

**PBM Caremark buying  
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to harmonize state regs / 4**

# Business Insurance

www.businessinsurance.com

September 22, 2003

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\$4

## Isabel claims put at \$1 billion

### Extent of losses less than feared

By SALLY ROBERTS and DAVE LENCKUS

Although claims are just starting to trickle in, early estimates put the insured damage from Hurricane Isabel at about \$1 billion.

Personal lines insurers will likely bear the brunt of the losses from the storm, but commercial insurers also could be hit as businesses assess flood and business interruption damages.

The powerful Category 2 hurricane slammed into North Carolina and Virginia on Thursday and then lashed the Eastern seaboard, uprooting trees, destroying roofs and snarling air traffic. In addition, Isabel flooded homes and businesses and knocked out electricity to 5.5 million customers from the Carolinas to New York. The storm was responsible for at least 16 deaths in six states.

President Bush declared major disasters in  
See ISABEL/page 34



PHOTO: KRT

Residents of Kitty Hawk, N.C., survey the damage to Highway 12 and to ocean-front homes from Hurricane Isabel, which lashed the Eastern seaboard last week.

## Senate panel OKs change in pension funding

### Bigger PBGC losses ahead?

By JERRY GEISEL

**WASHINGTON**—Employers with underfunded pension plans would be spared paying billions of dollars in required plan contributions under legislation passed last week by the Senate Finance Committee.

A last-minute amendment to the legislation would waive for three years a provision in current law that requires employers to accelerate contributions to their pension plans when their plans become underfunded.

The legislation, which was approved last week  
See FUNDING/page 33

## Calif. 'pay or play' law may hit employers hard

By JUDY GREENWALD

**SACRAMENTO, Calif.**—A health insurance mandate passed earlier this month by the California state Legislature could create a large financial burden for some large employers if it becomes law, some observers warn.

The "pay or play" measure, which Gov. Gray Davis is widely expected to sign, would require firms to either provide their employees with health insurance or pay into a state-run pool that would provide coverage.

And while enactment of the bill would make California only the second state after Hawaii to mandate health coverage, it may encourage the introduction of similar measures elsewhere.

Meanwhile, observers expect litigation over whether large employers would be exempt from the mandate's provisions under the Employee

Retirement Income Security Act.

S.B. 2, or the Health Insurance Act of 2003, would require employers to either pay 80% of employees' health insurance premiums or contribute to a state fund. For companies with 200 or more employees, the requirement would apply to both workers and their dependents from Jan. 1, 2006.

Firms with 20 to 199 workers would have another year to comply and do not have to cover dependents. Within that group, though, businesses with 20 to 49 workers would come under the law's provisions only if the Legislature authorizes a special tax credit for them. Firms with 19 or fewer employees are exempt.

The program will be administered by a Managed Risk Medical Insurance Board, which will determine the benefits that must be provided ei-

See CALIFORNIA/page 31

## Late News

### U.S. health care quality 'inconsistent': NCQA

Despite improvements in some areas, the quality of health care in the United States remains inconsistent, causing needless deaths and driving up the total spending on health care, according to the National Committee for Quality Assurance. In a report, the NCQA says that care for numerous conditions has improved, in particular for chronic health conditions. The study states, though, that while some health plans have adopted best practices for treating patients, many others have not and this means that many people are not getting the best possible treatment.

### NAIC accreditation of Illinois under review

The National Assn. of Insurance Commissioners is examining the Illinois Insurance Department's operations to determine whether the department should be allowed to keep its NAIC accreditation. The Illinois Insurance Department's status is "a pending matter," an NAIC spokesman said. The NAIC's accreditation program requires that insurance departments have adequate statutory and administrative authority and resources to regulate insurers. The Illinois department has recently lost many regulators with financial examination experience, in part because of early retirement packages offered in conjunction with a new gubernatorial administration.



PHOTO: REUTERS

Sen. Frist

### Frist moving ahead with class action bill

Senate Majority Leader Bill Frist, R-Tenn., plans to move a class action reform bill to the Senate floor within the next few weeks,

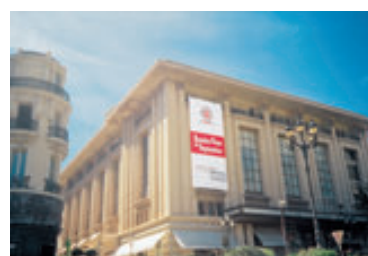
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NEWSPAPER

## Spotlight

### RENDEZ-VOUS REPORT

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# Rulings could complicate subrogations in 5th Circuit

By **DAVE LENCKUS**

**NEW ORLEANS**—Court rulings in an ongoing claim payment dispute between two insurers could discourage future claim settlements and complicate subrogations in the nation's 5th Circuit, regardless how the case is ultimately resolved, according to legal experts.

In the case, a district court judge and a federal appellate court panel have mistakenly relied on a legal doctrine—known as the voluntary payment doctrine—that is intended to bar debtors from trying to recover any payments they have made voluntarily to creditors, some legal experts say.

Neither insurer in the dispute is a debtor to the other. But one insurer, Wausau Insurance Cos. of Wausau, Wis., is attempting to invoke the

doctrine to stop the other from pressing Wausau for a larger contribution toward a bodily injury and premises liability claim that the insurers jointly settled.

The second insurer, Genesis Insurance Co., contends that it had an oral agreement with Wausau to sort out their exact liability for the claim at a later date. Such an agreement would trump the voluntary payment doctrine, argues Stamford, Conn.-based Genesis, whose ultimate parent is Berkshire Hathaway Inc.

"This is a very unusual application of the voluntary payment doctrine," observed Joseph M. Perillo, a professor at Fordham University Law School in New York. "It's not only unusual but also improper," Mr. Perillo asserted.

"This is a quasi-contractual claim

by insurance company A against insurance company B. A didn't pay B" originally, so "the voluntary payment doctrine doesn't apply" in this kind of case, Mr. Perillo said.

Policyholder attorney Finley T. Harkham, who was not involved in the case, agrees. "It just doesn't seem like the concept should apply at all," said Mr. Harkham, a partner with Anderson Kill & Olick P.C. of New York.

Mr. Harkham said the courts in the case do not understand that Genesis, like any CGL insurer, is contractually obligated to contribute to any reasonable settlement that its policyholder approves with the insurer's consent.

"The insurer's liability is to the policyholder," Mr. Harkham said.

See **RULINGS**/page 32

## Impact on competition debated

# Caremark, AdvancePCS deal would join two major PBMs

By **MICHAEL PRINCE**

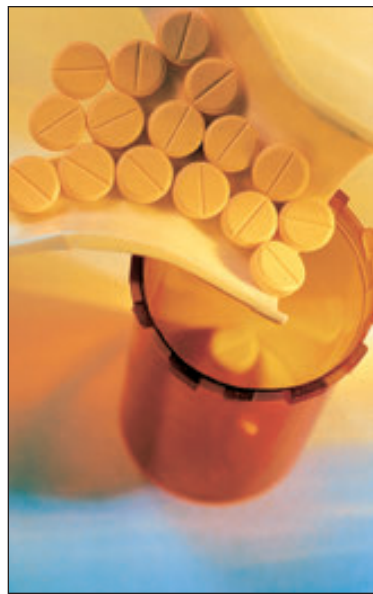
The proposed merger of two leading prescription benefit managers is likely to benefit the companies, though the impact on employers remains unclear.

Caremark Rx Inc.'s proposed purchase of rival AdvancePCS would combine the fourth- and second-largest U.S. PBMs, respectively.

Opinions differ on whether the loss of a major player in the PBM marketplace will hurt employers by significantly reducing competition. In addition, observers are divided on whether the combined company's larger size will enable it to obtain better prices from drug makers.

What is certain, though, is that the combined company will be big.

The deal "creates a behemoth in



the space," said Todd Gibson, director of the PBM practice for Princeton Consultants Inc., a PBM consulting firm in New York. The combined company, which will keep the Caremark name, will serve approximately 95 million people.

In 2002, Caremark reported PBM revenues of \$6.80 billion, while AdvancePCS' PBM revenues were about \$13.10 billion. The largest PBM in 2002, Franklin Lakes, N.J.-based Medco Health Solutions Inc., had PBM revenues of \$33.0 billion (*BI*, Feb. 24).

Under the terms of the deal, which is valued at about \$6 billion, shareholders of Irving, Texas-based AdvancePCS would receive cash as well as 2.15 shares of Caremark

See **DEAL**/page 31



PHOTO: GETTY

WorldCom Inc. has been embroiled in legal disputes over its D&O coverage since last year.

# AEGIS filing argues Chapter 11 plan limits WorldCom D&O cover

By **DOUGLAS McLEOD**

**NEW YORK**—WorldCom Inc.'s proposed bankruptcy reorganization plan is raising a new round of arguments in the company's longstanding legal feud with its excess directors and officers liability insurers.

One of those insurers, Bermuda-based Associated Electric & Gas Insurance Services Ltd., contends in its latest court filing that the terms of the reorganization plan effectively eliminate the liability of most of the excess insurers for any WorldCom D&O claims.

The filing, in U.S. Bankruptcy Court in New York, seeks to dismiss a declaratory judgment action that WorldCom filed in January against AEGIS and five other excess insurers that participated on its \$100 million D&O and \$50 million fiduciary liability programs.

The Clinton, Miss.-based telecom giant sued the excess insurers after they refused to join WorldCom's November 2002

settlement with its primary insurer, National Union Fire Insurance Co. of Pittsburgh, Pa. Under that settlement, National Union and its parent, American International Group Inc., agreed to continue coverage for "non-culpable" WorldCom officials—those not involved in alleged wrongdoing at the company—while WorldCom agreed to forego its entity coverage under the policies.

The excess insurers have maintained that their policies are void from inception because WorldCom obtained them using fraudulent financial statements.

Two of the insurers—CNA Financial Corp.'s Continental Casualty Co. unit and the Twin City Fire Insurance Co. unit of Hartford Financial Services Group Inc.—sued more than a dozen WorldCom officials in U.S. District Court in New York earlier this year to rescind their D&O and fiduciary liability coverage. Last month, though, U.S. Bankruptcy Judge Arthur J. Gon-

See **WORLD.COM**/page 34

## Inside Business Insurance

### Tumult in industry delaying market turn

Continued turbulence in the insurance industry is likely to delay the arrival of a soft market. **Page 4**

### U.K. court dismisses culture of blame

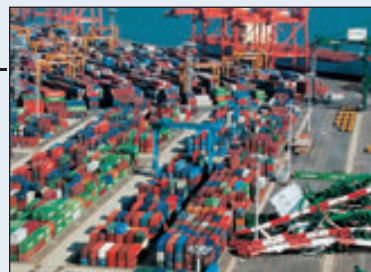
Paul Winston says a recent U.K. House of Lords ruling provides an eloquent defense of personal responsibility. **Page 6**

### Time to look at reform of solvency regulation

A recent report underscores the need for improvements in solvency regulation, one of this week's editorials says. **Page 8**

### Insurers must avoid underpricing: Prettejohn

The chief of Lloyd's of London says insurers must be willing to walk away from underpriced risks. **Page 29**



### Typhoon Maemi lashes South Korea

Typhoon Maemi, which swept through parts of South Korea last week, could cost insurers more than \$500 million. **Page 29**

## Online

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

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

• New **Opinion Poll** for readers: What steps should the government take to shore up the Pension Benefit Guaranty Corp.?

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### REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

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# Eagleburger hits Holocaust disclosure laws

By MARK A. HOFMANN

**WASHINGTON**—Forcing European insurance companies that wrote life insurance in the early 20th century to provide the names of all of their policyholders as a condition of doing business in the United States would do nothing to settle the claims of Holocaust victims and their survivors, according to a former U.S. secretary of state.

