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SURPLUS LINES MARKET REPORT

RANKINGS OF THE LARGEST SURPLUS LINES INSURERS, WHOLESALERS

Revised asbestos reform proposal offered / 3

Lawmaker pledges work on pension reform / 3

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September 20, 2004

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Ivan terrible to reinsurers

Third major hurricane could cause property rate firming

By MICHAEL BRADFORD and DAVE LENCKUS

As the 2004 hurricane season continues to batter the United States and storm-weary insurers, it is becoming increasingly likely that U.S. policyholders will not be paying less for property insurance at their next renewal.

While no one is predicting drastic rate hikes after Hurricane Ivan—the most recent of three multibillion-dollar windstorms—the likelihood that property reinsurance prices will at least stabilize and could rise is increasing. As year-end renewals near and hurricane season drags on, with the possibility of additional catastrophe losses, insurers and reinsurers are considering their options.

"If you didn't have Ivan, the market would have handled the losses, and there would be very

See IVAN/page 60

PHOTO: NY TIMES

The Windemere Condos and Conference Center in Orange Beach, Ala., was severely damaged when Hurricane Ivan battered parts of the Gulf Coast last week.

Late News

IBM, plaintiffs in talks over cash balance suit

IBM Corp. said it is discussing with plaintiffs a possible resolution of remedies and claims stemming from a district court ruling involving its cash balance pension plan. Last year, in a decision that generated national publicity, Judge G. Patrick Murphy for the U.S. District Court for the Southern District of Illinois ruled that IBM's cash balance plan discriminated against the company's older employees. While Armonk, N.Y.-based IBM said it plans to continue through the appeals process to defend the legality of its plan, it said that the "parties are in discussions regarding a possible resolution of some of the remedies issues and/or claims." Judge Murphy has agreed to delay a decision on remedies in the case.

Premium hikes slow for federal health plans

Insurance premiums for health plans covering federal employees will rise by an average of 7.9% next year–down from 10.6% in 2004–marking the first time since the late 1990s that the increase has been in single digits. Federal officials cited several factors behind the moderation, including greater competition among insurers. The Federal Employees Health Benefits Program is the nation's largest group benefits program, with more than 8.5 million participants. On average, the federal government pays 70% of participants' premiums.

NAIC elects three as interim officers

The National Assn. of Insurance Commissioners elected three interim officers at the organization's fall quarterly meeting in Anchorage, Alaska, last week. Diane Koken, Pennsylvania's commissioner of insurance, was elected president. In addition, Joel Ario, Oregon insurance administrator, was named vp, and Alessandro Iuppa, Maine's superintendent of insurance, was elected secretary/treasurer. The elections

Ms. Koken

See LATE NEWS/page 59

Converium to close units

Ratings spur U.S. move

By SARAH VEYSEY

ZUG, Switzerland—Following two key ratings downgrades in recent weeks, reinsurer Converium Holding A.G. said it plans to close its U.S. units and expects to see a reduction in the amount of U.S. business it writes.

Standard & Poor's Corp. on Sept. 10 dropped its rating of the Swiss reinsurer to BBB from A-. This move, coupled with A.M. Best Co.'s recent downgrade of the group to B++ from A-, prompted Converium to abandon a plan, announced earlier this month, that would have allowed it to continue writing U.S. business through one of its units in the United States.

Under that plan, Converium was to place loss-plagued Converium Reinsurance (North America) Inc. in runoff and boost capital to Converium Insurance (North

See CONVERIUM/page 58

Prospects in Senate uncertain

House panel sets vote for TRIA extension bill

By MARK A. HOFMANN

WASHINGTON—The House Financial Services Committee next week will mark up legislation that would extend the Terrorism Risk Insurance Act for two years, boosting hopes that the law will be reauthorized this year.

TRIA's reauthorization would be welcome news for risk managers, businesses and insurers. Those groups have been urging lawmakers this year to extend the law—currently slated to expire on Dec. 31, 2005—to prevent dislocations in the insurance marketplace.

But even if the full House approves the Terrorism Insurance Backstop Extension Act—H.R. 4634—extension advocates realize that they still face an uphill battle in the Senate, due in part to lawmakers' desire to adjourn early next month.

TRIA, enacted in late 2002, created a federal terrorism insurance backstop that would help cover insurers' losses from future catastrophic terrorist attacks. A sunset provision was included, though, as lawmakers hoped a private market for terrorism would emerge by the end of 2005.

H.R. 4634, introduced by Rep. Pete Sessions, R-Texas, would extend TRIA through the end of 2007 (*BI*, June 28). Among other things, the bill would increase the deductible that participating insurers must pay and would increase the size of the aggregate industry retention to $17.5 billion in 2006 and $20 billion in 2007, up from the $15 billion currently set for 2005.

The decision by House Financial Services Committee Chairman Mike Oxley, R-Ohio, to mark up the bill on Sept. 29 came one day after the release of a report that says failure to extend TRIA could have a dire impact on the U.S. economy. A spokeswoman for Rep. Oxley said that the committee chairman is inclined to extend TRIA's federal backstop to group life insurers, as well.

Analysis Group Inc., a national economic research and consulting firm, prepared the report for the property/casualty insurance industry. The study projects that even if there is not another terrorist attack, allowing TRIA to expire as cur-

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Spotlight report

SURPLUS LINES MARKET

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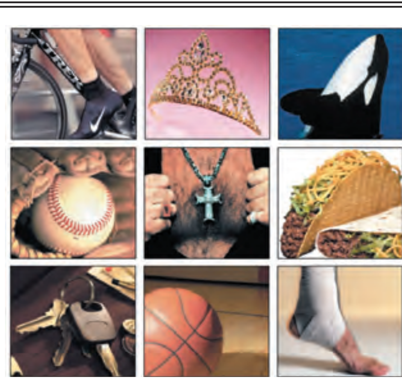


RANKING OF LARGEST SURPLUS LINES INSURERS

on page 14

RANKING OF LARGEST WHOLESALERS, MGAs

on page 24

Offers reduction in trust fund size, other changes

Daschle proposal seeks to revive asbestos reform

By MARK A. HOFMANN

WASHINGTON—Insurers are greeting the latest attempt to revive asbestos litigation reform with a great deal of caution.

Senate Minority Leader Tom Daschle, D-S.D., last week offered another proposal to create a national trust fund to replace the current litigation-based system for compensating victims of asbestos-related disease. The proposal the latest in a series of offers and counteroffers designed to overcome the differences of opinion that have hindered the asbestos reform effort.

The new Daschle proposal would limit the proposed trust fund to $140 billion—down from the $145 billion he'd previously suggested—to bring the funding amount in line with that put forward by Senate Majority Leader Bill Frist, R-Tenn. The proposal also offers changes from Sen. Daschle's previous proposals in how pending asbestos-related personal injury lawsuits would be treated, as well as a change in language dealing with asbestos-related lung cancer cases.

Sen. Daschle

As in previous proposals, the funding for the arrangement would come from defendant companies in asbestos liability cases and their insurers.

Senators from both parties had expressed hope that an asbestos compensation reform bill could pass during this Congress, which is slated to adjourn early next month. Although a measure to create a $153 billion trust fund won narrow approval in the Senate Judiciary

See ASBESTOS/page 59

Insurers, reinsurers sue to recover Sept. 11 losses

By DOUGLAS McLEOD

NEW YORK—More than a dozen insurers and reinsurers have filed lawsuits seeking to recover Sept. 11, 2001, terrorism losses from an array of defendants ranging from American Airlines Inc. and United Airlines Inc. to the Kingdom of Saudi Arabia.

Filed last Friday to meet a deadline for Sept. 11-related liability actions, the suits are expected to be consolidated with a mass of related claims already pending in U.S. District Court in New York. The consolidated action, pitting dozens of individual and corporate plaintiffs against multiple defendants, ultimately will sort out who is liable for property and other losses stemming from the attacks.

Several of the suits filed Friday name virtually the same cast of defendants: American, United, U.S. Airways Group Inc., several airport security companies and Chicago-based Boeing Co., which manufactured the hijacked planes. The suits charge that the defendants' negligence in various ways contributed to the losses. Those filing suits last week included:

PHOTO: KRT

American Airlines is among the defendants in lawsuits filed by insurers and reinsurers.

- Industrial Risk Insurers, a unit of GE Insurance Services. IRI filed two complaints: one to recover losses related to the destruction of most of the World Trade Center complex; and a second for losses specifically related to 7 World Trade Center, which collapsed several hours after the attacks.
- Assurance General de France and several units of Allianz A.G. Holding of Munich, Germany, including Fireman's Fund Insurance Co.
- Lloyd's of London underwriters; Munich Reinsurance Co. and affiliate Munich-American Risk Partners GmbH; and Greater New York Mutual Insurance Co. and affiliate Insurance Co. of Greater New York.
- Great Lakes Reinsurance (UK)

See SUITS/page 58

PHOTO: EFE

Rep. John Boehner, inset, says pension reform is needed because of concerns that bankrupt employers like US Airways will dump their pension obligations on the PBGC.

Pension reform in the works, lawmaker says

By JERRY GEISEL

WASHINGTON—An influential federal lawmaker is drafting pension reform legislation that he expects to roll out early next year.

Rep. John Boehner, R-Ohio, who chairs the House Education and the Workforce Committee, has pledged to work for passage of a comprehensive reform bill, warning that the retirement security of millions of employees and the interests of taxpayers are at stake.

Speaking last week before a meeting of the U.S. Chamber of Commerce in Washington, Rep. Boehner, whose committee has jurisdiction over pension legislation, touched on several issues related to pension reform. A key concern at the moment, he said, is that employers in bankruptcy can walk away from their underfunded pension plans and stick the Pension Benefit Guaranty Corp. with most of their plan liabilities.

"We can't let employers dump their pension plans onto the PBGC," he said.

The call for pension reforms from Rep. Boehner, who spearheaded the passage of legislation earlier this year that changed rules governing how employers must calculate pension liabilities (*BI*, April 12), comes as the PBGC itself is urging legal changes to better protect the financially distressed agency from even bigger losses. The PBGC currently faces a deficit of more than $9 billion, largely due to massive losses in recent years stemming from the takeover of failed steelmakers' pension plans.

Among other things, the

See PENSIONS/page 57

Inside Business Insurance

Litigation reform bill moves to Senate

Tort reform advocates express optimism that the Senate will pass litigation reform legislation before it adjourns. Page 4

Medicare Advantage sees return of health plans

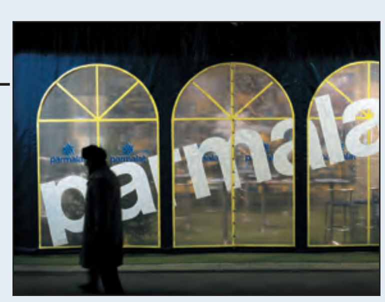
In a reversal, more managed care plans are participating in the Medicare program. Page 4

Canadian cost concerns spur benefit changes

Canadian employers are changing their pension and health care plans to address rising costs. Page 6

Lawmakers must act on TRIA extension now

Risk managers, business groups and insurers must urge Congress to renew TRIA before adjourning, this week's editorial says. Page 8



U.K. to consider reform of auditor liability

Lawsuits against auditors, such as litigation brought by Italy's Parmalat, are making coverage scarce and prompting liability reforms. Page 51

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info about your own event.
- Updated **directories of wholesalers and surplus lines insurers** are among the searchable listings of all industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Do you think Congress will extend the Terrorism Risk Insurance Act before it adjourns in October?

Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Bill would sanction lawyers for filing frivolous suits, curb forum shopping

House approves litigation reform measure

By MARK A. HOFMANN

WASHINGTON—Even though the current Senate has not looked favorably on tort reform proposals, some reform advocates are optimistic that the Senate could follow the House's lead and pass modest litigation reforms before it adjourns next month.

Their optimism stems from the House's 229-174 vote last week approving the Lawsuit Abuse Reduction Act. The vote fell largely along party lines, with all but a handful of Republicans supporting the measure and most Democratic members opposing it.

The act—H.R. 4571—would reinstate provisions in Rule 11 of the Federal Rules of Civil Procedure that require federal judges to sanction attorneys who file lawsuits determined to be frivolous under the rule's guidelines. For example, the bill would require a federal court to bar an attorney who files three frivolous suits in that court from appearing before that court for a year.

The rule spells out specific criteria that determine whether a suit should be deemed frivolous. Among other things, a suit is considered frivolous under Rule 11 if it is filed for "improper purpose," such as to harass or cause unnecessary delay or a needless increase in the cost of litigation. Claims for which the factual allegations have no evidentiary support are also deemed frivolous under the rule.

The rule was amended in 1993 to give judges discretion over the imposition of sanctions.

LARA, which was introduced by Rep. Lamar Smith, R-Texas, also contains provisions that would curb so-called forum shopping, in which plaintiff attorneys select the most favorable venues in which to file suits, rather than ones most directly relevant to the litigants. Corporate defendants in particular have long complained that some attorneys seek plaintiff-friendly state

See LARA/page 55

PHOTO: ZUMA

Rep. Lamar Smith, R-Texas, introduced LARA.

PHOTO: REUTERS

Former Hollinger International Chairman Conrad Black faces shareholder litigation over company transactions.

Shareholder suits raising D&O rates for some in Canada

By GLORIA GONZALEZ

A spate of high-profile lawsuits against directors and officers of major Canadian companies is driving up D&O premiums for large public corporations in Canada, even as rates are beginning to stabilize for small to midsize companies.

In addition to rate hikes for larger risks, the increased legal action and more onerous corporate governance requirements are leading to more careful scrutiny of all Canadian D&O risks, brokers and underwriters say.

But despite the changes, Canada remains an attractive market for D&O insurers, and capacity is increasing, they say.

Several Canadian companies this year have been hit with significant shareholder claims and government inquiries over allegations of wrongdoing or negligent governance by company executives.

Toronto-based Hollinger Inc. is facing several inquiries related to alleged corporate misdeeds committed by Conrad Black, the company's controlling shareholder and the former chairman of its Chicago-based Hollinger International Inc. unit. A judge at the Ontario Superior Court of Justice recently granted a shareholder request for an investigation into company transactions. Last week, a group of five Canadian shareholders filed suit against Lord Black, his wife, several Hollinger executives and the corporation itself seeking unspecified damages for market losses caused by alleged misconduct.

Lawsuits seeking class-action status have also been filed against Hollinger in the United States, and Hollinger International has filed a $1.25 billion suit against Lord Black and associates for alleged self-dealing in the management

See D&O/page 56

Health plans returning to Medicare program

By JERRY GEISEL

WASHINGTON—The exodus of managed care plans and their enrollees from the Medicare program appears to be over.

Aided by an infusion of more than $1.3 billion in additional federal funding this year and next, Medicare Advantage plans—formerly known as Medicare+Choice plans—are returning to those markets they abandoned years ago and are entering new ones. The plans—generally health maintenance organizations—provide coverage to enrollees who opt out of the traditional Medicare indemnity program in favor of richer benefits, though they often get less provider choice.

America's Health Insurance Plans last week released a new survey of 65 Medicare Advantage plans that enroll 87% of the program's nearly 4.7 million beneficiaries. The survey found that, in 2005, just one plan will be withdrawing from one county. That withdrawal will affect just 500 beneficiaries.

That is a sea change from recent years, when droves of managed care plans, pinched by parsimonious increases in federal payments, left the program, resulting in hundreds of thousands of beneficiaries scrambling for coverage from those HMOs remaining in the program or being forced to return to the traditional Medicare market.

For example, in 2002, managed care plan pullouts from Medicare affected 536,000 beneficiaries; in 2003, they affected 200,000 beneficiaries; and this year, pullouts affected 40,000 enrollees.

But now, boosted by a 10.6% rate increase from the government in March—five times more than the 2% annual rate hikes of recent years—plans are coming back to the Medicare program.

"A turnaround has begun," said Karen Ignagni, president and chief executive officer of AHIP, a Washington-based organization that represents health plans.

"The bloodletting has stopped," concurred Joseph Martingale, national health care strategy leader for Watson Wyatt Worldwide in New York.

Indeed, plans, assured of what they believe will be adequate federal funding, are expanding into new markets.

For example, Hartford, Conn.-based Aetna Inc. earlier this year began to offer Medicare Advantage

See MEDICARE/page 57

ALARYS/IFRIMA conference

Interest in risk management growing in Latin America

By ROBERTO CENICEROS

SOUTHAMPTON, Bermuda—Risk managers across Latin America—as well as multinational companies with risks in the region—face a variety of challenges and opportunities, according to speakers and attendees at a recent conference held by Latin America's main risk management organization.

Although the concept of risk management is still taking hold in Latin America, a desire to compete globally is fueling interest in the discipline, noted one attendee of a recent conference in Southampton, Bermuda, hosted jointly by the Asociacion Latinoamericana de Administradores de Riesgos y Seguros and the International Federation of Risk & Insurance Management Assns. Inc.

"Normally, in Latin America you have (risk management) set aside in the corner of a financial department, or you have it outsourced to brokers," said Andres Ricardo Holownia, regional risk manager for truck manufacturer Scania Latin America Ltda. in Sao Paulo, Brazil.

ALARYS/IFRIMA04

Continued conference coverage on page 48

There are, though, a growing number of professionals working in stand-alone risk management departments, Mr. Holownia said. As Latin American companies look to expand into other countries, such as the United States, they are seeking to identify and manage exposures such as directors and officers and errors and omissions liability.

In addition, growing employee benefit costs, along with changing business trends, could create opportunities for risk and benefits management in the region, said Roberto Cudemus M., principal for Mercer Human Resource Consulting in Miami.

Previously, when benefit costs in-

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FUTURE COSTS ARE A WORRY NOW

Employers in Canada anticipate making a variety of changes to their pension plans in 2005

Revision of investment policy	26%
Introduction of asset/liability mgmt. initiatives	21%
Search for investment manager	17%
Increase in employee contributions	13%
Possible conversion to defined contribution plan	10%
Reduction of future benefits	7%
Termination of plan	2%

Source: Morneau Sobeco

Canadians cope with rising benefit costs

By GLORIA GONZALEZ

Canadian employers are increasingly concerned about the cost of their pension and health care benefits programs, and some are planning to make changes in an effort to reduce their expenses, a survey reveals.

According to the survey, titled "Compensation Trends and Projections for 2005" and conducted by human resources consulting firm Morneau Sobeco, 21% of respondents expressed concern about their future pension costs, up from 15% in a similar survey from 2003. In addition, 60% of the employers reported concerns about rising health care-related costs, up from 57%. Toronto-based Morneau Sobeco based its findings on data from 302 organizations representing 631,000 Canadian employees.

Some surveyed employers said they are planning to make changes to their pension offerings in response to weakness in the financial markets in recent years, which has increased the amount they must contribute to their plans. For example, 26% of employers with defined benefit pension plans will make changes to their investment policies such as adjusting the asset mix next year, the survey found. Another 13% of employers are planning to increase employee contributions to their pension plans; employee contributions to defined benefit pension plans are permitted in Canada.

However, few employers are considering terminating their defined benefit plans or converting the plans to defined contribution plans. Less than 2% said they intend to terminate their plans next year, while less than 10% are considering converting their plans to defined contribution plans.

"I do not see a major trend for converting defined benefit plans into defined contribution plans," said Andre Sauve, a partner and actuary who is based in the firm's

See BENEFITS/page 54

Review ordered for bridging practices

By JUDY GREENWALD

ST. LOUIS—Four Minnesota women who were fired from their jobs with a utility company in the 1950s and 1960s because they were married or pregnant and who later were rehired may be eligible for pension benefits for their first period of employment, says a federal appellate court, in a decision that hinges on the issue of the statute of limitations for their claims.

The 8th U.S. Circuit Court of Appeals in St. Louis said in its Sept. 7 decision in *Noreen Maki vs. Allete Inc.* that the women, who were fired and subsequently rejoined Minnesota Power, a unit of Duluth, Minn.-based Allete Inc., may be entitled to have their first period of employment included in their pension calculations even though their company was operating within the law when they were terminated.

The women's attorneys said the decision, which overturns a lower court ruling, could be influential as more women who were affected by past discriminatory employment practices reach retirement age.

However, an employer attorney says firms that already consistently apply their benefit plans need not have any further concerns because

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Paul Winston

Editor Paul Winston's weekly column will return next week.

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Editorial

It's time to move on TRIA extension

THERE HASN'T BEEN much good news out of this Congress as far as risk management matters go.

Efforts to enact medical malpractice reform, class action reform and asbestos compensation reform have all foundered. Although there's still some talk going on about targeted tort reform and asbestos compensation, the only major issue really left on the table is the extension of the Terrorism Risk Insurance Act—the law that created a federal financial backstop to help insurers cope with possible future catastrophic terrorist losses—through the end of 2007 from its current scheduled expiration at the end of next year.

Fortunately, the resolution of that issue may provide risk managers with one bit of good news out of this soon-to-be adjourned Congress. As we report on page 1, two developments last week give rise to some hope that TRIA can be reauthorized this year.

One was the decision of House Financial Services Committee Chairman Mike Oxley to schedule a Sept. 29 markup of a TRIA extension bill. The other was the release of a new independent study that underscores the potential costs to the U.S. economy if TRIA is not extended, costs that could have to be paid even if no terrorist attack occurs.

Both developments received a hearty welcome from risk managers and insurers, and for good reason. Both risk managers and insurers want TRIA extended for an additional two years, and they want Congress to approve the extension this year.

We believe the pro-extension arguments are sound. In some cases, negotiations are already underway for insurance programs that won't take effect until next year and that will extend into 2006. That means that unless TRIA is extended, a policy would enjoy the TRIA backup for part of its term and not for the rest. How could such a policy be underwritten? That's a question frustrating risk managers and underwriters alike.

Congress can and should end that frustration, and Rep. Oxley deserves a great deal of credit for getting the extension effort moving before Congress adjourns. Given the Senate's track record on issues of interest to risk managers, though, we have no illusions that enacting reauthorization will be easy, even given wide bipartisan support in the House for the extension. After all, the world's greatest deliberative body has deliberated to death every tort reform the House has passed during the current Congress.

Risk managers and the business community in general must make every effort to ensure that members of both houses of Congress understand exactly what's at stake in the TRIA reauthorization effort and why TRIA should be reauthorized sooner rather than later.

Extending TRIA before this Congress adjourns next month would be the best news possible to emerge out of what has unfortunately been a bad-news session for risk managers.

DB pension reform needed now

HOUSE EDUCATION AND the Workforce Committee Chairman John Boehner had it right when he said last week that if Congress does not act to reform the defined benefit pension plan system, the impact on worker retirement security could be devastating.

Indeed, there is ample evidence of how much trouble the system is in, with signs that the problems are growing worse, not better.

In the last month alone, two sponsors of massively underfunded pension plans—United Airlines and US Airways Group Inc.—have said they will not contribute to the plans while in bankruptcy and that they may terminate those plans. If they do, the Pension Benefit Guaranty Corp. will have to pay about $8.5 billion in benefits guaranteed to those airlines' plan participants.

That's a loss the agency, already carrying a $9 billion deficit, can ill afford to absorb. To make matters worse, there is little doubt that if those airlines walk away from their pension plans, other financially-strapped carriers will follow suit.

The prospect of huge continuing losses is why a Washington policy group warned last week that the PBGC will go broke by 2020. To avoid that, the Center on Federal Financial Institutions said a multibillion dollar taxpayer-funded PBGC bailout will be necessary, which we don't think would go down very well with voters, especially those not covered by pension plans.

