three frivolous suits in that court from appearing before the court for one year.

Among other things, Rule 11 defines a frivolous lawsuit as one presented for "improper purpose," such as to harass or cause unnecessary delay or needless increase in the cost of litigation. In addition, it covers claims for which the factual allegations have no evidentiary support.

The measure also removes an existing provision in Rule 11 that allows an attorney who files a frivolous lawsuit to escape sanctions if he or she withdraws the lawsuit within 21 days after a mo-

See LARA/page 22

Late News

Outlook for reinsurers 'stable,' Fitch says

The outlook for the global reinsurance industry is stable, Fitch Ratings reports. Chris Waterman, a senior director in Fitch's European Insurance Group in London and an author of the report, said a normal catastrophe experience in the second half should result in rates remaining flat or dropping slightly at Jan. 1, 2005, renewals. While losses from hurricanes Charley and Frances would not be sufficient in themselves to increase rates, they may have a stabilizing effect on pricing, he said. The report, "Mid-Year 2004 Global Reinsurance Outlook," is available at *www.fitchratings.com.*

Broker USI acquiring Summit Global Partners

Continuing its recent acquisition spree, Briarcliff Manor, N.Y.-based USI Holdings Corp. has reached an agreement to acquire Dallas-based Summit Global Partners Inc. Terms were not disclosed. USI is the ninth-largest broker of U.S. business, based on $352.3 million in 2003 brokerage revenues from U.S. clients, while SGP is No. 34, with $61.8 million in revenues (*BI*, July 19). SGP, which specializes in middle-market risk management and employee benefit accounts, is expected to contribute about $68 million in revenues to USI annually, USI said in a statement. SGP operates in California, Florida, Illinois, Michigan, New Mexico, Oklahoma, Tennessee and Texas.

R.I. attorney general wary of reimportation law

Rhode Island's recently enacted law authorizing the Department of Health to license Canadian pharmacies to sell prescription drugs in the state "could violate federal laws," the state's attorney general says. The law is problematic because it allows the Department of Health to license entities that violate a federal ban on the reimportation of prescription drugs from Canada,

PHOTO: REUTERS

Mr. Lynch

See LATE NEWS/page 23

NEWSPAPER

International

NEW SOUTH WALES KEEPS FIRE LEVY

Begins on page 17

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Sarbanes-Oxley expands OSHA investigations

Workplace rule governs whistleblower practices

By MEG FLETCHER

WASHINGTON—Acting in a little-known role as part of its mandate to ensure the welfare of employees in the workplace, the Occupational Safety and Health Administration recently released a final federal rule establishing procedures for the handling of whistleblower complaints under the Sarbanes-Oxley Act.

The new rule details policies and procedures OSHA has established to protect the rights of employees who have reported employers' misconduct and warns employers not to discriminate against whistleblowing employees. OSHA also explains its process for investigating and adjudicating complaints, including an appeals process open to either party.

The act "expands the type of companies that OSHA investigates," an OSHA spokesman said. As a result, OSHA is now responsible for initially investigating whistleblower discrimination complaints under similar provisions in 14 federal laws, most of which relate to environmental risks, the spokesman said.

"Whistleblower protection is an important part of the Sarbanes-Oxley Act…(and) will protect courageous workers who speak out against corporate abuse and fraud," Secretary of Labor Elaine L. Chao said in a statement.

OSHA said in a statement that since the enactment of the law—

See **OSHA**/page 6

Signs of softening don't dampen reinsurer results

But premium growth likely to slow, analysts say

By JUDY GREENWALD

U.S. reinsurers continue to report strong results despite the growing signs of a softening market, particularly for property business.

"The results for the six months, on balance, have been excellent, maybe even exceptional, for the reinsurers," said John L. Ward, chairman of the Cincinnati-based Ward Financial Group.

Despite signs of softening, "earnings have been pretty good," pricing remains strong, catastrophes were light and investment results "were not too bad," Mr. Ward said. And while rates are softer than they had been, "I wouldn't call them 'soft,'" he said.

The 27 reinsurers that reported their first-half results to the Washington-based Reinsurance Assn. of America posted a 96.3% aggregate combined ratio, compared with 97.9% for the prior-year period. The 20 largest reinsurers—based on net premiums written—posted a slightly higher 96.6% combined ratio vs. 95.1% for the comparable period. Net premiums written for the RAA reinsurers totaled $15.02 billion, a 6.6% decline from the total reported by a comparable group for the first half of 2003. The 20 largest reinsurers reported $14.88 billion in net premiums written, a 2.9% increase.

REINSURERS
First-half 2004
RESULTS

Brian Meredith, senior property/casualty insurance analyst with Banc of America Securities in New York, said, "clearly, we're seeing the impact of moderating price increases—and, obviously, increased price competition—on top-line growth." However, "profitability continues to be extremely good, particularly on an accident-year basis, because of the significant price increases we've had over the past couple of years. I also believe you continue to see a flight to quality going on in the industry."

Karen Davies, vp and senior credit officer with rating agency Moody's Investors Service in New York, said, "The results were helped by a fairly mild catastrophe environment in the first six months of the year, which will probably be

See **RESULTS**/page 20

Insurers in U.S. withstood Sept. 11

By DOUGLAS McLEOD

The Sept. 11, 2001, terrorist attacks, the worst insured catastrophe in American history, were not costly enough to trigger failures of any U.S. insurance companies, according to a university researcher's study.

"There was this major fear that our insurance industry would be wiped out by these acts simply because of the enormous payouts," said John Fitzgerald, a finance and insurance professor at Ball State University in Muncie, Ind., who expects to finalize the study in the coming weeks. "However, the only business failures were actually normal exits from the industry."

While initial estimates of Sept. 11 losses ranged as high as $70 billion in the weeks after the attacks, actual damage payments have amounted to between $30 billion and $35 billion over the past three years, Mr. Fitzgerald noted.

Losses have been lower than initially expected in part because victims or their families chose to participate in the federal Sept. 11 Victims Compensation Fund rather than suing airlines, security firms, building owners and others.

In addition, while some insurers—among them Berkshire Hathaway Inc. and American International Group Inc.—suffered heavy losses, insurers generally reinsured their New York City exposures extensively, spreading losses throughout the industry. As a result, no U.S. insurer faced larger losses than it could bear, Mr. Fitzgerald concluded.

One Japanese insurer, Taisei Fire & Marine Insurance Co. Ltd., blamed its 2001 bankruptcy on huge Sept. 11 aviation losses assumed through U.S. managing general agent Fortress Re Inc., Mr. Fitzgerald noted. Non-U.S. insurers were not included in the study, he said.

Fears of ongoing uninsured terrorism exposure have also proven overblown, he suggested.

While some businesses worried soon after Sept. 11 that the high cost of terrorism coverage would force them to close—and while the insurance industry has introduced 47 different terrorism exclusions to various types of policies—"American businesses have adapted to the changing climate," Mr. Fitzgerald found. "Today, terrorism is simply thought of as a natural part of doing business. It has become a simple risk management issue."

Inside Business Insurance

Employee fraud on the rise
A new survey finds that employee fraud is increasing, and some say employers aren't doing enough to stop it. Page 4

Oklahoma House impeaches commissioner
Oklahoma's insurance commissioner faces a Senate trial that could remove him from office. Page 4

And you thought you'd heard it all
Paul Winston shares some of the wildest and most curious excuses that risk managers have heard. Page 6

Coverage tax credit worth a look
A Bush administration proposal to expand health insurance coverage merits consideration. Page 8

Lloyd's underwriters expect modest softening
Despite losses from two hurricanes in Florida, Lloyd's underwriters project only modest rate hikes in most lines at renewals. Page 17

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info about your own event.
- Searchable **directories** provide access to all the listings of industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Do you think the government should give small employers tax credits to encourage them to offer health insurance plans to their employees?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Fraud by employees on the rise, survey finds

By RUPAL PAREKH

Highly publicized cases of corporate fraud, such as the WorldCom Inc. scandal and the Enron Corp. collapse, have in recent years shone a spotlight on workplace crime, heightening organizations' awareness of their exposures and prompting regulatory reform, including the 2002 Sarbanes-Oxley Act. Yet, reports of fraud in the workplace are greater than ever.

Among 450 organizations that responded to a survey conducted last year by KPMG L.L.P., 75% reported being victim to incidents of fraud within their organization in the previous year–up from 62% in a 1998 survey by the New York-based firm. Respondents were companies with revenues of more than $250 million and state and federal government agencies.

While financial reporting and medical/insurance schemes represent the costliest fraud categories, with the highest potential of damaging earnings, employee fraud is the most prevalent form, the KPMG survey found. The greatest growth was seen in theft of assets and expense account abuse.

Employee fraud, also called occupational fraud—a broad term for a range of misconduct by workers and executives—is considered by some industry experts to be more than a "rising" problem.

"Occupational fraud has already risen," said Joseph Koletar, principal, investigative and dispute services at Ernst & Young L.L.P. in New York. "It's a problem that's overdue in our attention."

According to Mr. Koletar, a former FBI agent and author of the 2003 book "Fraud Exposed: What You Don't Know Could Cost Your Company Millions," occupational fraud is pervasive, lurking in the background and threatening every industry. Once companies discover that their workers are taking kickbacks from suppliers or falsifying time cards, for example, the last thing many of them want to do is publicize it, observers say.

"You're not going to see a fidelity loss story on the front cover of the Wall Street Journal every day," said Brian O'Neill, a senior vp with the fidelity and crime division of New York-based American International Group Inc.

Meanwhile, employee fraud losses continue to mount.

Six percent of a typical U.S. company's annual revenues are lost to workplace theft and fraud, according to a July 2004 report by the Austin, Texas-based Assn. of Certified Fraud Examiners, a 30,000-member group dedicated to com-

See FRAUD/page 11

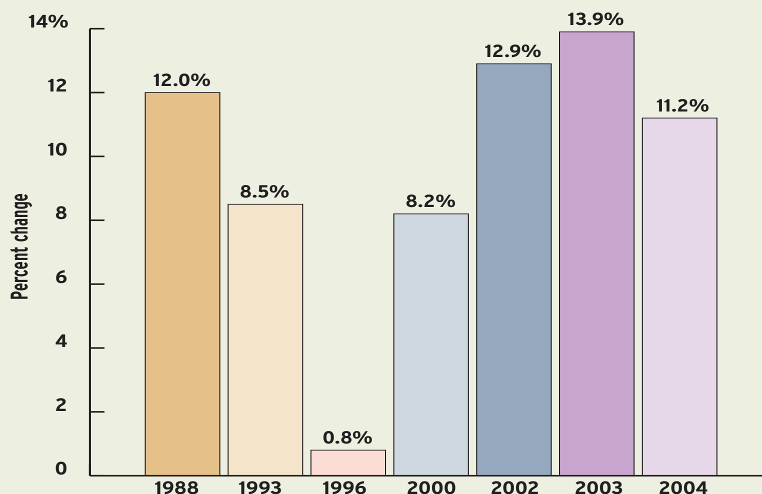
FRAUD FACTS

- **82%** of fraudsters have never been convicted of a crime; they are first-time offenders.
- **47%** of employee fraud crimes are committed by women.
- **40%** of occupational frauds are detected because an employee, customer or vendor provides a tip.
- **37%** of victim organizations recover nothing at all from fraud-related losses.
- **32%** of perpetrators are between 41 and 50 years old.
- **31%** of cases are never reported to law enforcement.
- **27%** of fraudsters have had a tenure of between three and five years with their employer.
- **26%** of companies decline to take legal action for fear of bad publicity.
- **9.1%** of perpetrators have a postgraduate degree.

Source: Assn. of Certified Fraud Examiners

PREMIUMS STILL INCREASING

Percentage increase in group health insurance premiums from previous year



Source: KFF/HRET Survey

Health insurance premium hikes moderate in 2004

By JOANNE WOJCIK

The overall average increase in group health care premiums slowed slightly in 2004 but remained in double digits for a fourth straight year, according to a survey by the Kaiser Family Foundation and the Health Research & Educational Trust.

Premiums for all plans rose by an average of 11.2% this year, down from a 13.9% increase in 2003, according to the annual survey, which provides an in-depth look at trends in health insurance costs and coverage in the workplace.

The survey, which polled 1,925 public and private employers, also examines premium increases by plan type.

Premiums for health maintenance organization coverage rose by 12.0% on average in 2004, compared with 15.2% in 2003. For point of service plans, the in-

See SURVEY/page 21

Errors & omissions

• The July 19 profile of Hilb Rogal & Hobbs Co. incorrectly listed the name of a retail agency that HRH acquired. In April, HRH added The Federau Group of Lansing, Mich., which strengthened the Glen Allen, Va.-based brokerage's foothold in the Midwest.

Oklahoma House impeaches insurance commissioner

By MEG FLETCHER

OKLAHOMA CITY—The Oklahoma House of Representatives last week overwhelmingly approved five articles of impeachment against state Insurance Commissioner Carroll Fisher for alleged misconduct in office.

The action sets the stage for a state Senate trial that is set to begin with procedural discussions Sept. 14, although Mr. Fisher said his attorney plans to ask the state Supreme Court on Sept. 13 to stay the Senate trial. Mr. Fisher is facing similar charges in criminal court and does not want testimony presented before the Senate that could be used against him in the criminal proceedings, he said.

Mr. Fisher, a twice-elected Democrat who has served as commissioner since November 1997, currently faces three felony criminal charges relating to his alleged embezzling of insurance education funds, operating a charity illegally and embezzling a $1,000 campaign contribution. He denies any intentional wrongdoing and vows not to leave office voluntarily.