In fact, two bills that would give states that right would “work in precisely the opposite direction,” contends Lawrence Eagleburger, who was secretary of state under the first President Bush and is the current chairman of the International Commission on Holocaust Era Insurance Claims. Mr. Eagle-

burger offered his testimony before the House of Representative’s Government Reform Committee last week as the panel considered the impact of the Supreme Court’s decision in *American Insurance Assn. vs. Garamendi* on resolving Holocaust-era insurance claims.

The June 23 decision in *AIA vs. Garamendi* overturned California’s Holocaust Victims Insurance Relief Act. The act authorized the state to suspend the license of any insurance company operating in California if it failed to publish information about Holocaust-era policies. The high court ruled 5-4 that California had no right to interfere with the federal government’s conduct of foreign policy. U.S. policy under both Presidents Clinton and George

W. Bush has been that the ICHEIC serves as the sole remedy for Holocaust-era insurance claims.

ICHEIC was designed to encourage insurance companies to voluntarily disclose information about policies and to pay claims.



Mr. Eagleburger

But the commission has come under fire for the slowness of its process.

Rep. Tom Davis, R-Va., chairman

of the House Government Reform Committee, said during last week’s hearing that the court ruling “left open the possibility of congressional action.”

Both Reps. Henry Waxman, D-Calif., and Mark Foley, R-Fla., have introduced bills that would force insurers operating in the United States to disclose information about policies they—or their European affiliates—wrote in Europe between 1920 and 1945.

Congressional anger with the insurers involved was more than evident during the hearing. Among the terms used by lawmakers to describe insurer conduct in Holocaust claims handling were “cynical,” “reprehensible” and “deplorable.” Rep. Adam Schiff, D-Calif., charged

that some insurers still demand that claimants produce “nonexistent documents.”

Mr. Eagleburger countered that, “generally speaking,” the insurers involved have grown more cooperative with ICHEIC. He noted that the ICHEIC process costs claimants nothing to use and sets a “relaxed standard of proof” for claims.

The former secretary of state said that, as much as he understands the purpose of the two bills, “I do not understand how they will solve the problem.” In fact, Mr. Eagleburger said, requiring insurers to publish the names of millions of policyholders who may or may not have been Holocaust victims or have any tie to the Holocaust could make the process even slower.

## NAIC awaiting GAO report, forms plan to harmonize state regulations

By MEG FLETCHER

**CHICAGO**—The National Assn. of Insurance Commissioners is busy documenting its accomplishments and marshalling its supporters as it prepares to defend state-based insurance regu-

lation from congressional and industry critics who seek federal authority to reduce barriers among states.

adopted during the NAIC’s quarterly meeting in Chicago last week. The new plan signals the NAIC’s “ongoing commitment to modernizing and harmonizing the state-based system of insurance regulation,” according to an NAIC statement. The plan builds on the NAIC’s original “Statement of Intent—The Future of Insurance Regu-

**The plan demonstrates the commitment of more than 20 new insurance commissioners, says NAIC President Mike Pickens.**



lation from congressional and industry critics who seek federal authority to reduce barriers among states.

Knowing that a federal General Accounting Office report about market conduct is due out soon, state regulators adopted a broad new plan to streamline insurance regulation among states. They also signed a resolution supporting state regulation with two groups of state lawmakers—the National Conference of Insurance Legislators and the National Conference of State Legislatures.

In addition, the NAIC also is planning a “fly-in” trip to Washington soon to highlight for Congress the progress state regulators have made.

The cornerstone of the NAIC’s effort is a nine-page document, entitled “A Reinforced Commitment: Insurance Regulatory Modernization Action Plan,” which its members unanimously

“This next step is necessary and appropriate now that the major goals and objectives of the Statement of Intent have been achieved,” Mr. Pickens said.

One of the chief goals of the 2000 statement was to streamline licensing for producers by focusing on multistate reciprocity. Enough states signed on to that proposal for the NAIC to beat the November 2002 deadline for federal authorities to create the National Assn. of Registered Agents and Brokers (*BI*, Dec. 20, 1999).

The new plan contains a declaration of principles and con-

See NAIC/page 32

### 2003 NAPSLO Annual Convention

## Problems pressure insurers to maintain hard market

By ROBERTO CENICEROS

**SAN DIEGO**—The insurance industry remains tumultuous as insurers grapple with a host of problems.

Among the factors causing turbulence in the market are escalating tort costs, reserve deficiencies, reinsurance market difficulties and weakened balance sheets, according to a panel of insurer executives.

In addition, continued dismal investment returns and the threat of terrorism remain key concerns, the executives said at a discussion held at the annual meeting of the National Assn. of Professional Surplus Lines Offices Ltd.

As a result of these factors, a return to soft market conditions is unlikely in the near future.

“Long story short—in my view, we are not moving today from a hard market to a soft market,” said Jeff Post, president and chief executive officer for Fireman’s Fund Insurance Co. in Novato, Calif. “We are moving today from a hard market to a confused market, and it’s a confused market because we still have a lot of things we have to fix as an industry.”

Reserve adequacy is one problem

**NAPSLO coverage continues on page 26**

area, Mr. Post said during the panel discussion.

According to rating agency A.M. Best Co., insurers providing coverages aside from environmental and asbestos are underreserved by 10%, Mr. Post said. And environmental and asbestos insurers are underreserved by a further 10%, he noted.

“That clearly means this industry today, along with other problems, has overstated surplus,” Mr. Post said. “That is why companies continue to get downgraded, because, at the end of the day, they still have unrealized losses that have not yet flowed through their income statements and balance sheets.”

Various reports place property/casualty reserve deficiencies at \$40

See NAPSLO/page 26

## Industry influences discussed

### Forum panelists review forces affecting the market

By RODD ZOLKOS

**CHICAGO**—Although insurance is formally regulated at the state level, various other forces are having a growing impact on shaping the industry, according to one group of insurance industry experts.

Speaking at the 2003 Insurance Forum last week in Chicago, speakers on several panels discussed the various influences on the industry.

In Washington, a proposed optional federal charter for insurers is drawing considerable attention. But the federal government actually began moving into a greater role in insurance with the 1999 Gramm-Leach-Bliley Act, according to Charles T. Richardson, a partner with the Baker & Daniels law firm in Washington.

“GLB put in motion forces for change in the way insurance regula-

tion is done and by whom,” he said.

“Over the past 24 months, there has been increasing attention given to an alternative federal facility for regulating insurance,” Mr. Richardson said.

“Congress has now gotten into the insurance business in a big way,” Mr. Richardson said. “Congress’ interest is not a passing fancy.”

And, while terrorism and a federal insurance charter are not directly linked, some advocates of federal chartering argue that the Terrorism Risk Insurance Act presents a good test case for federal regulation of insurance, he said.

Nathaniel S. Shapo, a partner with the Sonnenschein, Nath & Rosenthal L.L.P. law firm in Chicago, said he thinks it will be some time before there is comprehensive

federal oversight of insurance, because the Senate isn’t as interested in insurance as is the House of Representatives.

“Politically, we’re looking at a long, drawn out process here,” said Mr. Shapo, the former insurance commissioner of Illinois. “There’s no way, in my opinion, that a federal regulator can get passed in the next few years.”

“I can’t see what the benefits are going to be of having federal regulation of this area,” said J. Anthony Clark, director of the Illinois Department of Insurance. The National Assn. of Insurance Commissioners is seeking to address insurance company concerns over state regulatory inefficiencies, he said, citing an NAIC pilot program to allow multistate filings for insurance products. “Even though it’s a test, I

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## Paul Winston

# Laws can't protect you from yourself

Anyone who cares about the struggle to balance personal responsibility with public liability should read a recent decision by the United Kingdom's House of Lords.

The unanimous opinion, handed down July 31, makes clear that people must bear the consequences of engaging in risky behavior. The opinion argues that it would be undesirable for society to try to make the world safe from reckless behavior. Furthermore, it warns of the dangers to society of embracing litigiousness, as embodied in the case before it.

*"The pursuit of an unrestrained culture of blame and compensation has many evil consequences and one is certainly the interference with the liberty of the citizen,"* a concurring opinion reads.

The ruling, *Tomlinson vs. Congleton Borough and others*, involved a man who sought to hold local authorities liable for a terrible injury he sustained while attempting to dive in a shallow lake at a public park that had prohibited swimming for many years. While visiting the park, the man spontaneously decided on a hot summer day to cool off by running into the lake. He ran into the water and, while the water was at mid-thigh level, made a running dive and struck his head on the sandy bottom, breaking his neck. He was rendered a tetraplegic by the accident.

Mr. Tomlinson then sued the local authorities, arguing they owed him a duty of care to provide for the safety of visitors on their park premises. At trial, he admitted that he was a frequent visitor to the lake and was aware of the no-swimming policy, but held that even as a trespasser, they should have protected him from himself.

While a trial court had ruled against him, the Court of Appeal upheld his claim under its reading of the relevant British laws governing the liability of landowners.

The Law Lords unanimously overturned the Court of Appeals. After an exhaustive review of the duties owed under British law and a consideration of numerous other precedents—including an Illinois court decision—the lords found that there was no liability because:

- Swimming was clearly banned in the park through posted signs and by the actions of park rangers.

*"What more was it reasonable to expect of the defendants beyond putting up the notices and issuing warnings and prohibitions?"*

- The dangers of diving in shallow water should be obvious to all and not require any special protection.

*"Mr. Tomlinson...engaged in an activity which had inherent risk. The risk was that he might not execute his dive properly and so sustain injury. Likewise, a person who goes mountaineering incurs the risk that he might stumble or misjudge where to put his weight. In neither case can the risk be attributed to the state of the premises. Otherwise, any premises can be said to be dangerous to someone who chooses to use them for some dangerous activity."*

- Just because the potential injury is severe (e.g., a broken

neck) does not mean that there is a greater duty to protect the public.

*"It is a fallacy to say that because drowning is a serious matter that there is therefore a serious risk of drowning."*

- Once Mr. Tomlinson had violated the park's rules, he became a trespasser.

*"When you invite a person into your house to use the staircase, you do not invite him to slide down the banisters."*

- The park did not owe him a duty to discourage him from trespassing.

*"It is not, and should never be, the policy of the law to require the protection of the foolhardy or reckless few to deprive, or interfere with, the enjoyment by the remainder of society of the liberties and amenities to which they are rightly entitled. Does the law require that all trees be cut down because some youths may climb them and fall? Does the law require the coast line and other beauty spots to be lined with warning notices? Does the law require that attractive water side picnic spots be destroyed because of a few foolhardy individuals who choose to ignore warning notices and indulge in activities dangerous only to themselves? The answer to all these questions is, of course, no."*

In conclusion, one of the Law Lords' concurring opinions stated: *"Of course there is some risk of accidents arising out of the joie de vivre of the young. But that is no reason for imposing a dull and grey safety regime on everyone."*

The full decision can be found at [www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030731/tomlin-1.htm](http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030731/tomlin-1.htm).

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**Paul Winston**

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## Editorial

# Beware reinsurer insecurity

**T**HE RATING DOWNGRADES of several major reinsurance companies in recent months should be of as much concern to risk managers as it is to the insurers that buy coverage from reinsurers.

Although risk managers often do not have direct contact with reinsurers, it is important to remember that the reinsurers bear the ultimate risk of most commercial insurance programs. And, as several recent insurer insolvencies have shown, the risk of uncollectible reinsurance directly affects primary carriers' own claims paying ability.

Furthermore, as reinsurance companies are downgraded, the perceived reduction in the financial security they provide could also lead to downgrades among the insurance companies that rely on them.

That can directly affect risk managers' own programs.