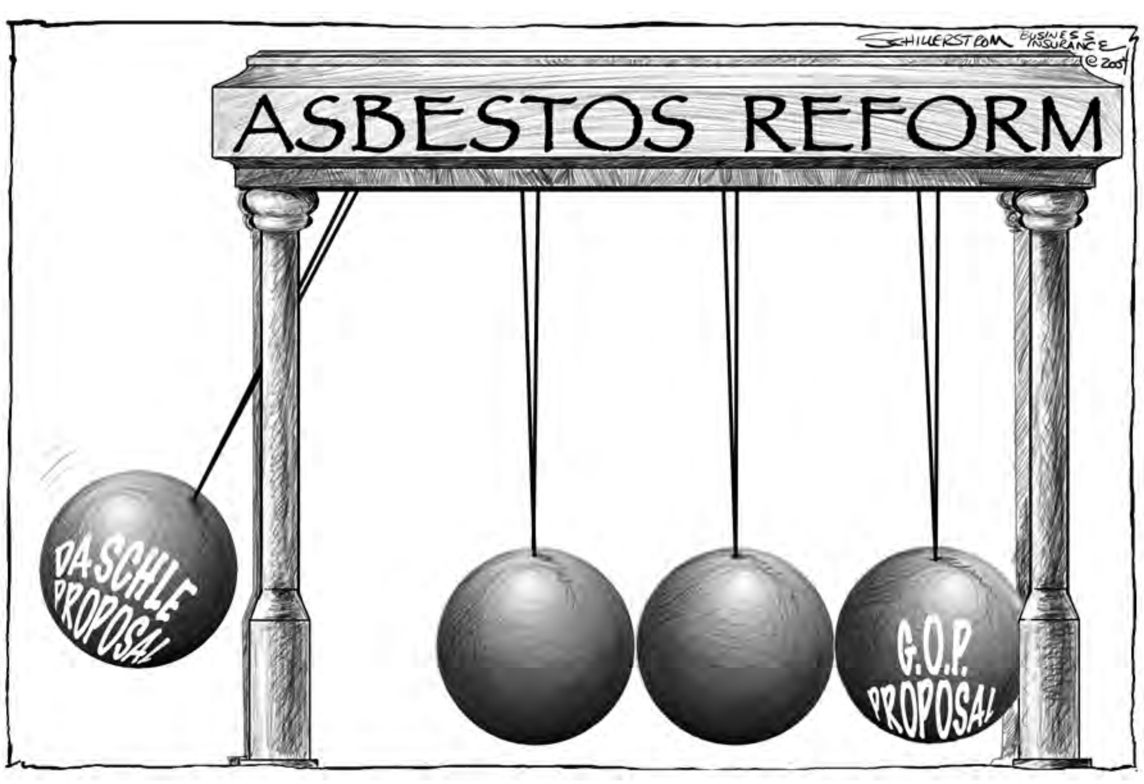
Alternatively, Congress could massively boost premiums employers pay the PBGC to increase its revenue base. But such a move—as Rep. Boehner himself warned—ultimately would be self-defeating. In a voluntary pension system, employers with well-funded defined benefit plans aren't going to keep those plans if it means paying sky-high PBGC premiums to make up for others' underfunding. Instead, those companies will move to defined contribution plans, eliminating their premiums and reducing the PBGC's income.

To prevent this gloomy scenario, Congress next year must make pension law reform a high priority. It should be clear by now that pension law is riddled with loopholes if companies can legally amass such massive liabilities. Those loopholes must be closed.

Similarly, it should be clear that companies in significant financial distress should not be allowed to increase pension benefits until their problems abate.

Chairman Boehner, to his credit, promises to lead the reform charge, and we hope legislators heed his call.

Schillerstrom



Letters to the Editor

Claims adjustment delay a cause for worry

To the editor: I am concerned about length of time it has taken adjusters to respond with at least an appointment for property losses incurred during Hurricane Frances.

I was told by USAA that it may be way beyond a few days and that exposed undersiding for rafters on the roof did not require immediate attention. I have an open roof on two sides and sections of missing tile from the top.

I used to work for an insurance brokerage. Aren't insurers supposed to respond in a timely way to claims or face allegations of bad faith?

Surely, immediate attention by USAA—a very large insurer in this area due to military bases, NASA and retirees—is warranted. Currently, no local office contacts are available—just an 800 number and bored operators.

I am very, very worried and all my neighbors are, too.

Brenda Kebsch Kirby
Melbourne Beach, Fla.

Note: This letter was submitted Sept. 8, four days after Hurricane Frances made landfall in Florida.

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

Surplus Lines Market

Wholesalers, insurers find homes for exotic, odd risks

By JOANNE WOJCIK

Until the baseball deflected by Cubs fan Steve Bartman in a playoff game last season was destroyed in a pyrotechnic display outside Harry Caray's Restaurant in Chicago in February, it was insured for $1 million by an underwriter at Lloyd's of London.

The policy, placed through broker Heath Lambert Group Ltd. by Chicago-based retail broker Mesirow Financial, was taken out by the restaurant's general manager to protect against the infamous ball—which some say cost the Cubs a shot at the World Series—being lost or stolen in the weeks leading up to its ceremonial demise.

Specific body part coverage, which is almost always written in the surplus lines market, is a rarity that is usually taken out by celebrities as a publicity stunt.

When cyclist Lance Armstrong rolled to his record-setting sixth Tour de France victory, a big bonus paid by his sponsor was backed by a reinsurance policy underwritten by Swiss Reinsurance Co.

Swiss Re also wrote a policy to indemnify fast-food chain Taco Bell's pledge to give everyone in America a free taco should the Russian Mir spacecraft hit a 40-square-foot raft off the coast of Australia when it fell to Earth.

And in 1998, the year St. Louis Cardinals first baseman Mark McGwire broke the single-season home run record, the team bought a multimillion-dollar policy from a

See RISKS/page 28

Softening standard market not prompting big buyer exit from surplus lines coverages

By ROBERTO CENICEROS and MARK A. HOFMANN

Insurance buyers are not stampeding out of the nonadmitted market, despite softening rates and increased competition for some of these risks from admitted insurers, insurers and wholesalers say.

Although underwriters acknowledge that some business is returning to the admitted market, they say they also are retaining significant business—especially for difficult and challenging risks—and are not slashing rates to keep it.

"In my opinion, the market has flattened, not softened," said William F. Schmidt, president and chief executive officer of United National Insurance Co. in Bala Cynwyd, Pa. "In the majority of the products that United National offers, we are at our highest rate levels that we have seen for number of years. What we have seen is a flattening of any rate increases," he said.

"Our actual submissions and hit ratios remain steady compared to last year," said Letha Heaton, senior vp at Evanston Insurance Co., a Deerfield, Ill.-based unit of Markel Corp. "We write some of the areas that still remain surplus lines risks, such as hard to place medical malpractice and hard to place products liability," she said. "We are not seeing the huge increases in new business submission, as we did in the heat of the medical malpractice crisis. However, that is to be expected," she added.

"As a surplus lines company, we work real hard to position ourselves to be profitable in the natural ebb and flow of the market, and to avoid chasing market share," Ms. Heaton said.

"We are still enjoying some good

See MARKET/page 12

Hard market often helps fraudsters exploit E&S buyers

By DOUGLAS McLEOD

A former California insurance wholesaler is facing federal fraud charges in New York for allegedly issuing scores of bogus Lloyd's of London policies to bar and restaurant owners.

In Los Angeles, meanwhile, a surplus lines insurer is suing the operators of a risk purchasing group for allegedly issuing phony errors and omissions binders to hundreds of life insurance agents without informing the insurer or remitting premiums.

Hard markets make certain coverages expensive and difficult to place, tempting unsophisticated buyers to jump at insurance offers that seem too good to be true.

Alleged frauds like these could have happened at any point over the last few decades, though the two cases in fact date from earlier this year. Surplus lines frauds—like outbreaks of the flu—vary in scope and intensity, but follow common patterns and never disappear entirely despite the efforts of insurance regulators and law enforcement officials.

The conditions that spawn such scams recur regularly: Hard markets make certain coverages expensive and difficult to place, tempting unsophisticated buyers to jump at insurance offers that seem too good to be true.

Obstacles to stamping out fraud are likewise familiar: The interstate nature of many scams hampers state regulators and local prosecutors; the scams are often complex and difficult to explain to juries;

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Market: Buyers not rushing out of E&S market

Continued from page 10

times," said Gary Tiepelman, senior vp at Scottsdale Insurance Co. in Scottsdale, Ariz. "What I am not seeing is people getting goofy and really going after business and writing it ridiculously cheap. You see it on occasion, but you are just not seeing it on a whole class of business," he said.

A year from now the market will probably look much like today's, with increased competition but "not returning to the craziness of the past. I think a lot of companies are focused on profitability rather than market share," said Janet Jordan-Foster, executive vp-specialties excess and surplus for Zurich Insurance in New York.

Surplus lines insurers are holding firm on their underwriting standards, but they are having to show flexibility on pricing, especially for large accounts and property coverage, said Thomas Comer, president and chief executive officer of Swett & Crawford Group in New York.

"In the past they would name their price, and that would be it in the hard market," Mr. Comer said. "Now, they are dropping their rates. They have to be competitive." Consequently, buyers are shopping around more than in the recent past.

"The expectation is for a continued softening in the market," Mr. Comer said.

"The shift has happened," said John Edack, executive vp in Arch Capital Group Ltd.'s western region in San Francisco. Arch handles its nonadmitted business through Arch Specialty Insurance Co.

"The shift to the standard market has occurred in certain casualty classes—such as nonhazardous products, premises business and commercial contractors—as well as in property, notably fire-oriented risks, including occupancy-driven risks such as manufacturing, wood products and restaurants," he said.

At the same time, Mr. Edack said, the surplus market "is still a very viable source of capacity for earthquake via the (difference-in-condition) policies."

Competition

Property insurance was cited by several market observers as a source of competition between admitted and nonadmitted carriers.

"We're seeing the most competition on what I would call our smaller property accounts," said Kevin Kelley, president and CEO of Lexington Insurance Co., a unit of New York-based American International Group Inc. "Those accounts would be in the $25,000 to $35,000 (premium) range. We see those accounts moving to the package market. Other than that, we're not really seeing business leave the surplus lines" market, he said.

In fact, given the recent unusually costly hurricane activity in Florida, that trend of smaller accounts moving to admitted carriers may slow down, Mr. Kelley added.

Rates for larger property accounts are down about 25% to 30% over a year ago, Mr. Comer said. But on average, property rates for Swett & Crawford's book of business are down about 8% to 9%, he said.

Rates this year remain favorable for casualty lines in the nonadmitted market, though they are not as good as a year ago, said Mr. Tiepelman of Scottsdale.

Excess and umbrella pricing, for example, continues increasing about 10% annually, compared with 15% to 20% a year ago, Mr. Tiepelman said. Liability coverage for service contractors, such as exterminators, roofers, and other entities that conduct their business on customers' property, meanwhile, is rising about 5% annually. A year ago, Scottsdale saw 10% price increases for that coverage, he said.

'What I am not seeing is people getting goofy and really going after business and writing it ridiculously cheap. You see it on occasion, but you are just not seeing it on a whole class of business.'

Gary Tiepelman
Scottsdale Insurance Co.

But without standard-market insurers significantly moving to offer casualty coverages now provided by the nonadmitted market, several casualty lines are holding their own on rates, said Steve DeCarlo, president and CEO of American Wholesale Insurance Group in Charlotte, N.C.

"We are seeing a slight softening in the casualty market, but it has not been nearly to the extent or the precipitous drop that we had when the property market softened starting last year," said Charles Wood Jr., chief operating officer for CRC Insurance Services Inc. in Birmingham, Ala.

Rates for directors and officers liability and professional errors and omissions coverage, for example, generally have held firm, though there are signs of softening for D&O coverage—especially as standard markets regain some appetite for business they previously shunned, according to CRC.

One casualty line clearly shifting back toward the standard market from surplus lines is the real estate

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OVER AND UNDER

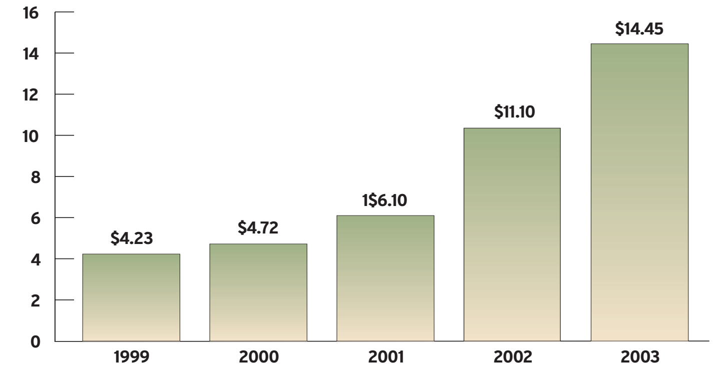
Ranked by statutory combined ratio

Lowest		Highest	
National Fire & Marine Insurance Co.	-47.2%	Pacific Insurance Co. Ltd.	124.0%
American Empire Surplus Lines Insurance Co.	74.5%	First Specialty Insurance Corp.	123.4%
Adriatic Insurance Co.	80.1%	Maxum Indemnity Co.	120.3%
Mt. Hawley Insurance Co.	85.3%	Noetic Specialty Insurance Co.	119.6%
Admiral Insurance Co.	87.5%	Tudor Insurance Co.	111.4%

Source: *BI* survey

PREMIUM GROWTH

Nonadmitted direct written premiums by the top 10 surplus lines insurers, in billions of dollars



Source: *BI* survey

Largest U.S.-based surplus lines insurers

Ranked by 2003 nonadmitted direct written premiums

Rank	Company/Address/*Parent*	Phone/Fax/Web site	2003 nonadmitted direct written premiums	% change	2003 gross premiums	% change	2003 net written volume	2003 net income	Statutory combined ratio	Principal officer
1	Lexington Insurance Co.* 2711 Centerville Road, Suite 400 Wilmington, Del. 19808 *American International Group Inc.*	617-330-1100 Fax: 212-458-7018 *www.lexingtoninsurance.com*	$4,551,449,816	26.1%	$6,087,097,230	23.6%	$2,809,966,736	$300,767,687	91.6%	Kevin H. Kelley, president/executive officer
2	American International Specialty Lines Insurance Co. 1400 W. Benson Blvd., Suite 315 Anchorage, Alaska 99503 *American International Group Inc.*	212-770-7000 Fax: 212-509-7059 *www.aig.com*	$3,502,015,290	43.1%	$3,561,158,309	39.6%	$384,276,078	$7,288,574	96.1%	Kevin H. Kelley, president
3	Steadfast Insurance Co.* 1400 American Lane Schaumburg, Ill. 60196-1056 *Zurich Financial Services Group*	847-605-6000 Fax: 847-605-7895 *www.zurichna.com*	$1,501,870,108	22.9%	$1,553,344,202	24.0%	NA	$7,736,878	NA	Thomas Bradley, president
4	Scottsdale Insurance Co.* 8877 N. Gainey Center Drive Scottsdale, Ariz. 85258-2108 *Nationwide Mutual Insurance Co.*	480-365-4000 Fax: 480-368-5856 *www.scottsdaleins.com*	$1,089,784,140	25.4%	$2,367,571,297	19.2%	$539,709,245	$40,461,480	95.0%	Roger M. Williamson, president
5	Evanston Insurance Co. 10 Parkway N. Deerfield, Ill. 60015 *Markel Corp.*	847-572-6000 Fax: 847-572-6259 *www.shand.com*	$869,903,570	22.0%	$1,015,609,596	21.4%	$699,444,615	$69,635,256	91.4%	Michael A. Rozenberg, president
6	Columbia Casualty Co.* CNA Plaza Chicago, Ill. 60685 *CNA Financial Corp.*	312-822-5000 Fax: 312-817-0040 *www.cna.com*	$725,272,269	70.5%	$759,098,615	119.0%	NA	$1,015,795	NA	Stephen W. Lilienthal, chairman/president
7	Arch Specialty Insurance Co. 1 Liberty Plaza, 53rd Floor New York, N.Y. 10006 *Arch Capital Group Ltd.*	212-651-6500 Fax: 646-746-8105 *www.archinsurance.com*	$670,207,701	204.6%	$692,553,012	214.4%	$74,204,390	$1,329,005	88.3%	Ralph E. Jones III, CEO
8	Admiral Insurance Co. 1255 Caldwell Road Cherry Hill, N.J. 08034-3220 *W.R. Berkley Corp.*	856-429-9200 Fax: 856-795-9301 *www.admiralins.com*	$550,526,471	33.1%	$628,123,345	33.3%	$561,260,416	$55,883,737	87.5%	James S. Carey, president/CEO
9	Essex Insurance Co. 1209 Orange St. Wilmington, Del. 19801 *Markel Corp.*	804-273-1400 Fax: 804-273-1435 *www.essexinsurance.com*	$540,377,455	11.5%	$566,310,731	11.0%	$356,628,686	$28,335,092	92.7%	William B. Dickler, president
10	United National Insurance Co.* 3 Bala Plaza E., Suite 300 Bala Cynwyd, Pa. 19004 *American Insurance Service Inc.*	610-664-1500 Fax: 610-660-8887 *www.ungl.ky*	$445,592,420	-13.4%	$553,231,691	-24.8%	$158,949,970	$11,019,867	95.8%	William F. Schmidt, president/CEO

*Figures reported on pooling basis.

Source: *BI* survey

Visit *www.businessinsurance.com* for more information and access to the full searchable directory of surplus lines insurers.

Market: Buyers not rushing out of E&S market

Continued from page 12

sector, said Zurich's Ms. Jordan-Foster. She said smaller general liability accounts for apartment buildings and some other commercial properties have "gravitated back to the standard-line marketplace."

Zurich's product liability book of business, however, is holding its renewals and gaining new accounts, she said. "It's becoming more competitive" but not shifting back to the standard markets, she said.

Enhanced coverage

MGAs are attempting to maintain their revenue by broadening available coverage instead of reducing rates, observers say (see story, page 18).

"As the market softens, you will see a lot more of that," said Ken Schneider, director of product development at Burns & Wilcox Ltd. in Farmington Hills, Mich. "It's starting to happen."

Mr. Schneider said he expects to see more combining of coverages, such as general liability and directors and officers liability insurance, under one form.

"I would call it cutting and pasting, broadening of coverage, adding a few more bells and whistles that were taken away during the hard market," Mr. Schneider said.

While market observers say they have yet to see new products emerge, there is increased talk about developing new programs, agreed Bryan Sanders, president of Dominion Specialty Group, a unit of Glen Allen, Va.-based Hilb Rogal & Hobbs Co.

"I feel like there is a willingness among companies to talk about programs again. For the last three years, they weren't willing to entertain any talk of programs. Now, they are at least willing to take a look," he said.

With property insurance rates dropping, insurers over the past year have shifted more capital to programs underwritten by managing general agents, according to Randall Goss, chairman and chief executive officer for U.S. Risk Insurance Group Inc. in Dallas.

"There is more capacity now for MGA business than there was a year or two ago," Mr. Goss said. "It's enough that it's noticeable."

For example, U.S. Risk recently expanded the number of states where it offers an energy and oil program for drilling contractors. Previously, U.S. Risk provided the coverage only in Texas, Oklahoma, and California; it is now available in other states such as New Mexico and Colorado.

The future

Arch's Mr. Edack sees a bright future for the nonadmitted market.

Insurance company consolidation, insolvencies and balance-sheet impairments related to uncollectible reinsurance or reserve strengthening "could create market dislocation" over the next year or two, he said. This would favor the "solution-oriented E&S underwriting community," Mr. Edack observed.

For some brokers, the distinction between placing a risk with admitted or nonadmitted lines is blurring.

"In past couple of years, you've really seen a change in broker mentality when it comes to surplus lines," said Marie Solomon, a managing director at Victor O. Schinnerer & Co. Inc. in Bethesda, Md. "Admitted vs. nonadmitted is not an indication of stability. Therefore, we at Schinnerer have obviously taken advantage of the surplus line market and will continue to do so."

"We run specialty business. We don't do Main Street business, and sometimes there's an advantage to using a nonadmitted market," said Lorna Parsons, managing director at Schinnerer.

Wholesalers, E&S insurers favor enhancing programs over developing new offerings

Arch Capital Group Ltd. in 2003 launched a nonadmitted program for residential construction risks.

By ROBERTO CENICEROS and MARK A. HOFMANN

Insurance buyers are likely to find that some excess and surplus lines offerings are broader than they were a year ago.

Many wholesalers and insurers are in the process of expanding existing programs, often by adding new types of coverage or additional capacity. Some surplus lines insurers are also rolling out new product lines, though few are developing entirely new types of insurance coverage.

"We're receptive to opportunities, but as for development of a bunch of new areas, we're not there yet," said Gary Tiepelman, senior vp at Scottsdale Insurance Co. in Scottsdale, Ariz.

The market has not eased to the point where entirely new forms of coverage are being developed as a common means of generating premium growth.

Several other excess and surplus lines participants, including managing general agents, say that the market has not eased to the point where entirely new forms of coverage are being developed as a common means of generating premium growth.

But the fact that insurers are more willing today to hear about new program ideas is a sign that easing conditions are likely to continue. A year ago, the E&S markets weren't even willing to entertain such notions, several observers say.

Many of the opportunities currently being presented to Scottsdale, for example, are coming from potential managing general agents that are looking to move existing programs to the company from other insurers that have less than an A rating.

Other excess and surplus lines underwriters say that while entirely new insurance policies have not yet emerged, they are interested in broadening the scope of existing coverage.

Woodus K. Humphrey & Co. Inc., for example, has traditionally focused on providing property policies. The MGA unit of American Wholesale Insurance Group Inc. currently has the backing of three insurers to underwrite property coverage for woodworking entities such as sawmills, furniture and pallet manufacturers. It offers up to $30 million in limits for the woodworking property coverage.

But Woodus is on the verge of expanding the woodworking program by also providing general liability coverage with limits of $1 million per occurrence and $2 million in aggregate, said Scott Reynolds, chief actuary for Charlotte, N.C.-based American Wholesale.

In another example of increased interest among insurers, American Wholesale recently raised the limits available under its umbrella program from $5 million to $10 million, Mr. Reynolds said. That happened after two additional insurers agreed to participate in the program. American Wholesale expects it will soon raise those available limits to $15 million.

Program refinement is also underway, said Randall Goss,

Continued on next page

A new venue liability program from Lexington Insurance Co. offers coverage for stadiums, nightclubs and other entities.

Continued from previous page

chairman and chief executive officer for U.S. Risk Insurance Group Inc. in Dallas.

U.S. Risk, for example, recently secured an additional insurance market for a garage program providing property and liability coverage for used-car dealerships and automobile service operations.

The new market brings an A rating to the program. U.S. Risk did not previously provide the coverage through an insurer with an A rating, according to a U.S. Risk source.

In March, U.S. Risk broadened a nursing home policy by liberalizing the coverage trigger. The previous form had a claims-made-and-reported trigger, which included a specific requirement for reporting claims to U.S. Risk. The reporting requirement has been dropped.

For the nursing home coverage, U.S. Risk can provide primary limits of $1 million per claim, a $3 million per location aggregate for operations with multiple facilities, and a $5 million policy aggregate. Excess coverage is available with limits of $2 million per claim, $6 million per location aggregate, and a $10 million policy aggregate.

King of Prussia, Pa.-based Apogee Insurance Group Inc. offers liability coverage with limits of $10 million for foreclosure properties held by banks, said Tom C. Katona, managing member for the wholesale broker. Apogee opened its doors in September 2003. It provides banks with an automated system for updating covered foreclosure properties, calculating premiums, and generating invoices, which adjust monthly based on the properties they are holding.

A combination of easing market conditions and its expertise and system automation helped Apogee win market support for the program, Mr. Katona said. The coverage is written on Lloyd's of London paper.

"We have been working on new programs during the past several years of the hard market. We have added an additional person to deal with new programs," said Marie Solomon, managing director at Victor O. Schinnerer & Co. Inc. in Bethesda, Md. She said Schinnerer plans to introduce two new programs on a nonadmitted basis later this year but could not provide further detail.

'We have been working on new programs during the past several years of the hard market. We have added an additional person to deal with new programs.'

Marie Solomon
Victor O. Schinnerer & Co. Inc.

"One big play we have in the nonadmitted surplus lines area is residential construction," said John Edack, executive vp with Arch Capital Group Ltd. in San Francisco.

"We offer a primary limit of $1 million to $5 million for subcontractors, specialty general contractors and residential wraps," he said, adding that the program was introduced at the end of 2003.

American International Group Inc.'s Lexington Insurance Co. has rolled out a number of new products in the past year, noted Kevin Kelley, Lexington's president and chief executive officer.

For example, the insurer began offering a venue liability protection product in April. The general liability product offers liability limits of up to $1 million primary with excess limits up to $25 million for such places as nightclubs, sports stadiums, museums and dinner theatres. Limits of up to $10 million in aggregate accidental death and dismemberment insurance also are provided.

Lexington also introduced an umbrella liability insurance package for public and private school bus operations with limits of up to $25 million; a new liability program for companies developing and selling anti-terrorism products and technologies in accordance with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism—or USA PATRIOT—Act with limits of up to $25 million; and a liability package for amateur sports organizations.