Thursday, 95 members of the state House unanimously voted to adopt an eight-page report citing several actions as demonstrating Mr. Fisher's "willful neglect of duty,

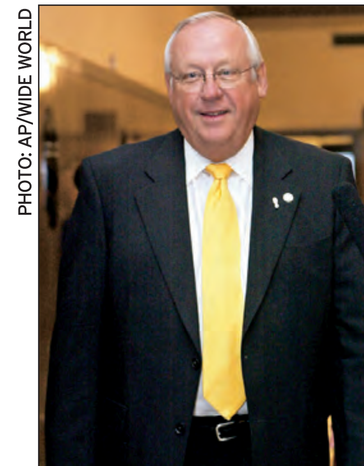


PHOTO: AP/WIDE WORLD

Oklahoma Insurance Commissioner Carroll Fisher faces a trial in the state Senate.

corruption in office" or "incompetency."

At least 88 of those members approved each of the five articles of impeachment. Three of the articles outlined are similar to the three criminal charges he faces: "mishandling" of insurance education funds, "improperly soliciting monies for a charity he established from entities he regulates" and "use of campaign funds for his personal benefit."

Mr. Fisher also was impeached for "the solicitation and acceptance of items of substantial value in exchange for favorable rulings," according to the articles of impeachment. In addition, he was impeached for obtaining and disseminating confidential employment documents of a political opponent, according to the document.

"I can defend all of those charges," said Mr. Fisher, who maintains that the House proceedings presented only one side of the story. "I will fight this as far as it can be fought," he said.

Bill seeks disclosure of filings with PBGC

Participants would get access to more corporate data

WASHINGTON—Participants in underfunded pension plans would be able to obtain nonpublic financial information about their employers under an amendment approved Wednesday by the House of Representatives.

The amendment, proposed by Rep. George Miller, D-Calif., was passed on a 268-148 vote as part of a broader bill appropriating funds for several federal agencies. It would apply to employers whose pension plans have at least $50 million in unfunded benefits. Such employers are required to disclose detailed financial information to the Pension Benefit Guaranty Corp.

That information includes pension actuarial reports as well as audited and unaudited financial reports. Although the PBGC currently must keep that information confidential, the Miller amendment would require the agency to disclose the information to any plan participant requesting it.

"The vote in the House today recognizes the right of all workers to know important information about their own future," Rep. Miller said.

However, Kyle Brown, a consultant with Watson Wyatt Worldwide in Washington, said that making more confidential corporate information available could further erode employer interest in providing defined benefit plans.

—By Jerry Geisel

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OSHA: New whistleblower rules

Continued from page 3

formally known as the Corporate and Criminal Fraud Accountability Act of 2002—on July 30, 2002, the agency has received 307 related employee discrimination complaints. The law requires an employee to file a complaint within 90 days of the alleged discrimination.

The Sarbanes-Oxley whistleblower provisions protect employees in some publicly traded companies and brokerage firms, as well as their contractors, subcontractors and agents, from retaliation by employers or their representatives. The provisions apply in cases in which an employee provides information that he or she believes indicates fraudulent activity, including the violation of a Securities and Exchange Commission rule or other federal law relating to fraud against shareholders.

To determine if the act applies to a specific company, an OSHA fact sheet suggests that employees visit the SEC Web site, *www.sec.gov*, and search the EDGAR database for the company's name. "Only companies with a class of securities registered under Section 12 of the Securities Exchange Act or that are required to file reports under Section 15(d) of that act, or their contractors, subcontractors or agents are covered," according to OSHA.

The new rule specifically states employers' obligations: "No company or company representative may discharge, demote, suspend, threaten, harass or in any other manner discriminate against any employee with respect to the employee's compensation, terms, conditions or privileges of employment because the employee, or any person acting pursuant to the employee's request" has filed a whistleblower complaint. Other examples of employer discrimination include failure to hire or rehire, blacklisting and disciplinary action, according to OSHA.

Call for Nominations

Risk Manager of the Year™
Risk Management Honor Roll™

Nominations for the Risk Manager of the Year and Risk Management Honor Roll are now being accepted by *Business Insurance*.

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

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

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

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

DEADLINE FOR NOMINATIONS: November 22, 2004

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

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Business Insurance

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Paul Winston

Sorry, the dog ate my excuse

A week before Labor Day, I wrote about a Web site, *www.workforce.com*, that has a thriving community of human resources professionals who compare notes and share information on a wide variety of important workplace management issues. One of the more entertaining discussion threads included some of the best/worst excuses individuals had heard from people calling in to say they could not make it to work.

The imaginative and absurd lengths that people will go to in order to come up with a convincing excuse never ceases to amaze me.

I reasoned that such creativity could also be found in claims encountered by readers of *Business Insurance* and invited readers to share some of the wildest excuses for accidents and claims they had heard. So here they are:

Paul Winston

- *We had a gentleman who was riding the up escalator and did not step off at the end. He just stayed on the step until it hit the end and fell forward onto the floor. He said it was our fault because we did not have a sign telling him that the end of the escalator was coming and to walk off.*
- *I thought in the last 10 years I had heard it all, but yesterday I was advised that I would be receiving a report from a guest who stated there was a tooth in his French fries, and he did not believe it was his. The employee who fried the fries was checked, and she had all her teeth. The tooth does not appear to have been fried. So the guest said he was going to see his attorney.*
- *A young paralegal had filed a claim for hearing loss. When I had completed the investigation, the claimant had confessed he decided to shove pencil erasers in each ear, as he found the law firm's Muzak too intolerable to listen to. When he attempted to remove the erasers at the end of the workday, he found the erasers were imbedded too deeply to be conventionally removed. The erasers were surgically removed, and the claimant was issued a very tersely worded denial letter, which he wisely did not appeal.*
- *I keep a copy of interesting or humorous workers compensation claim reports for my employer. The following descriptions were reported on the Maryland–Workers' Compensation–First Report of Injury or Illness form that is filed with the state:*

"Employee states he was digging a hole when he somehow cut his mouth."

"Employee states he was lifting a dummy and the dummy hit his left knee causing strain."

"Employee states he has been performing regular job duties, uniform pants are too tight, causing irritation and unspecified injury to testicles."

"Employee states she was driving when her vehicle flipped over, causing bruising and swelling of her eyes."

"Employee states he was pulling toilet paper from dispenser and he cut left ring finger on the dispenser."

In addition to unusual claims, several readers shared their own versions of outlandish job excuses:

- *"I'm so anxious about starting this new job that I had to pull over in my car twice to throw up. I decided I better go home and lie down for a while."*
- *"I had a car accident on my way into the office. I'm at the car repair waiting for them to push the airbags back in so I can drive in."*
- *"My automatic garage door opener failed, and I can't get my car out of the garage."*
- *"Late for work due to very strong headwinds on London bridge."*
- *"My ferret died, bereavement day."*
- *I once confronted an employee who was always 15 minutes late to work. When I asked why she couldn't get in on time, she accused me of trying to create an unsafe condition because she would have to exceed the speed limit to make it on time. When I suggested she just leave home 15 minutes earlier, she rolled her eyes and said, "Oh, c'mon!"*

And here's one that might be heard more than once this hurricane season:

- *I own a small insurance agency in western Michigan. On May 31, 1998, we had the worst windstorm in western Michigan history. I took close to 100 claims over the weekend from my home and was preparing for the flood of claimants on Monday morning when one of my customer service representatives called in to see if "we were bothering to come to work because there was no power." I nearly fell off my chair.*

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

Editorial

HSA tax credit benefits justify cost

SHOULD THE GOVERNMENT provide tax credits to encourage employers to offer health insurance coverage and to individuals to help them buy coverage?

The administration evidently thinks so, as tax credits are the core of a new health coverage expansion proposal President Bush recently outlined.

The Bush package, as we report on page 1, includes several health care-related tax credit features. Under one, small employers would receive tax credits—up to $500 per employee—for their contributions to employees' health savings accounts.

Under another part of the package affecting low-income individuals not covered under group plans, the government would contribute $1,000 to their HSAs and provide a $2,000 tax credit to be applied against the premiums they pay for an HSA-linked high-deductible health insurance plan.

It would be unrealistic to think that the HSA tax credit for small employers is going to result in droves of companies deciding for the first time to offer their employees health insurance coverage. Even with a tax credit, the cost of coverage still would be out of reach for many small firms.

But clearly, the tax credit would be a sufficient financial incentive for employers on the edge of dropping coverage to keep it.

And it could make the difference for those employers that have been interested in offering coverage for the first time but can't quite afford it.

For lower-income individuals, the combination of an HSA contribution and the tax credits could be just enough to enable them to buy a high-deductible plan.

Obviously, these tax breaks would cost the Treasury. But we believe the benefits of the tax credit would justify the cost. To the extent more people have health care coverage, providers would get stuck with fewer uncompensated care costs.

That should mean a reduction in provider cost shifting to insured patients and, thus, less-costly hospital bills. With provider bills not going up as much, health insurance premium increases should slow a bit, and perhaps premiums would stay within the means of more employers.

Additionally, individuals who have health insurance are far more likely to get preventive care than are those without, reducing the likelihood of much costlier treatment later on.

This is a proposal that does not require a big federal bureaucracy to administer, nor does it turn upside down the existing system and create chaos.

The best way to improve the nation's health care system is through a series of small steps, and the ones proposed by the administration fit the bill. They deserve serious consideration by Congress.

LARA passage efforts worthwhile

AT FIRST GLANCE, the House Judiciary Committee's efforts to mark up the Lawsuit Abuse Reduction Act and send it on to the full House for a vote might look like a royal waste of time.

After all, congressional leaders want to adjourn this Congress for a final time early next month. Even if the bill wins House approval—which could happen as early as this week—the Senate would be hard pressed to follow suit before adjournment, even under the best of circumstances.

And these are not the best of circumstances. Due in large part to the Senate's rules, not a single House-approved tort reform measure has won Senate approval. The sole proposed litigation reform proposed by the Senate—an attempt to create a national trust fund to replace the current lawsuit-based system for compensating the victims of asbestos-related disease—has foundered. There's little reason to believe that the Senate would be any more enthusiastic about tackling LARA.

That's too bad, because LARA represents a common-sense approach to a pair of tort issues that bedevil employers. First, LARA would reinstate a provision in Rule 11 of the Federal Rules of Civil Conduct that requires federal judges to sanction attorneys who bring frivolous lawsuits before the court. The rule itself spells out what constitutes a "frivolous" lawsuit, but a 1993 change in the rule grants judges discretion over how to handle the attorneys who bring such suits. LARA would end that ambiguity.

The Rule 11 change is less controversial than the other change LARA would bring about. That would be to limit the jurisdictions in which a personal injury plaintiff could file suit to those state or federal courts with jurisdiction over where the claimant currently lives or lived at the time of the alleged injury, where the alleged injury occurred or where the defendant's principal place of business is located.

Employers have long held that the lack of such limits has led to what they consider forum shopping. That's where plaintiffs' attorneys seek the most plaintiff-friendly jurisdictions in which to file suit. LARA supporters hold that stopping the practice would make justice fairer; opponents hold that dictating to state courts would breach principles of federalism. Although we think that the LARA supporters have the better argument, the issue would probably have to be settled by the courts if LARA or similar legislation were to become law.

Unfortunately, that's unlikely to be this year, given the congressional calendar and the mood of the Senate. Yet the House's consideration of LARA is no waste of time. Doing so serves to keep tort reform—in this case, rather modest tort reform—in the public eye. By doing so, lawmakers may help ensure that legal reform is in the vanguard of issues to be dealt with in the next Congress.

Schillerstrom

Online opinion polls

Each week, Business Insurance posts a poll question about industry events on www.businessinsurance.com.

Visit the BI Web site to cast your vote in the weekly online polls and to view the results of previous questions.

Business Insurance

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Ask a Casualty Actuary

Long-term planning needed for comp claims

Q: *How can we better assess our exposure to workers compensation losses excess of $1 million per claim?*

A: Your exposure to workers compensation losses excess of $1 million might be greater than you think. It is helpful to look at a prototype claim that could exceed $1 million. Most of these claims involve permanently disabled workers who are paraplegics, quadriplegics or workers who suffered serious brain damage.

Assume Ted Jones became a paraplegic due to a work injury at age 40. Initial medical costs were $100,000, and ongoing medical care costs are currently $5,000 per year. Indemnity costs are a flat $20,000 per year for the rest of Ted's life. Ted is expected to live another 36 years, according to current mortality tables. So expected future indemnity costs are $720,000. And Ted's total expected future medical costs, in today's dollars, are $180,000. So incurred losses appear to be $1 million.

You might think that the chances of having a workers comp claim worse than Ted's is so small that there isn't much need to purchase coverage excess of $1 million. But consider these possibilities:

- First, Ted's medical costs are likely to inflate at about 9% per year until he dies. That's the average rate of escalation in medical costs over the last several decades, including increased utilization. If Ted were to live out his life expectancy of 36 years, his total medical costs would be $1.3 million, not just the $280,000 expected at today's medical cost levels. So, in reality, the incurred losses for Ted's claim are $2 million, not $1 million.
- Second, if Ted were to live 10 years beyond his life expectancy, dying at age 86, total incurred costs would be $3.9 million. If he were to live yet another five years beyond that, total costs would be $5.6 million. So a big element of risk is that Ted would live much longer than the average male his current age.
- Third, suppose Ted was only 20 years old when he became paralyzed. Assuming the same current costs, if he were to live out his life expectancy of 55 more years, the total incurred would be $7.5 million. If he were to live yet another 10 years, the total incurred would be a staggering $16.4 million. If he were to live yet again another 5 years, the total incurred would be a phenomenal $24.6 million.
- Fourth, mortality rates have been steadily falling for decades and are expected to continue to do so. That means injured workers are likely to live a number of years more than current mortality tables indicate. Medical technology keeps finding ways to extend our life spans, at the cost of employing increasingly sophisticated, and more expensive, procedures.