Most of the recent downgrades have left the affected reinsurers within the A range of ratings, which is generally viewed as secure. But unless all of a risk manager's insurers are reinsured by Berkshire Hathaway Inc. units, which is the only mainstream reinsurer that retains the highest AAA rating, a risk manager can no longer be assured that his or her liabilities are backed by unimpeachable security.

Some of the downgraded reinsurers have fought back, arguing, often convincingly, that the rating agency models are too inflexible and do not take into account the variables among different reinsurers. Nevertheless, the rating agencies still provide consistency and a well-accept-

ed yardstick to measure both reinsurers' and insurers' financial strength and claims paying ability.

Complicating the matter further is a provision currently being inserted in some reinsurance contracts that allows for the contracts to be commuted if the reinsurer is downgraded. While this provision gives the cedent an exit in the face of financial insecurity, it can also open the way for instability and confusion in the middle of a contract period.

The only thing certain amid all this change is that both insurers and risk managers must increasingly examine the security of the organizations that assume their risks. Merely checking a rating or accepting a broker's assurance will not be enough.

Risk managers will have to develop a better understanding of the

concerns driving rating agency actions, more closely examine their insurers' financial health and reinsurance collectibles and ask tough questions of their underwriters.

Reinsurers also should be scrutinized by risk managers as they assess just how secure are the risk bearers for all their exposures.

While few buyers can carry out a more-thorough analysis of insurer and reinsurer finances than can the rating agencies, relying on a letter rating alone as proof of security is not enough.

Of course, the rating agencies provide a valuable service that should not be disregarded, but risk managers themselves must strive to find their own comfort level with their risk carriers independently from the rating agencies.

# It's time to review insolvency regs

**D**ON'T SAY you weren't warned.

A recent report prepared by the respected analyst Stewart Economics Inc. for the Council of Insurance Agents & Brokers predicts that there will be a "lot of exits" among property/casualty insurers in the next few years. Given the number of exits that have already occurred in the past few years, taking some household names out of the market, the Stewart warning deserves to be taken seriously by risk managers.

The report makes clear that not

all of the departures will be called insolvencies, but, even given that caveat, the questions the report raises about how regulators handle insolvencies ought to be considered before any rush to the exits begins.

The Stewart report holds that the traditional regulatory approach of keeping failing insurers operating as long as possible is, in fact, counterproductive. While doing so may once have made some economic sense in a cartelized market, it does not make sense in the current competitive marketplace, according to the Stewart report.

Indeed, keeping a company on life support may actually make a bad situation worse, the report contends. Any financial cushions that the failing company might have are exhausted. Policyholders can go unpaid during the deathwatch, and the final result is most often the same as expected when the company grew so shaky it sought protection—dissolution.

The report makes no bones about it that changing longstanding regulatory practice isn't going to be easy. But, at minimum, the report should spur risk managers, insurers,

producers and regulators to think—and think hard—about how solvency regulation can be improved.

How best to accomplish this should be the subject of honest, vigorous debate, debate that won't be resolved quickly. What should not be subject to debate, though, is that such examination should begin in earnest, and begin soon. Even if the dire predictions of the Stewart report don't come to pass exactly as expected, everyone interested in the solvency issue should take the report as a warning that they can ignore only at their own peril.

## Schillerstrom



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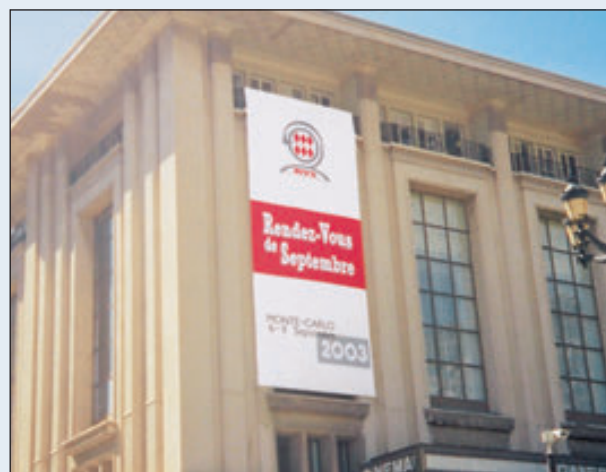
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## Spotlight

## Rendez-Vous Report

Spotlight editors: Gavin Souter and Sarah Veysey



PHOTOS: SARAH VEYSEY

About 2,500 people attended the 47th annual Rendez-Vous de Septembre in Monte Carlo, Monaco. The meeting, which marks the traditional beginning of the year-end renewal season, has little formal structure. Instead, reinsurers, brokers, cedents and others hold meetings in the cafes and hotel lobbies throughout the city.

## 2003 Rendez-Vous de Septembre

## Downgrades unlikely to affect buyer behavior

By GAVIN SOUTER and SARAH VEYSEY

**MONTE CARLO, Monaco**—The slew of downgrades of major reinsurers over the past several months should not drastically alter reinsurance buying habits, but it could lead to changes in the way both reinsurers and cedents view reinsurer security.

Reinsurance buyers will not end longstanding relationships on the basis of a downgrade, but the rating actions could still lead to some opportunities for more recently established reinsurers to grow their business, reinsurers and brokers say.

In addition, established reinsurers may have to curb their writings to maintain their ratings, and cedents may seek to diversify their reinsurance placements as a result of the

downgrades, according to executives meeting at the Rendez-Vous de Septembre in Monte Carlo, Monaco.

The Rendez-Vous meeting was preceded by some significant downgrades involving well-established reinsurers. Among the rating actions were:

- Munich Reinsurance Co. of Munich, Germany, which was downgraded by Standard & Poor's Corp. to A+ from AA- in August and to A+ from A++ by A.M. Best Co.
- Employers Reinsurance Corp. of Overland Park, Kan., downgraded by S&P to A+ from AA- in September.
- PartnerRe Ltd. of Pembroke, Bermuda, downgraded by S&P to AA- from AA in September.
- SCOR S.A. of Paris, downgraded to BBB+

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## 2003 Rendez-Vous de Septembre

## Renewal period to see more moderation

By GAVIN SOUTER and SARAH VEYSEY

**MONTE CARLO, Monaco**—Property reinsurance rates could come down during the year-end renewal season, but casualty rates will continue climbing into 2004.

An increase in capacity eager to write short-tail lines and a lack of major catastrophes over the past two years should at least halt increases if not drive down rates for property risks, according to reinsurers and brokers meeting at the Rendez-Vous de Septembre.

But, reinsurers caution, a significant loss over the next several months could dash any hopes of relief from the upward drive in rates that has pervaded most of the reinsurance market since the Sept. 11, 2001, terrorist attacks.

As they gathered in Monte Carlo, Monaco, for the annual meeting that traditionally marks the start of the renewal season, reinsurers were still seeking loss estimates from Hurricane Fabian in Bermuda and watching as Hurricane Isabel crossed the Atlantic, adding an element of uncertainty to the upcoming property renewals.

The direction of casualty rates is much more predictable. Continued problems with long-tail losses, depleted reserves and concerns over the tort environment should ensure that rates for difficult lines such as directors and officers liability and errors and omissions will continue to increase, reinsurers and brokers say. Yet, even in those lines, the rate of increase may moderate, they said.

Reinsurers are "being quite cagey" about the Jan. 1, 2004, renewals, said John Pelly, chairman and chief executive officer of Willis Re, a unit of Willis Group Ltd. in London. But, overall, the market will likely remain firm, he said.

"That will benefit everyone—even the direct clients—because volatility isn't good" for insurance buyers, either, he said. "The industry does need to make some money."

"We feel, for many lines, 2003 will probably cap the top of the cycle," said Stephen Searby, a credit analyst at Standard & Poor's Corp. in London. "There will be some softening of shorter-tail lines. We will see continued rate increases on long-tail liability and maybe marine."

And, barring a major catastrophe, 2004 should be more profitable for reinsurers than this year has been.

According to Lloyd's of London Chairman Lord Peter Levene, "rate increases will not continue forever. Evidence is emerging of capacity returning in certain lines, which is (putting) pressure on rating levels," he said.

"Overall, the market is pretty stable," said Salvatore Zaffino, chairman and CEO of Guy

Carpenter &amp; Co. Inc., a unit of Marsh &amp; McLennan Cos. Inc. in New York.

## Property

Rates for property catastrophe reinsurance are moderating due to the absence of severe catastrophe losses over the past two years, Mr. Zaffino said. "The rates are leveling off or coming down a little bit," he said.

Currently, the supply-and-demand equation for property reinsurance capacity is reasonably balanced, he said. "There is not an oversupply of capacity, but there is not a great shortage, either," he said.

Consequently, rate reductions will likely not exceed 10% at Jan. 1 renewals, Mr. Zaffino said.

The rates being charged for property catastrophe reinsurance are settling at "historically attractive" levels, said Kenneth LeStrange, CEO of Endurance Specialty Insurance Ltd. in Hamilton, Bermuda.

**'We feel, for many lines, 2003 will probably cap the top of the cycle...There will be some softening of shorter-tail lines. We will see continued rate increases on long-tail liability and maybe marine.'**

Stephen Searby  
Standard & Poor's Corp.

Property catastrophe rates will likely decrease by 5% to 10% at year-end, said Grahame Chilton, chief executive of Benfield Group Ltd. in London.

But because most reinsurers use similar catastrophe models and face similar expectations from their investors, there should not be a great variation in pricing, as long as reinsurers do not push for dramatic increases in market share, he said.

The use of similar models should keep catastrophe rates stable and result in a 5% to 10% decrease at year-end, said Dwight Evans, president of Arch Reinsurance Ltd. (Bermuda) in Hamilton, Bermuda.

Despite pressure to reduce property catastrophe rates, the price should be based on technical ratings rather than on market sentiment, said James P. Bryce, president and CEO of IPCRe Ltd. in Pembroke, Bermuda.

"People say, 'What is the direction of rates?' and I say, 'Give me your exposures and experience and I'll give you a rate,'" he said.

And although catastrophe losses have been moderate over the past two years, year-end re-

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# Rendez-vous: Renewal period sees more moderation

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newals still could be affected by catastrophe losses, Mr. Bryce said.

Reinsurance losses from Hurricane Fabian could be sizeable, and losses from Hurricane Isabel, which was still in the middle of the Atlantic at the time of the Rendez-Vous, are unknown, he said.

Deductibles for windstorm risks in Bermuda are likely to increase as a result of Hurricane Fabian, said Hans Rohlf, managing director and chief underwriting officer-North America for Hannover Reinsurance Co. of Hannover, Germany.

Locally, deductibles were too low prior to the hurricane and are likely to increase to 2% to 3% of insured values from the current 1%, he said.

But even though losses from Fabian will be "substantial," they won't be large enough to turn the property market, Mr. Rohlf said.

Although property rates are beginning to plateau, the softening could be checked by the need for reinsurers to meet investors' profit expectations, said Stephen Cane, CEO of Alea London.

"Investors have not had a good return (from the reinsurance industry) for many years," he said.

"There is pressure on CEOs to produce results, and there is no shield in the form of investment in-

come," Mr. Cane said.

Reinsurers should be able to increase their market share without drastically reducing prices, due to increased demand for insurance and reinsurance, Mr. Chilton said.

"Insurers' balance sheets have been eroded by the equity markets, so they need more reinsurance," he said.

And insured values are increasing at a higher rate than general economic growth, so insurance premiums should grow, too, Mr. Chilton said.

In addition, larger insurers are buying bigger property limits, Mr. Zaffino said.

"They are being advised by the models they use that they should have more coverage," he said.

Property reinsurance rates should not see any sharp falls, agreed Henry C.V. Keeling, CEO of XL Re, a unit of XL Capital Ltd. in London.

"Some people are trying to talk the market down a bit, but I think they might be being overly optimistic," he said.