Surplus lines premiums and taxes by state

State	Gross surplus lines premiums writen 2003	Gross surplus lines premiums writen 2002	Gross surplus lines premiums writen 2001	% change '02-'03	% change '01-'03	Surplus lines taxes collected 2003	Surplus lines taxes collected 2002	Surplus lines taxes collected 2001	% tax rate
Alabama [1]	$317,344,133 [2]	$240,701,250	$200,899,467	32%	58%	$19,040,648 [2]	$14,442,075	$12,053,968	6.00
Alaska [3]	89,399,989	72,531,706	46,243,824	23	93	2,076,131	1,759,066	1,061,849	2.70
Arizona	392,428,359	325,010,401	172,507,523	21	127	9,237,767	5,324,242	3,457,128	3.00
Arkansas	240,982,464 [4]	145,170,159	86,777,229	66	178	9,639,299 [4]	5,936,522	3,579,853	4.00
California [3]	6,003,968,512	4,352,803,039	3,036,441,969	38	98	153,895,016 [2]	113,256,417	79,080,740	3.00
Colorado [3,5]	469,990,312	334,938,120	200,332,198	40	135	14,309,190	10,048,144	6,009,965	3.00
Connecticut	276,243,370	223,520,388	106,533,596	24	159	10,624,745	8,596,938	4,097,446	4.00
Delaware	81,881,690	49,214,553	30,964,049	66	164	1,637,633	984,294	619,306	2.00
District of Columbia	169,800,375	135,857,606	90,898,982	25	87	2,852,000	2,064,742	1,360,697	2.00
Florida [3,5]	2,785,412,869	2,143,109,680	1,352,688,689	30	106	126,395,447	96,811,427	61,950,633	5.00
Georgia [6]	896,272,500	702,336,050	478,034,750	28	87	35,850,900	28,093,442	19,121,390	4.00
Hawaii [6,7]	192,509,898	148,244,136	79,594,037	30	142	9,007,946	6,928,597	3,711,915	4.68
Idaho	61,231,410	37,614,763	29,290,548	63	109	1,576,389	972,804	766,846	2.75
Illinois	815,041,545	511,056,626	299,021,608	59	173	28,529,162	15,334,825	8,973,021	3.00
Indiana	328,521,047	304,760,006	148,721,150	8	121	8,213,026	7,619,000	3,718,029	2.50
Iowa	121,895,353 [2]	93,347,260	64,895,603	31	88	2,437,907	1,866,945	1,297,912	2.00
Kansas [3]	157,293,071	119,568,673	74,599,653	32	111	9,522,315	7,324,282	4,476,073	6.00
Kentucky	188,140,000	115,717,619	69,902,515	63	169	5,630,000	3,448,162	2,114,889	3.00
Louisiana	758,734,765	655,954,021	502,346,254	16	51	37,936,738	32,797,701	25,117,313	5.00
Maine [6]	56,079,466	31,972,767	21,710,100	75	158	1,682,384	959,183	651,303	3.00
Maryland [6]	334,464,673	241,541,456	150,300,340	38	123	10,032,440	7,192,837	4,507,183	3.00
Massachusetts	675,783,742	567,188,409	340,105,870	19	99	25,166,675	21,269,437	12,785,001	4.00
Michigan	553,478,000	391,021,000	330,259,596	42	68	13,836,950 [4]	9,775,525 [4]	8,250,721	2.50
Minnesota	268,908,600	200,879,867	123,505,964	34	118	8,067,258	6,026,396	3,705,179	3.00
Mississippi	233,699,040	160,594,026	104,283,125	46	124	9,347,791	6,423,332	4,171,351	4.00
Missouri [6]	482,218,699	389,991,670	256,298,708	24	88	23,299,241	19,545,209	12,516,253	5.00
Montana	36,841,711 [2]	30,400,052	14,579,919	21	153	1,177,619 [2]	973,272	455,568	2.75
Nebraska	96,499,218	63,737,200	44,351,962	51	118	2,894,977	1,912,116	1,330,559	3.00
Nevada	220,189,113	173,213,016	82,536,538	27	167	7,708,023	6,062,476	2,886,268	3.50
New Hampshire [3,6]	67,525,555	58,844,400	37,243,110	15	81	1,350,511	1,176,888	744,862	2.00
New Jersey	1,019,791,239	894,667,076	537,021,111	14	90	30,575,586	21,842,082	14,178,928	3.00
New Mexico [6]	59,055,733 [4]	55,004,533 [4]	43,745,755	7	35	1,771,672	1,650,136	896,059	3.00
New York	2,661,007,862	2,033,273,510	845,133,607	31	215	75,495,604	47,675,088	24,674,333	3.60
North Carolina [7]	480,568,428	336,569,618	214,109,734	43	124	24,027,593	16,828,482	10,705,489	5.00
North Dakota	34,738,098	31,776,281 [3]	12,357,381	9	181	606,393	556,441 [3]	216,256	1.75
Ohio [6]	376,218,276	375,528,946	180,879,491	0	108	8,456,426	8,447,409	5,502,964	5.00
Oklahoma [6]	283,398,004	155,328,300	119,471,283	82	137	17,003,880	9,319,698	7,168,277	6.00
Oregon [3]	238,303,074	173,341,174	99,299,651	37	140	4,766,061	3,466,873	1,985,993	2.00
Pennsylvania [5]	1,031,093,000	844,023,000	466,000,000	22	121	22,118,094	18,744,009	10,206,000	3.00
Rhode Island	86,704,499	55,526,822	38,085,795	56	128	2,601,135	1,665,805	1,142,524	3.00
South Carolina	362,454,703	309,162,181	221,768,291	17	63	14,498,225	12,366,506	8,870,736	4.00
South Dakota	21,380,388	28,962,824	12,867,202	-26	66	534,510	724,071	321,680	2.50
Tennessee	298,350,357	260,875,305	186,087,653	14	60	10,571,917	7,102,069	4,885,352	2.50
Texas	2,945,474,937	2,506,197,148	1,508,379,298	18	95	143,053,481	122,541,462	75,411,705	4.85
Utah	135,925,999	106,155,026	68,014,805	28	100	5,776,854	4,511,588	2,890,629	4.25
Vermont [7]	30,625,988	16,948,138	11,524,496	81	166	918,780 [2]	345,734 [2]	260,758 [2]	3.00
Virginia	531,102,628	384,869,134	183,432,034	38	190	11,930,400	8,787,988	6,509,176	2.25
Washington	621,876,372	408,328,588	264,100,028	52	135	12,437,527	8,166,572	5,283,302	2.00
West Virginia	124,068,143	94,868,976	63,172,286	31	96	4,679,034	3,390,768	2,332,648	4.00
Wisconsin	174,167,234	163,239,526	106,770,218	7	63	5,225,017	4,878,067	3,203,106	3.00
Wyoming	20,905,938	15,297,450	11,635,265	37	80	582,706	437,184	343,316	3.00
Totals	**$28,133,870,985**	**$22,270,783,475**	**$13,769,724,260**	**30%**	**110%**	**$990,609,026**	**$748,374,328**	**$481,562,452**	

1. Fiscal year ending 9/30. 2. Estimated. 3. Numbers revised following new information. 4. BI Estimate. 5. Figures include independently procured coverage premiums and taxes collected. 6. Fiscal year ending 6/30. 7. Net surplus lines premiums written.

Source: *BI* Survey

Market generally satisfied with regulatory proposals

By DAVE LENCKUS

When surplus lines insurance market executives earlier this year met with staffers of the congressional committee working on modernizing insurance regulation, they apparently made a convincing presentation.

Surplus lines provisions in the recently released discussion draft of the committee's proposed regulatory reforms closely resemble the market executives' recommendations for revamping premium taxation, broker regulation and sophisticated-buyer insurance marketing.

But the discussion draft also contains some provisions that market executives contend are unclear and could promote, rather than eliminate, inefficient regulation and other market problems.

"I guess this proposal should really be viewed at this stage as a discussion draft for further refinements," said Michael Koziol, assistant vp and counsel for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America.

Still, the proposal demonstrates federal lawmakers' desire "to retain state regulation of insurance" and to have the states develop more uniform regulation, said Scott Harrison, a Washington-based managing director in the insurance regulatory practice at KPMG L.L.P.

Those changes should be as important to risk managers as they are to surplus lines market executives, according to Janice Ochenkowski, vp-external affairs with the Risk & Insurance Management Society Inc.

"I think these are important issues to risk managers, because the current situation does not allow risk mangers to act quickly in the best interests of their companies," said Ms. Ochenkowski, who also is a senior vp with Jones Lang LaSalle Inc. of Chicago.

Market executives say they hope to smooth out the rough spots in the discussion draft with committee staffers in the weeks ahead. The executives concur that there is no chance that federal lawmakers will pass a regulatory reform measure, which has not been formally introduced, before the 108th Congress adjourns late this year. But the executives say they hope to work out a measure that could be introduced early enough in the next Congress to have a chance of being passed.

A taxing problem

In late August, the chairman of a subcommittee of the House Financial Services Committee unveiled a discussion draft of the State Modernization and Regulatory Transparency Act, or SMART Act. The 17-section insurance regulatory reform measure, which is detailed in more than 300 pages, is the most comprehensive proposal of its kind in nearly 60 years (*BI*, Aug. 30).

Section VIII of the draft addresses several surplus lines market issues, many of which the National Assn. of Professional Surplus Lines Offices Ltd. underscored in a late February meeting and through correspondence in early March with committee staffers.

Kansas City, Mo.-based NAPSLO asked for several surplus lines regulatory reforms that the organization maintains would benefit buyers, regulators and the market. The reforms are designed to make the market run more smoothly for multistate risks, which is an increasingly important business for the market, said Richard Bouhan, NAPSLO's executive director. Multistate risks make up between 30% and 40% of the market's insurance buyers, according to Mr. Bouhan.

The King of Prussia, Pa.-based American Assn. of Managing General Agents largely has deferred to NAPSLO on surplus lines regulation modernization, noted James A. Roe, the government affairs chair with the AAMGA and president of MGA and wholesale broker Arlington/Roe & Co. of Indianapolis.

In the discussion draft, "to a great extent, we got a lot of what we asked for," Mr. Bouhan said.

Even so, there are problems with the proposal, he said.

For insurance buyers with multistate risks, NAPSLO proposed allowing a surplus lines broker to submit insurance premium taxes to only one state—the state in which the buyer is based. That state then would allocate the tax payment among all the states in which the buyer would be covered. The allocation would be based on a standard allocation formula.

Under current regulations, the surplus line broker is responsible for paying premium taxes to each state in which a multistate risk operates, but currently there is no standard formula for allocating those taxes among the states, and some states will not accept the payments from nonresident brokers.

For risk managers, the lack of a uniform tax payment system sometimes leads to the overpayment or underpayment of premium taxes, according to market executives.

The draft proposal essentially mirrors the NAPSLO proposal but calls on states to develop a tax allocation formula.

In a closely related recommendation, NAPSLO suggested requiring a surplus lines broker to comply with the regulations of only one state in which a multistate risk operates.

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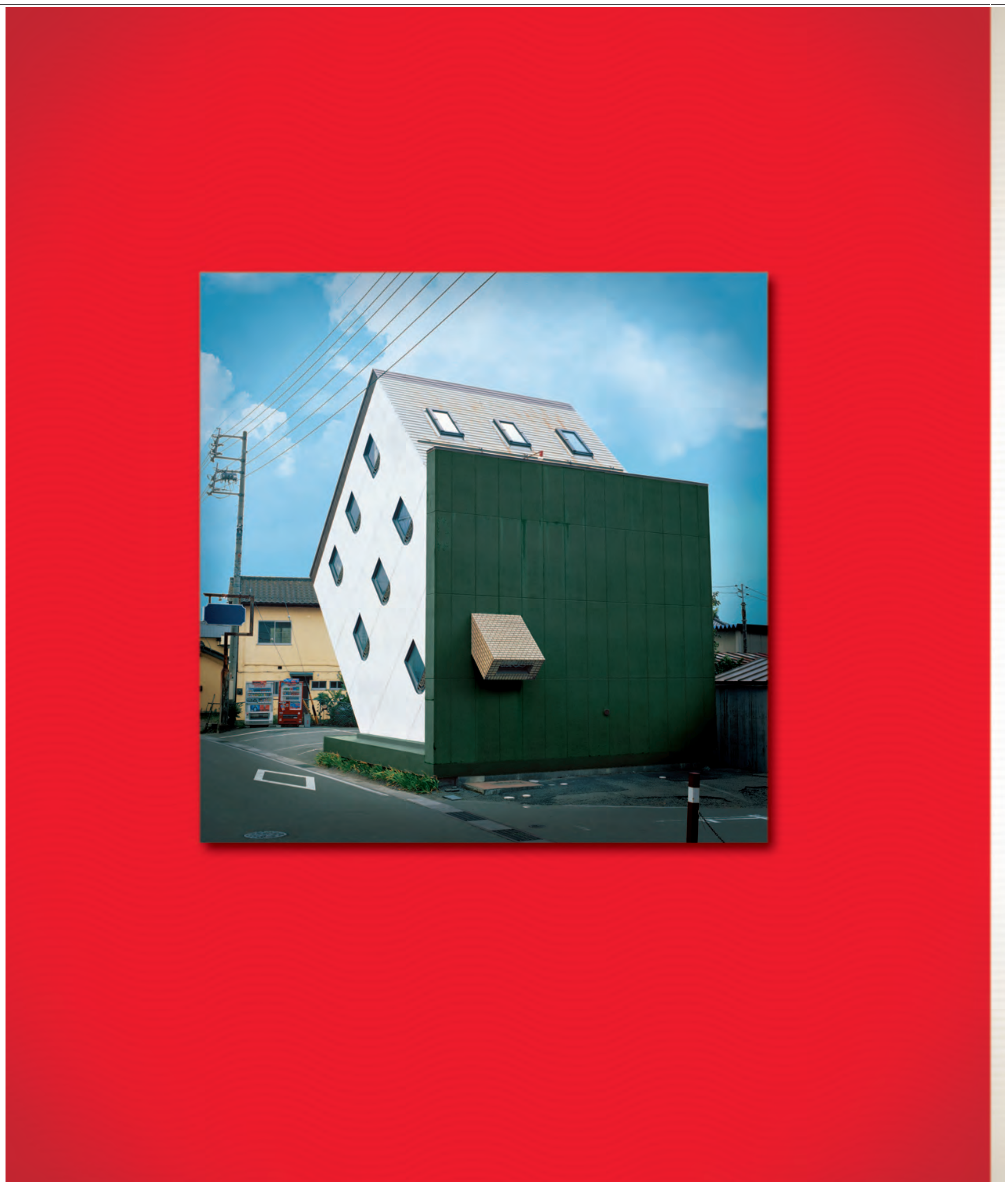

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Preferably, that state would be the same one to which the broker would submit the premium taxes.

Currently, laws in each state vary on issues such as due diligence searches for admitted market coverage before placing a risk with a surplus lines insurer and the premium tax-payment process.

The more time that a broker spends trying to comply with varying regulatory requirements for a single risk, the less time that broker has to devote to its client, Mr. Bouhan said.

The draft proposal calls on states to develop and adopt a model act that would ensure uniform regulation. That would mean that surplus lines brokers no longer would have to try complying with a variety of regulations when placing coverage for multistate risks. Under the draft proposal, regulations in states that do not adopt such a model act would be pre-empted.

NAPSLO also strongly recommended deregulating the surplus lines market for so-called "sophisticated" commercial insurance buyers. There is congressional support and the discussion draft includes a provision for freeing the admitted market from rate and form regulation for that group of buyers. NAPSLO wants those buyers also to be able to purchase surplus lines coverage without first seeking coverage from admitted insurers, as currently required in all but seven states.

That recommendation would level the playing field for deregulated admitted insurers and the surplus lines market and make the insurance-buying process more efficient for everyone involved, NAPSLO's Mr. Bouhan said.

Observers question whether federal lawmakers are contemplating allowing only the largest group of buyers affected by admitted market deregulation to purchase surplus lines coverage on an automatic export basis.

Surplus lines insurers, though, still would not be allowed to advertise in states in which they are not licensed, and brokers still would be restricted to placing risks with only those nonadmitted markets on a state's list of approved surplus lines insurers.

The draft proposal would grant risk managers and the surplus lines market this so-called "automatic export" capability, but the proposal's wording indicates that Congress might be planning to limit this option to a smaller group of commercial buyers than NAPSLO envisions, according to observers.

The draft proposal has raised this concern because it refers to commercial insurance buyers by different terms when it discusses which buyers would be affected by admitted market deregulation and which buyers would be eligible to purchase surplus lines coverage on an automatic export basis.

Because the proposal does not define those two groups of buyers by size or any other measure, observers question whether federal lawmakers are contemplating allowing only the largest group of buyers affected by admitted market deregulation to purchase surplus lines coverage on an automatic export basis.

NAPSLO is somewhat concerned about the issue, and its board will discuss how to address it, Mr. Bouhan said.

Mr. Koziol called the development "dangerous," because it would lead to confusion and mistakes. He said "it doesn't make sense" to consider an insurance buyer knowledgeable enough to conduct business with a deregulated admitted market but not knowledgeable enough to deal with the surplus lines market on an automatic export basis.

Additional concerns

A few other reforms proposed in the draft also raise concerns for market observers. Under those proposed reforms:

- State regulators would be required to develop uniform standards that surplus lines insurers would have to meet to be named on state lists of approved surplus lines insurers.

No uniform standards exist today, which prevents some insurers from making some state lists even though they are named on other lists.

KPMG's Mr. Harrison questioned, though, whether individual states would have the necessary incentive to set aside the standards that their regulators and lawmakers believe have worked well in their respective jurisdictions and reach a consensus on uniform standards.

- States would have to examine multistate surplus lines insurers every five years.

The PCI "has a problem with that," Mr. Koziol said.

Some states currently do not conduct such exams, and others conduct exams only when their own market analyses indicate that an insurer is facing financial difficulties, Mr. Koziol said.

- In every state in which a surplus lines insurer writes business, the insurer would have to submit a list of its appointed producers. Insurers also would have to pay any fees associated with submitting those lists.

If enacted, the requirement would foist a new burden on insurers, because not all states currently require such appointments, Mr. Koziol said.

Regarding the proposed regulations that would require multistate insurers to undergo routine financial exams and submit producer appointments, Mr. Koziol said that not all new uniform standards improve regulatory efficiency.

But Mr. Koziol said he believes that the chances of resolving the industry's problems with the discussion draft are "very good," because the House staff members working on the proposal are "knowledgeable."

Wholesale insurance brokers

Largest wholesale brokers* based on 2003 wholesale premium volume

Rank	Company/Address	Phone/Fax/Web site	2003 premium volume	% change	2003 gross revenues	% change	% surplus lines	Broker	MGA	Lloyd's of London coverholder	Total employees	Officers
1	Swett & Crawford Group 88 Pine St., 10th Floor New York, N.Y. 10005	212-493-7372 Fax: 212-742-1280 *www.swett.com*	$3,000,000,000	3.4%	$267,000,000 [1]	3.9%	62%	70%	28%	2%	950	Thomas Comer, president/CEO
2	CRC Insurance Services Inc. 1 Metroplex Drive, Suite 400 Birmingham, Ala. 35209	205-870-7790 Fax: 205-879-3739 *www.crcins.com*	$1,622,000,000	21.1%	$127,700,000	18.2%	75% [2]	81%	5%	14%	575	Thomas Curtin Sr., president/CEO
3	American Wholesale Insurance Group Inc. 4064 Colony Road, Suite 450 Charlotte, N.C. 28211	704-943-2004 Fax: 704-943-9000 *www.amwins.com*	$1,306,817,077	24%	$88,863,561 [1]	24%	49%	78%	20%	2%	401	M. Steven DeCarlo, president/CEO
4	Crump Insurance Services Inc. 7557 Rambler Road, Suite 350 Dallas, Texas 75231	214-265-2660 Fax: 214-265-2683 *www.crumpins.com*	$1,053,000,000	6.7%	$80,028,000 [1]	6.7%	55%	65%	20%	15%	466	Patrick O'Brien, executive vp/CFO
5	Stewart Smith Group Wall Street Plaza, 88 Pine St., 17th Floor New York, N.Y. 10005	212-509-2700 Fax: 212-952-8505 *www.stewartsmith.com*	$1,008,000,000	19.3%	$74,655,985	22.7%	68%	96%	NA	4%	227	Mark M. Smith, CEO

*Companies deriving more than 50% of their premium volume from wholesale brokerage. 1 *BI* estimate. 2 Estimated. NA Not applicable
Source: *BI* Survey

MGAs/underwriting managers

Largest MGAs/underwriting managers* based on 2003 wholesale premium volume

Rank	Company/Address	Phone/Fax/Web site	2003 premium volume	% change	2003 gross revenues	% change	% surplus lines	Broker	MGA	Underwriting Manager	Lloyd's of London coverholder	Total employees
1	The Schinnerer Group 2 Wisconsin Circle Chevy Chase, Md. 20850	301-961-9800 Fax: 301-951-5444 *www.schinnerer.com*	$956,000,000	19.9%	$80,304,000 [1]	19.9%	5%	1.0%	NA	99%	NA	589
2	Burns & Wilcox Ltd. 220 Kaufman Financial Center, 30833 Northwestern Highway Farmington Hills, Mich. 48334	800-521-1918 Fax: 248-932-9046 *www.burnsandwilcox.com*	$600,000,000	11.1%	$142,000,000	3.6%	90%	30.0%	60.0%	NA	10.0%	850
3	U.S. Risk Insurance Group Inc. 10210 N. Central Expressway, Suite 500 Dallas, Texas 75231	214-265-7090 Fax: 214-265-2454 *www.usrisk.com*	$328,757,000	-2.3%	$38,034,000	-0.5%	95%	46.7%	33.9%	NA	19.4%	304
4	NIF Group Inc. 30 Park Ave. Manhasset, N.Y. 11030	516-365-7440 Fax: 516-365-7392 *www.nifgroup.com*	$234,040,000	3.8%	$19,700,000	8.2%	40%	37.0%	60.0%	NA	3.0%	130
5	K&K Insurance Group Inc. 1712 Magnavox Way Fort Wayne, Ind. 46804	260-459-5000 Fax: 260-459-5606 *www.kandkinsurance.com*	$202,000,000	-12.9%	$43,632,000 [1]	-12.9%	15%	5.0%	95.0%	NA	NA	301

*Companies deriving more than 50% of their premium volume from acting as a managing general agent, underwriting manager and Lloyd's of London coverholder. 1 *BI* estimate. NA Not applicable.
Source: *BI* Survey

Visit *www.businessinsurance.com* for more information and access to the full searchable directory of insurance wholesalers.

Fraud: Scam artists exploit surplus lines market

Continued from page 10

and federal authorities have competing priorities, now including anti-terrorism efforts.

That doesn't mean that regulators and prosecutors are standing still. Insurance commissioners in several states are taking various steps, from consumer education drives to lining up local prosecutors dedicated to handling fraud cases. An anti-fraud panel of the National Assn. of Insurance Commissioners is developing a national fraud-reporting database to supplement existing regulatory information-sharing systems. The organization is also working on several anti-fraud model laws.

These steps, like previous regulatory efforts to combat fraud, are expected to help. No one, however, expects them to do away with the problem.

> **'Every time the market gets hard, it's an opportune time for the shysters to swoop down and take advantage.'**
>
> *Jose Montemayor*
> *National Assn. of Insurance Commissioners*

"It's almost impossible to catch someone who's going to intentionally mine the gaps in regulation," said Robert F. Craig, an Omaha, Neb., lawyer specializing in insurance insolvency issues. "Regulation is for people who want to participate (in the market) with some level of legitimacy."

In a surplus lines market that generates more than $20 billion in gross written premiums a year, scam artists' thefts represent a drop in the ocean and tend to afflict small commercial policyholders unfamiliar with the industry, observers agree.

"It's not a big issue," said Richard Bouhan, executive director of the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd. "That's not to say it isn't out there, but it's not a big issue."

Mr. Bouhan gave credit for containing frauds to the 15 state surplus lines stamping offices, which among other things review the eligibility of insurers to be included on state lists of approved surplus lines underwriters.