While self-insured reserves set aside today will earn significant future investment income, where can you get 9% on your money these days?

When you buy excess workers comp coverage over your self-insured reserves, your insurer may be figuring your premium based on average expected excess costs for a broad class of risks. So the premium quotation you get for such coverage anticipates that your exposure to serious permanent disability claims is typical. Your organization's risk of this occurring may either be greater or less than an overall average, and this can affect whether the quote you get is reasonable or not. In addition to the types of tasks your employees perform that might expose them to such injuries, there is also the question of the average age of the employees in such riskier jobs. If most of them are quite young, then the expected costs of a paralysis case would be much higher—because they would very likely live longer than would comparable older workers.

Will your excess comp insurer still be in business 30 to 50 years from now, when many permanently disabled claimants would still be living? The financial strength and rating of your prospective excess workers comp insurer is worth considering. Often the excess insurer keeps only a low layer of the excess costs, so it is also important to consider the chances that their reinsurers will be around 30-plus years from now to meet claim obligations. You should find out who these reinsurers are.

Try the eye-opening exercise of creating a spreadsheet to duplicate the cost estimates cited in this article. (Or e-mail me at *admin@richardsherman.com*, and I will send you an attached Excel workbook.) You could then vary the age and the annual cost assumptions and see how total incurred losses change.

Doing this for a number of scenarios should give you a better feel for the degree of risk you face of claims in different excess layers. You will probably gain a greater appreciation for the very high degree of risk assumed by either your self-insurance program or an excess comp insurer and its reinsurers. It is startling to see how much the total incurred varies depending upon the claimant's age at injury and how long that individual lives.

Would you like advice from an experienced colleague on a risk management, benefits management or actuarial problem? Three regular features in the Perspective section of Business Insurance can give you some answers.

Ask A Risk Manager, Ask A Benefit Actuary and Ask A Casualty Actuary answer written questions from readers on risk and benefits management issues and actuarial problems.

This month's column on actuarial issues in the casualty field is written by Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore.

Address your questions to ASK, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Court rules comp benefits exempt from garnishment

The Supreme Court of Oklahoma has ruled that workers compensation benefits due to an injured worker were entirely exempt from garnishment by a creditor.

Donald D. Laubach sustained two injuries during his employment with Southwestern Bell Telephone Co. He filed claims in the workers compensation court and received awards for benefits. He settled his claim with SBTC and its insurer, and an annuity was purchased for the remaining $40,000 of his award.

William A. Strong II and Carolyn Strong had previously received a judgment against Mr. Laubach in federal court in an unrelated matter. The Strongs then attempted to collect their judgment from Mr. Laubach's workers comp proceeds through two separate garnishment actions. Mr. Laubach and SBTC objected, claiming that the workers comp proceeds were totally exempt under Oklahoma law. A federal magistrate granted Mr. Laubach an exemption of $50,000 for the workers comp benefits; however, he held that because Mr. Laubach had already received $50,000 in workers comp benefits, he had received the maximum exemption allowed. Mr. Laubach appealed, but the federal trial court ruled against him.

Mr. Laubach and SBTC then appealed to the 10th U.S. Circuit Court of Appeals, which asked the Supreme Court of Oklahoma to clarify the state law on the exemption question.

The Supreme Court of Oklahoma said that the workers comp benefits paid to Mr. Laubach are in the nature of a "money allowance" that compensated him for the loss of earning power and disability to work and that affords him a living. These benefits, the court said, were intended by the Oklahoma Legislature to remain completely exempt without restriction as to amount. The court emphasized that the exemption protects the injured worker and the worker's dependents.

Strong vs. Laubach, Supreme Court of Oklahoma, March 30, 2004 (BI/02/O.-$10)

Legal briefs

Builder not on the hook for contractor's mistake

A builder insured under a commercial general liability insurance policy did not, by virtue of either general tort principles or its contract with a city, become legally obligated to pay for damage to a water plant caused by a subcontractor's actions, according to the 6th U.S. Circuit Court of Appeals.

Detroit Water Team Joint Venture entered into a "design/build" contract with the city of Detroit to renovate the city's water plant. In connection with that project, DWTJV procured a CGL liability policy issued by American National Fire Insurance Co., which covered DWTJV and one of its subcontractors, Adamo Demolition Co. In the course of demolishing the reservoir, Adamo also tore down the concrete wall that the reservoir shared with a manhole, which caused the entire manhole structure to collapse and the electrical system to sustain considerable damage. DWTJV repaired the electrical system and immediately notified its insurer of its expenses. The insurer denied coverage. DWTJV brought this suit seeking coverage under the CGL policy, and the trial court ruled for DWTJV. The insurer appealed.

The appellate court said that the general rule under Michigan law is that a general contractor is not liable for the negligence of its subcontractor. The court pointed out that the CGL policy obligated the insurer to pay those sums that DWTJV became "legally obligated" to pay as damages. Since DWTJV was not "legally obligated" in tort to repair the electrical system, the court said that there was no coverage under the CGL insurance policy. The trial court decision in favor of DWTJV was reversed.

Detroit Water Team Joint vs. Agricultural Insurance Co., 6th U.S. Circuit Court of Appeals, June 11, 2004 (BI/03/O.-$10)

Anti-assignability clause in health plan valid

An unambiguous anti-assignability provision in an ERISA-governed welfare benefit plan is valid and enforceable, according to the 11th U.S. Circuit Court of Appeals.

Horton Homes Inc. offered and funded a medical benefit plan governed by the Employee Retirement Income Security Act. The plan extended coverage to dependents of Horton Homes employees as long as the dependents met certain conditions. In September 1999, Linton Franklin was employed by Horton Homes and enrolled himself and five children in the plan. In 2001, one of Mr. Franklin's daughters contracted a severe infection for which she was hospitalized and treated by physicians practicing with Physicians' Multispecialty Group. The child died. After her death, PMG obtained a written assignment from the administrator of the child's estate and filed a claim with the welfare plan for $68,230 to recover the cost of medical services it rendered to the child. The plan administrator denied the claim on the ground that this child was not "principally dependent" on Mr. Franklin for financial support, as required by the plan. PMG sued the employer and the plan, seeking to establish the child's eligibility. The trial court ruled for PMG. The employer and plan appealed.

The appellate court noted that the plan did include an anti-assignment provision. The court said that ERISA leaves the assignability or non-assignability of health care benefits under ERISA-regulated welfare plans to the negotiations of the contracting parties. The court concluded that the anti-assignability provision in the plan here was unambiguous. Therefore, the court said that the plan provision on non-assignability was valid and enforceable. The court concluded that PMG could not maintain an ERISA action. The trial court decision was reversed.

Physicians Multispecialty vs. Health Care Plan, 11th U.S. Circuit Court of Appeals, June 3, 2004 (BI/04/O.-$10)

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

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Fraud: Number of incidents rises

Continued from page 4

bating fraud and white-collar crime. Last year alone, fraudulent activities cost U.S. employers a total of $660 billion, the ACFE estimated.

Patricia Tilton, a partner and head of KPMG's forensic practice in New York, has found that, frequently, "employees commit fraudulent acts because of pressure to perform or because of economic pressures." She noted that most fraudsters are first-time offenders.

A changing business climate, in which companies increasingly move operations offshore and into a variety of cultural environments, may also contribute to organizations' vulnerability to fraud and theft by employees, experts say.

> **Frequently, 'employees commit fraudulent acts because of pressure to perform or because of economic pressures.'**
>
> *Patricia Tilton*
> *KMPG L.L.P.*

"I think technology has something to do with" the rise, said Frank Scheckton Jr., senior vp for the Windsor, Conn.-based fidelity and crime department of Great American Insurance Co., which writes fraud insurance policies for financial institutions, governmental entities and other businesses.

"You can create a phony invoice on a computer so easily now," and "there are ways to open phony commercial bank accounts and then cash the checks," said Mr. Scheckton.

Managing fraud risk

As a range of factors makes fraud easier to commit, the good news is that businesses have a number of risk mitigation options to help stem losses that arise out of corrupt employee behavior.

Fidelity/crime insurance, sometimes referred to as fidelity bond or commercial crime insurance, can safeguard an organization from loss of money, securities or inventory that arises from a crime. Such policies may include employee dishonesty coverage, which protects against unlawful acts committed by workers, including embezzlement, forgery and theft of property.

While each fraud case is unique, insurers look for certain standards in any potential policyholder.

Among the things AIG's Mr. O'Neill said he always analyzes, for example, are an organization's internal controls, overall financial condition, computer and vendor controls, who has access to treasury and payroll, and whether the company has already experienced fraud loss.

Despite a "much more critical underwriting process in place today," as compared with a few years ago, KPMG's Ms. Tilton said "premium levels are softening a little now" in the fidelity/crime market.

In addition to purchasing insurance, businesses can bolster corporate intelligence. Forensic software programs are designed to comb through dense data to detect abnormalities associated with fraud, while auditing software assists companies in complying with Sarbanes-Oxley requirements.

Michael Liebowitz, director of risk management for Bridgeport Hospital & Healthcare Services Inc. in Bridgeport, Conn., said that in an effort to "short-circuit any problems before new employees ever enter the building," the company has established a department of corporate compliance, through which workers are given "conduct training" and time sheets are audited electronically. Such minor internal controls, Mr. Leibowitz said, work to give potential offenders a simple message—"that people are watching."

"One of the companies that's doing an excellent job is the Gap," according to Mr. Scheckton. He said he has been impressed by, among other things, Gap Inc.'s global enforcement of high standards for business conduct. The retailer's code of ethics for employees and directors, for example, is printed in nine languages in addition to English and makes culturally sensitive exceptions to accommodate different communities' customs. The San Francisco-based clothing retailer declined to comment on its anti-fraud practices.

Furthermore, organizations with fraud-reporting hotlines can cut their fraud losses by approximately 50%, according to the New York-based Insurance Information Institute.

"The No. 1 method for detecting fraud is through a tip," said Tony Malone, chief executive officer of the Norcross, Ga.-based The Network Inc., an independent provider of employee hotlines that services employers including the Coca-Cola Co. and Marriott International Inc. As part of Sarbanes-Oxley compliance, all public companies must provide an anonymous fraud reporting mechanism for employees, though Mr. Malone said he has witnessed a trend in which more private companies are now offering hotlines.

"But only about 37% of businesses have a hotline, so there's room for more action to be taken to prevent fraud loss," he said.

Experts agree that employee fraud will never disappear altogether, so organizations must experiment with how to most effectively detect and mitigate their exposures.

"It'll all depend on how creative the crooks get," said AIG's Mr. O'Neill.

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Cost sharing spurs walkout at managed care plan

Group Health employees stage strike over proposal to raise their share of benefit expenses

By LAURA B. BENKO

A strike by employees of Group Health Cooperative late last month may be emblematic of a year when rising health insurance costs have contributed to a sluggish job market and tensions have mounted between workers and employers over increased health care cost-sharing.

About 1,200 nurses, medical assistants, therapists and other workers represented by the Service Employees International Union Local 1199 NW staged a five-day walkout against the consumer-governed HMO after the two sides failed to reach a compromise over the cost of employee health benefits. The move was an unusual planned strike in which both sides knew when it would begin and end, deal or no deal.

Many employees have 'been largely shielded from the true cost of health care during the managed-care era and view rising costs as the company's problem.'

Jim Foreman
Towers Perrin

Seattle-based Group Health says it needs to boost the amount its employees contribute for their health insurance to avoid having to increase patient fees and premiums for members. The union, however, argues the proposed increases are too high and would make coverage unaffordable for some employees.

The standoff is a prime example of the growing rift between employees and employers, which have been shifting a larger portion of their fast-rising benefits costs onto workers. In a recent survey of 120 companies and 1,000 employees, Towers Perrin found that 92% of employers see rising health care costs as a serious problem that must be addressed, while only 28% of workers think it would be appropriate for them to accept additional cost increases.

A survey released in August by Mercer Human Resource Consulting found that if employers renewed their current medical plans with no changes, the average cost increase for 2005 would be nearly 13%. Overall, employers expect to bring their initial cost increase down three points, to an average increase of 9.6%, mostly by cost-shifting and changes in benefits.

"The clear trend among employers is to try to enlist employees as allies in the effort to control health care cost growth...through changes in plan design," said Jim Foreman, a managing director at Towers Perrin. But "many employees just aren't buying it, in part because they've been largely shielded from the true cost of health care during the managed-care era and view rising costs as the company's problem."

The strike, which represented the first major labor disruption at Group Health in 15 years, followed more than a year of increasingly contentious contract negotiations between the 9,000-employee cooperative and the SEIU, the last two months of which were presided over by a federal mediator.

Group Health has proposed boosting copayments to $15, imposing deductibles and adopting a sliding scale for monthly premiums, ranging from 1% of base pay for individual coverage to 3% for family coverage. Under the new arrangement, a nurse who earns $69,000 a year would pay $60 a month in premiums for individual coverage, said a Group Health spokeswoman. An employee who earns $30,000 annually would pay $25 a month.

SEIU workers have a $5 copayment for doctor visits and prescriptions, but no premiums or deductibles. The union agreed to some increases, including doubling certain copayments and adding deductibles. But anything beyond those concessions would amount to a takeaway of benefits, said an SEIU spokesman. "The proposed increases would quickly put affordable health care out of reach for many people," he said. "Some employees would suddenly have to pay $2,000 to $3,000 more a year just to maintain their family coverage."

In the past month, the spokesman added, the union has signed new contracts with two other area employers, Swedish Medical Center in Seattle, and Valley Medical Center in Renton, Wash., both of which

Continued on next page

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Continued from previous page
retained zero-premium coverage for many workers.