Property reinsurance rates should remain steady or rise slightly, said Nikolaus von Bomhard, a member of the board of management at Munich Reinsurance Co. in Munich, Germany.

A few areas may see modest de-

creases—such as property risks in the Caribbean—but in general rates should remain stable, he said.

"In the Caribbean, there is a leveling of property catastrophe rates," said Patrick Cerceau, chief underwriting officer-overseas for Converium Ltd. in Zurich. The decline is largely due the injection of capacity in Bermuda over the past two years, he said.

Noncatastrophe property insurance rates have begun to soften, and reinsurance accounts with good experience will likely see some rate reductions, too, said Mr. Evans of Arch.

Marine reinsurance rates are also softening, said Alistair Lockhart-Smith, head of the marine reinsurance division at Jardine Lloyd Thompson Group P.L.C. in London.

"Rates are on the way down," Mr. Lockhart-Smith said of marine insurance. "The pressure is going to be on (at the Jan. 1 renewal), and there is new capital in the market," he said. "We won't see a freefall of rates, but rates are falling at the moment."

Although there are fewer players in the market than in previous downturns, there still are too many companies chasing the same profitable business, he said.

"Buyers and sellers both expect to

see rates fall in most short-tail classes at the Jan. 1 renewal," said Ross McKenzie, chairman and CEO of Aon Re International in London.

It is a question of "who blinks first," he said, noting that reinsurers are under pressure from investors to sustain rate increases. "If the new capacity breaks ranks with the old capacity, then we could see rates fall," he said.

"The soft market has started in certain areas of the United States and London markets," said Gilles Meyer, CEO of Alea Europe Ltd. He predicted that the whole market is likely to turn in 2005, depending on the performance of the investment markets.

Indeed, property, energy and aviation rates are already seeing some softening, according to David Margrett, CEO of London-based brokerage Heath Lambert Group.

And even in some liability lines "where perhaps you wouldn't expect it," there are signs of rates beginning to fall, noted Callum Stewart, a managing director at Heath Lambert.

## Casualty

Most casualty rates will continue to rise at Jan. 1 renewals, according to Mr. Cane of Alea. Increases, he

said, will depend on "how stressed the classes are—in some classes, it will be spectacular."

Indeed, casualty rates are still increasing in most areas, Mr. Zaffino said.

Casualty losses, in general, have been a lot worse than expected over the past several years, reserves are generally inadequate and investment income has slumped, he said. Consequently, reinsurers are still insisting on significant rate increases.

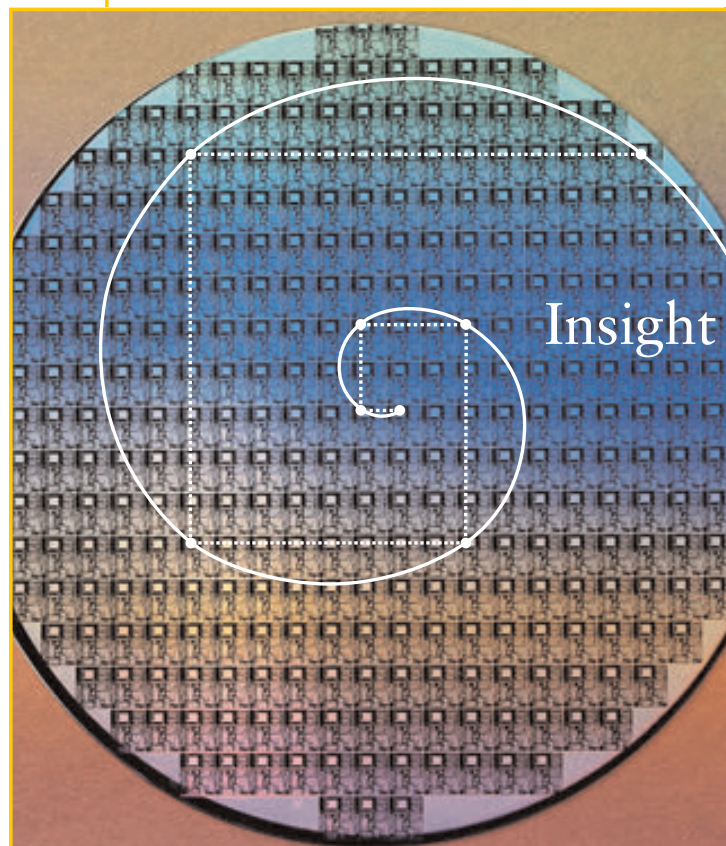
Professional liability lines, in particular, will continue to experience dramatic rate increases, Mr. Zaffino said.

"It is a low interest-rate environment, and at a time when interest rates are low, the underwriter is particularly exposed," said John Coomber, CEO of Swiss Reinsurance Co. in Zurich. "Investment income isn't going to come to the rescue of bad underwriting," Mr. Coomber said.

Casualty rates are "firm and increasing," noted Tim Carroll, president and CEO at GE Reinsurance Corp. in Barrington, Ill.

Professional liability, D&O and E&O coverages remain tough to place, and rates still are going up, he said.

D&O rates are increasing significantly. See **RENDEZ-VOUS**/page 14



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# Rendez-vous: Casualty rates likely to continue rising

Continued from page 12

cantly, said Mr. Evans of Arch. In the first half of 2003, rates increased by between 30% and 50%, and they should increase by at least 25% at year-end renewals, he said.

"We may see a leveling off in the middle of next year, but it should still be a very good market to be in through the end of next year," Mr. Evans said.

Casualty rates will continue rising, agreed Mr. Keeling of XL Re. Overall, casualty rates increased about 25% at July 1, and more difficult lines saw increases of 50% or more, he noted. Similar increases

should be expected at year-end renewals, he said.

The rate increases will hold steady, in part, due to the continued limitation in casualty capacity, Mr. Keeling said. While several new reinsurers have helped replenish some of the property capacity that left the market after the Sept. 11 terrorist attacks, those new reinsurers have been less successful in winning casualty business, he said.

Most cedents seek to place casualty business with reinsurers that have a rating of AA or higher, due to the long-term nature of the claims, Mr. Keeling said.

Indeed, there are fewer reinsurers writing casualty risks, and the area remains challenging for reinsurers and cedents, said Mr. von Bomhard of Munich Re.

Reinsurers, in addition to increasing rates, are adding exclusions to liability coverages, he said.

For example, Munich Re, which already had asbestos exclusions in many of its policies, now is including asbestos exclusions in all of its policies, Mr. von Bomhard said. Munich Re also is limiting the liability for its new auto liability policies and has imposed several exclusions in other liability coverages, he said.

But reinsurers aren't the only ones getting tougher.

Cedents are seeking to include rating-downgrade provisions in casualty reinsurance contracts, allowing them to commute the coverage if a reinsurer is downgraded, said Mr. Evans of Arch.

"They are not in all contracts, but it is part of the growing concerns about security," he said.

## Excess-of-loss

Most new reinsurers are broker-market reinsurers, and that will likely lead to an increase in the purchase

of excess-of-loss reinsurance, said Mr. Chilton. Pro rata reinsurance is dominated by large direct reinsurers.

GE Reinsurance is looking to write more excess-of-loss business, said Mr. Carroll. "In proportional business, you are following the pricing of the ceding insurer, but in excess-of-loss, you are pricing the product. And the reinsurance price is not directly connected to the underlying portfolio," he said.

Insurers with profitable portfolios are increasingly willing to retain more of their risks in order to achieve revenue growth, and that should lead to some insurers changing from proportional reinsurance to excess-of-loss coverages, said Mr. Evans of Arch.

Proportional business is still good business if a company has the ex-

**Casualty rates will continue rising, according to Henry C.V. Keeling of XL Re. Overall, casualty rates increased about 25% at July 1, and more-difficult lines saw increases of 50% or more, he notes. Similar increases should be expected at year-end renewals, Mr. Keeling says.**

pertise and resources to write it, said Mr. von Bomhard of Munich Re.

Reinsurers that have sufficient resources and close relationships with cedents can control their proportional business effectively, he said.

"If you have a close relationship with the company, you know where you stand," Mr. von Bomhard said. "We do not have a preference for proportional or nonproportional. If it makes sense, we'll do it."

## New approaches

Some cedents are increasingly looking at nontraditional coverages such as finite reinsurance, some executives say.

The nontraditional market is something that buyers are really starting to consider now, noted John Berger, CEO of Chubb Corp. unit Chubb Re in Bernardville, N.J. "People are looking at nontraditional ways to transfer risks—there are real deals now," he said.

In particular, U.S. cedents are increasingly looking for more structured reinsurance programs such as aggregate stop-loss coverage and finite risk coverage to cover reserve developments, said Rod Fox, chief executive of Benfield's U.S. operations.

In addition to examining alternative structures, many reinsurance buyers are seeking to increase their retentions in response to the increased prices over the past several years, said Mr. Berger.

"Companies are trying to work out how they can buy less reinsurance; they want to retain more," he said.

Gilles Meyer, chief executive officer  
See **RENDEZ-VOUS**/page 16

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# Rendez-vous: Some rates falling

Continued from page 14

cer of Alea Europe Ltd., said that such efforts are a good way to put pressure on reinsurers to reduce rates, he said. "So there will be competition," he said.

Olivier du Passage, chief executive officer of Aon Re France and chairman of Aon Re Europe, predicted that many cedents would take on greater retentions at the Jan. 1 renewal.

But although retentions are rising in many cases, the level of the increase varies significantly from cedent to cedent, said Mr. Zaffino of Guy Carpenter.

## Reducing volatility

While changes continue in the reinsurance market, big swings in price should be resisted, according to some executives.

The reinsurance cycle should be made less volatile, said Mr. von Bomhard of Munich Re. Investors in reinsurance companies and reinsurance underwriters are less likely to accept volatile results, so cyclical changes in reinsurance rates should be less pronounced, he said.

"We should forget about the cycle and try to maintain the right

price for the risk and then see whether we have a cycle," Mr. von Bomhard said.

Prices will inevitably be affected by the availability of capacity, said Mr. Berger of Chubb Re.

"It is supply and demand. You can say whatever you like about rates going up, but it is supply and demand," he said.

"I think it'd be nice if the industry could accept the idea of stabilizing," said Michel Lies, head of the Europe division at Swiss Re. "We've tended to always think that the up-cycle is the beginning of the down-cycle."

2003 Rendez-Vous de Septembre

# Few insurers ceding terrorism coverage

By GAVIN SOUTER

**MONTE CARLO, Monaco**—Reinsurers are finding few takers for the terrorism coverage that they have been offering both before and after the passage of the Terrorism Risk Insurance Act last year.

In large part, the price of the primary coverage is deemed too high by policyholders with properties in large cities and the coverage

is generally deemed unnecessary by policyholders that are outside of urban areas, reinsurers and brokers say.

Terrorism coverage, or the lack of it, was a major theme at last year's Rendez-Vous de Septembre in Monte Carlo, Monaco, as reinsurers and brokers grappled with the issue in the face of uncertainty over whether the U.S. government would provide a backstop for terrorism losses.

TRIA was finally passed in November 2002 (*BI*, Nov. 25, 2002), and reinsurers and insurers have been offering both TRIA and non-TRIA related coverage since then.

The uptake of reinsurance coverage for terrorism risks is "a total patchwork," said Salvatore Zaffino, chairman and chief executive officer of Guy Carpenter & Co. in New York.

In many cases, where there is a significant exposure, policyholders are not buying primary coverage because the price is prohibitive. In other cases, policyholders that have properties outside of major cities are not buying terrorism coverage because they do not believe that they face a significant exposure, Mr. Zaffino said.

Few policyholders are interested in terrorism coverage, agreed Kenneth J. LeStrange, CEO of Endurance Specialty Holdings Ltd. in Hamilton, Bermuda. Policyholders find the coverage expensive and banks often do not require its purchase as part of loan agreements, he said.