"They have played a very significant role over the years in ensuring the integrity of the marketplace," Mr. Bouhan said.

Nevertheless, the marketplace has seen periodic plagues of grifters since the 1970s. Some scams have been run by dishonest agents and managing general agents who defraud both their issuing insurers and policyholders.

Many more scams have involved con artists who operate or produce business for bogus offshore insurers; these insurers siphon away surplus lines risks for a year or two until claims outpace incoming premiums and the companies shut down.

Role of cycles

Many of these scams have accompanied tight markets.

"Every time the market gets hard, it's an opportune time for the shysters to swoop down and take advantage," noted Jose Montemayor, Texas' insurance commissioner and a member of the NAIC's Antifraud Task Force.

"They're providing a $350 product for $250 and, voila," Mr. Craig commented.

The hard market that took hold in 2001 has not produced an explosion of surplus lines-related fraud, several observers say. Instead, the largest and most widely publicized frauds of the last few years have been small-employer health insurance scams whose operators claim to be exempt from state regulation.

Still, property/casualty scams are "alive and well," Mr. Craig said.

"It's been a pretty constant pain in our backs," Mr. Montemayor said, noting that con artists have targeted tough liability risks such as liquefied petroleum gas transporters; nursing homes; taxi and limousine companies; pyrotechnics manufacturers; and special events producers.

In a typical case, a dishonest agent issues bogus policies bearing either a legitimate insurer's name or one that sounds close to such a name, he said. Offshore insurers also appear occasionally, falsely claiming that they can write business without a license in the U.S. under state "direct procurement" statutes, Mr. Montemayor said.

Earlier this year, federal prosecutors in New York indicted Richard Peterson—a former California wholesaler whose broker licenses were revoked in the 1990s—for allegedly issuing scores of phony Lloyd's coverage binders to other brokers on bar and restaurant risks.

Operating through a purported San Francisco brokerage, United Restaurant Services Corp., Mr. Peterson collected $4 million for the fake binders, prosecutors charge. Mr. Peterson has pleaded not guilty; neither he nor his lawyer could be reached for comment.

Meanwhile, Aspen Specialty Insurance Co., a Boston-based unit of Aspen Insurance Holdings Ltd. of Bermuda, is suing the operators of a

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Continued from page 10

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California purchasing group for allegedly issuing bogus E&O coverage documents to hundreds of life insurance agents across the country. While Aspen issued a policy to the group, Choice E&O Risk Purchasing Group of Redondo Beach, Calif., Choice E&O was to submit individual risks for approval and had no binding authority, the suit says.

Instead, the group's operators—Margaret M. Manning and Christine J. Riddell—issued binders and collected premiums without ever notifying Aspen, according to the complaint, filed in Los Angeles County Superior Court. Ms. Manning referred questions about the suit to a lawyer, who could not be reached. Ms. Riddell also could not be reached.

Fake policies and other forms of fraud are growing more widespread, said Dean Hansell, a partner with LeBoeuf, Lamb, Greene & MacRae L.L.P. in Los Angeles, who is representing Aspen and who is also a former Los Angeles police commissioner.

The rise of the Internet and the increasingly national and international nature of insurance transactions are contributing to the problem, he said. Con artists in one state, for example, may focus only on victims in other states, making it less likely that authorities in the fraudsters' home jurisdiction will find local victims needed for a successful prosecution. Authorities in other states, meanwhile, often lack the resources to go after out-of-state offenders or are focused on higher-priority cases, Mr. Hansell said.

Frauds "are interstate in nature, and the criminal investigation bureaus of departments of insurance have been chronically understaffed and have the conflicting priority of going after claims fraud," he explained.

The alternative is to get federal authorities involved, but they are often unfamiliar with the complexities of insurance and also have conflicting priorities, including terrorism investigations, Mr. Hansell added.

Federal and state officials' successful joint effort in 2001 to shut down an allegedly fraudulent Nevada-based health insurer, Employers Mutual L.L.C., should serve as an example of what cooperation can accomplish, observed Alice A. Molasky-Arman, Nevada's insurance commissioner and a member of the NAIC Antifraud Task Force.

But scam artists "are always a step ahead," she conceded. "They move faster than the government."

Anti-fraud efforts

Insurance regulators nevertheless continue to develop new tools to combat fraud.

Texas regulators have negotiated an agreement with local prosecutors in Dallas to fund a special prosecutor for insurance fraud cases, said Mr. Montemayor, adding that a similar agreement is in the works for Houston and could be duplicated in other cities.

Criminal prosecution is important because the administrative remedies available to regulators, including license revocations, cease-and-desist orders and fines, are often ineffective against con artists, Mr. Hansell said.

NAIC officials are also working on a national fraud database that, unlike current information-sharing systems, would take input directly from agents and insurers, Mr. Montemayor said.

In addition, the NAIC is developing various fraud-related model laws, including one that would make licensed insurance producers criminally liable for diverting or aiding in the diversion of client premiums

Kendel J. Lyman, manager of the Seattle-based Surplus Line Assn. of Washington, said that regulators should go after agents and brokers involved knowingly or inadvertently in frauds, including by imposing fines much heftier than those typically levied today.

"Fine them big time," Ms. Lyman said. "Make it so it hits the wallet."

Meanwhile, state regulators have also launched a consumer education drive, dubbed "Stop. Call. Confirm," urging buyers to check with their insurance departments that an insurer is approved to do business in the state before paying premiums.

That, in the end, is the most commonly repeated advice on cheap and potentially bogus coverage: If it seems too good to be true, it probably is.

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NAIC officials are also working on a national fraud database that, unlike current information-sharing systems, would take input directly from agents and insurers, Mr. Montemayor said.

In addition, the NAIC is developing various fraud-related model laws, including one that would make licensed insurance producers criminally liable for diverting or aiding in the diversion of client premiums

Kendel J. Lyman, manager of the Seattle-based Surplus Line Assn. of Washington, said that regulators should go after agents and brokers involved knowingly or inadvertently in frauds, including by imposing fines much heftier than those typically levied today.

"Fine them big time," Ms. Lyman said. "Make it so it hits the wallet."

Meanwhile, state regulators have also launched a consumer education drive, dubbed "Stop. Call. Confirm," urging buyers to check with their insurance departments that an insurer is approved to do business in the state before paying premiums.

That, in the end, is the most commonly repeated advice on cheap and potentially bogus coverage: If it seems too good to be true, it probably is.

PHOTO: ICM

Former St. Louis Cardinals star Mark McGwire's ankle was insured by a special policy written at Lloyd's after the team's insurer excluded it from coverage because of previous injuries.

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Lloyd's syndicate to cover only his ankle, which the team's disability underwriter excluded from coverage because it had been injured so many times before.

Over the years, Lloyd's also has issued policies covering other celebrity body parts—including Entertainment Tonight host Mary Hart's shapely legs and Dolly Parton's buxom bosom—but recent rumors that pop diva and actress Jennifer Lopez's derriere is underwritten by the world's oldest insurance market are purely fictional.

"It's a myth," said Jonathan Thomas, active underwriter of Lloyd's syndicate 1607, managed by Creechurch Underwriting Ltd., which specializes in worldwide accident and health insurance and underwrote the one-year policy on Mr. McGwire's ankle.

In fact, specific body part coverage, which is almost always written in the surplus lines market, is a rarity, usually taken out by celebrities as a publicity stunt, insurance industry experts say.

"I would say for 20 of these inquiries for a given part of the body to be insured, probably only one of them ever comes to being just that part of the body being insured," Mr. Thomas said.

Instead, many celebrities whose livelihoods depend on their appearance are covered by disability insurance, which pays regardless of which body part causes them to lose their jobs, he explained.

One notable exception is the aging professional athlete close to the end of his or her career, such as Mr. McGwire.

"A degree of disability in one part of the body exacerbates an existing level of disability, and however much you underwrite them thoroughly and try and exclude the contributory causes of one form of disability that you do know about, it becomes extremely difficult. So we end up in certain circumstances just insuring, say, the lower legs," Mr. Thomas said.

'I would say for 20 of these inquires for a given part of the body to be insured, probably only one of them ever comes to being just that part of the body being insured.'

Jonathan Thomas
Creechurch Underwriting Ltd.

Most coverage for these and other one-off risks is underwritten by the contingency insurance market, whose specialized underwriters deal with such esoteric insurance needs. The coverage is generally placed by surplus lines brokers or managing general agents, often in the London market, especially when high limits are sought. Policies may or may not be on admitted paper, depending on the risk.

"A lot of the coverage is placed in London because of limited reinsurance capacity here in the United States. So London is the market where they go to fill out the lines. If you have a $50 million to $75 million placement, London is very meaningful," said Frank Lorenzo, director of entertainment and contingency risks at Swiss Re in New York, which provides reinsurance support to domestic insurers of contingency risks.

"There are a few insurance companies here in the United States that do very unusual coverage and specialize in it," said Le Conte Moore, New York head of the entertainment and media group of Marsh Inc. But limits they write are usually under $50 million, he said.

"When it comes to capacity, meaning $100 million or more, there's no option but to go to Lloyd's," Mr. Moore said.

Other odd risks

Among the domestic markets that will, on occasion, entertain bizarre risks are:

- Scottsdale Insurance Co., which wrote $1 million in liability coverage for a doctor in Long Island who has a lion as a house pet, according to Paul LoVullo, senior vp at LoVullo Associates, an MGA in Buffalo,

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Prize indemnity policies, such as one that covered a watermelon seed-spitting contest and those purchased for hole-in-one competitions, often are written on an inland marine form.

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N.Y. The premium was $35,000.

The Scottsdale, Ariz.-based insurer also wrote $1 million in liability coverage for tanning beds located in an oil change shop.

"The company that wrote the liability on the oil change shop didn't want to pick up the exposure of the tanning beds. That's sort of an unusual risk—you're getting a tan while you're waiting for your car to be serviced. So we wrote that with Scottsdale," said Mr. LoVullo. That premium was only $500 per bed, he said.

• Essex Insurance Co., a unit of Markel Corp., which assumed the product liability risks of a zoo animal waste recycler, which converted the waste into fertilizer sold to farmers, Mr. LoVullo added.

• Swiss Re, which provides reinsurance support to insurers that provide "over-redemption" coverage, which protects the financial interests companies that provide incentives to buy a particular product.

"If you opened a package of videocassettes that contains a redemption of a rebate or some other promotional gimmick, if they expect a 4% return and it comes in at 8%, somebody is losing a lot of money, and that's what's insured," said Mr. Lorenzo.

Games of chance with long odds or that are very unlikely to ever have a winner are also often insured domestically.

"A long time ago, I did one gimmick that if anyone could produce a bona fide alien and bring it before a panel of scientists that would conclude the scenario, then they would win $10 million. That was so far-fetched that the National Enquirer decided to self-insure that," Swiss Re's Mr. Lorenzo recounted. "But I did get some money on anybody who could produce Elvis and bring him to a certain place."

Lees Summit, Mo.-based Midwestern General Agency Inc., also an MGA, wrote a prize indemnity policy for a "keyhole contest" held during a hot air balloon race in the early 1990s, said Joe Timmons, president and CEO.

The policy covered the price of a car that was awarded to the balloonist who successfully plucked the keys off a stake about 20 feet off the ground, he said.

> **'A long time ago, I did one gimmick that if anyone could produce a bona fide alien and bring it before a panel of scientists that would conclude the scenario, then they would win $10 million. That was so far-fetched that the National Enquirer decided to self-insure that.'**
>
> *Frank Lorenzo*
> *Swiss Reinsurance Co.*

Domestic insurers will also cover games requiring outstanding physical ability, such as half-court basketball shots and hole-in-one golfing competitions.

"We had one promotion where somebody had to hang upside down and try to make a basket from half-court," Mr. Lorenzo said.

The policy never was triggered, though. "Hanging upside down and seeing the basket is tough," he observed.

Whenever such contingency coverage is provided by domestic E&S insurers, it usually is written on an inland marine form and on a manuscript policy.

"A lot of this has to be manuscripted. You're writing a lot of one-off policies. The inland marine is a form that allows this," explained Bill Hubbard, president and chief executive officer of American Specialty Underwriters Inc., a Woburn, Mass.-based subsidiary of Houston Casualty Co.

ASU, which wrote the team coverage for the Cardinals that excluded Mr. McGwire's ankle, also wrote insurance to cover a $25,000 prize that would be awarded to anyone who beat the record set for watermelon seed spitting at an annual

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PHOTO: ZUMA

Swiss Reinsurance Co. wrote a policy that backed a bonus paid to cyclist Lance Armstrong for winning the Tour de France in 2004.

Risks: Unusual exposures

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competition.

Mr. Hubbard said he read about the contest in the Wall Street Journal and then called the promoters and told them that if someone breaks the record, they could offer a prize, which could be insured by a prize indemnity insurance policy.

"It was a fun little thing that we did," he said. "It was written by Lloyd's on a surplus lines basis."

The policy, however, never paid, as no one was able to beat the previous world record, he said.

Contractual bonus insurance, which pays professional athletes for exceptional performance, is mostly written by Lloyd's on a surplus lines basis because of the loss history of that particular line of business.

"Those kind of incentive bonuses are very difficult, because they're usually only bought by people who have a very good chance of making it, and you don't get a spread of risk," said Mr. Lorenzo of Swiss Re. "We had a lot of money on Lance Armstrong," he said.

That's entertainment

Surprisingly, many risks that are often assumed to be placed in the E&S market are not. For example, today most entertainment risks are written on admitted paper, as are weather risks and event-cancellation insurance.

"The entertainment community as a whole, in our niche market of insuring the business of entertainment...is a surplus lines market. What they do is relatively high risk. But it's on admitted paper," unless the admitted markets reject the risk, said Brian Kingman, senior vp of Aon Albert G. Rubin Insurance Services in Los Angeles.

The company placed coverage for Keiko, star of the film "Free Willy" against the risk of the orca whale dying during production, Mr. Kingman said. In addition, "we were asked to insure the dolphin on Flipper against the peril of escape. We had a half-dozen dolphins that were in open water, and the producers were fearful that the dolphins may escape and not come back, losing production time or even the film's completion."

'We only go to the surplus lines market when we get thrown out of the domestic admitted markets.'

Brian Kingman
Aon Albert G. Rubin
Insurance Services

Fortunately for the filmmaker, "the underwriters were fairly confident that the dolphins would not escape, because they were used to first-class accommodations. They were very spoiled. I think they had the salmon flown in from Alaska every day," Mr. Kingman quipped.

Aon Albert G. Rubin also was asked to insure the risks associated with the dog featured in the movie "K-9," he said.

"Jim Belushi wasn't actually the star of that movie—it was really Rando the German shepherd. So we insured Rando against any kind of incapacity from death, sickness or injury, because that dog was virtually irreplaceable," he said.

But all of these risks were placed in the admitted market, according to Mr. Kingman.

"We only go to the surplus lines market when we get thrown out of the domestic admitted markets," he said.

For example, most cast insurance policies contain exclusions for actors who like to fly their own planes, he said, declining to identify any.

Cast policies also exclude pregnant actresses, according to Mr. Kingman.

"Cast underwriters don't like to be on any losses associated with pregnancy. So if an actress is pregnant, even though their doctor might say, 'It's the second trimester, and they should be OK,'...and they're in the right age group, they're healthy, it still ends up usually in London," he said.

In addition, "anybody with a

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PHOTOS: ZUMA, NY TIMES

Parties with a financial interest in high-profile celebrities like Celine Dion, left, and Oprah Winfrey often take out high-limit disability coverage on the personalities.

Risks: Unusual exposures

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very serious, publicly known issue, whether it be a health issue or substance abuse issue or injury, is going to have problems getting insurance because of the amount of money that's at risk on an average film," he said.

"Entertainment risks become contingency risks because of exclusions," explained Swiss Re's Mr. Lorenzo.

High-limit disability insurance, which is usually purchased on entertainers and celebrities by those whose livelihoods depend on them and when sufficient life insurance coverage is unavailable, also is placed in the surplus lines market.

One well-known daytime TV personality "brings in so much money for her (producers and networks) it's amazing. So they'll go out and buy as much life insurance and disability insurance as they can, and when they get to a point where they can't buy any more, they go to the contingency market and they'll try and get extra capacity at much higher rates," said Mr. Lorenzo.

Two other entertainers with substantial disability coverage written by those with a financial interest in their careers are television talk show host Oprah Winfrey and pop singer Celine Dion.

"Oprah has huge amounts of insurance written on her," Mr. Lorenzo said. And, "because Celine Dion is doing a nightly show in Las Vegas, the economics of having her there every night is not like a tour with 100 events; there are 200 to 300 events. So there's a lot of insurance on her."

Sometimes insurance is even taken out on celebrities when there is no apparent connection to the policyholder.

More than a decade ago, Mr. Thomas, the Lloyd's underwriter, wrote a "death and disgrace policy" on Princess Diana that was purchased by a South African soap manufacturer that was using a model who closely resembled the late Princess of Wales in an ad campaign. The policy expired long before Princess Diana died in 1997, he said.

"They were potentially out the money they had spent on the production if anything happened to Princess Di on the other side of the world," he said. "So sometimes the people who have the insurable interest have no contractual obligation to the person at all."

E&S market vital

Were it not for the E&S market, many of these one-of-a-kind—and sometimes almost indefinable—risks would probably have to go bare, industry experts acknowledge.

"You may have seen some of the press that came out on chest hair insurance. That was us," said Mr. Thomas. "It's a real policy in the sense that it's a real policy form. But nobody bought it."

"What happened was, I was asked if we could do it. If somebody had an insurable interest that justified that they really would suffer that sum of money if they lost all their chest hair, I said I reckon I could probably construct a policy for it. And I did. And then they didn't come back."

When insurance for the Bartman ball was being discussed, "we were not able to get our package carrier to cover the ball," which was to be put on display at the restaurant as part of a fundraiser for the Juvenile Diabetes Foundation, said Daniel Weil, managing director at Mesirow Financial in Chicago.

"The question was, 'What is the ball? Is it fine art? Is it a collectible?'" he said.

There was also the question of what would be appropriate coverage limits. Although the ball was purchased at an Internet auction for just over $100,000, its value to loyal Cubs fans could be much higher, especially given the club's historical postseason woes, Mr. Weil said.

"I don't want to say that it was sort of a tongue-in-cheek thing. There was a legitimate concern if something happened to the ball. On the other hand, we would laugh and say, 'Who'd want to steal this ball?'" he said.

Independent or affiliated: Which is the better choice?

Stand-alone surplus lines insurers and units of large admitted companies each offer advantages

By JUDY GREENWALD

The question of whether surplus lines affiliates of large admitted insurers have an advantage over independently owned competitors is like many questions: The answer depends on whom you ask.

Surplus lines units of large insurance groups have the benefit of their parents' name recognition and the ability to write on either an admitted or a nonadmitted basis, some observers say.

Conversely, independent surplus lines insurers, which tend to focus more on small and midsize accounts, can often react to market conditions faster and with more flexibility than their larger counterparts, others add.

"I think that it actually is probably a mischaracterization to say one would have an advantage over the other," said Mac Wesson, president and chief operating officer of Dallas-based wholesaler U.S. Risk Insurance Group Inc.

Each type of company has its strengths and place in the market, he suggested.

Many of the largest surplus lines insurers have parent companies with admitted market operations. They include Boston-based Lexington Insurance Co. and Anchorage, Alaska-based American International Specialty Lines Insurance Co., which are units of American International Group Inc.; Schaumburg, Ill.-based Steadfast Insurance Co., which is owned by Zurich Financial Services Group; and Scottsdale, Ariz.-based Scottsdale Insurance Co., a wholly owned subsidiary of Nationwide Mutual Insurance Co. of Columbus, Ohio.

Other major surplus lines insurers, though, operate independently without admitted market affiliates. They include Bala Cynwyd, Pa.-based United National Insurance Co. and Franklin Lakes, N.J.-based Western World Insurance Co.

Operating in the surplus lines market, where each state promulgates its own rules and regulations, can be complex for any surplus lines insurer, regardless of its ownership. Ohio, for instance, requires five declinations from the admitted market before business can be submitted to a surplus market, while some states call only for a "certificate of nonavailability" that declares the coverage was not available in the admitted market, said Mike Ardis, director of communications and technology for the Kansas City, Mo.-based National Assn. of Professional Surplus Lines Offices Ltd.

In addition, 23 states maintain "export" lists of risks for which retail brokers can go directly to the nonadmitted markets. These often include transportation risks such as

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Choice: Opt for an affiliate?

Many states permit brokers to go directly to the nonadmitted market when seeking insurance coverage for amusement park risks.

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ambulance services and helicopters, as well as risks such as amusement parks, skating rinks and explosives manufacturers, said Mr. Ardis. Every state requires a broker to have a surplus line license to place business in a nonadmitted market, he said.

Admitted insurers with surplus lines affiliates can write in either the admitted or the nonadmitted market.

"There is a clear advantage in dealing with a company" that can write on both an admitted and nonadmitted basis, depending on the risk's parameters and how it is filed in various states, said Tony Strianese, president of Stockbridge Ga.-based Peachtree Special Risk Brokers L.L.C. a wholesale unit of Brown & Brown Inc.

The ability to write on an admitted basis could "save the insured the process of filing and, maybe more importantly, paying additional dollars" in surplus lines taxes, which "could be a significant savings," said Mr. Strianese.

Having both admitted and nonadmitted options "gives some flexibility," acknowledged Michael J. Stone, who is president and chief operating officer of RLI Insurance Co. and Mt. Hawley Insurance Co., admitted and surplus lines subsidiaries, respectively, of Peoria, Ill.-based RLI Corp.

"It may be that there are certain risks or certain aspects of the business that we would only want to write on a surplus lines basis, and then there's other business that tends to be written on admitted paper," he said. "If you have that flexibility…you can capture the business that makes sense from an E&S perspective and the business that makes sense from an admitted perspective."

"A carrier that has the ability to write on a surplus lines basis or an admitted basis has an advantage over somebody that just writes it one way or the other," agreed Mark Manzi, New York-based head of global placement specialties, North America, for Marsh & McLennan Cos. Inc.

Admitted insurers "have a huge marketing force, a presence, where perhaps some of the surplus lines companies that work exclusively through their surplus lines agents or representatives do not have a cohesive system," said Nebraska Insurance Director Tim Wagner.

'A carrier that has the ability to write on a surplus lines basis or an admitted basis has an advantage over somebody that just writes it one way or the other.'

Mark Manzi
Marsh & McLennan Cos. Inc.

E&S underwriters with admitted market affiliates are typically bigger firms "with scale and infrastructure," noted M. Steve DeCarlo, president and chief executive officer of Charlotte, N.C.-based American Wholesale Insurance Group Inc. Even so, he added, "their ratings aren't necessarily higher, quite frankly, because some of the niche companies' are fantastic."

Judy Patterson, executive vp at First State management Co., a unit of the Hartford Financial Services Group Inc., said that "one of the major benefits we have is simply the name identity that The Hartford brings to our product.

"When a broker or agent is trying to sell a First State policy, there may not be any name brand identity associated with us to an insured, but there is along with The Hartford, so that clearly is an advantage," Ms. Patterson said. First State writes business primarily through Boston-based Pacific Insurance Co. Ltd.

Surplus lines insurers that are part of larger insurance groups say they operate independently, though, of their admitted affiliates.

"We are independent in the sense that we have our own distribution system," as well as separate marketing, underwriting, claims and actuarial operations, said R.

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Choice: Pick an independent?

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Max Williamson, Scottsdale's president.

"We follow the same rules" everyone else does, Mr. Williamson said. "There's no sliding back and forth" between Nationwide and Scottsdale. If a Nationwide submission does not qualify for the admitted market, "could we write it automatically? The answer is, 'No,'" said Mr. Williamson. First, the agent on the account would have to obtain the appropriate declinations and then submit it through one of Scottsdale's agents. "They can't submit it directly," he said.

"It's not like companies have got one person sitting next to another person, with one person writing admitted and another person writing nonadmitted, and they're passing paper back and forth. It tends to be separated," Mr. Stone said.

"Underwriting decisions are made independent of the admitted portion of the Hartford group," agreed Ms. Patterson.

Meanwhile, independent insurers say they more than hold their own. Thomas Mulligan, Western World executive vp of underwriting and marketing, said he appreciates the large admitted insurers who are in the market.