The Group Health spokeswoman, however, said all of Group Health's nonunion workers and some employees who belong to other unions already pay monthly premiums. Continuing to provide "virtually free" benefits for SEIU members is akin to asking their co-workers and Group Health customers to subsidize them.

"We think the SEIU's leadership is out of touch with the true costs of health care," she said, adding that Group Health has also proposed pay raises of 9.5% to 24% under the contract that would, in most cases, offset the cost-sharing increases by thousands of dollars. "It's a matter of integrity. We think it's unfair to ask our members to pay more (for coverage) when a small group of our own employees aren't."

Industry observers say employers of every kind are asking workers to pay a growing share of their benefit costs. In a survey of 160 employers, Hewitt Associates Inc. found that employees are now paying an average of 23% of the premium for individual coverage, up from 21% last year. Meanwhile, 47% of employers now require a $15 copayment for a doctor visit, up from 24% in 2002.

But the SEIU stressed that the cooperative, which was formed in 1947 to provide affordable coverage and boasts healthy profit margins, should offer good benefits. Group Health posted pretax income of $155 million last year on revenue of $1.97 billion, representing an 8% margin, according to Standard & Poor's Corp.

With their roots as being a worker-friendly, family-conscious cooperative, they set a higher standard for themselves for the very beginning, the SEIU spokesman said.

No further talks were scheduled, but Group Health's spokeswoman said the cooperative has called the federal mediator to suggest a return to bargaining. The cooperative serves more than 540,000 people in Washington and northern Idaho.

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

Insurer buying HealthMarket

CDHP acquisition to let UICI expand into group health

By JOANNE WOJCIK

NORTH RICHLAND HILLS, Texas—MEGA Life & Health Insurance Co.'s acquisition of HealthMarket Inc. will enable MEGA to expand into the small-group employer health care market.

North Richland Hills, Texas-based MEGA, a subsidiary of life/health insurance holding company United Insurance Cos. Inc., has signed an agreement to acquire Norwalk, Conn.-based HealthMarket, which provides consumer-driven health plan services to businesses with 250 or fewer employees. Terms were not disclosed.

In 2003, HealthMarket's consumer-driven plans had 32,000 covered lives from 2,500 employers, making it the ninth-largest consumer-driven plan provider in the nation in *Business Insurance*'s annual ranking (*BI*, June 28).

After the HealthMarket acquisition closes, which is expected to happen this month, UICI's 2,200-member agency field force, which had been selling primarily to self-employed individuals, will also be able to sell group health care plans. According to analysts, UICI often receives sales leads from employers that purchase individual coverage and want to purchase group coverage for their employees.

In addition, the deal will allow HealthMarket to reach those consumers that had been unwilling to buy from a startup, according to Steve Wiggins, the company's founder and chairman.

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Comings & Goings - Industry

Mr. Hargrove

Ms. Tsui

Mr. Reilly

Mr. Novielli

Agents/brokers:

Mike Brewer has been named president of Lockton Benefits Group, a unit of The Lockton Cos. Inc. of Kansas City, Mo. Previously, Mr. Brewer was executive vp and regional manager of Gallagher Benefit Services Inc.

Chicago-based Hub International Ltd. has named **Kathy M. Quintana** president and chief executive officer of its Los Angeles office, succeeding **Frank C. Hayes**, who will serve as chairman of the company. Before her promotion, Ms. Quintana was chief operating officer.

Denver-based Moody Insurance Agency Inc., which specializes in insurance, risk management and bonding services for contractors, has named **Troy Moody** the company's first chief operating officer. Mr. Moody joined the agency 10 years ago as an account executive.

Charles Cushner has been named senior vp of the general business practice of Redwood City, Calif.-based ABD Insurance & Financial Services. Previously, Mr. Cushner was senior vp at Calco Insurance Brokers & Agents.

Dallas-based Crump Insurance Services Inc. has named **Glenn Hargrove** to the newly created position of chief operating officer. Previously, Mr. Hargrove was the head of Crump's Memphis, Tenn., office.

Insurers:

Branchville, N.J.-based Selective Insurance Group Inc. has made several senior-level appointments to both Selective Insurance Group and Selective Insurance Co. of America.

- **Michael H. Lanza** has been named senior vp and general counsel. Before joining Selective, Mr. Lanza was a consultant.
- **James McLain** has been named senior vp, chief claims and personal lines officer. Previously, Mr. McLain was senior vp-claims.
- **Charles A. Musilli** has been named senior vp, chief field operations and marketing officer. Mr. Musilli formerly was senior vp, selective risk managers, reinsurance and risk management.
- **Eduard J. Pulkstenis** has been named senior vp, chief commercial lines underwriting officer. Previously, Mr. Pulkstenis was vp of small-commercial business.

Wausau, Wis.-based Wausau Insurance Cos. has appointed **Susan Doyle** senior vp and general manager of the company's national broker division. Previously, Ms. Doyle was regional vp for technical risk at Arch Insurance Group.

St. Paul, Minn.-based St. Paul Travelers Cos. Inc. has named **Kenneth F. Spence III** senior vp and general counsel. Before his promotion, Mr. Spence was vp of the legal services division and deputy general counsel.

Venture Programs Inc., based in West Chester, Pa., has named **George Tsui** executive vp of underwriting. Before joining Venture, Mr. Tsui was senior vp of CMJ Underwriters Inc.

ACE Overseas General, the non-U.S. insurance operations of ACE Ltd., has named **Neil C. Smith** president-ACE Far East, replacing **Scott Pickering**, who was appointed country manager for ACE New Zealand. Previously, Mr. Smith, who will be based in Japan, was senior vp of the ACE European Group.

Also at ACE, **Guy Swayne** has been named executive vp of Bermuda-based ACE Financial Solutions International. Previously, Mr. Swayne was senior vp.

Columbus, Ohio-based ProCentury Corp., a specialty property/casualty insurance holding company, has announced two promotions at its Century Surety Co. subsidiary.

- **Erin E. Alward** has been named chief financial officer. Before her promotion, Ms. Alward was vp of finance.
- **Steve R. Young** has been named chief investment officer.

Continued on next page

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BI 09-13-04 A 14,15 9/9/04 5:43 PM Page 2

Previously, Mr. Young was chief financial officer.

Carmel, Ind.-based Conseco Inc. has appointed **Steven M. Stecher** executive vp-operations and information technology for Conseco Insurance Group. Before joining Conseco, Mr. Stecher was senior vp and chief information officer of ORIX Financial Services.

Schaumburg, Ill.-based Zurich North America has named **Robert Lindemann** president of the middle markets business unit of its North American commercial business division. Previously, Mr. Lindemann was president of American Manufacturers Mutual Insurance Co.

Reinsurance:

Spencer Woodbury has joined the San Francisco office of John B. Collins Associates Inc. as senior vp. Previously, he was president of Market Re Intermediaries.

Managed care:

Health Net Inc. has appointed **Anthony Piszel** executive vp and chief financial officer. Previously, Mr. Piszel was senior vp and controller for Prudential Financial Inc. He replaces **Marv Rich**, who is executive vp-operations.

San Francisco-based Delta Dental of California has named **Michael J. Castro** its chief financial officer and senior vp. Mr. Castro, previously vp of finance/controller, replaces the retiring Elizabeth Russell.

Other providers:

Atlanta-based Crawford & Co. has named **Thomas W. Crawford** chief executive officer, succeeding Marshall Long, who assumed the CEO position on an interim basis in April, following Grover L. Davis' resignation as chairman and CEO. Mr. Crawford, who is not related to the Crawford family that founded the claims management services company, previously was president of the retail distribution division of the Prudential Insurance Co. of America.

Peter Reilly has been named president and director of complex injury analysis for Palm Coast, Fla.-based Dynamic Claims Solutions Inc. Previously, Mr. Reilly was vp of case analysis for MEDPsych Corp.

The Innovation Group, a Hartford, Conn.-based insurance software provider, has named **Tony V. Novielli** senior vp of business development for the company's technology solutions division. Before joining the company, Mr. Novielli was managing principal for the insurance knowledge practice of American Management Systems Inc.

Dr. Paul R. Berger has been named chief medical officer and vp of SHPS Inc., a Louisville, Ky.-based benefits administrator. Previously, Dr. Berger was a principal at Mercer Human Resource Consulting.

Assurant Employee Benefits has named **Karla J. Schacht** senior vp and chief information officer. Before joining Assurant, Ms. Schacht was the owner of a print, copy and design company.

BISYS Group Inc., a New York-based outsourcing provider, has named John M. Howard president of its insurance services division. Previously, he was president of the Prudential Select Brokerage unit of Prudential Financial Inc.

Business Insurance would like to report on senior-level changes at insurance industry companies and related firms and organizations. If your organization has recently promoted, hired or appointed a senior vp or higher-level executive, please send information to Joe Walker, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; or e-mail jwalker@businessinsurance.com. Photographic images with identifying information should be sent to Assistant Managing Editor-Graphics Kathy Barnes at the above address or to kbarnes@crain.com.

Deadline approaching for directory of reinsurance brokers

Business Insurance will publish its online Directory of Reinsurance Brokers in conjunction with the Oct. 25 issue, which will also feature a Spotlight report on trends and issues in the reinsurance industry and a ranking of the largest intermediaries.

The online directory will be available to subscribers on *www.businessinsurance.com* and will be included in *Business Insurance's* 2004/2005 Market Sourcebook, a special printed compilation of all of *BI*'s directories and rankings that will be published in December.

Companies must report gross revenues to be listed in the directory and must derive at least $500,000 of their revenue from reinsurance brokerage to be included.

The directory includes both U.S. and non-U.S.-based reinsurance brokers.

Business Insurance publishes the directory as an editorial service; there is no charge to be listed.

If your company meets the criteria for inclusion but has not yet received a questionnaire, please request one from Directory Editor Kevin Edison at 312-649-5279. Questionnaires may also be printed from the *BI* Web site at *www.businessinsurance.com.*

Questionnaires must be received by the extended deadline of Oct. 1.

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Commentary

Taxing with torts most unsuitable

California is facing a drought—of both water and state revenue. There might not be much the state can do about the former, but lawmakers recently tried to do something about the latter by tapping a new revenue stream.

In the process, they took a bad idea that emerged nearly a decade ago and tried to "improve" upon it. The result is a strange new wrinkle in a nasty little tort trend that might be called "taxation through litigation."

The idea took flight back in 1997, when states sued tobacco companies to recover Medicaid expenditures associated with smoking-related illnesses. The states that participated in the so-called "global" settlement with tobacco companies ended up with billions of dollars, with the general understanding that the funds should be used for health care and programs designed to discourage smoking.

Mark A. Hofmann

But financially hard-pressed states began using the settlement funds for all kinds of things for which taxpayers otherwise would have had to foot the bill or go without. Scholarships, roads and who knows what else ended up being funded by the tobacco settlement. Nobody in state government particularly liked to talk about what was happening, but the result was taxation through litigation.

California, however, recently eschewed such reticence in a new appropriations measure designed to fill the gaping holes in the state's budget. One provision in the grab-all legislation requires that 75% of any punitive damage award go to a new state fund. The law is quite up front about it, too. It says that the state's "extraordinary and dire budget needs" required the unusual step of garnishing private punitive damage awards.

Initially, the provision—first floated by Gov. Arnold Schwarzenegger—included a set of tort reforms long sought by the business community. These included banning the imposition of multiple punitive damage awards for a single act or omission and forbidding plaintiffs' attorneys from being paid any fee on the state's share of a punitive award. Businesses hailed the initial proposal.

But as anyone familiar with the legislative process could have predicted, the final version didn't exactly turn out as planned.

The ban on multiple punitive damage awards vanished. The final provision, however, made sure that plaintiffs' attorneys would get their cut of both the private and public portions of the punitive damage awards. Even with a statutory cap of only 25% of the public portion payable to the attorney, the law still creates a situation where the lawyer's take could be greater than what goes in the plaintiff's pocket.

There is a certain irony here, because some tort reform advocates have suggested that since punitive damage awards are designed to punish and deter, both of which are functions of the state and not the individual, such awards should go to the state. That's a philosophically reasonable position.

But philosophically reasonable positions can easily mutate into practically unreasonable results.

For example, the California law could have the perverse result of encouraging juries to levy larger punitive awards than they might award if they knew that all of the money would go to an individual plaintiff. In fact, jurors would have a legitimate interest in seeing that the state reaps the largest punitive damage awards possible. Every penny the state takes in punitive damages is one less that must be raised from individuals through taxation or saved through curtailed services.

That's a pretty significant temptation for jurors who might otherwise think twice about levying a punitive damage award that benefits only a plaintiff and his or her lawyer.

The immediate impact of California's split-recovery act probably won't be great. The law doesn't affect cases already in the pipeline and is scheduled to expire at the end of June 2006. That's not a lot of time to hear a case in both trial and appeals courts—in fact, many cases involving punitive damages drag on for years and sometimes even decades.

But I'm willing to bet that the temptation to extend the law to reap its potential benefits will sorely test California lawmakers.

The punitive damages provision gives an economically parched state government a new source of revenue. It might be taxation through litigation, but no government wants willingly to dam up a revenue stream, particularly one that can be tapped without draining the financial resources of the majority of its citizens.

Senior Editor Mark A. Hofmann can be reached at mhofmann@business-insurance.com.

Federal-Mogul mulls T&N sale as 'market test' in pension flap

By TERRY KOSDROSKY

SOUTHFIELD, Mich.—Bankrupt auto supplier Federal-Mogul Corp. may put its T&N P.L.C. assets in the United Kingdom up for sale, at least to see what price they would fetch.