"People are not buying the cover, and you can't reinsure what's not insured," said James P. Bryce, president and CEO of IPCRe Ltd. in Pembroke, Bermuda.

And reinsurers and insurers are still refining the price of their terrorism coverage because they have little experience on which to base a price for the exposure, he said.

Arch Reinsurance Ltd. (Bermuda) has a book of terrorism reinsurance that has been profitable due to the lack of insured losses since Sept. 11, 2001, said Dwight Evans, president of the Hamilton, Bermuda-based reinsurer. The rates will likely soften next year, Mr. Evans predicted.

"Who knows what the right price is, but we still think there is an attractive margin in the business," he said.

And the demand for terrorism reinsurance may grow next year, as the retention levels under the TRIA program increase and insurers review their greater exposure, Mr. Evans said.

"We've written very few terrorism-specific coverages. We get asked to bring some terrorism coverage into traditional treaties, and we do that on a case-by-case basis," said Tim Carroll, president and CEO of GE Reinsurance Corp. in Barrington, Ill.

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# Ratings: Downgrades unlikely to affect buyer habits

Continued from page 10

from A- by S&P in July; and to B++ from A- by Best in September.

"We've been busy recently—the last year has been unprecedented in the number of rating actions that have taken place. In the last nine months alone there have been 11 downgrades in the reinsurance market," noted Stephen Searby, a credit analyst at Standard & Poor's Corp. in London.

However, he said, the "worst is probably behind us" in terms of reinsurer downgrades, he said.

Mr. Searby described 2002 as "the reinsurance industry's perfect

storm," because for many it combined a need to bolster reserves with the pressure of declining financial markets.

Despite the capital-raising efforts of reinsurers over the past two years, the combination of investment losses and growing liabilities has weakened the financial strength of the reinsurance industry as a whole, said Stuart Shipperlee, managing director-European operations at A.M. Best Co. in London.

"We don't think it's likely that the industry as a whole will recover to its former levels," he said.

Although the downgrades may

lead to some changes, they likely won't disrupt longstanding relationships between cedents and reinsurers, broker and reinsurer executives say.

Cedents will not accept or decline long-term business partners on the basis of a downgrade, said Grahame Chilton, chief executive of Benfield Group Ltd. in London.

So, most of the large reinsurers that have been downgraded will not lose much of their existing business as a result of the downgrades, he said.

"Ratings are important," said Salvatore Zaffino, chairman and CEO

of Guy Carpenter & Co. Inc., a unit of Marsh & McLennan Cos. Inc. in New York. "But if everybody is downgraded, people will look at it differently," he said.

The downgrade of Munich Re will not affect its ability to write business, said Nikolaus von Bomhard, a member of the board of management at the reinsurer. He noted that brokers, cedents and analysts have all supported that assessment.

And new business, including rating-sensitive U.S. casualty business, is still being offered to Munich Re, Mr. von Bomhard said.

"It will not affect the amount of business that we will write," he said.

ERC also should not lose business as a result of its downgrade, said Tim Carroll, Barrington, Ill.-based president of chief executive officer of GE Reinsurance, a unit of ERC. "We respect the rating agencies' view, but we disagree with it because we think it is backward-looking," said Mr. Carroll.

ERC is strongly reserved and capitalized and "from our point of view, the security of the company has never been better," he said.

So far, cedents still seem to be happy with the security that is offered by ERC despite the downgrade, Mr. Carroll said.

**'I don't think the companies that have been downgraded want to get back to AAA. The banking business has not been AAA for years, so why should the reinsurance world?'**

Henry C.V. Keeling  
XL Re

Other reinsurers agreed that well-established reinsurers should not lose a significant amount of business because of the downgrades.

"I don't expect a lot of business to leave Munich Re and American Re," said Hans Rohlf, managing director and chief underwriting officer-North America for Hannover Reinsurance Co. of Hannover, Germany. "They are still solid companies, and their clients know that," he said.

On the other hand, medium-sized companies that have been downgraded are losing business in the current market, and Hannover Re is benefitting from that, Mr. Rohlf said.

The downgrades will likely prompt a change in attitude by reinsurers over what level of rating they should strive to maintain, several reinsurers said.

ERC, which previously held the top ratings from both Best and S&P, may not strive to regain such ratings, said Mr. Carroll.






"We have to ask whether we would want to deploy the amount of capital we would have to deploy and can we use it effectively. So it is not a foregone conclusion that we would want to go back to AAA," Mr. Carroll said.

Munich Re intends to take steps, which could include raising new capital, in order to increase its rating to AA by the middle of next year, Mr. von Bomhard said.

The AA rating would be sufficient and Munich Re would not strive to regain its AAA rating, he said.

The recent spate of downgrades could mark a change in the overall security requirements for reinsurers, said Henry C.V. Keeling, CEO of XL Re in London, a unit of XL Capital Ltd. "I don't think the companies that have been downgraded want to get back to AAA. The banking business has not been AAA for

See RATINGS/page 20

<p>Montpelier Re Holdings Ltd.</p>  <p>Montpelier Re</p> <hr/> <p><b>\$874,000,000</b> Common Stock Sole Placement Agent</p> <p>December 2001</p>	<p>Montpelier Re Holdings Ltd.</p>  <p>Montpelier Re</p> <hr/> <p><b>\$219,052,000</b> Initial Public Offering Joint Bookrunner</p> <p>October 2002</p>	
<p>Montpelier Re Holdings Ltd.</p>  <p>Montpelier Re</p> <hr/> <p><b>\$200,000,000</b> Senior Credit Facility Lead Arranger and Administrative Agent</p> <p>December 2001</p>	<p>Montpelier Re Holdings Ltd.</p>  <p>Montpelier Re</p> <hr/> <p><b>\$214,000,000</b> Follow-On Offering Joint Bookrunner</p> <p>June 2003</p>	<p>Montpelier Re Holdings Ltd.</p>  <p>Montpelier Re</p> <hr/> <p><b>\$250,000,000</b> Senior Notes Joint Bookrunner</p> <p>July 2003</p>

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PHOTO: SARAH VEYSEY

## Ratings: Opportunities seen for recently formed reinsurers

Continued from page 18

years, so why should the reinsurance world?" he said.

"I don't see that there's a need for a AAA rating in most areas of reinsurance other than specialties like financial guarantee reinsurance," Mr. Keeling said.

Most top-rated reinsurers in the past have not benefited from their ratings in terms of pricing, Mr. Keeling said.

"During the soft market, the most competitive prices were often

coming from the AAA carriers," he said.

The downgrades could affect the downgraded reinsurers' own appetite to accept risks because they will have more concerns about the amount of capital they will be prepared to put at risk, said Mr. Chilton of Benfield.

"That will lead to more opportunities for the new carriers," Mr. Chilton said.

And, as some smaller reinsurers suffer downgrades or exit the mar-

ket, there could be more opportunities for more recently established reinsurers, said Mr. Zaffino of Guy Carpenter.

"All of our clients have looked at their approved list of reinsurers, and certain reinsurers have been removed," he said.

"Fortunately, we have the new Bermuda markets that filled in the void somewhat. If they had not come in, then we would have had a crisis like we had in the mid-1980s," he said.

And the downgrades could lead to more cedents seeking to diversify

**'Insureds and reinsureds are looking at it from an asset-allocation point of view, and they don't want all their eggs in one basket.'**

Mark W. Boucher  
Endurance Worldwide  
Insurance Ltd.

their reinsurance placements, according to Mark W. Boucher, CEO of Endurance Worldwide Insurance Ltd. in London.

"Insureds and reinsureds are looking at it from an asset-allocation point of view, and they don't want all their eggs in one basket," he said.

Cedents are looking for more diversity in their reinsurance placements despite the continued consolidation among reinsurers, said Mr. Keeling of XL Re. "So there is an opportunity for a number of players to take a greater leadership role in the market," he said.

The consolidation that has taken place in the reinsurance market has forced cedents to re-examine their reinsurance programs, and they are realizing that they have significant exposures with a relatively small number of reinsurers, said Dwight Evans, the president of Arch Reinsurance Ltd. (Bermuda) in Hamilton. "That forces them to look around the landscape," Mr. Evans said.

Arch, for example is seeking to increase its casualty book, he said. And although cedents often seek to place their casualty reinsurance with AA rated insurers—given the long-term nature of the risks—A-rated insurers, such as Arch, can still attract casualty business, he said.

"We have fresh capital and \$1.6 billion in surplus, so people are willing to overlook" the lower rating, Mr. Evans said.

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2003 Rendez-Vous de Septembre

# Industry urged to focus on disciplined underwriting

By GAVIN SOUTER

**MONTE CARLO, Monaco**—Changing economic and legal environments require a sustained return to disciplined underwriting if insurers are to thrive in the future, the chairman of Lloyd's of London says.

The current environment of increased liabilities and lower investment income requires insurers and reinsurers to write for underwriting profits and to work for reforms in the business environment, said Lloyd's Chairman Peter Levene,

Lord Levene of Portsoken. Only then will the insurance industry be able to provide adequate security for policyholders, he said.

"The changes taking place in the economic environment over the past few years have been remarkable," said Lord Levene.

Massive corporate failures and the collapse of several insurance companies have led to increasing uncertainty, he said, speaking at the formal session of the Rendez-Vous de Septembre in Monte Carlo, Monaco. Consequently, policyholders are



looking more deeply at the insurers and reinsurers they look to for security, said Lord Levene.

**The insurance industry must 'return to basics and focus on one simple thing, which is underwriting for profit.'**

Lord Peter Levene  
Lloyd's of London

"One clear trend is that buyers are looking beyond ratings and looking deeper into relationships," he said.

"Reinsurance receivables and willingness to pay can be just as important as ability to pay," Lord Levene said.

In order to provide the security and stability that policyholders require, the insurance industry must become more consistent in its approach to underwriting, he said.

"It is critical that we stop behaving like slaves to the cycle," Lord Levene said. "We have to return to basics and focus on one simple thing, which is underwriting for profit. So far, there has been a great deal of talk on this subject, but perhaps we should have a little more action."

The depressed investment environment requires a return to underwriting profits if reinsurers and insurers are to prosper, agreed Nikolaus von Bomhard, member of the board of management at Munich Reinsurance Co. in Munich, Germany.

Reinsurers must maintain a combined ratio of less than 100% to provide adequate returns to their investors, Mr. von Bomhard said.

But reinsurers must also be prepared to take risks, he said. "If you don't take volatility, you don't have any business," he said. So, reinsurers should ensure that they adequately limit their liabilities, charge adequate rates and ignore the cycle, he said.

If reinsurers have a thorough understanding of their business and can underwrite it more effectively than their competitors, then they will sometimes be able to make "opportunistic" profits, Mr. von Bomhard said.

For example, some reinsurers are currently taking advantage of the large rate increases in the directors and officers liability market. "Hopefully, the people that are taking advantage of it know what they are doing," he said. "But opportunistic underwriting should not be the starting point."

The insurance industry also should push for litigation reforms, said Lord Levene.

"Unrestrained litigation is very dangerous for business," he said. Insurers have duty to fight for reform of tort and litigation systems in the United States and elsewhere, he said. "We need to protect our own future and act to ensure that the same culture does not gain hold in Europe."

Insurers also will become larger and increasingly global in response to growing exposures worldwide, and this "has implications for the regulation of our industry," he said.

Regulators can't know every company around the world, he noted. In Europe, regulation has been modernized and barriers between countries have been removed, he said. But in the United States, well-established international insurers are still required pay substantial funds into trust funds even when the risks are retrocessionally placed back into the U.S. market, he said.

"Such systems create complexities and drive up the cost of doing business," Lord Levene said.