They bring "added financial stability and additional credibility to the whole surplus lines industry," he said. "The fact that some large admitted companies have seen fit to offer surplus lines subsidiaries adds considerable credibility and financial stability to the industry for the smaller independent."

> **'We're focused totally on surplus lines. Our customers deal directly with the decision makers and, in certain segments of the business, I think that plays very well as a competitive advantage.'**
>
> *Thomas Mulligan*
> *Western World Insurance Co.*

But, he said, "I think there's a very specific market niche for us, where we can take advantage of our size" by being flexible. "We're focused totally on surplus lines. Our customers deal directly with the decision makers and, in certain segments of the business, I think that plays very well as a competitive advantage."

United National President and Chief Executive Officer William Schmidt said he is not sure the surplus lines affiliates of admitted insurers have a competitive advantage. "I think what they have is more of an appetite for the larger risk, so you'll find those larger carriers typically competing for larger risks," he said.

But United National feels comfortable as a small insurer working with small to midsize risks, said Mr. Schmidt. "We have a different appetite," he said. "I think we each have our place in the market."

U.S. Risk's Mr. Wesson agreed. It may be true that some nonadmitted insurers that are part of large groups "have capital and surplus strength and name identification and all of the things that go along with being part of a large group," he said.

But "the lesser-known and lesser-capitalized companies still are very sound financially and, by virtue of their independence, they have a certain flexibility and response time that might be greater than some of their larger counterparts," he said.

United National is a good example, according to Mr. Wesson. "They're very nimble. They're taking advantage of market opportunities as they see them, and because they're not big and don't have a lot of mass behind them, it's easy for them to change direction and seize opportunities that they might realize in the marketplace."

New software aids in detecting false health claims

By SHANNON MORTLAND

To avoid being victimized by costly, fraudulent claims, two big health insurers doing business in Ohio are arming themselves with new software programs designed to sniff out false filers.

Cleveland-based Medical Mutual of Ohio Inc. and Indianapolis-based Anthem Blue Cross & Blue Shield are implementing new software programs that will help them better detect fraudulent and improper claims from doctors, hospitals, outpatient centers and pharmacies. The software is expected to boost Anthem's savings from rooting out fraud by 20%, said Cynthia Lucas, senior manager for Anthem's Special Investigations Unit.

'It's only a small amount of the population that bills us improperly, but they have the opportunity to get us for a lot of money.'

Cynthia Lucas
Anthem Blue Cross & Blue Shield

In 2003, Anthem saved or recovered $22 million in fraudulent claims companywide, $2 million of which was saved in Ohio alone, she said.

"It's only a small amount of the population that bills us improperly, but they have the opportunity to get us for a lot of money," Ms. Lucas said.

Take, for example, the psychologist who was billing Medical Mutual for more hours than existed in a day, said John Shoemaker, manager of financial investigations at Medical Mutual.

Another doctor's patients always were "on death's door," meaning they never had something as simple as a cold; they always had pneumonia, which "pays at a higher rate than the sniffles," Mr. Shoemaker said.

With the phasing in of its new software, Medical Mutual this year expects to avoid paying out $4 million in fraudulent claims, up from $2 million in 2003, said Brien Shanahan, director of legal affairs at Medical Mutual.

The software to track claims from doctors and hospitals already is up and running, and a similar software system to monitor claims from pharmacies will be implemented within 60 days, Mr. Shoemaker said.

With the new anti-fraud software, Medical Mutual and Anthem periodically can query their claims information for data such as how often a hospital bills for a certain procedure or how often a doctor writes prescriptions for a certain drug.

They also can watch for "doctor shoppers"—people who visit multiple doctors to get prescriptions for highly addictive drugs such as OxyContin, Mr. Shanahan said.

"We have some people who are walking around with enough OxyContin to kill a horse," he said.

While Anthem has used fraud-detecting software in its Midwest region for five years, it was costly because it didn't work well with Anthem's existing claims database, Ms. Lucas said. The new software is more compatible. It will be implemented this month in Indiana, Kentucky and Ohio. The software already is in use in Anthem's Connecticut, Maine and New Hampshire markets and will be used companywide within three years, she said.

Medical Mutual would not disclose the cost of its new software, but Ms. Lucas said software systems like the one Anthem is implementing typically cost at least $1 million.

Mr. Shanahan said only about 5% of the possible fraudulent claims Medical Mutual investigates turn out to be fraud.

He said some claims are filed improperly because office staff members are not well trained in billing claims, and some are just mistakes. He said the new software would help identify those errors, too, so that the mistakes aren't repeated.

Dr. Alan E. London, executive director of managed care at the Cleveland Clinic Foundation, said that with the clinic's 2.6 million patient visits a year, 250,000 billing statements going out each month and 10,000 billing codes to choose from, hospitals, doctors' offices and insurance companies are bound to make mistakes.

"Health care billing is a very complex business unto itself," he said. "The Cleveland Clinic supports anything that helps improve the accuracy of billing and efficiency of processing claims."

Oakland, Calif.-based Kaiser Permanente also is on the lookout for fraudulent claims, even though most of its claims are from Kaiser-employed physicians, said Pamela Jordan Handley, Kaiser's director of corporate communications. Kaiser is implementing a new nationwide claims processing system early next year, which should help the company monitor possible claims fraud.

Shannon Mortland is a reporter for Crain's Cleveland Business, a sister publication of Business Insurance.

Added insurance costs of obesity a weighty problem

By KATIE MERX

If American businesses want to relieve the stress of obesity on corporate bottom lines, they need to help their overweight workers slim their own bottom lines, corporate benefits directors and insurance industry studies contend.

The New York-based Insurance Information Institute reports that an obesity epidemic is raising rates not only for health insurance but also for life insurance, disability insurance, workers compensation, liability insurance and excess casualty insurance.

Obese individuals often take longer to recover from ailments and injuries, experience more absences from work, can suffer injuries more easily and are likely to die sooner than their healthy-weight counterparts. All of those consequences mean it costs more to insure them, and that's raising the cost of insurance and of doing business, the Insurance Information Institute says in a report titled "Obesity, Liability and Insurance."

Men with more than 25% body fat and women with more than 30% body fat are generally defined as obese.

"The expense impact is just tremendous," said David Groves, vp of corporate health management for Detroit-based Comerica Inc. "It's an area that has to have attention. It is our No. 1 public health problem."

So Comerica, like other Michigan employers such as Dearborn-based Ford Motor Co. and Benton Harbor-based Whirlpool Corp., is approaching obesity as a major health issue that is costly not only to its employees' health but to its own finances, Mr. Groves said.

The National Center for Chronic Disease Prevention & Health Promotion reports that the percentage of obese Michigan residents nearly doubled to 25% of the population in 2001 from 14% in 1990.

In Southeast Michigan, 23% of residents are obese, according to the Greater Detroit Area Health Council.

The U.S. surgeon general estimates that problems associated with Americans being overweight resulted in $117 billion in direct and indirect costs in 2000.

But it's hard to demonstrate to top executives that spending money to fight obesity will save the company money in the end, Mr. Groves said. It often takes a couple of years to see a return on investments in wellness programs, he said.

"In any wellness program, the return on investment is not going to be 1-to-1 in the first year," said Ed Murphy, a principal in the health and group benefits practice at Mercer Human Resource Consulting in Detroit. "The return can grow to 5-to-1 in the first three years."

But if an employer is struggling just to keep up with inflation in existing expenses, the wellness program can be a hard sell, Mr. Murphy said.

It's tough enough to prove that obesity is to blame.

Michael Ansley, owner and operator of several metro Detroit Buffalo Wild Wings Grill & Bar franchises, said he's been following the effect of lawsuits that blame fast-food chains for obesity but said no one has mentioned anything to him about obesity affecting his business insurance rates.

"They're always looking for excuses to raise our rates," Mr. Ansley said, "but we haven't seen anything about (obesity) yet."

The link between rising business costs and obesity "can be hard to sort out," Comerica's Mr. Groves said. "But we know it's there."

And there is a growing body of evidence to help benefits and human resources managers make the case that fighting obesity is cost-effective.

UnumProvident Corp. of Chattanooga, Tenn., the country's largest disability insurance provider, reports that short-term disability cases attributed to obesity have increased tenfold during the last decade.

The growth of obesity has had an impact in the workplace, Robert Anfield, vp and medical director for UnumProvident, said in a statement.

"Overweight and obese individuals have more chronic health problems than normal-weight people, resulting in tens

of millions of lost work days annually," according to the Insurance Information Institute's report.

"And when those individuals have complications with a medical condition, their costs can be two to five times the cost of someone who is not obese," Mr. Murphy said.

"The increased prevalence of obesity, which increases the incidence rates of serious disease, is therefore a cost driver for disability insurers," according to the Insurance Information Institute report.

Obesity, historically, has influenced individual life insurance rates but not group life plans, said Pat McNamara, CEO of employee benefits consultant Financial Concepts Inc. in Ann Arbor, Mich.

But with the growing costs associated with insuring obese

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people, it's reasonable to believe that could change, insurance professionals said.

"These people are going to die much sooner than they have to," Mr. Groves said. "I would not at all be surprised to see obesity listed as a medical condition" soon, he added.

While insurers currently consider weight and build when establishing a person's life insurance rate, the global life insurance industry soon may even factor in the likelihood of a person becoming obese before determining that individual's risk and premium costs.

Zurich-based reinsurer Swiss Reinsurance Co. said in an April 2004 report, "Too Big to Ignore: the Impact of Obesity on Mortality Trends," that premiums should include not just the risk of death based on current weight but be linked to a person's potential for obesity later in life. The reinsurer said possible ways of doing that would be to lower the threshold for how much body fat makes a person a high insurance risk, to adjust base mortality rates or to collect a broader range of data, such as waist circumference.

While insurers currently consider weight and build when establishing a person's life insurance rate, the global life insurance industry soon may even factor in the likelihood of a person becoming obese before determining that individual's risk and premium costs.

Workers compensation, too, is feeling the weight of obesity issues. Because overweight and obese people suffer from a higher incidence of chronic disease, recovery from any given injury or illness is likely to be more difficult and more expensive than for normal-weight individuals, the Insurance Information Institute report contends.

The best way for companies to reduce those costs is to encourage employees to live healthier lives and then help them do it, Mr. Groves said.

Comerica offers a comprehensive health screening for its employees. The exam, which includes blood tests as well as other heart-health and diabetes screenings, costs employees $10 the first year they participate and $5 the second year. It's free in subsequent years.

Comerica pays a company to provide the screening. Comerica also pays for coaching for the 15% of screened employees at the highest risk of health problems, Mr. Groves said. The program is free, and 87% of employees offered the voluntary program participate.

Both Messrs. Groves and Murphy said other incentives for better health are coming.

"Generally speaking, insurance law requirements preclude you from upcharging for a condition," Mr. Murphy said.

Conversely, Mr. Murphy said, an employer can provide discounts and incentives to individuals who embrace healthy lifestyles or participate in health programs.

"If you don't intervene, these people are going to become diabetic or develop heart disease and become very costly" to the employer and the government, Mr. Groves said. "Obesity is a very high priority for us, both directly and as it ties in as a risk in other areas."

Katie Merx is a reporter for Crain's Detroit Business, a sister publication of Business Insurance.

The Insurance Information Institute's report is available at www.iii.org/media/hottopics/insurance/ obesity.

Obesity takes a heavy toll on broad range of coverage

The Insurance Information Institute reports that obesity is adding to the cost not just of health insurance but also of life insurance, disability insurance, workers compensation and liability insurance.

- **Life insurance.** Obesity has long affected individual life insurance premiums, but with the numbers of obese people reaching epidemic proportions, it threatens to affect group life rates as well. Additionally, reinsurers may require insurers to consider a person's risk of becoming obese later when determining premiums.
- **Disability insurance.** Obese people have more chronic health problems than their thinner counterparts and, therefore, miss more work days.
- **Workers compensation.** Obese people often require more time and care to recover from injuries and illnesses, making them more expensive to workers compensation insurers.
- **Liability and excess casualty insurance.** Liability and excess casualty insurers face heightened risks that certain policyholders are perceived as contributing to obesity, including fast-food chains and franchisees and advertising agencies.

—By Katie Merx, Crain's Detroit Business

Litigation suits some companies just fine

By CHRISTINA LE BEAU

Some entrepreneurs think they can make a good living by capitalizing on areas where lawsuits are rampant. But those who have done it say they can't get too comfortable. While any industry can be cyclical, companies that rely heavily on litigation-driven business are susceptible to everything from regulatory changes to politics to the prevailing consumer mood.

In 2001, damage-restoration expert Kent Rawhouser realized that mold-related litigation was hitting its stride, so he thought it might pay to get to know a few lawyers in the field. Since then, his company, 20-year-old A&J Specialty Services Inc., has doubled its revenues.

Yet Mr. Rawhouser is hardly sitting still and watching the money roll in. As mold cases have grown, insurance companies have started capping or excluding coverage for remediation, putting a damper on businesses like A&J. So now, Mr. Rawhouser is more aggressively trying to win contracts for drying services, to stem excess moisture before it becomes a mold problem.

"I think there always will be some litigation, but to rely on just the legal industry, well, we're trying to do that less all the time," said Mr. Rawhouser, whose company, based in DeForest, Wis., employs 13 and is about to open a Schaumburg, Ill., office.

Litigation has always spawned new business ventures, said Lloyd Shefsky, clinical professor of entrepreneurship at Northwestern University's Kellogg School of Management in Evanston, Ill., whether entrepreneurs are trying to solve problems or just chasing money. For the most part, these businesses are short-lived, such as anti-product-tampering consultants or mobile echocardiography services, like those that popped up during the fen-phen diet drug debacle.

Diversification works

The companies that succeed branch out beyond their core businesses.

"There's a growth phase, then a leveling-off phase, then things get standardized and clarified. There are certain things people aren't willing to fight about anymore because it's now in the law," said Nicholas Peneff, president of Public Health & Safety Inc., an environmental services firm in Rockford, Ill., that got its start in 1991 by training asbestos workers.

The training led to field work—performing inspections and writing reports on everything from workplace hazards to residential lead paint violations. Though it wasn't a segment he actively solicited, lawyers became a big part of his business.

As the rules governing asbestos and lead paint became clear cut, Mr. Peneff's company, which employs 10, adapted. The firm pumped up training and industrial hygiene work but also became adept at identifying ambiguities in the law.

For instance, while lead paint codes have been standardized, there's less agreement about the lead in soil and dust. "You look for areas where litigation is starting to move, where not everyone understands where the boundaries are," said Mr. Peneff.

Changing with the times

For Theresa Zagnoli, a drop in jury trials could have been a death knell. After all, her company, Zagnoli McEvoy Foley L.L.C. in Chicago, earns its keep with trial consulting, helping lawyers with courtroom strategies, witness preparation and jury selection. But as mediation and arbitration have increased, Ms. Zagnoli and her partners have adapted to serve parties involved in alternative dispute resolution.

Even for cases that do involve jury trials, the company has changed with the times. When the firm began in 1994, trial graphics were a small part of the business. "Now that's probably more than 30% of our business," said Ms. Zagnoli, who employs 45 people.

Sometimes, it's the nature of the litigation that changes. Craig Greene has been a forensic accountant for about 20 years, both solo and working for other firms. These days, he's a partner with Chicago-based McGovern & Greene L.L.P., which he and James McGovern started in January 2003.

Over the years, he's worked on everything from embezzlement trials and accounting fraud to divorce cases and partnership breakups.

"Unfortunately, we're a very litigious society. When things don't go well, we file litigation," said Mr. Greene, whose firm employs 13 people. "Maybe the trends will change, but there's always something else on the horizon."

Christine Le Beau is a freelance reporter for Crain's Chicago Business, a sister publication of Business Insurance.

Region: Challenges, opportunity

Continued from page 4

creased, human resource departments across Latin America simply asked upper management for more money to fund the increases, Mr. Cudemus said. But today, public health and social security systems are failing across the region while workers are demanding better benefits. Companies, meanwhile, have less money to spend on benefits as they face worldwide competition and difficult economic conditions.

So increasingly, Latin American companies are spending more time studying the risks associated with growing benefit liabilities.

"Companies are exploring that more and more, because human resources units are struggling for more resources," Mr. Cudemus said.

Latin American companies should also seek to make their benefits more efficient, Mr. Cudemus said.

That provides risk managers with an opportunity to help their employers eliminate what he referred to as "organizational waste," which occurs when employers don't provide the right sort of benefits for their employees. Such situations can lead to a less-healthy and less-productive workforce, he noted.

The current dynamics also present a chance for risk managers to introduce alternative benefit financing concepts such as self-insurance, multinational pooling arrangements and captive use, Mr. Cudemus said.

Indeed, the use of captives for a variety of risks is expected to grow in Latin America.

According to several ALARYS conference attendees, only about 100 Latin American companies currently own captives. They say, though, that captive use will expand, albeit slowly.

For example, many companies in Colombia have conducted captive feasibility studies, said Nora Elena Mesa Toro, a risk management consultant at L&M Consultores en Riesgos y Seguros in Medellin, Colombia.

Still, very few companies have formed captives because corporate leaders remain conservative and disinclined to adopt a concept that is still relatively unknown in the region, she said.

In other countries, legal circumstances hinder risk management efforts. In Brazil, for example, the workers compensation system does not provide a financial incentive for reducing losses. Under Brazil's government-run workers comp system, each company pays a fixed rate regardless of its loss experience, Mr. Holownia said.

Brazilian risk managers would prefer a competitive private market, such as the one used by its neighbor Argentina. Employers there receive lower workers comp rates if they maintain favorable loss records, Mr. Holownia said.

Argentina, though, is in the throes of a political risk controversy.

At the center of the debate is the question of whether "emergency laws" passed as the country's financial crisis worsened in 2001 and 2002 allow actions that amount to expropriation, said Barker C. Keith, vp and corporate counsel for Sovereign Risk Insurance Ltd., a Hamilton, Bermuda-based political risk insurer.

Under those laws, Argentina's government said that foreign utility companies can no longer calculate price increases based on dollar values and must instead base them on the less-valuable peso.

Following the change, several utility companies filed claims with their political risk insurers. The companies maintain that a breach of public utility concessions occurred, which interferes with their earnings potential and is tantamount to the expropriation of assets, Mr. Keith said.

Some of the claims have been paid, while others remain in arbitration over whether the government's action constitutes expropriation.

Since 2002, Argentina has been responsible for more political risk claims than any other country in the region, Mr. Keith said.

Other Latin American political risk trends include continued civil war and terrorism, such as in Colombia; legal systems that strain property and contract rights; and the growth of democracy. The last factor has led to a greater turnover in governments, which can increase the chances that an incoming administration will terminate contracts entered into by the previous government, Mr. Keith said.

Across Latin America and the Caribbean, 2003 statistics show that foreign direct investment declined about 19% to $36 billion over four years, Mr. Keith noted. Meanwhile, investment in regions such as Asia and Central Europe is increasing.

Overall, insurance purchasing is not growing in Latin America, said Juan P. Bragadin, managing director for XL Insurance Global Risk in Buenos Aires, Argentina. Some insurers have either sold or consolidated operations in the region. For example, Allianz A.G. Holding last month said it was selling AGF Allianz Chile S.A. to Liberty Mutual Group Inc. (*BI*, Aug. 20).

But XL believes it can bring efficiencies to the market and sees Latin America as a region in which it can compete for world accounts, Mr. Bragadin said.

XL and Bermuda-based ACE Ltd. are now both aggressive participants in the Latin American commercial insurance market, said Jose M. Linares Gavaldon, managing director for Aon Risk Services in Caracas, Venezuela.

The "fresh capacity" they bring to the region is helping to keep pricing competitive while underwriting standards remain prudent for Latin American risks, Mr. Linares said.

ALARYS/IFRIMA conference

Brazilians see pros, cons in state reinsurer monopoly

By ROBERTO CENCIEROS

SOUTHAMPTON, Bermuda–Operating in a country with a government-controlled monopoly reinsurer can increase risk transfer costs and narrow coverage options, say Brazilian risk managers.

Yet, in some instances, working with Brazil's IRB-Brasil Re allows insurers and captive owners to obtain more favorable rates than might be available on the world market, according to Jorge Daniel Luzzi, director of risk management Americas, Far East and Australia for tiremaker Pirelli S.A. in Sao Paulo, Brazil.

If international reinsurers, for instance, raise their rates worldwide to pay for losses caused by recent hurricanes, captive owners and other insurers in Brazil will not see a similar rate increase from the IRB, Mr. Luzzi predicted. Brazil is not prone to catastrophes, with the exception of flooding, he said.

Mr. Luzzi noted that, after the terrorist attacks of Sept. 11, 2001, the IRB did not join most reinsurers worldwide in raising rates, because it did not share in those losses.

By law, all reinsurance coverage for Brazilian risks must be placed with the IRB, though the reinsurer can grant exceptions. The IRB, which was formed in 1939, is a joint stock company whose majority stake is held by the Brazilian government.

Mr. Luzzi and other risk managers spoke during an interactive panel discussion at a joint conference hosted by the Asociacion Latinoamericana de Administradores de Riesgos y Seguros and the International Federation of Risk & Insurance Management Assns. Inc.

Historically, IRB's pricing can exceed rates charged by competitive reinsurers by up to 20%, Mr. Luzzi and other speakers told the conference.

Mr. Luzzi acknowledged that making a precise determination of the IRB rate load is difficult, but he said that the largest gaps in rates are likely to occur when pricing in the world market is soft and most reinsurers are dropping their rates.

Some IRB coverages may be more expensive because the IRB spreads risk only over Brazil and not the entire world, said speakers at the conference, held earlier this month in Southampton, Bermuda.

In 1996, Brazil's National Congress passed a law to end the IRB's reinsurance monopoly, but that proved to be a false start (*BI*, May 17). More recently, the government has indicated that it will not open the nation's reinsurance market to foreign competition, panelists said.

Andres Ricardo Holownia, regional risk manager in Sao Paulo for Scania Latin America Ltda., said his company, a truck manufacturer, maintains good relations with the IRB, whose pricing he described as adequate.

Yet Mr. Holownia noted that some insurance professionals in Brazil complain that the IRB, which had appeared to be growing increasingly flexible back when it seemed that Brazil would open up to competition, has recently become less flexible in its underwriting and pricing positions.

Carlo Cesar Carvalho, risk manager for Embraer Empresa Brasileira de Aeronautica S.A. in Sao Paulo, said the aircraft manufacturer also maintains a good working relation with the IRB. But he said he suspects that some foreign insurers opt not to participate in Brazil rather than negotiate with the IRB.

Additionally, the IRB at times may not want to back some coverage features that are available on the worldwide market, Mr. Carvalho said. Therefore, it can be hard to obtain new and innovative coverages in Brazil, he said.

Conference has diverse attendance

SOUTHAMPTON, Bermuda—Risk professionals from 25 countries gathered at the Fairmont Southampton Hotel in Bermuda Sept. 7-10 for a joint conference hosted by the Asociacion Latinoamericana de Administradores de Riesgos y Seguros and the International Federation of Risk & Insurance Management Assns. Inc.

The ALARYS/IFRIMA 2004 conference marked IFRIMA's 20th anniversary and ALARYS' 10th anniversary. About 175 people registered for the conference, which included panel session topics ranging from employee benefit risk management to captive ownership and loss prevention for worldwide programs.

IFRIMA comprises various risk management organizations worldwide, including ALARYS. ALARYS is mostly made up of risk management organizations from across Latin America, but the Bermuda Insurance Management Assn. joined ALARYS in 2002.

The gathering marked the first time that ALARYS has met outside of Latin America. Organizers said the time was right for that because Bermuda represents an important insurance market for Latin America.

ALARYS announced that a group recently formed in Colombia, the Asociacion Colombiana de Administradores de Riesgos y Seguros, has become its 10th member.

There are plenty of risk managers in Colombia, said Nora Elena Mesa Toro, president of the new Colombian organization and a risk consultant with Medellin, Colombia-based L&M Consultores en Riesgos y Seguros. Having a risk management organization could help them coordinate their efforts to elevate the status of the profession, she noted.

IFRIMA meets annually with member organizations; next year, it will meet at the Federation of European Risk Management Assns.' Risk Management Forum 2005, to be held Oct. 2-5 in Lisbon, Portugal. For more information, visit *www.ferma-asso.org*.

ALARYS, which meets every two years, has not yet announced the location of its 2006 conference. Its Web site is at *www.alarys.org*.