The move came recently after the T&N pension trustee rejected a $130 million offer from the company's bondholders to fund the pension plan. Federal-Mogul bondholders are led by financier Carl Icahn.

The trustee, South Africa-based Alexander Forbes Ltd., said $130 million isn't enough and spurned the offer.

Alexander Forbes said Federal-Mogul creditors should pay $416 million over eight years to ensure the plan's future, according to London press reports.

Southfield, Mich.-based Federal-Mogul said a "market test" of the British T&N business will show that the $130 million is fair. Under British law, the pension trustee has the authority to sell assets for the pension plan.

"(We) believe that such a market test will demonstrate the fairness of what was offered to U.K. creditors, including the pension scheme," the company said in a statement.

A sale is only a possibility, and production won't be disrupted, said a spokeswoman for Federal-Mogul.

It also shouldn't affect the company's emergence from Chapter 11. Its reorganization plan was approved in August and is being voted upon. The plan calls for 50.1% of Federal-Mogul's equity to go to asbestos claimants and the rest to bondholders. The deal would, in effect, bar additional asbestos lawsuits. A confirmation hearing is scheduled for Dec. 9.

The company was forced into Chapter 11 because of mounting asbestos liabilities. Many of those liabilities were acquired when Federal-Mogul bought T&N in 1998.

Federal-Mogul said the $130 million would make T&N's U.K. pension plan 88% funded, which is "better than many pension schemes in the U.K today," the company said.

The pension plan's British administrator, Kroll Associates, said it believes T&N's assets could be worth up to $1.2 billion. But Federal-Mogul creditors said the business would sell for only about $500 million. And not all of that would be available for the pension plan. Much of it would go to creditors, according to the Daily Deal, a publication that tracks mergers and bankruptcies.

Terry Kosdrosky is a reporter for Crain's Detroit Business, a sister publication of Business Insurance.

Business Resources

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PHOTO: NEWSPIX

Firefighters in New South Wales, Australia, will continue to be funded by a tax on property insurance premiums. NSW Premier Bob Carr said there is no compelling case to introduce a property tax to fund fire fighting services.

Policyholders to keep financing New South Wales fire service

By ELIZABETH FRY

SYDNEY, Australia—Policyholders in New South Wales will continue to pay high levies on property insurance following a decision by a NSW parliamentary committee not to reform the way the state funds its fire protection services.

The report of the Public Accounts Committee on fire service funding, tabled in NSW Parliament earlier this month, recommended retaining the current system, in which nearly three-fourths of the funding for the NSW Fire Brigades and NSW Rural Fire Service is provided by insurance companies. Insurers then impose fire service levies of up to 24% on policyholders of property insurance.

According to Allan Hansell, the NSW manager for the Insurance Council of Australia, the committee's decision to stick with an insurance-based levy rather than a property-based tax ignored the weight of the public submissions made to the PAC. Furthermore, Mr. Hansell said, the decision disregarded a key recommendation in the April 2003 report from the Royal Commission investigating the collapse of HIH Insurance Ltd. that those states that have not already done so should "abolish fire service levies on insurers."

And while the PAC report left the door open for a property-based levy in the future, NSW Premier Bob Carr rejected that possibility, saying there exists no compelling case for introducing such a levy.

Currently, every NSW policyholder of commercial or residential property coverage provided through an insurer licensed by the Australian Prudential Regulation Authority pays a levy that is added to the premium. According to Mr. Hansell, this levy, combined with a 10% general sales tax and a 5% stamp duty, a tax on the transfer of

See FIRE/page 19

ALM Autumn Conference

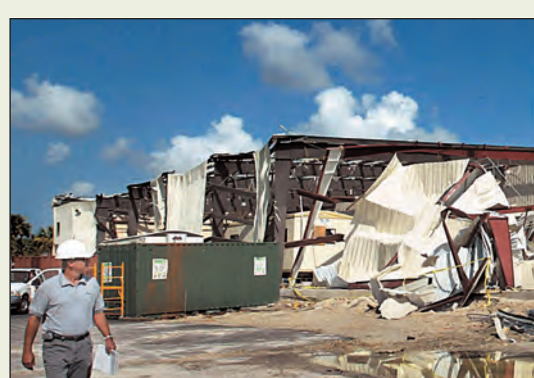
Lloyd's underwriters project modest softening at renewals

By SARAH VEYSEY

LONDON—Although there is some softening of prices for certain lines of coverage, insurance and reinsurance buyers are unlikely to see drastic rate declines at renewal, Lloyd's of London underwriters say.

Price competition is creeping back into the market, said Nick Furlonge, director of risk at Beazley Furlonge Ltd., the Lloyd's managing agency operated by Beazley Group P.L.C. Despite that trend, he said he does not believe that "rates are going to fall off the edge of a cliff. There are too many checks and balances for that."

PHOTO: zuma



Claims from Hurricane Charley are not expected to raise rates at Lloyd's of London.

Those checks and balances include the need for underwriters in the United States and Europe to price business to make an underwriting profit because of such factors as reduced investment returns and the impact of prior-year legacy issues on reserves, Mr. Furlonge said. These factors are likely to temper more extensive price competition, he predicted during a session at the Assn. of Lloyd's Members' Autumn Conference, held Sept. 3.

Hurricane Charley, which hit Florida last month, by itself is not likely have a huge effect on the rating environment, noted Mr. Furlonge. But, he added, the hurricane did give some underwriters pause for thought, and the softening of rates for property treaty business seen at the mid-year point may now be tempered.

The rating environment for professional liability coverage is "very mixed," according to Mr. Furlonge. For example, directors and officers liability insurance—which has borne several large losses in recent years—has attracted new capital to the market and renewed price competition, he said. Rates for "big ticket" directors and officers liability risks have de-

See RATES/next page

More in U.K. close DB pension plans

By SARAH VEYSEY

The percentage of U.K. companies operating defined benefit pension plans that are open to new members fell to 38% in 2004 from 56% in 2002, according to a study by Mercer Human Resource Consulting.

In addition, 12% of the companies whose plans are still open intend to close them to new entrants, according to the survey of 1,823 U.K. companies, which was conducted in March 2004. And 15% of that group said they had reduced benefits for future service or intend to do so.

Peter Bowers, worldwide partner at Mercer in London, said employers have been moving away from defined benefit plans for several reasons.

Reduced investment returns have increased the deficits of many plans, he said, and the cost of providing defined benefit plans has been increasing as people live longer and bond yields have declined, he noted. These factors, combined with new accounting rules requiring companies to list pension deficits and surpluses on their balance sheets, have made defined benefit pension plans less attractive to many employers, he noted.

Among the companies whose plans remain open, 39% increased employer contributions last year or plan to do so next year, while 29% said they have decided to increase employee contributions. In the United Kingdom, defined benefit plans—known as final-salary plans—often are funded by both employer and employee contributions.

Many of those companies whose plans are closed to new entrants have made policy changes to protect the benefits of existing participants, the survey found. For example, more than one-third—37%—have increased employer contributions or intend to do so, while 28% said they have boosted or will boost employee contributions.

However, 15% said they have reduced benefits for future service or plan to do so.

Another recent survey found that the percentage of companies offering defined benefit plans has dropped over the past year.

The survey of 520 U.K. employers, conducted by the London-based Confederation of British Industry and consultant Pertemps Recruitment Partnership, found that 30% of U.K. employers are offering a final-salary plan, down from 43% in 2003.

More information on the Mercer survey is available at www.mercerhr.com.

World Updates

Aviva sells Asian nonlife business

U.K. insurer Aviva P.L.C. has agreed to sell its nonlife insurance businesses in Asia for £249 million ($442.0 million) in cash to Japan's second-largest nonlife insurer, Mitsui Sumitomo Insurance Co. Ltd. Aviva's nonlife insurance operations, which collectively generated gross premiums of £173 million ($308.7 million) and profits of £21 million ($37.5 million) in 2003, will transfer to Tokyo-based Mitsui during the end of 2004 and beginning of 2005. Richard Harvey, group chief executive of London-based Aviva, said the insurer plans to refocus on life insurance products in the region.

Amlin records first-half gains

Lloyd's of London-based insurer Amlin P.L.C. posted profits of £74.2 million ($134.7 million) for the first half of 2004, a 17.2% increase over the comparable period last year. Amlin's gross written premiums increased 6.7% for the period to £709.7 million ($1.29 billion), while its combined ratio dropped to 73% from 83%. Amlin, which operates multiline syndicate 2001, said in a statement that while rates for most lines had peaked in 2003, "they are by no means in free fall," noting that rates dropped 2.5% on average from their 2003 peak during the first half of 2004.

Profits, premiums increase at Brit

Brit Insurance Holdings P.L.C. recorded an aftertax profit of £37.5 million ($68.1 million) for the first half, up 73.6% from the prior-year period, due in part to increased rates. London-based Brit noted that it had restated its first-half 2003 figure to reflect changes in accounting standards. Gross premiums for the half were £778.5 million ($1.41 billion), up 16.9% over the prior-year period.

Briefly noted

The U.K. Department of Trade and Industry said last week that it would not recommend introducing a **cap on auditors' liability**. Auditors had sought such a cap because of concerns over the price and availability of insurance coverage. The DTI said the government would, however, consider whether limiting liability on a proportionate basis contract by contract would enhance competition and improve quality in the market....**Heath Lambert Group Ltd.** has formed a transportation insurance brokerage division. The division will be headed by Executive Director Mike Hawkes, a former risk manager for London Transport.

Rates: Softening likely to be modest

Continued from previous page

creased, he noted.

For some other indemnity lines, though, rate increases are being imposed, Mr. Furlonge noted. One of the drivers behind that is the ongoing legacy issues caused by large losses during the 1990s that are still generating losses for many underwriters, Mr. Furlonge said.

For specialty, niche business, a lot of good quality risks are still being shown to Lloyd's underwriters, noted Mr. Furlonge, and a lack of competition for these risks means that there is not too much downward pressure on pricing.

Rates in the marine market are, by and large, holding fairly steady, according to Charles Franks, marine and special risks underwriter for Kiln P.L.C.'s syndicate 510.

"We see 2005 as a year of good opportunity for profit in the marine market," he said. But a large loss could change the market, Mr. Franks noted.

The market for upstream energy insurance, such as coverage for oil and gas exploration, has peaked, Mr. Franks said, but some fairly large losses in the offshore marine energy market during 2004 have probably dampened price competition, he said.

"We are seeing quite a bit of resolve from underwriters to keep prices where they are or with very small reductions," he said.

In the political risk market, Lloyd's underwriters are now seeing more business after a slowdown in the cycle for world trade following the Sept. 11, 2001, terrorist attacks. And the quality of business being seen is good, Mr. Franks noted.

ALM Autumn Conference

Discipline helps handle cycle

By SARAH VEYSEY

LONDON—Businesses at Lloyd's of London must better manage the insurance cycle to ensure good performance over the long term, according to a market executive.

"Only by pricing adequately and underwriting for profit rather than chasing market share can we ensure Lloyd's long-term future, which is in the interests of insurers and policyholders alike," Rolf Tolle, Franchise Performance Director at Lloyd's, told delegates of the Assn. of Lloyd's Members' Autumn Conference on Sept. 3.

Mr. Tolle said that market analysts at Lloyd's had studied the impact of the insurance cycle on the Lloyd's market and on other competing insurance markets and discovered that, during the last two insurance cycles, the Lloyd's market had experienced greater volatility of results than the U.S. market.

Mr. Tolle said that, given Lloyd's view that the next market downturn will be in 2005-2006, the market needs to take action now to mitigate this volatility.

"I have been saying for a while that businesses must be prepared, as the cycle turns, to be more discerning in the business they write, making sure that it is priced adequately and that the natural consequence of this would be a reduction in premium (volume)—something that we expect to see going forward," Mr. Tolle said.

He also noted that he hopes syndicates would not only reduce capacity if necessary, but also be prepared to allocate their capacity differently as rates fall.

He noted that the Lloyd's Franchise Board, which reviews and monitors syndicates' business plans, supports such a strategy.

Syndicates must submit their final business plans for the 2005 underwriting year by Sept. 24, Mr. Tolle said.

Lloyd's adopted the franchise system on Jan. 1, 2003, to oversee managing agents—the franchisees—and to try to prevent recurrences of the underwriting lapses that plagued the market with losses in the 1980s and 1990s.

"We are actively focussing on the capabilities of franchisees to manage the cycle, specifically approaches to rate and exposure monitoring," he said.

"We look at the way that agents technically price the business and at the robustness of their processes, as well as assessing the use of underwriting tools," among other things, he noted.

Mr. Tolle pointed put that the Franchise Board this year has imposed conditions—of varying severity—on about 40% of syndicates underwriting in the Lloyd's market.

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The New York City Housing Authority ("NYCHA") requests Proposals from qualified INSURANCE CARRIERS for Workers' Compensation and Employer's Liability Insurance. Carriers must be licensed in N.Y. State with "A.M. Best" rating of at least "A-, X". **Coverage is to become effective January 1, 2005.**

Proposals must be made in the format included in the Invitation for Bid package containing instructions, specifications and detailed submission requirements. Packets may be obtained by contacting NYCHA's Workers' Compensation Broker: **Aon Risk Services, 55 East 52nd Street, 35th Floor, New York, NY 10055 at (212) 441-1604.** In order to be eligible, completed bid proposals must be received by 4:00 P.M. on **October 25, 2004.**

All inquiries for additional information regarding the Invitation for Bid are to be directed, in writing, to **George Goettelmann, Broker, Aon Risk Services** at the aforementioned address and telephone number.