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## 2003 Rendez-Vous de Septembre

## Accounting rules bring 'pain before gain'

By SARAH VEYSEY

**MONTE CARLO, Monaco**—While talk of rating agency downgrades and the reinsurance cycle dominated discussions at the Rendez-Vous de Septembre, the impact of new European accounting standards was another key topic of conversation.

The International Financial Reporting Standards, which were developed by the London-based International Accounting Standards Board, seek to promote the transparency of financial reports and

greater disclosure by European financial services entities. Slated for introduction in 2005, the standards aim to harmonize the current patchwork of accounting rules throughout the European Union.

Although the new standards ultimately will benefit insurers and reinsurers, they are likely to bring "pain before gain," said Standard & Poor's Corp. credit analyst Rob Jones.

Under the IFRS, insurers and reinsurers must report assets on a fair-value basis from 2005. Liabilities,

though, would continue to be reported on an amortized basis under national accounting standards until 2007, when they, too, would be measured at fair value. Under fair-value accounting, assets and liabilities are recorded at their current market value.

While the standards will create greater transparency of financial reporting—which will, in turn, lead to insurers and reinsurers being viewed more favorably by policyholders and investors—their implementation will prove a costly bur-

den to companies, Mr. Jones said.

Indeed, any change that boosts transparency and consistency will ultimately be good for the industry, but the new standards are not yet well understood by insurers and reinsurers, said Jay Dhru, a managing director of financial services ratings at S&P in New York.

One concern is that, for practical purposes, companies must change their approach well before the rules take effect.

Because the new rules come into force in 2005, insurers and reinsur-

ers must also prepare their 2004 annual reports in accordance with the standards to ensure that accounts are comparable, said Ian Sparshott, a partner in the insurance practice of accounting firm Mazars in London.

That means companies must begin implementing the new standards now, in order to ensure they are ready, Mr. Sparshott said.

And the implementation process "promises significant cost increases in an industry where margins are already under acute pressure," S&P's Mr. Jones said. He noted that the introduction of IFRS will require significant actuarial resources, investment in new accounting systems and training of internal accountants and auditors.

In addition, Mr. Dhru noted that the standards' impact is not limited to Europe. Because so many reinsurers and insurers are global, companies based in the United States and Asia must also gear up for the introduction of the rules, he said.

In addition, the rules' two-phase implementation has raised concerns among insurers and reinsurers that, for a time, there will essentially be a mismatch between assets and liabilities on companies' balance sheets (*BI*, Aug. 18).

Treating assets on a fair-value basis and liabilities on an amortized basis could effectively make some companies appear insolvent, Mr. Dhru said.

Daniel Schante, director general of the Comité Européen des Assurances, said that the insurer association is holding talks with the IASB over that concern and others.

The rules may also affect the types of policies companies offer, said Andrew Kail, a partner at PricewaterhouseCoopers L.L.P. in London.

For example, finite insurance and reinsurance products rely on discounting techniques, which often conflict with a fair-value accounting approach, he noted. "Quite a lot of international (insurance and reinsurance) clients are already beginning to think about it and how they sell and what they sell," Mr. Kail said.

Another area of debate has been the new rules' prohibition of so-called equalization or catastrophe reserves.

Holding such reserves is currently common practice among many European companies, which set aside a portion of profits earned in claim-free years and add them to reserves to cover large catastrophes in future years.

The IASB sought to eliminate this practice, because it views catastrophe reserving as providing for a liability that doesn't actually exist when the accounts are drawn up.

This change is worrying for many companies, which fear that it could significantly erode their capital base, said Mazars partner Andrew Green.

Nevertheless, although they have concerns about the practical impact of IFRS, most European insurers and reinsurers recognize the need for harmony in accounting rules, Mr. Schante said.

"For everyone to converge will be difficult, but I think the industry understands we need a consensus," he said.



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# Comings & Goings

## Insurers:

London-based Brit Insurance Holdings P.L.C. has appointed **Ken Culley** chairman of its subsidiary company, Brit Insurance Ltd. Mr. Culley, who previously was a non-executive director, replaces **Clive Coates**, who will remain as a non-executive director.

PMA Insurance Group has named **Kurt L. Schuhl** as senior vp and chief claims officer. Before joining the Blue Bell, Pa.-based insurer, Mr. Schuhl was senior vp at Cambridge Integrated Services Group.

## Reinsurance:

GE Employers Reinsurance Corp. has named **Keith Saylor** group products business leader for its US Accident & Health unit. Before his promotion, Mr. Saylor was a master black belt on ERC's six sigma team.

## Other suppliers:

Kenexa, a Wayne, Pa.-based provider of human resources software, has appointed **Rama Velpuri** chief technology officer. Previously, Mr. Velpuri was chief executive officer of Oracle Corp. Mazars, a London-based account-

ing firm, has made two appointments in its insurance division.

• **Beth Rees** has joined the firm as director of its insurance insolvency practice in London. Previously, she was a director of insurance at the London office of accounting firm Grant Thornton.

• **Ian Sparshott**, previously a senior manager in Mazars' insurance group, has been appointed a partner in the insurance group in London.

RewardsPlus, a provider of benefits management technology in Hunt Valley, Md., has made two senior-level appointments.

• **Gary Broache** was promoted to executive vp and chief operating officer. Previously, Mr. Broache was senior vp and chief technology officer.

• **Steven Schaefer** has been named executive vp of business development at RewardsPlus. Before his promotion, Mr. Schaefer was senior vp of operations and business development.

• **Mark Larsen** has been named senior managing consultant in the Chicago office of Mullin Consulting Inc., a Los Angeles-based firm specializing in the design and administration of executive benefits. Before joining Mullin, Mr. Larsen was vp at Clark Consulting Inc.

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# Pressures: Problems plaguing insurance industry

Continued from page 4

billion to \$120 billion, said James S. Carey, president and CEO of Admiral Insurance Co. in Cherry Hill, N.J.

"If that high number is correct, it's a scary situation," he said. Furthermore, Mr. Carey noted, the industry's surplus is down \$50 billion in just the past two years.

In addition, Mr. Post said, "rating agencies do not like our industry today."

"It may come to a day when a B-rated insurance company is actually a good quality credit," he said. "We see that today on the reinsurance side. There are just not that many good quality reinsurers left, and I'm afraid if we don't make some adequate returns in the short term, that could also happen on the primary side."

Given such factors, it is cause for concern that "we are starting to see some softening in some lines of business," Mr. Post said.

The rising cost of lawsuits is a key concern for the insurance industry, said Kevin H. Kelley, chairman and CEO of Boston-based Lexington In-

surance Co. Total tort costs in the United States are projected to reach \$300 billion in 2005, he said.

Tort costs rose by about 14% in 2000 and 2001, Mr. Kelley said. He acknowledged that tort costs had increased at a rate of 15% to 16% during the mid-1980s but noted that, at the time, high investment returns could counter such "loss-cost inflation."

Today's situation is very different, though, with investment returns trailing rising tort costs.

"The only way you can fund for that gap...is through rate increases, and any executive who doesn't recognize that probably won't be in their position for very long," he said.

Unanticipated and long-tail liability losses also continue to plague insurers and reinsurers, said Michele P. Bernal, chief actuarial officer and vp for American Re-Insurance Co. in Princeton, N.J.

For example, she said, few in the industry would have expected that an event such as the Sept. 11, 2001, attacks could affect so many lines of business or that corporate restate-

ments would lead to widespread losses.

"We (in the industry) are certainly a lot better off from where we were a couple of years ago; we are starting to feel a little healthier. But we are still weak, and we are really going to need to continue to push on the hard market to be able to continue to recuperate," she said.

Even in property insurance—a line in which some NAPSLO conference attendees say they have seen prices begin to weaken—there are dangers of price hikes returning, some of the panelists said.

They pointed to forecasts for a robust hurricane season, noting that Hurricane Isabel was, as they spoke, swirling east of the Caribbean.

"If that were to hit a populated area of the U.S., I would guarantee that any softening you might see on the property side of the market would bounce back rather quickly," Mr. Carey said.

Increased insurer consolidation also is possible—particularly in two or three years—potentially creating "distraction and havoc" in the mar-

ket, Mr. Kelley said.

That potential exists because of the significant disparity in the size of insurers, he said, noting that the top two insurers have considerably greater market capitalization than the combined market capitalization of the next eight largest companies.

For buyers, though, such a scenario can result in upward pricing pressure, Mr. Kelley said in an interview after the panel presentation.

L.M. Wesson Jr., president and chief operating officer of U.S. Risk Insurance Group Inc. in Dallas, moderated the panel discussion.

## 2003 NAPSLO Annual Convention

# E&S market seen as settling down

By ROBERTO CENICEROS

**SAN DIEGO**—The excess and surplus lines marketplace has calmed somewhat, according to many attendees at this year's annual meeting of the National Assn. of Professional Surplus Lines Offices Ltd. in San Diego.

With rate increases slowing from the steep climb evident a year ago and with capacity opening up in some lines, the market appears more settled, with less panic among surplus lines brokers, they said.

For property accounts, brokers are finding that rates are flattening and more insurers are offering capacity. On the casualty side, though, rates are continuing to increase significantly.

Scott J. Bayer, vp of the general liability division for Liberty International Underwriters in New York, said that general liability rates increased by about 25% during the first half of this year. He noted, though, that increases have slowed to about 20% during the past two months.

Some of the moderating effect on casualty prices has stemmed from "rogue" insurers undercutting the others on pricing, said Mr. Bayer. But this has not led to overall decreases in pricing, he added, noting that the larger E&S players remain disciplined in their underwriting.

"For most of the core excess and surplus (insurers)—the ones that are on the top 10 list, the names everybody knows—you find a large amount of underwriting discipline within those markets," Mr. Bayer said.

Several attendees at the NAPSLO meeting said that they expect current casualty rate firming to continue, but opinions differed on the property side.

"Definitely, the market is somewhat in transition, because there are more choices today than there were 12 months ago," said Dan R. Eudy, president and chief executive officer of Avon, Conn.-based Industrial Risk Insurers, a unit of GE Global Asset Protection Services.

"There are more people that are in this market willing to put their capacity to work," Mr. Eudy said of property coverage. "I think 12 to 15 months ago a

lot of people sort of stepped back from the market. They were not making their capacity available."

Some buyers still face difficulties placing their property coverage, depending on their particular situations, Mr. Eudy said. But property prices could remain flat through the remainder of 2003 and into 2004, he said.

James S. Carey, president and CEO of Admiral Insurance Co. in Cherry Hill, N.J., said he sees property rates increasing by about 7% this quarter. That compares with the 15% increases imposed earlier in the year.

Some brokers, however, said they have seen property rates drop by as much as 20% to 30%.

Most of the decrease in rate hikes is occurring among larger accounts that are negotiated more aggressively than are smaller accounts, said Jon S. Saltzman, president and CEO of Penn-America Group Inc., a Hatboro, Pa.-based specialty property/casualty insurer that covers small businesses. Smaller accounts, he said, are not seeing as much benefit from the slowdown in rate hikes.

A report on conditions in the excess and surplus market, conducted by A.M. Best Co. and made available at the conference, echoes the views of many attendees.

"A.M. Best believes that a tightened underwriting environment with higher rates will continue to be a reality for the majority of surplus lines risks, with the possible exception being on the noncatastrophe-exposed property risks where rate increases have moderated and may have flattened out through the beginning of 2004," the report states.

Risks experiencing rate increases will likely see prices rise throughout this year and possibly into next, although the price hikes will gradually slow, according to the report.

"The overall market is liable to remain tight, particularly for casualty lines such as workers compensation and professional liability lines like medical malpractice and directors and officers liability, until carriers are producing more-robust returns on equity," the report states.