ALARYS/IFRIMA conference

Captive use in Latin America difficult but rewarding

By ROBERTO CENICEROS

SOUTHAMPTON, Bermuda—Captive owners operating across several Latin American countries encounter regulatory and other obstacles to using the vehicles as efficiently as they would like, two risk managers say.

To improve the situation and make captive use even more attractive, Latin American countries need to standardize insurer licensing and solvency requirements, said Ramon Alvarez-Pedrosa, director of insurance in Madrid, Spain, for Repsol YPF, an oil and gas company operating in 28 countries.

Mr. Alvarez-Pedrosa made his remarks during a presentation at a recent conference in Southampton, Bermuda, that was hosted by the Asociacion Latinoamericana de Administradores de Riesgos y Seguros—the main Latin American risk management organization—and the International Federation of Risk & Insurance Management Assns. Inc.

Mr. Alvarez-Pedrosa noted that within the European Union, an insurance license issued by one country is recognized by the other member states. Additionally, European countries are working to standardize their solvency requirements, he said.

But Latin American free-trade agreements have failed to achieve such standardization, Mr. Alvarez-Pedrosa said, and the resulting patchwork of approaches creates headaches for captive owners.

"If Argentina issues a license, it should be recognized by Brazil and other Latin American countries," said Mr. Alvarez-Pedrosa, whose company has captives domiciled in Bermuda and Luxembourg. "That would be a leap forward."

Obtaining fronting arrangements is also a challenge in every Latin American country, said Luiz Octavio P. de Mello, insurance manager for Petroleo Brasileiro S.A., the Brazilian oil conglomerate known as PETROBRAS.

For example, regulations in the region typically require buyers to purchase all insurance coverage from local companies, Mr. de Mello explained. But finding adequate fronting arrangements presents a hardship in nearly every country. The fronting companies either make excessive demands or lack the necessary capacity and other capabilities, he said.

Mr. Alvarez-Pedrosa also noted that obtaining fronting coverage presents a challenge for his captive operations. Sometimes, local fronting arrangements are even required for reinsurance purchased on the world market, he said.

Some regulators also place excessive restrictions on the use of captives, Mr. de Mello said. For instance, they may want to see how rating agencies have evaluated PETROBRAS' captive before allowing the facility to insure liability risks. PETROBRAS' Bermuda-based captive has no rating, he said.

Despite the difficulties, PETROBRAS still gains from the use of its captive for Latin American risks, Mr. de Mello said. The company uses the facility to insure property, including business interruption coverage, as well as for a variety of liability risks, cargo coverage and construction exposures, he said.

Mr. de Mello noted that PETROBRAS did not create its captive for tax advantages; rather, the company's goal was to better understand and control its insurance costs, he said. The captive's formation in 1997 provided the company with

ALARYS/IFRIMA04

an opportunity to centralize the administration of its insurance program and establish its corporate insurance philosophy throughout its subsidiaries.

The subsidiaries, though, continue to independently purchase some limited coverages, such as workers compensation and auto liability, from local insurers. The Brazilian government owns 51% of PETROBRAS, but the company is listed on the New York and Brazilian stock exchanges, with its units operating throughout South America and several other continents.

Despite the difficulties, Mr. de Mello said he foresees expanding the use of the facility because the company's oil reserves and production have grown and it continues to acquire more units.

Captive ownership allows Repsol YPF to maintain control of how its claims are settled, permits it to retain premiums and provides it with direct access to world reinsurers, Mr. Alvarez-Pedrosa said. It also gives the highly diversified multinational company a greater ability to prioritize the mitigation of risks faced by its subsidiaries, despite great differences among the business units.

For now, Repsol YPF's captives insure only the company's exposures, Mr. Alvarez-Pedrosa said. But he said he would like to expand their use to cover third-party risks, although he did not elaborate as to what types of risks he considers suitable.

Products & Services

ACE Westchester creates environmental division

PHILADELPHIA—ACE Westchester Specialty Group, a unit of ACE Ltd., has launched an environmental division to offer liability products and services to the wholesale brokerage market.

The new environmental division provides environmental contractors and consultants with coverage such as contractors pollution; premises pollution; and general, professional and excess liability.

The maximum limit for the entire product suite is $25 million.

For more information, contact Barbara Deas, senior vp, at 678-795-4220 or *barbara.deas@ace-ina.com*.

Affiliated FM adds all-risks to manufacturer offerings

JOHNSTON, R.I.—Affiliated FM Insurance Co., a subsidiary of Factory Mutual Insurance Co., has added all-risks property coverage for manufacturers to its line of products.

The Johnston, R.I.-based Affiliated FM is offering an all-risk policy that includes a combined business interruption and extra expense form offering customizable coverage extensions. The coverage is intended to help manage financial risks such as contingent business interruption, off-premises services and contractual penalties. The all-risk property policy features embedded floor, earth movement and boiler and machinery coverage, as well as coverage for warehouse legal liability, demolition and the increased cost of construction.

The automatic limit available for off-premises services is $500,000, contingent business interruption is $500,000 and the extended period of indemnity is 90 days. Automatic limits can be modified.

For more information, visit the company's Web site at *www.affiliatedfm.com*.

LMU offers two D&O coverage options

BOSTON—Liberty Mutual Underwriters, a division of Liberty Mutual Group Inc., has introduced two directors and officers policies for companies to better protect their executives and boards of directors against exposures such as bankruptcy.

Boston-based Liberty Mutual Underwriters' Side-A and Side-A difference-in-conditions coverage intends to offer fewer exclusions and broader coverage than do other D&O policies. Side-A D&O coverage insures D&O losses that are not indemnified by the company due to financial insolvency or bankruptcy. The Side-A DIC excess policy can drop down and provide additional coverage where primary D&O policies are lacking. The excess coverage also includes a nonrescindable policy, even if the company restates quarterly/yearly financial earnings; a severability provision that provides coverage for innocent directors and officers; and a narrow bodily injury/property damage exclusion that provides some protection for lawsuits arising from bodily injury/property damage allegations.

The available limit of liability is $25 million for each product.

For more information, contact Carl Pursiano, senior vp-management liability, at 212-208-4202.

Best releases 2004 books on aggregates, averages

OLDWICK, N.J.—A.M. Best Co. Inc. has announced the availability of its 2004 "Best's Aggregates & Averages—United States & Canada" property/casualty and life/health reference books. The books can be used to study industry trends by comparing balance sheets, expenses and investments.

The property/casualty and life/health books offer annual statement and insurance expense information for the industry. They also include an overview of financial and operating performance indicators as well as net and direct results by line of business.

The property/casualty edition features a balance sheet and summary of operations and underwriting expenses incurred by group and company. A new feature for the property/casualty book includes Schedule P data by line, which is the loss reserves portion of companies' annual financial statements. The life/health book presents an analysis of operations and reserves by line, as well as company rankings, among other features.

The data presented in these reference books is drawn from Best's Statement File, a detailed insurance financial database.

To find out more, contact customer service at 908-439-2200, ext. 5742, or at *customer_service @ambest.com*. Information can also be obtained by visiting the Oldwick, N.J.-based Best's Web site at *www.ambest.com/sales/aggavg*.

The Hartford offers new D&O policy

HARTFORD, Conn.—The Hartford Financial Services Group Inc. has launched a new directors and officers product that intends to provide individual directors and officers with personal coverage.

The D&O product, Priority Protection, is a nonrescindable policy available for public and private companies of all sizes. It provides a difference-in-conditions feature, allowing first-dollar protection of nonindemnifiable claims when an individual is unable to obtain D&O coverage because of bankruptcy, denial of coverage or cancellation of underlying policies. It also provides a severability provision, which preserves coverage for innocent executives and board members, as well as the flexibility to choose a defense counsel, among other features.

Limits for the Priority Protection product are available up to $25 million.

For more information, contact Patricia Fitzgerald, national marketing director at the Hartford Financial Products unit in New York, at 212-277-0457, or visit *www.hfpinsurance.com*.

Motivano introduces HSA prepaid card

NEW YORK—Motivano, a provider of electronic prepaid card accounts for health care, mass transit and parking, is now offering a prepaid health savings account card for employees.

SmartFlex, the HSA debit card, includes management of all transactions, access to funds held in money market accounts and mutual fund investments; multiple account access on the same card, such as flexible spending or health reimbursement accounts; and the ability to differentiate claims between these accounts. Employees also have online access to plan information and account balances. Both MasterCard and Visa cards are available. Kansas City, Mo.-based UMB Bank is the custodian of the HSA funds.

New York-based Motivano also offers prepaid cards accounts for FSAs, HRAs and dependent care reimbursement accounts.

For more information, contact Kathleen Snyder, director of marketing, at 646-435-5668, or visit the company's Web site at *www.motivano.com*.

IntegResource offers recovery planning product

CHARLOTTE, N.C.—IntegResource has developed a recovery planning software product to help companies and organizations manage and protect company resources during a crisis such as a fire or flood.

The Charlotte, N.C.-based IntegResource's business continuity software program, Resource Tracker, allows users to document the recovery of resources during emergency situations. The software allows the user to catalog contact information of the company's disaster teams and other employees; vendors and supporting organizations; and the company's critical resources, such as computers and servers. It provides reports on team assignments and staffing during the recovery process and can be used to monitor the status of recovery items stored off-site.

All reports can be printed, e-mailed and exported to PDF, HTML and Microsoft Word documents and also can be downloaded to personal digital assistants.

For more information, contact John North, IntegResource's president, at 877-629-6688 or at *jnorth@integ-resource.com*. To view a demo, visit the company's Web site at *www.integ-resource.com*.

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

Approach has eliminated several large asbestos exposures

Settlement strategy aiding Equitas

By SARAH VEYSEY

LONDON—Equitas Ltd. has made strides recently in eliminating some of its largest asbestos exposures and will continue to seek comprehensive settlement deals with policyholders, executives of the runoff reinsurer told attendees at the eighth annual meeting of reinsured names.

Since 2001, the company has settled one-third of its largest asbestos exposures—those over $20 million—Glenn Brace, Equitas' claims director, told attendees. During the past year, Equitas, the runoff reinsurer for Lloyd's of London's 1993 and prior years' nonlife liabilities, has settled seven of the 20 largest asbestos claims it faced at the beginning of the year, Mr. Brace said.

And during the past financial year—to March 31, 2004—the company has paid $1 billion in asbestos settlements—extinguishing about $3.5 billion in policy limits, he noted.

The eighth annual meeting for reinsured names was held at the Queen Elizabeth II Conference Centre in London on Sept. 10.

Equitas seeks to make policy buyback deals with policyholders, Mr. Brace said. Under the terms of such deals, both parties achieve finality and certainty, he noted. He added that Equitas enters into such agreements only if the settlement cost "reflects our valuation of our exposure to that policyholder, appropriately discounted in light of the unique circumstances of that case."

Because such deals buy back all remaining coverage provided under the original policyholder, "they preclude additional claims by that assured of any type, known or unknown," noted Mr. Brace. "This means we not only receive a release for all claims the assured currently makes, but we also buy protection against deterioration in that policyholder's claim experience."

Mr. Brace told attendees that Equitas does not maintain that asbestos claims from the United States have peaked. But he noted that there is "a growing intolerance of the payment of improper claims"—for unimpaired claimants, for example.

Company executives noted that Equitas has, in recent years, introduced measures—such as its so-called "documentation requirements"—to attempt to ensure that only those claimants who can provide documentary evidence that

See **EQUITAS**/next page

TACKLING EMPLOYERS LIABILITY COSTS

More than half of U.K. manufacturers surveyed have introduced risk assessments to cut employers liability costs, with mixed results.

Source: British Chambers of Commerce

Employers liability rates still rising for most U.K. firms

By PETA MILLER

Although nearly three-quarters of U.K. employers surveyed saw their employers liability premiums rise in the 12 months ending in June, the increases generally were less severe than in an earlier survey.

Indeed, insurers and brokers maintain that the market for employers liability is stabilizing as competition increases. The insurance, which covers a range of employee injuries and illnesses, is mandatory in the United Kingdom.

In a report released earlier this month, the British Chambers of Commerce said that a survey of 600 of its members revealed that 74% had experienced an increase in their premiums for employers liability coverage in the year ending June 2004.

The BCC, which represents 135,000 businesses that operate in all sectors of the U.K. economy, conducted its first research into the cost of employers liability coverage in November 2002.

That survey found that half of the respondents said their premiums increased by more than 20% in the previous year, while 11% said their premiums had more than doubled.

In its most recent survey on employers liability, conducted this summer, the BCC found that one-third of respondents saw their premiums rise by between 20% and 50%, while 7% experienced a rise of more than 100%.

"What we have seen is a very bad situation getting slightly better," said according to Steven Hill, policy adviser at BCC.

Many firms are still experiencing significant increases, and if that continues, the viability of these businesses will be threatened, he noted.

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PHOTO: AFP

An increase in lawsuits against auditing firms, such as litigation recently brought by Italy's Parmalat, has made it harder for auditors to find affordable liability insurance.

U.K. government to consider proportional liability system for accounting companies

By CAROLYN ALDRED

After deciding against a liability cap for auditors, the U.K. government has agreed to look at a system of proportional liability, a move that accounting firms are welcoming.

Earlier this month, Trade and Industry Secretary Patricia Hewitt announced that the government will not introduce a cap on auditors' liability into the Companies (Audit Investigations and Community Enterprise) Bill pending in Parliament.

However, the government will consider allowing auditors to contractually limit their liability for clients' losses on a proportional basis, Ms. Hewitt said.

Details on how this would be achieved have yet to be determined. The Institute of Chartered Accountants hopes that the government will include some form of proportional liability for U.K. auditors in a separate corporate law bill expected to be brought before Parliament in 2005.

Under the current system, auditors have unlimited liability and may be subject to joint and several claims. So, for example, if a few auditors are sued, but some are no longer in business, the remaining firms could be held liable for the entire judgment, regardless of their level of responsibility. Proportional liability would ensure that an auditor was responsible only for its share of a given loss. So, if an auditing firm were found to be only 10% responsible for a given loss, then that is all the firm would have to pay.

Auditors had been campaigning for an outright cap because of concerns over high prices and inadequate limits available in the insurance market. For the largest auditing firms, such as the so-called Big Four, virtually no commercial insurers are offering liability coverage, and smaller firms are finding that premiums are very high for a relatively low amount of insurance, auditors say.

An increase in litigation against auditors in the past few years, including a claim by Aylesbury, Eng-

See **AUDITORS**/page 53

World Updates

Max Re enters property market

Max Re Ltd. has set up a division to provide property insurance and reinsurance. Bermuda-based Max Re, a unit of Max Re Capital Ltd., said the division will focus on commercial, industrial and technical risks for large, multinational clients and will offer capacity of up to $25 million. The division will be led by Louis A. Adanio, senior vp and chief property underwriter, who previously was with Endurance Specialty Insurance Ltd. Max Re, which was set up in 1999 to focus on structured financial reinsurance, in recent years has expanded into more traditional lines.

Security tops list of cedent concerns

European ceding insurers view financial security and competitive rates as the most important qualities they seek in reinsurance, a survey by Tillinghast and GE Insurance Solutions found. All 250 respondents, who were small and midsize insurers, said that reinsurer security influences their coverage purchasing decisions, while 93% consider competitive rates and 89% weigh their long-term relationships with reinsurers. In addition, the survey found that 58% of the European insurers are concerned by growing tort costs, 55% are worried by increasing litigiousness and 43% consider natural catastrophes a key issue.

Catlin posts gains in profits, premiums

Catlin Group Ltd. posted net income of $95.8 million for the first half of 2004, an increase of 89.0% over the year-earlier period. Catlin attributed the profit growth in part to positive market conditions. The Hamilton, Bermuda-based company has operations in the Lloyd's of London and London company markets as well as in Bermuda. The group's gross premiums written increased 25.2% in the half to $935.3 million for the half, while net earned premiums rose 54% to $548.2 million.

Hiscox profits up, premiums down

Hiscox P.L.C. recorded a pretax profit of £50.8 million ($92.3 million) for the first half of 2004, up 61.3% over the prior-year period. In a statement, London-based Hiscox attributed the growth largely to the rating environment. Hiscox recorded gross written premiums of £533.5 million ($968.8 million) for the first half, down 9.6%, due largely to the weakness of the U.S. dollar, in which Hiscox writes a substantial amount of its volume.

Equitas: Eliminates some exposures

Continued from previous page

they have suffered injury or impairment from exposure to asbestos receive payment.

Scott Moser, chief executive officer of Equitas, noted that chances of federal asbestos reform being passed this year "are dim." He said, though, that Equitas would continue "to work hard to achieve passage of legislation that will pay fair amounts to claimants while preventing payment to the uninjured."

Mr. Moser said that Equitas had not, so far, been asked by the courts to reopen any previously settled asbestos cases. In response to a question from the floor concerning the case of another U.K. insurer that recently said it had been asked to reopen cases, Mr. Moser said that if Equitas were to receive a court order to reopen any settled case, "we'd appeal. We'd fight," he said.

Any such request would be vigorously opposed by Equitas, reiterated Hugh Stevenson, the company's chairman.

'If Equitas were to receive a court order to reopen any settled case,' we'd appeal. We'd fight.'

Scott Moser
Equitas Ltd.

During the year ending March 31, 2004, Equitas collected more than £400 million ($713.7 million) in reinsurance recoveries and completed 83 commutation deals, Jeremy Heap, reinsurance recoveries director of Equitas, told attendees at the meeting. The past year saw the company strike deals with three of its 10 largest inwards reinsurers, including Travelers Property & Casualty Co.

Inwards reinsurers are companies that have issued policies protecting Equitas.

Equitas will continue to seek reinsurance commutations whenever possible, he said. "When we embark on commutation discussions, we much prefer to conclude a deal which not only collects outwards reinsurance proceeds but also extinguishes liabilities for inwards reinsurance," he said.

Premiums: Employers liability

Continued from previous page

Brokers and insurers say the situation is improving for employers.

John Jones, technical director (casualty) at Aon Risk Services Ltd., a division of Aon Corp. in London, noted that employers liability rates are leveling off—or even falling in some cases—because of growing competition in the market this year.

Some industries continue to see very high rates, he said, but those tend to be confined to sectors where fatal and serious injuries are more common, such as manufacturing.

Phil Bell, liability underwriting manager at Royal & SunAlliance Insurance Group P.L.C. in London, said there is more competition now than there has been in the last three years.

"While individual risks may see rate increases, usually because of a poor claims record or negative risk factors, this does not appear to us to be the trend in the market," he said.

David Ireland, group insurance director for construction company Vinci P.L.C. in Widnes, England, said, "I have not heard of any complaints or comments (about employers liability) in the market from other risk managers."

But small to midsize firms probably suffer more from being treated as part of one block of business by insurers, said Mr. Ireland. Vinci has 2,500 employees in the United Kingdom.

"We are in the fortunate position of not having enough (employers' liability) claims to form a database," said Stephen Elston, European insurance and risk manager at Air Products P.L.C., an industrial gas and technology provider in Walton-on-Thames, England.

Even with a lack of claims, though, the company has faced premium increases over the past several years, though they have not been excessive, Mr. Elston said. He added that he expects a further, though more modest, increase at this year's renewal.

Many companies that have expected a break, though, did not get one, the BCC survey found.

'While individual risks may see rate increases, usually because of a poor claims record or negative risk factors, this does not appear to us to be the trend in the market.'

Phil Bell
Royal & SunAlliance Insurance Group P.L.C.

Forty percent of the respondents said they have implemented a risk mitigation program designed to reduce their employers liability premiums. However, 50% of those companies received no such reduction, the survey notes.

Commenting on the influence of risk assessments on premium, Aon's Mr. Jones warned that there is a lag involved.

"If you have improved health and safety procedures in a company, that will not get rewarded until the benefit of that is shown by a reduction in claims," he said.

Employers must also address spurious and exaggerated claims and make sure they have the right kind of documentation in place to successfully defend them, Mr. Jones added.

Risk management and health/safety procedures are just some of the factors influencing insurers' pricing, RSA's Mr. Bell said. But, he added, RSA ensures that those with the worst claims experience pay proportionately more than other companies.

Insurers have always treated Vinci on the merits of its own performance, taking into consideration claims and accident records, Mr. Ireland said.

"Businesses should implement a risk assessment strategy as part of good practice, but they should also expect insurers to 'reward' such a strategy with a fair and accurate premium," David Frost, BCC director general, said in a statement announcing the survey results.

In addition, Mr. Frost called on the U.K. government to place more emphasis on the rehabilitation of injured workers.

Such efforts to increase the use of rehabilitation are under way.

BCC's earlier findings about employers liability rate hikes were among the factors that led to an investigation by the U.K. Office of Fair Trading into the state of the market for employers' liability coverage and the publication of two reports by the Department for Work and Pensions, said the BCC's Mr. Hill.

In its second report, published in December 2003, the DWP pledged to "help establish a new approach to rehabilitation" in the United Kingdom (*BI*, Dec. 8, 2003).

The report announced three key proposals: the development a framework for vocational rehabilitation; the creation of pilot projects to test ways, including fixed fees, of resolving claims at lower cost; and the exploration of an approach to better reflect health/safety performance in underwriting.

More information on the BCC survey is available at www.chamberonline.co.uk.

Auditors: Proportional liability by contract considered

Continued from page 51
land-based Equitable Life Assurance Society Ltd. for £2.5 billion ($4.49 billion) against auditor Ernst & Young and a $10 billion claim by Italian dairy Parmalat S.p.A. against its auditors—Grant Thornton S.p.A. and Deloitte Italy—in recent months, has led to the coverage crisis.

While auditors say they are disappointed with the government's decision not to introduce a liability cap, they are pleased by the prospect of a proportional liability system.

"Such reform cannot be regarded as objectionable in principle, as auditors proved guilty of negligence would still pay their fair share of the loss that they have caused," he said.

Mr. Connolly believes that proportionate liability will improve competition in auditing by encouraging midsize and smaller firms, which "might not otherwise wish to take on larger clients," to seek new business.

Kieran Poynter, chairman of PricewaterhouseCoopers L.L.P. in London, also expressed disappointment that "the government has decided not to include reform in the current bill."

However, he said he welcomes the news that the government "will urgently address the question of liability reform by way of proportionality by contract."

Proportionality "is widely supported by the business community and, indeed, is the normal basis by which we contract with our clients for services other than audit," he said.

Mr. Poynter said he believes that proportional liability "can provide a fairer solution," but he adds that it "will need to be supported ultimately by a high-level cap to address the very largest risk exposure that many of the accounting firms have to carry, and which are uninsurable."

"This is an urgent issue, and we will work closely with government and other interested parties towards finding a solution," said Mr. Poynter.

The introduction of proportionate liability will "ease the high level of anxiety that exists in the insurance market about auditor liability," predicted Mr. Wosner.

The Institute of Chartered Accountants also is pleased that the government is looking further at the operation of the U.K. audit market and calling for industry, investors and the profession to work together to examine proposals for a system of proportionate liability via contract, said Chairman Eric Anstee.

"I believe broad consensus can be built for such proposals," he said, adding that the institute is setting up a task force with representatives of the profession to discuss the proposition and identify ways to proceed.

The task force will produce a report to industry and government that will outline how proportionate liability can be achieved, he added.

> **'At the moment, auditors are about the only professionals that can't limit their liability, and the exposures that auditors now have are horrendous.'**
>
> *John Wosner*
> *PKF*

"I am relieved that the government has left the door open and is looking at an alternative, because reform is needed," said John Wosner, chairman of U.K.-based accounting firm PKF in London.

"At the moment, auditors are about the only professionals that can't limit their liability, and the exposures that auditors now have are horrendous," Mr. Wosner said. "For a business to have its very existence threatened in such a way is not proportionate."

"The Big Four firms can no longer find insurance, and other accountancy firms have faced premium increases of between 150% and 200% in the last two to three years," said Mr. Wosner.

A system of proportionate liability has been urged by accountants for several years and is probably a more-sensible solution than a liability cap, he said.

"We are disappointed that the Department of Trade and Industry rejected the introduction of a cap but are heartened the government will be considering proportionate liability by contract," said John Connolly, chief executive and senior partner of Deloitte & Touche L.L.P. in London.

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Between the Lines

Compiled by Joanne Wojcik

What's in a name?

A rose may be a rose by any other name, but whether Americans would support a government-run universal health care system could depend on what it's called.