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Mayor, New York City

Tino Hernandez
Chairman, NYCHA

LEGAL NOTICE

ENGLISH & AMERICAN INSURANCE COMPANY LIMITED
NOTICE OF ANNUAL MEETING OF SCHEME CREDITORS

A meeting of the Scheme Creditors of the Company has been convened by the Scheme Administrators, pursuant to Clause 8.1 of the Scheme of Arrangement between the Company and the Scheme Creditors for the purposes set out below.

The meeting will be held at the Swissôtel The Drake, 440 Park Avenue, New York, NY 10022, USA, on Tuesday 19 October 2004 at 10.00am (New York time). A report concerning the progress made in implementing the Scheme and the conduct of the Company's affairs generally since the last such report was prepared will be laid before the meeting pursuant to Clause 8.1.2. Scheme Creditors will have the opportunity to address questions to the Scheme Administrators concerning the report at the meeting.

A copy of the report is being sent to the last known address of all known creditors, potential creditors and brokers of the Company. Any person entitled to attend the meeting who has not received the report by 24 September can obtain a copy free of charge from the Scheme Administrators of the Company at KPMG LLP, 8 Salisbury Square, London EC4Y 8BB.

Queries regarding Scheme Creditors' claims should be directed to the helpline on +44 (0) 1452 782 600.

T. A. Riddell, Joint Scheme Administrator

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:
Petition of Omni Whittington Insurance Services Limited, as Foreign Representative of **THE PRUDENTIAL ASSURANCE COMPANY LIMITED,**
Subject of a Foreign Proceeding.

In re:
Petition of Omni Whittington Insurance Services Limited, as Foreign Representative of **PEARL ASSURANCE PLC** (formerly Pearl Assurance Company Limited),
Subject of a Foreign Proceeding.

In re:
Petition of Omni Whittington Insurance Services Limited, as Foreign Representative of **ELDERS INSURANCE COMPANY LIMITED,**
Subject of a Foreign Proceeding.

In re:
Petition of Omni Whittington Insurance Services Limited, as Foreign Representative of **HISCOX INSURANCE COMPANY LIMITED** (formerly Economic Insurance Company Limited),
Subject of a Foreign Proceeding.

In re:
Petition of Omni Whittington Insurance Services Limited, as Foreign Representative of **THE WORLD MARINE & GENERAL INSURANCE PLC** (formerly The World Marine & General Insurance Company Limited),
Subject of a Foreign Proceeding.

In Proceedings Under Section 304 of the Bankruptcy Code
Case No. 04-14884 (ALG)
(Jointly Administered)

NOTICE OF ENTRY OF ORDER GIVING FULL FORCE AND EFFECT TO SCHEMES OF ARRANGEMENT AND GRANTING RELATED INJUNCTIVE RELIEF AND CLOSING CASE

PLEASE TAKE NOTICE THAT on September 9, 2004, the Honorable Allan L. Gropper, United States Bankruptcy Judge for the United States Bankruptcy Court for the Southern District of New York entered an Order giving full force and effect to Schemes of Arrangement under Section 304(b) of the Bankruptcy Code and granting related injunctive relief in the above-captioned cases. Parties in interest may obtain a copy of such Order and the referenced Schemes of Arrangement by making written request to the undersigned attorneys for the Petitioners.

Dated: New York, New York • September 9, 2004

LOVELLS • *Attorneys for Petitioners*
By: /s/ Karen Ostad
Karen Ostad (KO 5596) • Dina Gielchinsky (DG 6054)
900 Third Avenue, 16th Floor, New York, New York 10022
(212) 909-0600

REQUEST FOR PROPOSALS

The West Virginia Public Employees Insurance Agency (PEIA) is soliciting proposals designed to increase the availability of managed cared options for its policyholders.

The request for proposal was released September 13, 2004.

PEIA is a self-insured public health care plan with more than 204,000 members, including approximately 72,000 active State and local public employees, 31,000 retirees and 101,000 dependents and COBRA participants. The agency manages a traditional indemnity program for its covered eligibles and contracts with licensed health maintenance organizations (HMO's or health plans) to furnish health benefits through managed care.

Copies of the request for proposal may be obtained, and questions regarding the proposal may be submitted to:

J.A. Haught
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West Virginia Public Employees Insurance Agency
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Fire: Levy on property premiums maintained

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property, has a "tax on tax on tax" effect that results in businesses paying 43% extra in taxes on top of their base premium.

"The tax burden on policyholders and the squeeze on fire services funding is likely to increase because of high levels of noninsurance and as more owners of large commercial property buy their insurance cover from offshore companies, allowing them to avoid the fire service levy, general sales tax and stamp duty," Mr. Hansell said.

The PAC report concedes that the current system is inequitable. "That is created by the ability of some members of the community and corporate sector to avoid contributing their fair share to the funding of the state's fire services in the secure knowledge that they would still receive the fire services' assistance should they need it," the report states. "These so-called 'free riders' can avoid paying their fair share by choosing not to insure their properties and contents, or by insuring at inappropriately low values. This places a higher burden of funding on those who do insure and, arguably, discourages people from insuring prudently."

The committee said, though, that it was unable to determine with any certainty the extent of this problem.

The PAC also acknowledged that a levy based on the unimproved capital value of property would be a more efficient, equitable and transparent way to fund fire services. The PAC said it was opting not to support this reform due to inadequacies in the modeling it used to analyze the possible impact of such a levy.

"Despite the scale of this project and the thoroughness of the consultants in undertaking the work, there were significant limitations to the available data and, therefore, on the conclusions drawn as a result," the report notes. "On the grounds of equity, more work is needed to ensure the commercial sector is not unfairly disadvantaged by a change to the current system."

Kevin Mutch, former risk manager for international mining company Rio Tinto Ltd. in London, and now a consultant for the company, said, "The PAC recommendations are lacking in logic and in resolution and determination to achieve fairness."

The Risk Management Institution of Australasia Ltd. said PAC's recommendations are disappointing.

RMIA Special Interest Group Coordinator Jason Hall said he believes that the decision means that risk managers whose companies paid billions of dollars in premiums annually to insure their organizations' assets are still burdened with an unfair share of the cost of funding fire services. "A significant number of property owners underinsure or pay no property insurance at all, relying on the prudent nature of others to fund the fire services to which they have access," Mr. Hall said.

He noted that some RMIA members effectively pay three times over for fire protection services through fire service levy contributions; local government contributions; and the provision of their own fire mitigation measures, facilities and infrastructure.

Mr. Hall said he was astonished that the PAC acknowledged in its report that the majority of public submissions supported introducing new arrangements. "It is, therefore, difficult to understand why the PAC took the soft option and failed to recommend any significant change," he said.

> **'A significant number of property owners underinsure or pay no property insurance at all, relying on the prudent nature of others to fund the fire services to which they have access.'**
>
> *Jason Hall, Risk Management Institution of Australasia Ltd.*

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LARGEST U.S. REINSURERS' FIRST-HALF 2004 RESULTS

Ranked by net reinsurance premiums written. All amounts in thousands of dollars.

Reinsurer	Net reinsurance premiums written 2004	Net reinsurance premiums written 2003	Policyholder surplus (reinsurers only)	Net income (loss) 2004	Loss & loss-adjustment expenses	Loss ratio	Underwriting expenses	Expense ratio	Combined ratio 2004	Combined ratio 2003
National Indemnity Co.	$1,830,236	$1,667,345	$23,096,319	$1,167,391	$506,371	38.6%	$269,673	14.7%	53.3%	57.7%
Employers Reinsurance Corp. [1]	1,782,486	1,690,530	5,946,709	248,673	1,401,256	75.8	471,695	26.5	102.2	103.6
Transatlantic Re/Putnam Re	1,690,014	1,464,669	1,923,406	127,396	1,126,518	68.7	454,284	26.9	95.6	96.5
General Re Group [2]	1,584,420	1,610,034	6,157,849	343,259	1,191,330	67.9	519,353	32.8	100.7	101.4
Everest Reinsurance Co.	1,471,177	1,338,271	2,041,419	154,131	945,460	69.8	327,848	22.3	92.1	95.0
Odyssey America Re Corp./Odyssey Re Corp. [3]	1,003,136	927,914	1,603,959	86,274	680,027	68.1	286,694	28.6	96.7	96.9
Swiss Reinsurance America Corp. [4]	971,375	955,201	2,500,961	(8,016)	848,414	93.2	153,622	15.8	109.0	120.3
Berkley Insurance Co.	813,979	677,064	1,319,088	138,623	505,430	65.7	205,097	25.2	90.9	94.7
American Re-Insurance Co. [5]	769,297	715,935	3,532,764	401,931	601,136	78.5	198,480	25.8	104.3	94.1
Partner Re U.S. [6]	503,586	579,578	549,479	16,507	354,389	75.8	134,171	26.6	102.4	103.9
Folksamerica Reinsurance Co.	463,065	436,096	932,471	27,978	272,899	64.2	129,129	27.9	92.1	95.1
Converium Reinsurance (North America) Inc.	370,484	468,854	394,111	(314,748)	583,100	154.1	85,219	23.0	177.1	101.0
Platinum Underwriters Reinsurance Inc.	359,656	445,008	401,252	19,068	136,132	41.1	198,206	55.1	96.2	96.5
XL Reinsurance Co. Inc. [7]	269,557	192,575	1,718,467	76,172	151,220	63.8	54,480	20.2	84.0	92.5
QBE Reinsurance Corp.	236,266	207,097	357,715	7,194	138,772	65.6	74,438	31.5	97.1	96.3
American Agricultural Insurance Co.	226,328	241,278	314,981	7,264	158,341	73.7	55.869	24.7	98.4	98.1
Endurance Reinsurance Corp. of America	200,829	423,688	393,900	(5,965)	103,800	66.5	67,450	33.6	100.1	101.2
The Toa Reinsurance Co. of America	142,197	131,667	313,784	12,014	114,532	83.8	34,971	24.6	108.4	104.5
AXIS Reinsurance Co. [8]	136,953	57,349	504,486	(11,099)	45,054	72.8	30,807	22.5	95.3	N/A
SCOR U.S. Group/SCOR Reinsurance Co.	54,600	233,301	407,566	(16,194)	92,473	104.3	37,748	69.1	173.4	113.1
Totals for Top 20	**$14,879,641**	**$14,463,454**	**$54,410,686**	**$2,477,853**	**$9,956,654**	**71.1 %**	**$3,789,234**	**25.5%**	**96.6%**	**95.1%**
Totals for all companies	**$15,016,194**	**$16,070,341 [9]**	**$55,942,738**	**$2,552,363**	**$10,103,043**	**70.8%**	**$3,832,168**	**25.5%**	**96.3%**	**97.9%**

1 Includes the combined results of Employers Reinsurance Corp. and GE Reinsurance Corp. 2 All data presented for the North American property/casualty segment of the General Re Group. Includes certain intercompany and other adjustments. Excludes other affiliates of the Berkshire Hathaway Group. 3 Includes the combined results of Odyssey America Reinsurance Corp., Clearwater Insurance Co., Hudson Insurance Co. and Hudson Specialty Insurance Co. 4 Represents only part of Swiss Re Group's business and includes a number of impacts, including cessions to the parent. 5 Includes the combined results of American Re-Insurance Co., American Alternative Insurance Corp. and The Princeton Excess & Surplus Lines Insurance Co. 6 Includes the combined results of Partner Reinsurance Co. of the US and its subsidiary PartnerRe Insurance Co. of New York. 7 XL Reinsurance America's net underwriting results consist of the net pooled share of the combined underwriting results of the XL America Group Pool. All Pool members are wholly owned subsidiaries of XL Reinsurance America. 8 Excludes reinsurance business of AXIS Capital Holdings Ltd. written in Bermuda. 9 Total premiums written shown for June 2003 are those reported in the June 2003 Reinsurance Underwriting Report.

Source: Reinsurance Assn. of America

Results: Signs of softening don't dampen profits

Continued from page 3

paid back in the second half of the year" because of the hurricanes that have battered Florida and elsewhere in recent weeks.

Results "really weren't that different" from those reported in recent periods, said Todd Bault, a research analyst with Sanford Bernstein & Co. in New York. "Premiums were down somewhat," which is attributable to several reinsurers that are in runoff as well as the "voluntary discipline on the part of other companies. So it looked like a fairly healthy market."

Yvonne Bernard, managing senior financial analyst with Oldwick, N.J.-based A.M. Best Co., noted that the first-half combined ratio of 96.3% is higher than the 94% posted in the first quarter, which she attributed to reserve increases. Reinsurers are now strengthening their reserves as they see the need, rather than waiting until the third or fourth quarter, which has traditionally been the case, she said.

The softening rates will affect reinsurers' future results, observers say.

"Top-line growth will continue to be challenging" for the remainder of this year and next, said Mr. Meredith. "Underwriting margins and returns on equity will be peaking out probably the end of this year or early '05. We're clearly heading into a softening marketplace right now."

Gary Ransom, managing director with Fox-Pitt Kelton Inc. in Hartford, Conn., said, "Results are probably very good for the reinsurers for the '03 and '04 accident years, and probably '05 will be good, because rates are just starting to go down," though they remain at "fairly good levels." As a result, reinsurers will continue to report good earnings in 2005 and 2006, and book values will grow as well, "but the top line is going to slow down," he said.

> **'Underwriting margins and returns on equity will be peaking out probably the end of this year or early '05. We're clearly heading into a softening marketplace right now.'**
>
> *Brian Meredith*
> *Banc of America Securities*

Moody's senior analyst Sara Hibler said that "underwriting results have improved for a vast number of companies, and so, from an underwriting standpoint, it would look like the industry's stabilizing." However, companies that wrote business during the soft part of the underwriting cycle will probably continue to increase their reserves, though "the magnitude of those (increases) would probably be less than they had been in prior years," Ms. Hibler said.