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## 2003 NAPSLO Annual Convention

# Alternative to federal regulation sought

By **ROBERTO CENICEROS**

**SAN DIEGO**—Without a plan to eliminate the patchwork of state tax rules for surplus lines policies, wholesalers may drop their opposition to federal regulation.

One alternative to the current system is the creation of a clearinghouse that would track and calculate the amount of taxes owed to the various states for each multistate risk placed by wholesalers, said Mike Johnston, senior vp of business development for CRC Insurance Services in Birmingham, Ala.

The brokers would then pay the clearinghouse, which would distribute the funds to the appropriate states, said Mr. Johnston, who is a member of the legislative committee of National Assn. of Professional Surplus Lines Offices Ltd.

The committee has "tossed around" the idea, Mr. Johnston said at a panel discussion at NAPSLO's annual meeting in San Diego.

"It's kind of in the talking stages right now, and we will probably get into it a little bit more," Mr. Johnston said. "But if something like that could be worked out for a significant number of states, I believe the wholesale brokers would remain loyal to the state-based system and would definitely not be propo-

nents of federal regulation."

The panel discussion focused on a set of nine regulatory principles that NAPSLO released in June (*BI*, Sept. 8). The principles make formal the organization's stance on issues such as rate and form regulation, guaranty funds and the standardization of taxation for multistate surplus lines risks.

The taxation issue has the most significance for large brokers, Mr. Johnston said.

"When you really cut to the chase, from a broker perspective, it's all about making those tax filings and trying to figure out the maze of laws," Mr. Johnston said. "The importance of solving that issue is probably what will keep most brokers interested in staying with a state-based system. If we can't resolve the issues of tax filings, I think a lot of brokers, especially some of the large brokers, might support an appropriate federal system. But we really don't want to go there."

Large wholesalers are more likely to support a federal system because they tend to place more coverage for multistate risks, he said.

One of NAPSLO's nine principles essentially states that federal-based regulation of the surplus lines industry cannot be as effective as a state-based system.

Currently, there are five separate pieces of legislation in Washington calling for federal regulation or oversight, said Paul W. Springman, executive vp for Markel Corp. in Glen Allen, Va.

The current state-based regulatory system clearly needs to be overhauled and reformed, he said.

"It has failed in a big way to keep pace with changes in the insurance industry, especially those involving technology issues," Mr. Springman said. "It has been very, very slow to respond to changes in the market and changes in the financial condition of carriers."

"However," he said, "with all the faults that we have today with our state regulatory system, I think it is still far better than any of the five measures that are currently being debated and reviewed at the federal level."

Theoretically, federal regulation could reduce costs if implemented properly and could increase insurers' ability to compete against federally regulated banks. It might do so by harmonizing the varying regulatory requirements of 50 different states, Mr. Springman said.

A federal regulator might also be more consistent in its financial review of companies. "I think most insurance company presidents will

tell you states do a very poor job of that," he said.

But Mr. Springman is opposed to federal regulation. The numerous disadvantages outweigh the potential advantages, he said.

Federal involvement in regulation could lead to underwriting guidelines and restrictions on pricing, Mr. Springman said.

"It is rather clear to me that the federal government would not be

any less bureaucratic than the state regulators that we operate with today," he said. And "a federal regulator probably would be slower to respond to industry issues."

Andrew S. Frazier, president and chief executive officer of Western World Insurance Group in Franklin Lakes, N.J., moderated the session. Other participants were Thomas B. Ahart, president of Ahart, Frinzi & Smith Insurance in Phillipsburg, N.J.; Daniel F. Maher, executive director of the Excess Line Assn. of New York in New York; and Richard Bouhan, executive director of NAPSLO.

## NAPSLO sets attendance record

**SAN DIEGO**—A sunny location and a continuing hard market produced record attendance at the 2003 National Assn. of Professional Surplus Lines Offices Ltd. Annual Convention.

Nearly 2,800 people attended the conference, held Sept. 10-14 at the San Diego Marriott Hotel and Marina, NAPSLO leaders said. In comparison, about 2,500 registrants attended the event in 2002, when it was held in Boston. The 2002 convention also broke attendance records.

Kansas City, Mo.-based NAPSLO is a national trade organization representing the surplus

lines industry and the wholesale insurance marketing system. At the San Diego convention, member firms voted in H. James Griffith to serve as president. Mr. Griffith is president of Princeton, N.J.-based Princeton Risk Managers Inc., a Lloyd's of London correspondent he founded in 1974.

Mr. Griffith replaced outgoing President Nicholas D. Cortez.

The organization's 2004 convention will be held Sept. 19-23 in Orlando, Fla. More information is available from NAPSLO at 816-741-3910 or at [www.napslo.org](http://www.napslo.org).



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## Commentary

# Looking for a fix to feeding frenzy

There's a lot of places I don't want to see the government, and one of them is definitely ahead of me in the drive-thru at the Bun-and-Run.

As far as I'm concerned, the government can have my three-cheese double beef and bacon breakfast burger when they can pry it cold from my greasy fingers.

Actually, strictly as a matter of choice, I tend to steer clear of the beef and bacon burgers at breakfast. But, like most, I've got a few favorite foodstuffs that would have a hard time passing muster with those who would safeguard us against our own dietary folly.

Just so we're clear on this, I think our country will lose something more than a few extra pounds the day jack-booted thugs from some sort of federal butterfat police move to slap the shackles of dietary oppression on Ben and Jerry.

I got to thinking about all this last week when I saw a report from the Center for Science in the Public Interest suggesting ways parents, teachers and school administrators could improve school foods. Among other things, the CSPI presented a list of "best" and "worst" snacks for school vending machines.

The "worst" snacks include Chips Ahoy!, Oreos, chocolate whole and 2% milk and various sodas. (I can't imagine anyone bad-mouthing Chips of Joy. And Oreos! Who could put them on such a list? The whole thing conjures up some really unpleasant images: "Senators, I have in my hand a list of 47 snack foods...")

Meanwhile, on the other side of the ledger, snacks making the cut for the CSPI's "best" list include things like unsweetened applesauce cups, raisins and bottled water.

Somehow I don't see the vending machine company needing to send someone by too often to restock the machines at a CSPI-approved high school.

Not that I think the folks at the CSPI aren't well intentioned, or even that their cause is without merit. Obviously, a fitter America is a healthier America, which brings with it not just personal benefits but economic pluses in the way of reduced health care costs and improved productivity.

And, undeniably, the CSPI has done some good work in getting restaurants to offer healthier dining options and forcing some companies to stop making inaccurate claims about various food products.

Fighting the good fight against super-sizing and junk foods is prob-

ably fated to being somewhat unpopular, with the effort inevitably sounding somewhat shrill and school marmish.

And it probably doesn't help that the Center's "findings" sometimes seem to border on common sense. Everybody knows that Twinkies and Snickers bars probably aren't the ideal lunch for a growing high school student. But how much pizza can a teen-ager eat a day?

The other thing is, the Center's message is often one we don't particularly want to hear, their pronouncements sometimes having the tone of that "friend" sitting across a restaurant table from you, asking if you know just how many

calories are in that favorite dish you've just begun to enjoy. How does one respond to that? I guess "shut up" is always an option.

In this case, on the other side of the plate, there's the far more gracious response from some of those opposed to the CSPI's proposed snack ban, the Grocery Manufacturers of

America. The GMA suggests that rather than banning certain snacks from our schools, the emphasis should be on educating young people on proper nutrition and an emphasis on fitness, which all sounds perfectly reasonable.

And in one story, I saw a spokeswoman for the GMA quoted as saying, "There are no good foods and bad foods." I liked that. It had a nice kind of nutritional Father Flanagan ring to it.

Of course, according to the story, this spokeswoman also suggested that government restrictions on snacks in schools will just drive kids to convenience stores to get what they want. What the heck is this all about? Are Twinkies just a gateway snack? Will exposure to the pusher down at the Speedy Mart lead teens to succumb to the temptation to try harder stuff like Slim Jims and MoonPies?

If you look at it that way, maybe the real solution to teen nutritional issues is an educational one. And, there's probably a real business opportunity here as well for someone who can produce a new generation of health class films addressing the problem.

I'm thinking something along the lines of "Ho Ho Madness" might just be perfect. And, if you're having popcorn while you're watching, remember, no butter and easy on the salt.

Rodd Zolkos can be reached at rzolkos@crain.com.



Rodd Zolkos

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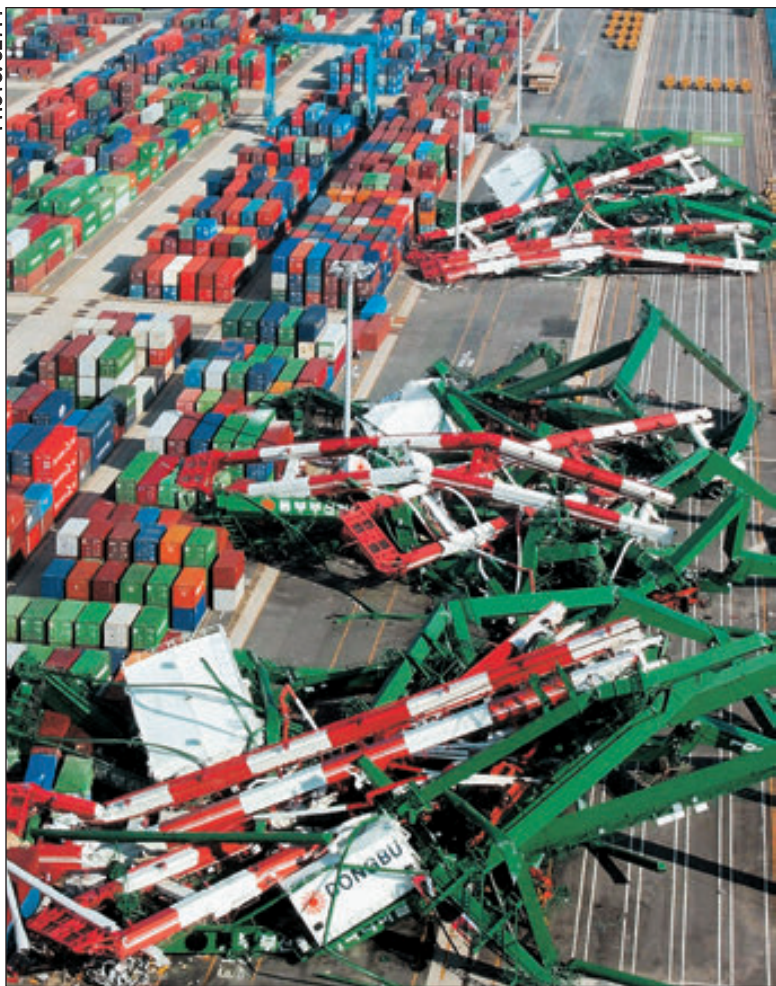
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The wreckage of collapsed container cranes in the port of Pusan, South Korea, which was hit by Typhoon Maemi on Sept. 13.

## Insured loss estimates vary Typhoon Maemi lashes South Korea

By ELIZABETH FRY

**PUSAN, South Korea**—Typhoon Maemi, which swept through parts of South Korea last week, could cost insurers more than \$500 million, according to some preliminary estimates.

Damage estimates for the havoc wreaked by the storm vary widely. Total economic losses from property destruction, export slowdowns, and business disruptions are now expected to exceed \$4 billion, according to John Huh, senior vp for South Korea at American International Group Inc. based in Seoul. According to Mr. Huh, the typhoon, which packed winds of 105 mph and was the biggest natural disaster in South Korea for 50 years, could cause up to \$1 billion in insured losses.

He noted that Typhoon Maemi has caused at least five times more damage than last year's Typhoon Rusa, which cost insurers \$170 million, so this typhoon could result in

as much as \$1 billion in claims.