Support among Americans is greater if it's coined "national health insurance," backed by 77%, than if it is dubbed "socialized medicine" or "Canadian-style health care," both of which 61% favor, according to a new poll.

But, regardless of the moniker, three out of four Americans agree that health care is a necessity like water, gas and electricity and should be "regulated by government," the survey found.

The poll included the responses of 1,020 adults gathered between Sept. 2 and 5 by Opinion Research Corp. on behalf of Results for America, a project of the nonprofit and nonpartisan Civil Society Institute of Newton Centre, Mass.

For other poll findings, visit *www.resultsforamerica.org*.

Online help for insurance headaches

Insurance buyers frustrated by sparring with their insurers over sluggish claims handling or other annoying practices have a new way to fight back.

InsuranceGripe.com, a new Web site created by insurance industry executive Rick Weidman, can walk a consumer through the process of preparing and filing a complaint with the appropriate authority. It is available to both personal and commercial lines policyholders.

Mr. Weidman, who has a day job at "a major reinsurance company in New York City" that he declined to identify, said he got the idea to launch InsuranceGripe.com while doing graduate work on customer service—or the lack thereof—in the insurance industry.

Since the site opened for business eight weeks ago, it's been averaging more than 10,000 hits a week, he said, overwhelming the three-person team handling complaints.

"This site has been long overdue for insurance customers and shoppers," Mr. Weidman said. "If you have ever had an insurance problem and attempted to contact your insurance department to complain, it can be a daunting experience."

Soda, snacks or...safety equipment

While most vending machines in the workplace dispense candy, snacks or soft drinks, those at International Steel Corp.'s plant in Wierton, W.Va., dole out safety equipment.

The steel mill is a test site for vending machines stocked with safety glasses, earplugs, gloves and other items designed to prevent occupational injuries, according to an ISG spokesman.

"One of our safety device suppliers came to us with the idea," he said. "It's a better way to inventory safety items and make them more readily available."

Consider, for example, if the strap on a worker's safety goggles breaks in midshift. Rather than tracking down an inventory manager for a replacement, the worker can simply walk over to the vending machine, swipe a company-issued debit card created specifically for the purpose and return to work with very little downtime, the spokesman explained.

The cost of the safety devices issued is charged back to the appropriate departments, he said.

If the experiment works, the safety device vending machines could begin popping up at other ISG facilities, he said.

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

Benefits: Costs spur changes

Continued from page 6

Montreal office.

There are several reasons why employers might be hesitant to eliminate their defined benefit pension plans. Some employers want to offer such plans to retain employees, many of whom do not want to assume the investment risks associated with their retirement savings.

In addition, Canadian companies have encountered situations in which their employees had smaller-than-expected retirement account balances in their defined contribution plans and ended up delaying their retirement plans, affecting the ability of the employers to manage human resource functions, Mr. Sauve said.

Calgary, Alberta-based TransCanada Pipelines, which had sponsored both a defined benefit and a defined contribution plan, terminated its defined contribution plan last year in an effort to retain key employees and avoid litigation from employees burned by bad investments, a spokesman said.

Union opposition to switching from defined benefit to defined contribution plans remains a key deterrent for Canadian employers exploring pension structure changes, consultants say. An attempt by Montreal-based Abitibi-Consolidated Inc. to introduce a defined contribution pension plan for union employees was stymied by the union representing 4,500 of its employees. The company has a defined benefit pension plan for union employees and a defined contribution pension plan for nonunion employees, a spokesman said.

Montreal-based Bell Canada's recent negotiations with a union representing more than 7,000 of its employees ended with the company guaranteeing the continuation of its defined benefit pension plan for existing employees.

Rising costs associated with health care benefits also are spurring Canadian employers to consider changes.

Health care costs have been increasing at double-digit rates in recent years and the aging of the population is expected to have a dramatic impact on health care costs, Mr. Sauve said. "Employers will definitely need to take actions to control those costs," he said.

For employers, rising prescription drug costs are the major problem in Canada, because they account for more than 70% of plan costs.

According to the survey, 22% of Canadian employers indicated their intention to introduce or increase employee cost sharing in 2005. This represents a 2% increase over last year and a 10% increase compared with three years ago, he said.

Another measure large companies are using to deal with rising health care costs is the adoption of flexible benefit arrangements, which allow employees to choose from various options for their medical, dental, disability and life insurance coverage. The use of these arrangements has increased more than 10% in the last five years, Mr. Sauve said. Flexible benefit arrangements "allow employers to manage future increases more easily," he said.

A copy of the Morneau Sobeco survey can be purchased at www.morneausobeco.com.

LARA: Bill would punish lawyers for bogus suits

Continued from page 4
and local jurisdictions in which to file national class actions that rightly belong in federal court.

Even though the Senate plans to adjourn early next month, some tort reform advocates believe that the measure could still win approval before adjournment.

Carl Parks, senior vp-federal government relations in Washington for the Property Casualty Insurers Assn. of America, noted that the some Democrats did break ranks and vote for the measure.

"There was a strong bipartisan statement in the House, and we would hope that the Senate would respond accordingly, given the broad concern about jobs and the economy," he said.

'There was a strong bipartisan statement in the House, and we would hope that the Senate would respond accordingly, given the broad concern about jobs and the economy.'

Carl Parks
Property Casualty Insurers Assn. of America

The Senate, however, has not been kind to tort reform legislation. Various bills involving medical malpractice reform, as well as a comprehensive class-action reform bill vigorously pushed by Senate Majority Leader Bill Frist, R-Tenn., all died in the current Senate.

"The biggest challenge is getting stuff on the Senate side," said Matthew D. Webb, vp-legal reform policy at the U.S. Chamber Institute for Legal Reform in Washington.

"We're very grateful for the House. They're working to keep pressure on the Senate. They have a standing commitment to legal reform, and this is a continuation of that," Mr. Webb said. "I don't necessarily discount the notion of the Senate doing something this year—it only takes one senator to offer an amendment, and you never know where that might go."

"We're cautiously optimistic," said Marliss Browder, director-federal affairs in the Washington office of the National Assn. of Mutual Insurance Cos. Sen. Frist "has named this as one of his top priorities, so we're hoping we'll be able to get some form of class action reform."

The president of the American Tort Reform Assn. was much less optimistic about the chances for Senate action on the bill this year but saw it as a potential way to make the Democratic presidential ticket—Sens. John Kerry, D-Mass., and John Edwards, D-N.C.—take a clearer position on reform.

"We don't see any real prospects of the Senate to take this up, but we think this is a terrific proposal," said ATRA President Sherman Joyce. "I think it builds on the comments that Sens. Kerry and Edwards have made about the need to address frivolous claims. Though their comments have been limited to medical liability, we think that addressing this issue in all civil litigation is most appropriate. We hope that they will join the supporters of this bill in moving this legislation."

D&O: Spate of suits raising rates for some in Canada

Continued from page 4

of the company.

Toronto-based Nortel Networks Corp. in recent months has fired 10 company officials, including its former president and chief executive officer, for improper accounting that has forced the company to restate its financial results since 2001.

A proposed class action lawsuit has been filed by shareholders against Nortel and several current and former directors and officers seeking damages of $250 million Canadian ($194.1 million) for alleged breaches of trust and fiduciary duty and misappropriation of corporate assets. The suit alleges that company executives, officers and employees were paid bonuses based on falsely reported financial performance data and diverted profits that should have been shared with shareholders.

Meanwhile, two proposed class action lawsuits filed against Montreal-based Bell Canada International Inc. on behalf of BCI shareholders were dismissed in July. The lawsuits, which sought $1 billion Canadian ($776.4 million) in damages, accused the company of oppressive behavior and failure to provide full disclosure related to company transactions.

Spokespeople for the various defendants could not be reached.

Impact of lawsuits

Such lawsuits are bringing heightened awareness of the risk of shareholder litigation in Canada and drawing the attention of the D&O market.

"I don't think they've had one that has been as notorious like Enron, Tyco and WorldCom, but there has been an increased awareness that just because you're a Canadian company, doesn't mean you're immune to suits," said Lesley Warrin, senior vp of Willis Executive Risks based in New York.

The allegation of corporate misdeeds is affecting the ability of the named companies to obtain affordable D&O coverage.

Hollinger allowed its D&O coverage to expire on June 30, saying it was too expensive. As a result of the expiration, Hollinger placed $500,000 Canadian ($388,199) in a trust to support its indemnification obligations to a current and former director of the company. Hollinger has also agreed to deposit up to $1.5 million Canadian ($1.2 million) in the trust when the company determines it has funds available to do so.

According to regulatory filings, Bell Canada's D&O premiums have more than doubled since 2002, when the first of the two lawsuits was filed, though it is unclear how much of the increase was related to the lawsuits. Company officials did not return calls for comment.

The recent spate of large shareholder claims has affected the availability and costs of D&O cover for other major Canadian companies, said William Edrich, casualty underwriter for London-based SVB Syndicates Ltd., a Lloyd's of London managing agency. He noted that most of the large D&O carriers "will have been hit quite hard" by these claims.

"Some insurers won't write the really big risks, and those that do write them expect them to pay the appropriate premiums," Mr. Edrich said.

The full impact of the Hollinger and Nortel lawsuits remains to be seen, said Joe Restoule, team leader-risk management for Calgary, Alberta-based Nova Chemicals Corp.

"The consequences of a successful lawsuit could be devastating for all of us," he said. The insurers "will be forced to share their loss experience with all policyholders."

While these types of claims are normally recognized as aberrations, insurers may cite them as a reason for maintaining current D&O premium levels, said David Griffiths, senior vp of Aon Reed Stenhouse Inc. in Toronto.

Overall, D&O rates appear to be softening for Canadian risks, though market observers say widespread rate reductions have yet to be seen.

"The D&O market is in an adjustment phase," said Michel Rodrigue, director-risk management for Transcontinental Inc. in Montreal. "The market is adjusting now to all the trends and the claims that happened in the past and all the new laws like Sarbanes-Oxley."

The D&O market in Canada is starting to soften, but not at the same pace as the U.S. market, said Sarah Robson, managing director of the executive risks practice of Marsh in Toronto. "We are not seeing the same increases that we've seen in the last two or three years," she said.

The underlying price for excess D&O layers has declined compared to previous years, she noted. Excess layer pricing for Canadian D&O risks in recent years has been between 90% to 95% of primary layer rates, but that range has fallen to 75% to 80%, Ms. Robson said.

Nova Chemicals is currently negotiating its renewal, but Mr. Restoule said he is expecting only a modest premium increase, compared with 20% during the hard market years, with the same limits.

While primary D&O rates have softened for Canadian-only traded companies, many large Canadian companies with U.S. exposures continue to pay substantial premiums, brokers say. "They definitely experienced a hard market," said Ms. Warren of Willis said.

"It's not harder to get, but the costs of D&O coverage, if you have U.S. exposures, have gone up dramatically," agreed Eric Dolden, an insurance lawyer with Vancouver-based Dolden Wallace Folick who specializes in D&O issues.

A more litigious U.S. society makes underwriters view Canadian companies that have U.S. operations or shareholders or that export into the United States as a greater risk than those without U.S. exposures.

"Canadian underwriters seem to almost have overreacted to U.S. risk," Aon's Mr. Griffiths said. "There appears to be fear of having insufficient premiums to cover losses."

Although renewals are still being conducted for many Canadian companies, early signs point to a stable D&O market for small to midsize companies. "I think it's leveling out," SVB's Mr. Edrich said. "I think it's not likely to continue growing into the next year."

Key among the exposures for small to midsize organizations, observers say, are Canadian tax statutes with provisions that allow directors and officers to be held personally liable for unremitted corporate taxes. "That's quite a big area of exposure," Mr. Edrich noted. "It's encompassed within the D&O policy."

Generally, these claims arise when the company is having cash flow problems and does not have the means to remit the taxes, Mr. Dolden said.

Following the firmer pricing in recent years, the Canadian D&O market is attracting additional capacity. Brokers report improvement in the amount of limits insurers are willing to offer. Some companies that had previously restricted limits to $10 million Canadian ($7.8 million) in the past are now offering $15 million to $25 million Canadian ($11.6 million to $19.4 million) in limits.

"I think there are certainly adequate limits for 98% to 99% of buyers," Mr. Edrich said.

Despite the increase in lawsuits, underwriters view the Canadian market as a more favorable D&O environment than the United States, said Phillip Hoyt, managing director of Toronto-based XN Risk Insurance Services (Canada) Inc., a provider of D&O liability insurance to privately held companies.

But insurers are scrutinizing Canadian companies more carefully, he said.

In particular, underwriters want to see application warranties, resumes and cover letters for corporate directors and officers and information about their prior board experiences, Mr. Hoyt said.

"We do more underwriting on the directors and officers than we have in the past," he said. "There is a lot more scrutiny on the directors and officers as a risk."

In the past, D&O insurers were selling policies that covered both the directors and the companies, but there has been a movement in Canada of directors and officers demanding separate stand-alone policies that the company can not use to pay its exposures. Directors and officers are making this demand "because the risk to their personal wealth and reputations is tremendous," Mr. Hoyt said.

In addition, some insurers will offer only Side A coverage, while insurers that do offer Side B coverage want increased retentions, Mr. Restoule said. "The coverage is more restrictive," he said.

Pensions: Lawmaker drafting reform legislation

Continued from page 3

PBGC is recommending that it be given a lien on corporate assets when companies in bankruptcy skip their legally required contributions.

That request comes in the wake of announcements from two bankrupt airlines—United Airlines and US Airways Group Inc.—that they would stop making contributions to their massively underfunded pension plans.

The two airlines have warned that they may eventually terminate their plans, a move that would cost the PBGC about $8.5 billion. In addition, participants in United's four pension plans would lose about $2 billion in benefits not guaranteed by the PBGC, while those in three US Airways' plans would lose about $200 million in nonguaranteed benefits, the PBCG estimates. Another US Airways plan covering pilots was terminated last year, which cost the PBGC about $600 million and the pilots about $1.9 billion in nonguaranteed benefits.

Congress' failure to make needed changes to bankruptcy law "will increase the risk that participants will lose promised benefits and that the pension insurance program will suffer larger losses," said PBGC Executive Director Bradley Belt.


PHOTO: NYTIMES

'We need to make clear that pension contributions are required whether a company is in bankruptcy or not.'

Bradley Belt
Pension Benefit Guaranty Corp.

"We need to make clear that pension contributions are required whether a company is in bankruptcy or not," he added.

Meanwhile, a new report says that the PBGC could run out of money to pay pension benefits less than two decades from now.

The report, prepared by the Center on Federal Financial Institutions—a Washington policy institute that focuses on federal insurance programs—notes that a taxpayer bailout of more than $60 billion or a huge increase in PBGC premiums paid by employers with defined benefit plans would be needed to avert the PBGC going broke by 2020.

Rep. Boehner, though, warned in his presentation that increasing PBGC premiums would do far more harm than good. Such a change, he said, would have "devastating" consequences for the PBGC insurance program, because more employers with well-funded plans would terminate their plans to avoid premium increases, depriving the PBGC of badly needed revenue.

Rep. Boehner said he is working on a comprehensive reform bill, which he expects to unveil early next year, to restore the health of the nation's defined benefit system.

Although the bill still is being drafted, Rep. Boehner outlined several principles that will shape the legislation. They include that:

- Congress should require employers to fully fund their pension plans.

"Outdated federal rules essentially force employers to make additional pension contributions during difficult economic times when they can least afford them, even while limiting their ability to better fund their plans during healthier times," Rep. Boehner said.

- Employers and unions should not be allowed to sweeten benefits when both sides know that it is unlikely that those pension promises can be met.

"This practice misleads workers, digs a deeper financial hole for plans that are already underfunded and increases the likelihood that pension plans will be terminated and taken over by the PBGC, often providing lower benefits for workers," he said.

- Reform legislation also should end the legal uncertainty surrounding cash balance plans.

That uncertainty has been fueled by the absence of federal regulatory guidance and a widely publicized court ruling last year in Southern Illinois that held that IBM Corp.'s cash balance plan discriminates against the company's older employees.

"Congress should consider solutions to ensure cash balance pension plans remain a viable part of the defined benefit system and a positive retirement security option for workers and employers," he said.

Medicare: Exodus of managed care plans may be over

Continued from page 4

plans in 52 counties in Maryland, New York, New Jersey and Pennsylvania to employers that either provide or want to provide retiree health care coverage.

"The law has had a very positive impact," said Frank McCauley, head of Aetna's Medicare Business Segment, referring to the 2003 legislation that boosted federal funding for the plans. Aetna has about 100,000 Medicare Advantage enrollees.

Other plans also are expanding. For example, Cypress, Calif.-based PacifiCare Health Systems Inc., whose Secure Horizons unit is one of the biggest Medicare Advantage plans with 700,000 enrollees, recently expanded into Denton and Collin counties in north Texas and soon will enter Nevada County in Northern California.

In all, the federal Center for Medicare and Medicaid, which administers the Medicare Advantage program, reports that 29 applications for new contracts and 21 service area expansions are pending.

And the plans not only are expanding into new markets but also are improving benefits and holding the line on premium increases. For example, PacifiCare earlier this year improved prescription drug coverage for about 82% of its Medicare Advantage plan enrollees.

Tufts Health Plan in Waltham, Mass., which has about 54,000 enrollees in its Medicare Advantage plan, has announced it will not boost premiums next year and is lowering prescription drug co-payments.

"This is very positive news," a Tufts spokeswoman said.

For employers—which once embraced Medicare managed care plans as the answer to soaring retiree health care costs only to see the plans exit markets, slash benefits and hike premiums—these developments are good news.

Back in the mid-1990s, many employers began to encourage retirees to enroll in the plans as a cost-saving strategy. Employers reasoned that it would cost far less to pay any premiums the plans charged plus, in some cases, Medicare Part B premiums than to provide coverage to retirees through their own, often-traditional indemnity-type plans that supplemented Medicare.

But that strategy began to unravel as federal funding for Medicare HMOs failed to keep up with the plans' cost increases, causing the plans, until this year, to exit markets that had become unprofitable or to sharply raise premiums and cut benefits.

Yet even with the favorable turnaround in the Medicare Advantage market, employers are not rushing in to contract with the plans.

"Employers aren't yet convinced that the same thing might not happen again," Mr. Martingale said, referring to the past cutbacks in federal financial support for the plans.

But that could soon change, as employers come to recognize the renewed opportunity to cut health care costs while still providing retirees with better benefits.

"The savings can, indeed, be substantial," said Aetna's Mr. McCauley.

8th Circuit: Women may be eligible for more benefits

Continued from page 6

of this decision.

The four women were terminated because of company policies that first prohibited married women, then pregnant married women, from working at the company. The policies were subsequently changed, and the company rehired the plaintiffs in the 1980s. They have all since retired and now collect pension benefits, but not as much as they would have collected had their prior service been counted in determining their benefits.

Minnesota Power amended its plans in 1976 and 1987, to permit employees to "bridge" prior employment periods in calculating benefits in certain cases. But the changes still did not permit bridging for women who were terminated because of its past discriminatory marriage and pregnancy policies.

In 2002, despite women employees' requests, the company said it would make no further changes to its bridging provisions, according to court papers.

The appellate decision says the district court granted Allete's motion to dismiss the case based on two theories: the plaintiffs were terminated before passage of Title VII of the Civil Rights Law of 1964, which cannot be applied retroactively; and the statute of limitations on discriminatory acts that took place in the 1960s has expired.

But the appellate court disagreed with the basis of the lower court's reasoning. "This case is not about discriminatory acts which took place when the plaintiffs were terminated in the 1960s.... Rather it is about alleged discriminatory acts which took place" in subsequent years, when the defendant adopted allegedly discriminatory bridging policies, the decision says.

Furthermore, the decision notes, although there are several points in time when the statute of limitations could have begun, "the one we find most applicable to this case" is when the women retired and their pension benefits vested. "It is at this moment that the alleged discriminatory provision of the pension plan was applied to each plaintiff and the defendant could no longer amend the bridging provisions to cure such discrimination." That statute of limitations has yet to expire.

'I don't see this as increasing the potential for liability for any company that isn't liable right now anyway.'

David L. Weinstein
Wildman Harrold

The appellate court remanded the case to the district court for further proceedings consistent with its opinion.

Commenting on the decisions, Minneapolis-based solo practitioner Daniel W. Schermer, who represented the plaintiffs in the case, said the decision is significant because "we're reaching the point where there are a number of women... who were forced out in the '60s as a result of anti-marriage or anti-pregnancy policies who are now reaching retirement age."

Douglas J. Heffernan, an employer attorney with Faegre & Benson in Minneapolis, said the plaintiffs are still going to have to prove in the lower court that Minnesota Power's bridging amendments were discriminatory and not gender neutral.

"I think that will be the critical part of it," he said. "If the court rules that the plan was discriminatory, that could affect lots of employers." On the other hand, if it decides the bridging amendments were gender neutral, "this whole thing will just be kind of blown over."

David L. Weinstein, an employer attorney with Wildman Harrold in Chicago, said, "I don't see this as increasing the potential for liability for any company that isn't liable right now anyway."

If companies have bridging provisions in their plans "and they're not implementing them consistently, they're courting trouble in any event, and so if there is a lesson for the employer community, here it is: make sure that the bridging provisions of plans say what you meant them to say," and then apply them accordingly.

Noreen Maki; Lucille J. Johnston; Dolly Hable; Ann M. Stenstrom, appellants, vs. Allete Inc., doing business as Minnesota Power, individually and as Administrator of Minnesota Power & Affiliated Companies Retirement Plan; 8th U.S. Circuit Court of Appeals, No. 03-3408

TRIA: House panel sets vote on extension

Continued from page 1

rently scheduled could reduce the U.S. gross domestic product by as much as $53 billion over three years.

"Absent TRIA, increased terrorism insurance premiums raise the cost of doing business, creating a drag on the economy," according to the report.

The study also holds that failure to extend TRIA could also result in the creation of 326,000 fewer jobs than would be expected if TRIA remained in place.

TRIA's lapse would prompt insurers to adopt terrorism exclusions or other limitations on coverage wherever permitted to do so by regulators, the report notes. Where regulators would not allow exclusions, insurers would leave certain lines of business or geographic areas. And even where terrorism insurance is offered, insurers will more cautiously manage their total exposures within defined geographic areas, further reducing capacity, the report notes, adding that the price for terrorism coverage "may well increase, possibility significantly."

The American Insurance Assn., the Financial Services Roundtable, the National Assn. of Mutual Insurance Cos., the National Council on Compensation Insurance, the Property Casualty Insurers Assn. of America, and the Reinsurance Assn. of America commissioned the study.

Both the report and Rep. Oxley's announcement drew praise from risk management and insurance groups, which have called for TRIA reauthorization this year because negotiations on policies that will renew next year and extend into 2006 are already underway. Not knowing whether TRIA will be in place makes the pricing of such policies difficult and could affect the availability of coverage, they say.

'Failure to limit insurers' exposure to catastrophic terrorism losses can have wide ranging implications for the stability of the U.S. and the global economy.'

Janice Ochenkowski
Risk & Insurance Management Society Inc.

"When TRIA was first introduced in Congress, RIMS suggested that in order to be fully effective, TRIA must be a six-year program," said Janice Ochenkowski, vp-external affairs for the New York-based Risk & Insurance Management Society Inc.

"We fully concur with the findings of the Analysis Group report, and believe that the extension of TRIA is long overdue. Failure to limit insurers' exposure to catastrophic terrorism losses can have wide ranging implications for the stability of the U.S. and the global economy. We urge Congress to pass TRIA extension legislation without delay and support efforts to establish a long-term solution to this important issue," said Ms. Ochenkowski, who is also senior vp at Chicago-based Jones Lang LaSalle.

"In passing the first TRIA bill, Congress took away the uncertainty in the marketplace," said Lisa McGreevey, executive vp-external affairs for the Financial Services Roundtable in Washington. "We're at a situation now where the private sector has not been able to fill in the gap for the same reason as the first time around—there are still a lot of unknowns as to how to price the risk."

"TRIA extension has picked up significant momentum in the past few weeks," said Julie Rochman, a senior vp at the AIA. "The chorus of policyholders around the country speaking out on this issue has grown and become too loud to ignore."

"It's been a difficult uphill climb all along, but if you look at where we've come in three months on this issue, certainly if we can move this out of the House and continue the strong efforts we're making in the Senate, there's every possibility of getting this done in this Congress," said Carl Parks, senior vp-federal government relations in Washington for the PCI.