Impact of storms

Observers say the recent hurricanes may at least temporarily affect property catastrophe rates, particularly in Florida, but they are unlikely to have a major impact on the overall market.

While the hurricanes might lead to some firmness in property rates, "I don't see it, at this point, sending rates sharply higher," said Chris Winans, senior property/casualty analyst with Lehman Bros. in New York.

James B. Auden, senior director at Fitch Ratings in Chicago, agreed. The hurricanes "might help support pricing at current levels," he said. "I don't think we see these catastrophe losses leading to large increases in reinsurance prices near term, but it may kind of stem the tide in recent declines."

"I think there's possibly some temporary upside for premium growth, given all the hurricanes, but that's not like a new, multiyear hard market," said Mr. Bault. "It would certainly be an excuse to take up rates a little bit more...but it's not going to produce a raging hard market, just as we're not in a raging soft market," he said. Instead, the market will continue to be disciplined, he said.

The softening will continue in the reinsurance market, albeit at a measured pace, observers predict.

"Property rates have certainly declined, but what we're hearing is they're still adequate," Best's Ms. Bernard said. In casualty, some lines of business are still getting increases, "although not as large as they were in the past." And, while there have been some negotiations on terms and conditions, "what we're hearing is that they're not giving away the company as yet," she said.

"Rates are moderating in property and probably still holding in casualty, but a lot of the companies that entered the property market as startups are also eyeing the casualty market" as opportunities in the property market diminish, said Ms. Davies of Moody's.

This may eventually create "more competitive conditions in the casualty market and, obviously, these companies have the advantage of not having legacy issues to haunt them from the last soft market," she said. "We really won't have a good idea until the Jan. 1 renewals in terms of whether the industry will start to lower rates significantly," Ms. Davies said.

But Mr. Bault said it is too soon to expect significant change in the market.

This year, "arguably, is the first year we can say it's not a hard market." As a result, "the outlook is that pricing is not going to do much in either direction. There'll always be examples of pricing still going up, and examples of pricing still going down, but the average is still going to be fairly stable."

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HSA: Plan could help reduce number of uninsured

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$500 in contributions an employer makes to each employee's HSA for family coverage, while a maximum tax credit of $200 per worker would be provided for individual coverage.

Low-income individuals not covered by employer plans would be eligible for other tax credits. The credit would be available for both HSA-linked high-deductible health insurance coverage and for more traditional coverage.

In the case of HSA-linked coverage, the government would directly contribute—for family coverage—$1,000 to an individual's HSA, along with a $2,000 refundable tax credit to partially offset the cost of the premiums for the high-deductible health insurance plan to which the HSA is linked. For individual coverage, the government would make a $300 HSA contribution and provide a $700 tax credit.

For low-income families who opt for a more traditional plan, such as a health maintenance organization, the government would provide a $3,000 health insurance premium tax credit for family coverage and a $1,000 tax credit for individual coverage.

Regardless of whether coverage is obtained through an HSA-linked plan or a more traditional plan, the tax credit would be advance refundable. That means an individual could use the credit immediately to offset the cost of the health insurance premium, rather than claiming the credit when filing income taxes.

Other provisions in the plan, which requires congressional approval, would allow individual health care purchasers to buy coverage from insurers outside their state of residence. That could cut costs for individuals who, for example, buy coverage in a state that imposes few benefit mandates on health insurers.

Additionally, the Bush plan calls for providing states with several billion dollars in grants to set up health insurance purchasing pools through which individuals eligible

> **'Anything that diminishes the number of uninsured is good news for corporate America.'**
>
> *Joe Martingale*
> *Watson Wyatt Worldwide*

for health insurance tax credits could purchase coverage.

"HealthPools will use the purchasing power of thousands of individual families to help the reduce the cost of health insurance premiums," the White House said in fact sheet, noting it envisions states setting up Web sites and toll-free numbers people could use to sign up for coverage. Pool coverage applications also would be available at heavily used government facilities, such as motor vehicle offices.

Finally, the proposal calls for devoting more federal resources to expanding enrollment in such government programs as Medicaid and the State's Children Health Insurance Program, where millions of eligible beneficiaries have never signed up for coverage.

The administration estimates the entire package would increase the number of people with health insurance by between 11 million and 17.5 million. Currently, around 45 million people lack coverage.

The use of tax credits to expand coverage is not new. A 2002 federal law gives eligible beneficiaries a tax credit equal to 65% of the premiums they pay for health insurance. Those eligible for the so-called health coverage tax credit are individuals who have lost their jobs due to foreign competition and retirees age 55 through 64 whose former employers' pension plans have been taken over by the Pension Benefit Guaranty Corp.

Benefit experts say the small employer HSA-related tax credit could be enough to maintain coverage at those firms on the edge of folding their health insurance plans because of the high cost of premiums, while also pushing those leaning toward offering coverage to do so.

"It helps those on the edge," said Andy Anderson, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

The package's $3,000 in subsidies—through a combination of direct federal contributions to lower-income individual's HSAs and tax credits to offset health insurance premiums—would be what Mr. Anderson describes as "huge assistance" to people in the lower middle class who are not covered under employer plans and who earn too much to qualify for Medicaid, but find the cost of private health insurance prohibitive.

"It could make a big difference for them," said Joe Martingale, national strategy health care leader for Watson Wyatt Worldwide in New York.

While large employers would not be eligible for the health insurance tax breaks, they still would benefit from it, experts say. If more people have health insurance, they say, hospitals would see a reduction in the amount of uncompensated care they provide to the uninsured, reducing their need to shift costs to insured patients, said Joe Walshe, a principal in the HR services unit of PricewaterhouseCoopers L.L.P. in Washington.

"Anything that diminishes the number of uninsured is good news for corporate America," Mr. Martingale said.

COVERAGE BY EMPLOYER SIZE

How health insurance coverage varies by employer size

Company size	Percentage of employees with employment-based coverage
Fewer than 10 employees	42.5
10-24 employees	53.7
25-99 employees	65.8
100-499 employees	74.3
500-999 employees	75.5
1,000 or more employees	79.6

Source: Employee Benefit Research Institute/U.S. Census Bureau

Survey: Health premiums ease

Continued from page 4

crease was 11.3%, down from 13.2% last year. And for preferred provider organization plans, premiums were up 10.9% in 2004, compared with 13.7% in 2003.

This year, the survey asked employers for the first time whether they were offering financial incentives to discourage employees from enrolling in their benefit plans.

It found that 17% of employers provide additional compensation or benefits to those employees who decline health coverage altogether; 12% vary the amount an employee must pay for family coverage depending on whether the employee's family member has access to coverage from another source; and 3% provide additional compensation or benefits to those employees who elect single, rather than family, coverage.

While few respondents said they are likely to adopt any of these practices in the future, 41% said they are very likely or somewhat likely to increase the amount that employees must contribute to the cost of family coverage. Currently, the average contribution by employees for single coverage is 16%, while employees who elect family coverage pay an average of 28% of that premium. Average annual premiums for employer-sponsored plans in 2004 were $3,685 for single coverage and to $9,950 for family coverage.

In addition, the survey notes that the percentage of employers providing health insurance dropped in 2004 compared with 2001.

While 68% of employers offered health care coverage to their employees in 2001, just 63% did so this year, according to the survey.

Copies of the survey are available online at the Kaiser Family Foundation Web site, www.kff.org/insurance/7148.

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LARA: Bill addresses two tort concerns

Continued from page 1

tion to impose sanctions has been filed.

LARA would also require that a plaintiff in a civil court action sue only where he or she lives or was injured or where the defendant's principal place of business is located. Tort reform advocates support such venue reform as a means to curb what they consider to be "forum shopping," where plaintiffs attorneys seek the most plaintiff-friendly jurisdictions in which to file suits.

The measure passed despite debate that sometimes became heated. For example, several Republicans noted that the Democratic vice presidential candidate—Sen. John Edwards, D-N.C.—has publicly called for harsh sanctions against lawyers who bring frivolous medical malpractice liability lawsuits. This eventually brought an angry retort from Rep. Melvin Watt, D-N.C. "You know damn well you have no intention of using John Edwards" as any kind of authority on tort law, said Rep. Watt.

Debate grew so shrill at one point that Judiciary Committee Chairman James Sensenbrenner, R-Wis., reminded members that questioning the motives of a House or Senate member violates committee rules.

Rep. Watt also charged that judges with an animus against particular lawyers could use LARA to ruin them. "I think we're making a mistake if we pass this bill," because it would remove judicial discretion, he said.

Other Democrats were more conciliatory. "I think a part of this bill makes a great deal of sense," said Rep. Howard Berman, D-Calif., but he added that he believed his GOP colleagues had "overreached" by taking a "good idea"—curbing frivolous lawsuits—and adding too much to it. He said the measure would become "another one-house bill," with no chance of winning Senate approval.

Even proponents agree that the measure faces long odds of getting enacted, given both the fact that congressional leaders hope to adjourn the current session for a final time in early October and that the Senate has yet to approve any House-passed tort reform measure in this session. But they say that the effort is still worthwhile.

"What makes LARA unique is that it addresses two of the worst problems in our judicial system—one that haunts small business and the other (that) is anathema to larger businesses," said Victor Schwartz, general counsel to the American Tort Reform Assn. in Washington.

"Small business' No. 1 problem is frivolous claims, the nickel-and-dime claims where plaintiffs lawyers make offers that are just under the cost of an insurer to settle. There is a very strong economic incentive to settle such claims; if the insurer doesn't (settle), it might end with up with a bad-faith claim from its policyholder," said Mr. Schwartz, who is also a partner in the Washington office of the Kansas City, Mo.-based law firm of Shook, Hardy and Bacon L.L.P.

For large businesses, LARA would provide protection against "rampant" forum shopping, said Mr. Schwartz. "This bill would put an end to litigation tourists," he said, referring to those plaintiffs and their attorneys who seek the most plaintiff-friendly jurisdictions in which to file civil suits.

"Making the sanctions mandatory is a good move," said Melissa Shelk, vp-federal affairs for the American Insurance Assn. in Washington. Ms. Shelk also praised the potential limits on jurisdiction choice. "As we've seen in asbestos, class action and other" forms of litigation, she said, "plaintiffs attorneys look for the most friendly court."

"It is very unusual to have a bill that meets major problems of both large and small businesses and contains no substantive" limits on people's right to sue, said Mr. Schwartz. "It sets the bill up for fast action in the 109th Congress," which will convene early next year, he said.

Mr. Schwartz said that the measure also challenges the Democratic Party's presidential ticket—Sens. John Kerry of Massachusetts and Edwards—to "support in fact what they said they would in theory," which is strengthening defenses against frivolous lawsuits. Both have called for sanctions against lawyers who bring frivolous medical malpractice lawsuits, he said.

Lawrence Fineran, vp-regulatory and competition policy for the National Assn. of Manufacturers in Washington, said he was disappointed that "even a reform as innocuous as this" would be passed only on a party line vote. "All this does is restore the Rule 11 sanction," he said, adding that "to bring a lawsuit just for publicity's sake doesn't do much good" for anybody.

"If nothing else, House passage would tee it up for next year, no matter which administration we have. Certainly, if Kerry-Edwards wins, it's going to make it tough, but all this bill does is restore the teeth that were in the sanctions. I would hope even a Kerry-Edwards administration would be forced to look at it closely. I think if the House passes it, it shows it's a serious effort."

A leading opponent of LARA found the arguments less than impressive. "This is one that's been pulled out before," said Pamela Gilbert, an attorney with the Washington law firm of Cuneo Waldman & Gilbert L.L.P.

"Certainly, we think this is unnecessary. It won't help get rid of frivolous lawsuits, which are not a problem, and it certainly won't increase corporate and business accountability. It's just politics; there's no hope, interest or intent of getting this law passed," she said.

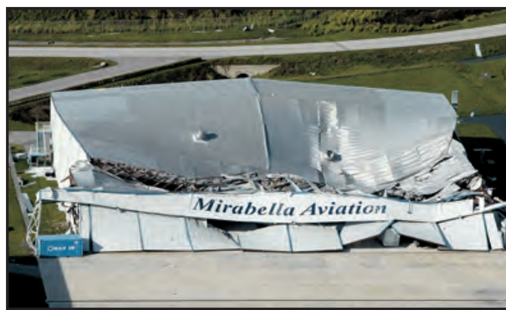

PHOTO: AFP, ZUMA

Hurricane Frances resulted in losses across much of Florida, including damaging buildings at an airport in Fort Pierce, above. Many businesses left their windows boarded up last week in anticipation of Hurricane Ivan.

Storms: More hurricane losses

Continued from page 1

ternoon. Evacuations were ordered in the Keys Thursday after the storm wreaked havoc in the Caribbean, most notably in Grenada, where it killed at least 23 people. On Friday, catastrophe modeling company EQECAT Inc. in Oakland, Calif., said that if Ivan continued along its expected path, striking near the Tampa/St. Petersburg metropolitan area as a Category 4 or 5 storm, insured losses could exceed $35 billion.

Hurricane Frances, a Category 2 storm that hit Florida's south central Atlantic coast early on Sept. 5—just three weeks after Charley swept through the state—is expected to cause between $3 billion and $10 billion in insured property damage, according to catastrophe modelers.

Frances made landfall near Sewall's Point, Fla., packing maximum sustained winds of about 105 mph, according to the National Hurricane Center. The storm lost strength as it crossed the state on a northwest path, eventually reaching the Gulf of Mexico. It then made a second landfall on the Florida Panhandle and dumped heavy rains throughout the Southeast and East Coast.

Damage, which ranges from minimal to extensive, "encompasses almost all of Florida except for the Panhandle," said Hart Hubbard, director of catastrophe services for claims services company GAB Robins North America, who is in the affected area. "The storm hit the eastern coast and just stood there for hours."