Joel Wood, senior vp at the Washington-based Council of Insurance Agents & Brokers, said that based on the remarks of a key Senate advocate of extending TRIA—Sen. Robert Bennett, R-Utah—he believes chances of Senate action this year are under 50% but that Rep. Oxley's decision "does provide momentum."

Mr. Wood said that the Senate Banking Committee will hold a hearing on a wide range of insurance issues this week, a hearing at which the CIAB will focus on TRIA reauthorization.

The hearing could be crucial, he said. Banking Committee Chairman Richard Shelby, R-Ala., "has not announced a position one way or the other, and he becomes critical," he said.

Converium: Reinsurer to close U.S. units

Continued from page 1

America) Inc., which would write both direct and reinsurance business (*BI*, Sept. 6) from the United States.

Under its revised plan, though, Converium will write U.S. business only through its Zurich and Bermuda operations and will seek fronting arrangements for the Global Aerospace Underwriting Managers Ltd. business currently written by Converium Insurance (North America), executives said.

The Zug-based insurer said that the decision was based in part on the ratings sensitivity of the U.S. market, where clients often will not place business with companies that do not have a rating in the A range. In 2003, Converium, which is the rebranded Zurich Re, wrote about $1.5 billion in U.S. business.

The company's most recent troubles came to light in July, when it announced that it was boosting its reserves by $384.7 million, primarily to address adverse claims trends for U.S. liability business written between 1997 and 2001. Then, following an actuarial review, Converium said earlier this month that it may need to further boost reserves and announced its initial plans to restructure in the United States and to raise capital. Following those announcements, Best lowered its rating on Converium, citing concerns about the group's capital position.

S&P subsequently downgraded Converium, citing its view that management credibility at the reinsurer has been damaged by recent reserve developments and the need to raise further capital. S&P also said it has concerns about Converium's ability to attract and retain business going forward.

Benjamin Gentsch, chief executive officer of Converium's Zurich-based operations, said the company thought about scrapping its plan to provide capital to Converium Insurance (North America) after the Best downgrade, and S&P's subsequent downgrade was "the final straw."

He said that because being downgraded to the B-range makes it more difficult to get business in the United States, Converium would, for the short term, concentrate on non-U.S. markets, such as Europe and Asia. He said that Converium has received indications of strong support from clients in those regions.

And while the company's U.S. operations will be placed into runoff, the license for Converium Insurance (North America) will be retained, and the unit may be used again in the future, Mr. Gentsch said.

Impact of changes

Commenting on the latest developments, Stephen Searby, a director at S&P in London, said that Converium's planned changes would create a "regional reinsurer shorn of" a U.S. presence.

"In the short-term, it would appear to have liquidity, but our concerns are about stickiness—the loyalty of clients—and management credibility, which has taken a dent recently," he said.

Mr. Gentsch said that he was concerned that S&P's fears about the company's franchise could become a "self-fulfilling prophecy."

"I think that without the downgrades we could have maintained our franchise outside of the U.S.," he said. But now, he said, it is a "chicken-and-egg situation" as the downgrade might affect the company's franchise.

Mr. Gentsch acknowledged that Converium would see a reduction in the amount of business it underwrites in some areas, such as Australia, where liability business must by law be placed with A-rated company. However, he said he is confident that business generally would not "fall away."

"We intend to keep the company alive and kicking. We still have an excellent franchise," he said. "Our people are extremely committed." He added that the company is instructing underwriters "not to bend on price" and said "we will remain disciplined."

"It is our intention, and our hope, that we'll regain our rating. How quickly that can be done, I can't say," he said.

Several brokers at the Rendez-Vous de Septembre in Monte Carlo, Monaco, were reluctant to say what effects the downgrade would likely have on Converium's ability to attract business, but they noted that buyers are increasingly concerned with reinsurer security.

Clement Booth, chairman and chief executive of Aon Re International in London, said he did not want to comment specifically on Converium's situation, but said "it is a significant downgrade, there is no getting around that."

In addition, he noted that there is currently no shortage of reinsurance capacity in the A-rated range.

Suits: Insurers sue over Sept. 11 losses

Continued from page 3

P.L.C.

- American Re-Insurance Co., a Munich Re unit, which is suing to recover reinsurance payments to Verizon Communications Inc.'s Vermont captive insurer, Exchange Indemnity Co.

Separately, several plaintiffs filed actions naming scores of Middle Eastern defendants allegedly responsible for Sept. 11 losses, variously including the Saudi government or members of the Saudi royal family; groups identified by the U.S. government as terrorist organizations; Islamic charities; and various individuals and corporations.

A dozen insurer units of ACE Ltd. and American International Group Inc., for example, have sued the governments of Saudi Arabia and Syria. Entities controlled by WTC leaseholder Silverstein Properties Inc. filed a 326-page complaint against Saudi officials, the Republic of Sudan and dozens of Middle Eastern banks and others, while WTC owner The Port Authority of New York & New Jersey joined an existing suit filed by investment firm Cantor Fitzgerald L.P.

Similar suits had already been filed last year by Chubb Corp.'s Federal Insurance Co. and last month by New York Marine & General Insurance Co. and CNA Financial Corp.'s Continental Casualty Co.

Meanwhile, lawyers representing workers at the WTC site filed a proposed class action lawsuit over their alleged exposure to toxic materials during the cleanup. The suit names several defendants, including cleanup contractors Bovis Lend Lease of Sydney, Australia; U.K.-based AMEC; and New York-based Tully Construction Co.

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Late News

Continued from page 1

were necessitated by the recent resignations of President Ernst Csiszar and Vp Jim Poolman. The new officers will serve until annual elections are held at the NAIC's winter quarterly meeting, scheduled for Dec. 4-7 in New Orleans.

PacifiCare adds products, members with AMS buy

PacifiCare Health Systems Inc. has agreed to buy health insurer American Medical Security Group Inc. for about $502 million. The acquisition of Green Bay, Wis.-based AMS will bring more than 314,000 commercial preferred provider organization members, boosting PacifiCare's commercial membership by more than 13%. The acquisition will also expand the company's product offerings to include health savings account and group life products, noted Cypress, Calif.-based PacifiCare.

California mandates domestic partner cover

California Gov. Arnold Schwarzenegger has signed legislation requiring California insurers and health plans to cover registered domestic partners to the same extent that they cover spouses. Under current law, plans and insurers must provide coverage for domestic partners, but only to the extent it is provided for dependents. The bill, A.B. 2208, was sponsored by Assemblywoman Christine Kehoe, D-San Diego.

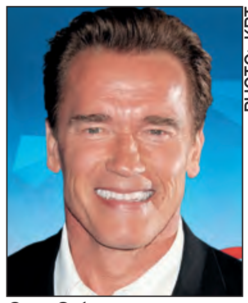

PHOTO: KRT

Gov. Schwarzenegger

Heath Lambert offers cargo cover in Iraq

Heath Lambert Group Ltd. has launched specialty coverage for companies transporting cargo into and out of Iraq. In addition to providing standard physical loss and damage cover, the program will offer optional coverage for war risks, worker strikes and terrorism, the

Heath Lambert Group

London-based brokerage said. Coverage is written at Lloyd's of London. A Heath Lambert spokesman declined to say how much capacity is available but described it as "substantial" and said there are deals underway to provide limits of between $20 million and $30 million.

Program to reward docs for good diabetes care

Two Harrisburg, Pa.-based managed care companies are launching a new pay-for-performance initiative to promote better care for the diabetic patients enrolled in their plans. Under the program, HealthAmerica and HealthAssurance, will pay quarterly bonuses of $25 per patient to physicians who meet standards for diabetic patient care set by the National Committee for Quality Assurance's Diabetes Physician Recognition Program. Such standards include glucose control; blood pressure control; control of blood lipids; and preventive care practices for eyes, kidneys and feet.

Reinsurers face threats to profitability: Best

Worldwide reinsurance rates are too low to sustain profitability, despite the hard market of the past three years, according to A.M. Best Co. Although many reinsurers have made underwriting profits over the past two years, rates have weakened in several lines this year, said Jose Sanchez-Crespo, general manager of Best's London office, commenting on the Oldwick, N.J.-based rating agency's "Global Reinsurance" report. In the United States, rate decreases and recent hurricane losses may cause the overall U.S. reinsurance market to report an underwriting loss for 2004, he said.

Briefly noted

Minneapolis-based **UnitedHealth Group Inc.** has settled a class action lawsuit over its prescription drug co-payments for $9.95 million, plus administrative costs that bring the total cost of the settlement to $11.15 million. The lawsuit alleged pharmacies were improperly allowed to collect full co-payments on inexpensive drugs from UnitedHealth members....Houston-based **Enron Corp.** will contribute $321 million from the sale of a pipeline unit to an escrow account to fully fund and then terminate four defined benefit pension plans as part of an agreement with the Pension Benefit Guaranty Corp....Oklahoma's Senate has set a date of Sept. 27 for a trial to determine whether **Insurance Commissioner Carroll Fisher** should be removed from office. Mr. Fisher, who is seeking a stay of the proceedings, recently was impeached by the state House on allegations that he embezzled insurance education funds and operated a children's charity illegally.

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Asbestos: Daschle seeks to revive reform

Continued from page 3

Committee more than a year ago, it has failed to go before the full Senate for a variety of reasons. These include disputes over the size of the fund and over what would happen to unpaid claims if the fund ran out of cash.

"We're still reviewing the offer," said a spokeswoman for Sen. Frist. The senator "hopes we can reach a reasonable solution to the asbestos crisis."

The proposal drew a cautious response from the insurance industry, which has said repeatedly that will not support any proposal that requires it to pay more than $46.025 billion into the trust fund.

"We're just beginning to look at it. From what we know about it, there are still a lot of very important open questions," said Julie Rochman, a senior vp at the American Insurance Assn. "For example, the proposal addresses the overall fund amount and has language on the lung cancer cases, but there is still an open question about pending claims and several other critical issues for insurers. As we've said all along, we can't agree to anything until we've seen the whole package."

"We're encouraged that the Majority Leader Frist and Minority Leader Daschle continue to seek an acceptable compromise on this," said Carl Parks, senior vp-government relations in Washington for the Property Casualty Insurers Assn. of America. "There's been a lot of movement in the right direction. We feel that the current offer still has a ways to go, but we would encourage the leadership on both sides to continue working together," he said.

"The problem is, the devil's always in the details," said Marliss A. Browder, director-federal affairs for the National Assn. of Mutual Insurance Cos. in Washington. "We haven't seen a copy of the actual proposal. There are a lot more issues that we need to have settled besides just the monetary numbers," she said.

Organized labor was even more critical of Sen. Daschle's latest proposal.

"We thought his earlier proposal of $145 billion was inadequate, so the present proposal of $140 billion is even less adequate," said Peg Seminario, director of safety and health for the AFL-CIO in Washington.

Cayman insurers hit hard by hurricane

GRAND CAYMAN, B.W.I.—Hurricane Ivan losses in Grand Cayman are bad news for local insurers.

While total insured losses were undetermined as of late last week, A.M. Best Co. hinted with ratings moves that three local insurers could be heavily impacted by the storm. The Oldwick, N.J.-based ratings agency placed the A- financial strength ratings of Island Heritage Insurance Co. Ltd., British Caymanian Insurance Co. Ltd. and Cayman General Insurance Co. Ltd. under review with negative implications.

The actions reflect uncertainty over the insurers' net exposure to Hurricane Ivan claims and the storm's impact on each company's capital, Best said in a statement.

"Although all three companies carry catastrophic reinsurance protection, it is premature to assess the total insured impact of the hurricane," Best said. The rating agency noted that there are concerns as to the insurers' abilities to absorb losses from a subsequent catastrophic event.

Grand Cayman was hard hit by Ivan—then a Category 5 storm with winds greater than 155 mph—on Sept. 12. The storm caused extensive wind and water damage to a number of commercial buildings. Many homes were made uninhabitable and water and electricity were knocked out by the storm.

Cayman Island Governor Bruce Dinwiddy said last week that he expected the island's financial sector, including the Cayman Islands Monetary Authority, which oversees the domicile's captive insurance business, to be operating today. "The infrastructure of the financial sector is mostly intact, including records and data," he said.

—By Sally Roberts

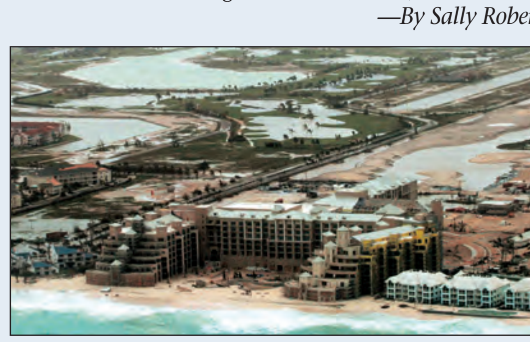

PHOTO: AP/WIDEWORLD

Grand Cayman Island on Sept. 13, after Hurricane Ivan passed over the island.

Online Poll

[9/13-9/17]

Do you think the government should give small employers tax credits to encourage them to offer health insurance plans to their employees?

Yes	**89.5%**
No	**9.3%**
Do not know	**1.2%**

BI Stock Index

[9/13 - 9/17]

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

***BI* Stock Index**	**2269.16**	**0.45**
Dow Jones	**10284.60**	**-0.28**
S&P 500	**1128.55**	**0.41**

Largest gains

EMC Insurance Group Inc.	8.68%
PacifiCare Health Systems	6.46%
Clark Inc.	6.43%
W.R. Berkley Corp.	4.96%
Everest Reinsurance	4.67%

Largest losses

Allmerica Financial Corp.	-5.57%
PMA Capital Corp.	-5.25%
NYMagic Inc.	-4.79%
HealthNet Inc.	-4.42%
Gainsco Inc.	-3.70%

Weekly change by market segment

Brokers	1.19%
Insurers/Reinsurers	-0.70%
Managed Care Organizations	0.86%

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

BI 09-20-04 A 60 9/17/04 5:43 PM Page 1

Ivan likely to stir up business interruption disputes

By MICHAEL BRADFORD and DAVE LENCKUS

It was bad, but it could have been much worse.

Ivan will go down as the second-costliest hurricane to hit the United States if insured damages reach $10 billion—as one catastrophe modeler predicts they could. But that's half of what the devastation might have cost had Ivan taken a slightly different track.

As it was, Ivan left a tangle of beachfront destruction along the Gulf Coast and insurers sharpening their pencils for the latest round of hurricane claims payments. One of their biggest challenges, industry sources say, will be sorting out complex business interruption claims from the third hurricane to strike since mid-August.

"That is a very difficult loss to adjust," said Jim Henderson, president and chief operating officer of Daytona Beach, Fla.-based brokerage Brown & Brown Inc.

Insurers and claims adjusters are working to sort out such complexities as flooding rules and evacuation issues as part of business interruption claims, he said.

The latest storm, after killing at least 68 and leaving a trail of destruction through the Caribbean, roared onto land with 130 mph winds at Gulf Shores, Ala., in the early hours of Sept. 16 and took at least 33 more lives. After hammering the Gulf Coast, Ivan moved north with diminishing force toward the Smoky Mountains.

In the days during Ivan's approach, EQECAT Inc., a catastrophe modeler based in Oakland, Calif., projected the storm would cause at least $20 billion in insured losses if it struck New Orleans. EQECAT predicted damages of $4 billion to $20 billion for a landfall between Biloxi, Miss., and Pensacola, Fla., the area where Ivan landed.

Because of weakening winds at landfall, which occurred about 150 miles east of New Orleans and slightly east of Mobile, EQECAT revised its damage estimate to $4 billion to $10 billion.

Losses of $10 billion would rank Ivan above Hurricane Charley and second to 1992's Hurricane Andrew in terms of greatest insured hurricane losses.

Other cat modelers, though, estimate damages will end up well under $10 billion. Risk Management Solutions Inc. in Newark, Calif. predicts insured damages will range from $2 billion to $7 billion, and Boston-based AIR Worldwide Corp. estimates $3 billion to $6 billion.

Those losses are in addition to insured losses in the Caribbean that modelers say could reach $1 billion to $2.5 billion.

Insurers and brokers, meanwhile, are busy sorting out potential business interruption claims.

The fact that Hurricane Ivan caused little direct property damage in New Orleans could lead to business interruption and contingent business interruption coverage disputes, according to policy experts.

"I've been getting a lot of calls about this" from brokers anticipating questions from their clients, noted Curtis S. Anderson, the New York-based managing director-national property claims for Aon Technical Services, the property/casualty claims and risk control unit of Aon Corp.

"I don't think there's any question that there's going to be a lot of disputes over that," he said.

Policy experts question whether insurers will respond to business interruption claims by New Orleans businesses, since the city's mayor did not order residents to leave.

A point of contention could be the nature of the evacuation from the city.

Because of the flooding risk, New Orleans Mayor Ray Nagin early last week advised residents to leave the city. Highways and roads were soon snarled with 1.3 million evacuees.

Residents of other Gulf Coast areas, though, were given no choice, as civil authorities ordered evacuations.

In many cases, property policies with windstorm coverage and optional civil authority provisions as part of the business interruption coverage will respond if policyholders lose business as a result of direct action by civil authorities. Such action—for example, prohibiting access to the business—can trigger coverage even if there is no property damage.

But many policy experts question whether insurers will respond to business interruption claims by New Orleans businesses, since the city's mayor did not order residents to leave.

Aon's Mr. Anderson said he thought the mayor's action amounted to an official directive.

Insurers are expected to disagree.

"I know that insurers are going to be looking for an order rather than a strong suggestion," said John Dempsey, managing partner of forensic accounting firm Dempsey, Myers & Co. L.L.P. of Wilton, Conn.

Broker James H. Costner, a senior vp in the Nashville-based property practice at Willis Group Holdings Ltd., agreed.

Even so, some policies might contain other provisions that would allow policyholders to tap their business interruption coverage, subject to deductibles, even if their property was not damaged, brokers said.

Property policies that contain a preservation-of-property or sue-and-labor clause might cover a property owner for business interruption losses, brokers explained.

Tropical resorts often recover under those clauses after boarding up in anticipation of a storm that ultimately skips by their location, Mr. Costner noted.

But Mr. Anderson said insurers do not consistently provide coverage under the preservation-of-property provision. Some policies will not respond if the policyholder's property does not sustain any damage, he said.

And, "there is a question" over whether coverage would extend to business interruption losses, he said. "You really have to read the clause."

Because New Orleans authorities routed traffic on both lanes of Interstate 10 to the west, policyholders might be more successful in recovering business interruption losses under a policy's ingress/egress provision, Mr. Anderson said. That provision provides coverage when clients or customers are blocked from reaching a covered business.

Businesses elsewhere in the country that suffered losses because they could not deal with business partners in New Orleans also should check whether their policies provide contingent business interruption coverage, Mr. Anderson advised.

"That's an area least explored by clients that should be explored," he said.

Ivan: Storm could raise rates

Continued from page 1

little movement in pricing" of reinsurance, said Wendy Baker, president of Lloyd's America Inc. in New York. "Now there's a question mark, and we have to see what the damage is."

As of late last week, catastrophe modelers were projecting insured losses from Ivan will range from $3 billion to $10 billion in the United States. The losses come on top of those from hurricanes Charley and Frances, which are estimated at around $13 billion to $15 billion in total.

Ivan came ashore early last Thursday, after a deadly run through the Caribbean. The storm ravaged several islands, killing at least 68 people and leaving significant damage in Grenada, Jamaica and the Cayman Islands. Risk Management Solutions Inc., a catastrophe modeler in Newark, Calif., estimates insured losses on those and other Caribbean islands at $1 billion to $2 billion.

The storm made landfall in the United States at Gulf Shores, Ala., as a Category 3 storm with winds as high as 130 mph. It was blamed for at least 33 deaths in the United States, as it spun north with high winds and drenching rains through the southeast.

As Ivan raked its way north, its effects were being debated by reinsurance executives gathered last week in Monte Carlo for the annual Rendez-Vous de Septembre, where executives gather to discuss which way the winds are blowing for renewals.

There were some indications at the meeting that Ivan and the two major hurricanes that preceded it could lead reinsurers to seek higher property catastrophe rates in the new year.

Paul Delbridge, a partner in the insurance industry practice at PricewaterhouseCoopers L.L.P. in London who attended the Rendez-Vous, said that reinsurance intermediaries there were telling clients "to expect the same or higher costs on property catastrophe business" at their next renewal.

"I personally think rates will be higher," Mr. Delbridge said. He predicted property reinsurance rates will increase by at least 10% at renewal. He added that he expects reinsurers will "come up with firm prices and terms and conditions" by late October, when reinsurers gather in Baden Baden, Germany, to actually negotiate reinsurance programs.

Steve Morello, chief underwriting officer with Princeton, N.J.-based American Re Corp., a subsidiary of Munich Reinsurance Co., predicted that—based on the reinsurance and insurance industry's depletion of capital and the time remaining in the hurricane season—the insurance and reinsurance market will harden beyond Florida and the Gulf Coast.

But, he said, the degree of rate increases likely will be tempered by the fact that there is not "a reinsurance capacity shortage driving prices."

If property owners do see price hikes, they are not expected to be severe, industry sources note.

"The insurance industry will have to evaluate this after the season," said Robert Hartwig, chief economist with the Insurance Information Institute in New York. "It does put pressure on property catastrophe reinsurance, but not as much as you would expect," given that much of the loss in Florida from Charley and Frances was covered by the state's catastrophe fund, he said.

Losses from Ivan would have to reach $15 billion to $20 billion to make it a "market-changing event," said Jim Henderson, president and chief operating officer of Daytona Beach, Fla.-based brokerage Brown & Brown Inc. He agreed that the catastrophe fund in Florida helped dampen the market effect from the first two hurricanes and kept the storms from producing the "economic impact to swing the market."

Tim Gardner, London-based head of the property specialty practice at reinsurance intermediary Guy Carpenter & Co. Inc., said that while he believes losses from the three storms are unlikely to turn the reinsurance market, they probably will stabilize it.

"It would be almost impossible" for Ivan to have caused as much insured loss as Charley and Frances did, because its track did not move it over as many large cities as the earlier storms that hit Florida, Mr. Gardner said. In addition, property values in the region hit by Ivan are not as high as those affected by the other two storms in Florida, he said.

Even so, losses from Ivan could be significant for some reinsurers, Mr. Gardner said, because it is likely that fewer reinsurers play in the multistate Gulf Coast market than in Florida alone.

Ivan's course through the southern United States did pose new concerns for insurers.

Windstorm deductibles in Louisiana, Mississippi and Alabama are not as substantial as they are in Florida, where insurers have substantially raised those amounts in the years since Hurricane Andrew devastated the state in 1992. And, Gulf Coast states outside of Florida do not have entities like the Florida Hurricane Catastrophe Fund, which helped cover claims from the first two hurricanes.

Because those "protective mechanisms" in place in Florida do not exist in the other states hit by Ivan, "there is a possibility that could create some pricing pressure" for insurers, said Bruce Zaccanti, a partner in Ernst & Young's Chicago office.

Even so, "I don't expect aggressive pricing" as a result of the three storms, he said, unless Ivan's losses turn out to be much larger than expected.

As claims have piled up from the 2004 hurricane season, insurers have begun to exercise reinstatements of reinsurance limits.

A Munich Re spokeswoman said that U.S. clients have asked for reinstatements. "In the majority of the traditional excess-of-loss treaties, only one reinstatement is included," she said. "Munich Re provides this kind of coverage under the overall precondition of adequate level of pricing and conditions."

Some smaller specialty lines insurers that focus on the Florida personal lines market purchased additional reinstatement limits beyond their automatic reinstatements after Hurricane Charley, according to Tom Kusmierczyk, senior vp and chief property treaty officer with American Re.

That's not the case, though, with national underwriters that typically keep high retentions, said American Re's Mr. Morello.

Ms. Baker of Lloyd's America said insurers may have available a single reinstatement or multiple reinstatements, depending on the structure of their reinsurance programs. Some insurers have multiple reinstatements available for lower layers of coverage and single reinstatements on higher layers, she noted.

Mr. Delbridge suggested that insurers that did not obtain reinstatements after Frances and now face losses caused by Ivan could face the prospect of not only shouldering losses on a net basis but also of dealing with downgrades from rating agencies.