"There's a lot of structural damage, and we have a lot of flooding, especially in the interior where the rivers have crested over their flood stage," Mr. Hubbard added.

In Fort Pierce, Fla., "there's no electricity and no traffic lights working and it's hard to go more than one square block without seeing a lot of roofs that are either blown off or have lost a lot of their shingles," Franklin Horowitz, an independent loss adviser, said late last week. "I went and looked at an apartment complex and basically every roof was damaged and half the interior units had gotten water damage, and have some moisture issues."

And "obviously, with no power, you're going to have a lot of spoilage problems" among homeowners and businesses handling food.

In addition, "the fresh fruit industry is going to take a big hit," Mr. Horowitz said. "Although Hurricane Charley was the storm with more muscle, I believe Hurricane Frances might actually do more harm to the citrus industry in terms of uprooting trees and knocking down fruit."

Charley, a smaller but more powerful Category 4 storm, caused between $6.80 billion and $7.40 billion in insured losses, according to current estimates.

Despite billions of dollars in insured damages, property insurance experts don't expect the one-two punch of Charley and Frances to shift the direction of the softening property catastrophe market in general.

In many cases, windstorm deductibles—which typically range from 2% to 5% of the insured value—have helped to insulate property insurers from losses, brokers say.

"It's a nonevent from a financial perspective and a market-turning perspective," especially for the commercial property underwriters, said Gary Marchitello, managing director of national property syndication for Aon Risk Services Cos. Inc. in New York.

"I think the biggest phenomenon we saw was the impact on the effect of deductibles insulating insurers from sustaining more loss than they did," he said. "Buyers are shouldering much more of the loss than they have historically."

Mr. Marchitello noted, however, that Hurricane Ivan, depending on its size, strength and where it makes landfall, could change the market, at least temporarily.

"With no science behind it, my benchmark is it has to be a $20 billion event to the commercial market to have a real impact," he said.

"I think the impact of three hurricanes occurring more or less simultaneously will be mostly an emotional impact on the underwriters," said James Costner, a senior vp and property insurance consultant with Willis Risk Solutions in Nashville. "It would take a $46 billion loss to equal the impact Hurricane Andrew had on surplus in 1992, and we are nowhere near $46 billion," he said. Andrew, the costliest hurricane in terms of insured losses, cost insurers more than $15 billion.

A catastrophe fund set up after Andrew also is reducing the impact of the storms on insurers. The Florida Hurricane Catastrophe Fund provides reimbursements to residential insurers in the state for a portion of their hurricane losses. All companies that write homeowners policies in Florida must participate in and pay premiums to the fund (*BI*, Aug. 23).

"I think this is one time the insurance industry has got its act together right. It's working the way they set it up to work, and I don't expect a huge overreaction" in terms of rate increases, Mr. Costner said.

"The downside is the amount of windstorm risk that has been moved back onto the balance sheet of insurance buyers," Mr. Costner said. "That's going to amount to billions."

Role of geography

Although property experts agree that the two hurricanes should not affect the softening in the general property catastrophe market, Florida exposures will be an exception.

"Catastrophe property rates in Florida had been decreasing by about 10% to 15%," said John Head, president of CBIZ Insurance Services Inc. in Atlanta.

"After Charley, we started to see some of the flatness come back, not quite flat, but 5% decreases. But once they started predicting Frances, we saw it move in the other direction. We haven't seen any increases yet, and it may just be short term, but you can't tell," he said.

Alexandra Glickman, area vice chairman and managing director of Arthur J. Gallagher & Co.'s real estate and hospitality services division in Glendale, Calif., said that within the last several days, she has seen insurers push back in terms of automatic double-digit decreases in the property catastrophe market.

"There will continue to be reductions and a trend down, but it will not be at that same breakneck speed

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Late News

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Rhode Island Attorney General Patrick Lynch said in a letter sent last week to the department's director. "Unfortunately, enabling an entity to violate federal laws and regulations is not good law enforcement policy," Mr. Lynch wrote.

Report sees costs from lapse of TRIA

An insurance industry-commissioned report scheduled for release Tuesday holds that the failure to reauthorize the Terrorism Risk Insurance Act could have a negative impact on the U.S. economy even if there is not another catastrophic terrorist attack. Among other things, the study—prepared by Analysis Group Inc., an economic research and consulting firm—found that the lack of the federal terrorism insurance backstop provided by TRIA would result in slower job creation. TRIA is slated to expire at the end of next year unless reauthorized by Congress.

N.J. judge transfers Oxford merger suit

A New Jersey judge has rejected a motion by UnitedHealth Group Inc. to dismiss a lawsuit challenging its merger with Oxford Health Plans Inc. The Medical Society of New Jersey filed the lawsuit Aug. 2 to appeal the New Jersey banking and insurance commissioner's decision to approve the merger. Minneapolis-based UnitedHealth then filed a motion to

dismiss the complaint, arguing that the law division of the Superior Court of New Jersey did not have jurisdiction to decide challenges to actions by state agencies. While the judge agreed her division did not have jurisdiction, she said dismissal was inappropriate and transferred the case to the Superior Court of New Jersey. UnitedHealth officials could not be reached.

Benfield revenues nearly flat in half

London-based Benfield Group Ltd.'s first-half revenues grew less than 1% to £206.1 million ($374.3 million). The broker said revenue growth was tempered in part by currency fluctuations, noting that revenues rose by 6.9% at constant rates of exchange. Pretax profit rose to £113.1 million ($205.4 million) from a restated £53.0 million ($88.1 million). The gain was due partly to the sale of a stake in Montpelier Re Holdings Ltd. as well as compliance with an accounting standard, Benfield said. Under Financial Reporting Standard 5, introduced in November 2003, Benfield said about two-thirds of its revenues will be recognized in the first half.

Wholesaler Crump forms financial lines unit

Dallas-based wholesale broker Crump Insurance Services Inc. has formed a new national practice to handle directors and officers liability, errors and omissions and employment practices liability placements. The financial lines practice is the first national practice group created by Dallas-based Crump, whose 17 U.S. offices have

operated largely independently in the past, said a spokeswoman for the unit of Marsh & McLennan Cos. Inc. Additional practice groups may be formed soon for other lines, she said.

Kiln proposes reinsurance unit

Lloyd's of London insurer Kiln P.L.C. has announced plans to set up a reinsurance operation made up of three reinsurers—W.R. Berkley Insurance (Europe), in which Kiln has a stake, and syndicates 510 and 557, which Kiln manages. Under the arrangement, which is subject to regulatory approval, shareholders in Kiln would receive underwriting profits from syndicate 510 and fees and commissions from all three entities. The insurer said its profits rose 61%, to £24.7 million ($44.9 million), in the first half of 2004, due mainly to "excellent underwriting conditions."

Briefly noted

San Mateo, Calif.-based **Calco Insurance Brokers & Agents Inc.** has named Dan Ryan president and chief executive officer....**United Airlines** is seeking federal bankruptcy court approval to hire Independent Fiduciary Services Inc. of Washington as the fiduciary of its four underfunded pension plans. United earlier reached an agreement with the Labor Department to retain an outside party as a fiduciary for its plans by mid-September. The plans are together underfunded by more than $8 billion, and United has suspended contributions while in bankruptcy....**Allied World Assurance Co. (Europe) Ltd.** has formally opened its European headquarters in Dublin, Ireland. The company is a unit of Hamilton, Bermuda-based Allied World Assurance Holdings Ltd., which writes property/casualty insurance and reinsurance worldwide....As part of a rebranding effort intended to unify the operations of General Electric Co., Kansas City, Mo.-based Employers Reinsurance Corp. has changed its name to **GE Insurance Solutions.** The new name encompasses a host of insurance and reinsurance operating units, including Employers Re, GE Re, GE Frankona Re and Westport Insurance Corp. GE said risks will continue to be underwritten by the units under their existing legal names....**Mercer Human Resource Consulting** has opened an office in San Juan, Puerto Rico.

Check out BusinessInsurance.com

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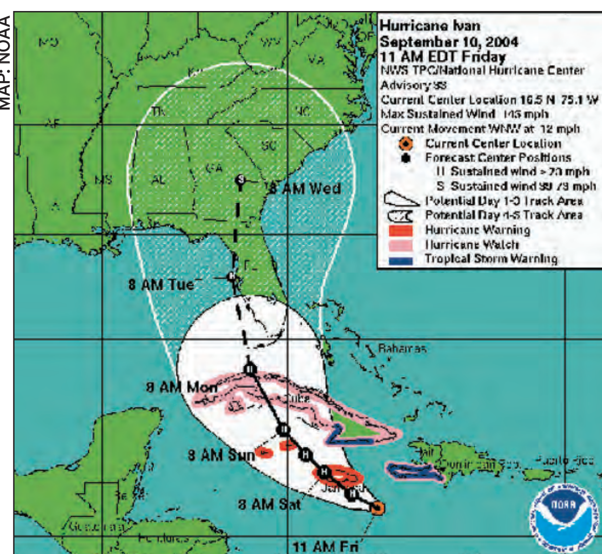
that we were seeing at the beginning of the year," she said.

"The issue will be whether we will continue to see the same type of trend down that we have seen in the past," she said. For "superior risks, which do not have a heavy Florida concentration, you will still see improved pricing. But I hope that insurers do not use these storms as an excuse to punish risks that do not have catastrophic wind exposures," Ms. Glickman said.

But if Hurricane Ivan causes between $5 billion to $8 billion in damages, "then I think you'll see a stabilization for cat-based perils. But I don't think that Frances and Charley are the end of the soft market by any stretch," she said.



According to projections from the National Oceanic and Atmospheric Administration last week, Hurricane Ivan will make landfall in Florida this week.

Reinsurance concerns

Although the storms are not expected to measurably affect the primary and reinsurance market, they are forcing some ceding companies to purchase additional reinsurance coverage, experts say.

Typical property catastrophe reinsurance contracts contain provisions allowing for one reinstatement of limits at a 100% additional premium if the original limit is exhausted due to a cat loss.

With two major hurricanes occurring early in the season, some cedents may be looking to purchase additional reinsurance coverage for subsequent catastrophes.

"We're seeing that in a very localized scale," said Tim Gardner, managing director and head of Guy Carpenter & Co. Inc.'s global property specialty practice in London. "There are some Florida clients that we have that are out in the market right now having those conversations and trying to replenish limits that have been exhausted, but not to the scale like an Andrew type of event."

The losses from Hurricane Andrew "went through almost all the catastrophe programs for writers in the state," he said. "So they had their first limits of their programs entirely exhausted. They were able to reinstate so they had another limit available, but many were concerned about getting through the duration of the year with only one limit out there."

Hurricanes Charley and Frances have not "materialized into a significant enough event to warrant that," Mr. Gardner said, noting that for most large insurers, net losses from the hurricanes are not reaching catastrophe retentions.

"Who knows? There's another really, really large storm in the Caribbean right now that may change that game entirely. We'll just have to wait and see," Mr. Gardner said.

Several major reinsurers say they are not expecting losses from hurricanes Frances and Charley to have a material impact on their operations.

Hannover Reinsurance Co. said that its losses from Frances would likely "result in a burden of losses in the mid-range double-digit million euros." The Hannover, Germany-based reinsurer also noted its exposure to Charley—originally estimated at about 100 million euros ($120.6 million)—would likely be 70 million euros ($84.4 million) before tax, because the scale of the losses was smaller than previously thought.

Swiss Reinsurance Co. said it expects its aggregate claims related to Charley and Frances to be less than $300 million before tax. "These events will not change Swiss Re's positive outlook for 2004 and its combined ratio target for the full year of 96%," the Zurich-based reinsurer said.

Munich Reinsurance Co. estimates its loss from Hurricane Frances to be a low three-digit million euro figure at the very most, a spokeswoman said.

Zug, Switzerland-based Converium Ltd. expects gross losses from Frances to be below $20 million and gross losses from Charley to be below $25 million, a spokesman said.

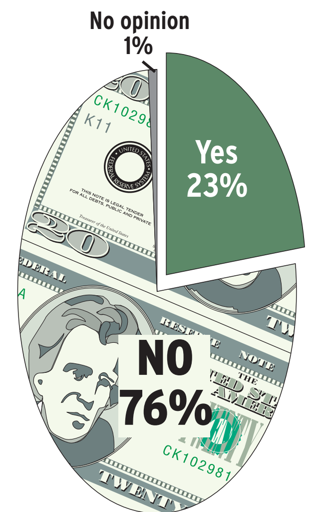
Robert Chase, director of underwriting at Lloyd's of London-based insurer Kiln P.L.C., said Kiln's net loss from Hurricane Frances will likely be about £2 million ($1.79 million), while losses from Charley will be about £3 million ($5.4 million).

Sarah Veysey contributed to this report.

Online Poll

[9/6 - 9/10]

Should a portion of punitive damage awards be paid to state or local governments rather than individual plaintiffs?



BI Stock Index

[9/6 - 9/10]

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

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

Index	Value	Change
BI Stock Index	2258.78	0.62
Dow Jones	10313.10	0.52
S&P 500	1123.92	0.92

Largest gains

Company	Change
Trenwick Group Ltd.	25.00%
NYMagic Inc.	7.62%
Clark Inc.	7.58%
USI Holdings Corp.	7.51%
EMC Insurance Group Inc.	4.72%

Largest losses

Company	Change
Unico American Corp.	-5.53%
Gainsco Inc.	-4.71%
Vesta Insurance Co.	-3.86%
Fairfax Financial Holdings	-2.93%
St. Paul Travelers	-1.84%

Weekly change by market segment

Segment	Change
Brokers	2.75%
Insurers/Reinsurers	0.89%
Managed Care Organizations	1.06%

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