Joong Lee, general manager of Royal & SunAlliance Insurance Group P.L.C.'s Seoul branch, estimates that insured losses from Maemi will likely be closer to \$500 million.

Roland Elke, the Seoul-based branch manager with Munich Reinsurance Co., which has a significant reinsurance portfolio in South Korea, disputes that the final insured losses will total \$1 billion—he predicts that they will be closer to \$500 million, but stresses that it is too early to tell. The South Korean government's latest estimate of \$1.4 billion in total economic damages is likely an underestimate, Mr. Elke said. "Last year, with typhoon Rusa, the government came up with a low figure that they subsequently revised upwards," he said. "It is doing the same thing here."

"Maemi was certainly more severe than Rusa," he said.

Maemi devastated three populat-

See **TYPHOON**/page 31

## World Updates

### U.K. nonlife industry weaker than before: Best

Despite hard market conditions in most lines of business, the financial strength of the U.K. nonlife insurance industry remains "significantly below historic levels," according to A.M. Best Co. The deterioration in U.K. nonlife insurers' strength reflects "the twin effects of adverse loss development and asset losses eroding balance-sheet strength," Best says in a recent report. Although the hard market is helping to restore strength, insurers' institutional investors have become increasingly focused on the risk-adjusted return on their investment, the report says. This, Best says, has led to "a natural limit to the amount of capital they are prepared to see an insurer carry and, hence, a limit to insurer balance-sheet strength."

### Hiscox posts first-quarter gains

Hiscox P.L.C. recorded pretax profits of £31.5 million (\$51.9 million) for the first half of 2003, up 708% over the comparable period last year. Gross written premiums rose 33.5%, to £590.6 million (\$974.5 million), for the period. London-based Hiscox operates multilane syndicates 33 at Lloyd's of London as well as a U.K. and international insurer.

### Zurich sells Indonesian book

Zurich Financial Services Group is selling its Indonesian life insurance business to PT. Asuransi Jiwa Manulife Indonesia as part of a strategy to exit noncore markets. Terms of the deal were not disclosed. ZFS' life insurance business in Indonesia generated premiums of \$7.54 million in 2002.

### Kiln profits up sharply

Lloyd's of London insurance group Kiln P.L.C. recorded pretax profits of £15.0 million (\$24.8 million) for the first six months of 2003, up from £3.5 million (\$5.3 million) for the comparable period in 2002. Gross written premiums were £241.3 million (\$398.8 million), up from £197.1 million (\$300.5 million) in the first half of 2002, Kiln said.

### Briefly noted

Harald Schenk has been appointed to the board of the **International Underwriting Assn.** in London. Mr. Schenk is the chief representative of Hannover Re in London.... Moody's Investors Service last week downgraded its performance rating of Lloyd's of London syndicate 102, managed by **Goshawk Syndicate Management Ltd.**, to C+ from B+.

## Profitable insurers are key to security of buyers: CEO

**LONDON**—Underwriters must be willing to walk away from underpriced business—both for their own benefit and for the benefit of buyers, according to the chief executive of Lloyd's of London.

Insurance is based on long-term financial security and the promise to pay in the event of a loss, said Lloyd's Chief Executive Nick Prettejohn. "To discharge that



Mr. Prettejohn

function, underwriters need to make a profit," he said during a presentation at the Chartered Insurance Institute's annual conference in London Thursday.

"While rock-bottom rates may seem attractive to policyholders in the short term, in the long term they are the road to nowhere," he said.

Mr. Prettejohn said he regards as "extremely heartening" the

recent moves by some Lloyd's-based businesses to walk away from certain lines.

"Those sentiments should be applauded and echoed loudly across the whole insurance and reinsurance marketplace," Mr. Prettejohn said. "I strongly believe this to be in the best long-term interests of everyone—policyholders, brokers and underwriters."

Mr. Prettejohn noted that as part of its new franchise-based regulatory system, Lloyd's has developed new underwriting guidelines designed to prevent a repeat of the past mistakes within the market.

"For instance, the maximum gross line from an individual risk should be no more than 10% of a syndicate's capacity, and each syndicate should retain a net minimum exposure on each risk," he said.

Under the franchise system, implemented this year as part of a package of reforms designed to modernize Lloyd's, companies operating in the market must submit detailed business plans to the Lloyd's Franchise Committee for review.

The CII conference, held Sept. 17-19 in London, attracted about 1,000 delegates.

—By Sarah Veysey



PHOTO: AP/WIDE WORLD

The ferry **Scandinavian Star** burns in the harbor of Lysekil, Sweden, where it was towed April 8, 1990, after fire killed 158 people on board.

## Denmark probes arson claims New investigation into 1990 ferry fire

By GERARD O'DWYER

**COPENHAGEN, Denmark**—Danish prosecutors say new evidence is emerging to indicate the 1990 Scandinavian Star disaster, which killed 158 passengers and crew, may have been caused by an arson for insurance scheme.

Survivors and families of victims have alleged for years that the vessel's true owners were concealed to avoid liability for the accident, which they contend was intentionally caused to recover huge insurance proceeds. In light of their claims, the Danish Parliament has asked several government authorities to investigate the vessel's ownership as well as the charge of arson

for insurance.

The North Sea car ferry, which had 581 passengers and crew aboard, was en route between Oslo, Norway and Frederikshavn, Denmark, when it caught fire in the early hours of April 8 in the Skagerrak Strait. The fire engulfed the entire vessel within 30 minutes, with most of the deaths caused by asphyxiation. The ship was towed to Lysekil, Sweden, to attempt to extinguish the fire but was a total loss.

Although authorities had earlier concluded the fires were intentional, they did not blame some of the crew, as is now alleged. Two directors of the ship's alleged owners and its captain received prison sen-

See **PROBE**/page 31

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NOTICE IS HEREBY GIVEN THAT ON SEPTEMBER 12, 2003, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. §304 ORIGINALLY ENTERED IN THIS CASE ON SEPTEMBER 9, 2002. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING SCHEDULED TO BE HELD ON FEBRUARY 5, 2004 AT 2:30 P.M. (THE "RETURN DATE") BEFORE THE HONORABLE PRUDENCE CARTER BEATTY, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT LOCATED AT ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING THE CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE PRUDENCE CARTER BEATTY AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

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## Typhoon: Storm lashes South Korea

Continued from page 29

The storm first ripped through Keoje Island, off the southern part of the Korean peninsula, destroying three large shipyards. Several vessels were damaged in the storm, including a Hyundai Heavy Industries chemical tanker, which sustained about \$5 million in damage, a Hyundai spokesman said.

The second area hit was Pusan, South Korea's largest port, which handles 80% of the country's container shipping. According to RSA's Mr. Lee, who was in Pusan at the time of the storm observed first hand that, "containers were hurled into the air and 10 giant cargo cranes toppled over."

RSA will face about \$10 million in losses in for a container port in the Pusan area currently under construction, he said. Mr. Lee estimated that total insured damage to the major Pusan port would likely total

\$100 million. "There are five container ports in Pusan and only one was totally destroyed—the other four are operating normally, but capacity is vastly reduced."

Marsh Inc.'s South Korean chairman, Jon Bitcheno, estimated that it will take 45 days to dismantle the wrecked cranes, and at least a year to replace them. However, apart from the major manufacturers, few South Korean companies purchase business interruption coverage, he said.

"What no one really knows is how much is insured. It's very difficult to get a handle on that," Mr. Bitcheno said.

The third district to be hit by the typhoon included Masan and Yeosu, where losses include damage to office buildings and industrial plant. The government estimates that at least 20 major companies were shut down on the southeastern coast.

## California: Pay or play plan assessed

Continued from page 1

by the employer or through the state program.

Employers that already offer health plans are going to have to look at their coverage, benefits, contributions and eligibility rules to determine whether their plans meet the legislation's requirements and, if not, whether they should revise their offerings or join the state program, said John Piro, Norwalk, Conn.-based chair of Hewitt Associates Inc.'s health care law practice.

"It's going to have an enormous impact on employers in California, especially multistate employers" that may also decide to offer a separate benefits package for their California workers, said Mr. Piro.

Opponents of the measure, such as the Sacramento-based California Chamber of Commerce, fear it will create a significant cost burden.

"Instead of providing leadership in tough economic times, leaders in the Legislature approved a new multibillion-dollar health care tax on employers," said Chamber President Allan Zaremberg in a statement.

A study commissioned by the Chamber and conducted by the Los Angeles County Economic Development Corp. estimates the mandate could cost employers an additional \$4.14 billion and employees another \$1.03 billion, for a total of \$5.17 billion, assuming the threshold is 50 employees, said LAEDC Senior Vp and Chief Economist Jack Kyser.

Advocates of the measure argue that it is needed to address the problem of the uninsured in the state.

The Sacramento-based California Medical Assn. said the legislation

"strikes a fair balance of constructive change and compassion for the plight of the uninsured that is desperately needed in our health care system," CMA President Dr. Ronald Bengasser said in a statement.

The CMA estimates the measure would provide coverage to about 1.3 million uninsured Californians. The number of uninsured in the state has been estimated at 6.6 million.

In addition, the CMA estimates that the mandate would save employers that already offer health insurance about \$1.2 billion, due to a reduction in cost-shifting for uncompensated care.

Observers disagree about to the legislation's impact on large employers.

Some observers note that many large employers already offer health insurance to their employees. "It doesn't look like there would be a big impact," although there will be additional administrative requirements for everybody, "which is the reason most large employers oppose mandates," said Linda Bergthold, a senior consultant with Watson Wyatt Worldwide in Los Angeles.

Large employers will be affected "only to the extent that it levels the playing field" with those that do not now offer coverage, said Joe Sweeney, vp and health care practice leader with The Segal Co. in San Francisco.

Others see a greater impact.

"Many of our clients are moving away from the traditional 80/20 split and are doing so particularly in the area of dependent coverage," said Kirby Bosley, who heads Mercer Human Resource Consulting's health care consulting practice in

See CALIFORNIA/next page

## Probe: Arson claim investigated

Continued from page 29

tences for fire safety violations, according to press reports.

"The Danish Parliament's Justice Committee has presented 11 questions about the fire to the Ministry of Justice that they demand be answered. It is our role to find those answers," the Denmark's Public Prosecutors Office explained in a recent statement, outlining the preliminary results of its investigation.

The parliamentary committee in recent weeks has asked the Justice Ministry and tax authorities to establish whether the ship was, as alleged, owned by a U.S. company that had avoided liability for the tragedy by hiding the vessel's ownership for the accident by fraudulently backdating sales documents and using a complex maze of holding companies and offshore shells.

The committee also questioned whether the Danish government's official investigation into the incident was manipulated to conceal the ship's possible unseaworthiness, facilitating the collection of insur-

ance by the ship's purported owner.

The insurance payout on the Scandinavian Star's loss was \$28 million. The hull insurer was Fjerde Soforsikringsselskab A/S, then a Copenhagen-based unit of Sun Alliance & London Insurance P.L.C.

The liability insurer was Skuld Protection & Indemnity Club based in Oslo. A spokesman for Skuld said that the insurer has been in constant contact with Danish prosecutors and is cooperating with their investigation.

In the statement outlining its preliminary findings, the Danish prosecutors office states that evidence indicates the fire that struck the Scandinavian Star was "set deliberately" as part of "an elaborate insurance scam."

The insurance program for the ship had changed only a week before the disaster, when it was sold on April 2 by Sea Escape Ltd. of Miami to VR Shipping of Copenhagen. However, at the time of the accident, the ship was registered in the Bahamas and flying a Ba-

hamian flag.

Following a paper trail, the prosecutors cite evidence that the Scandinavian Star was still owned by Sea Escape at the time of the tragedy.

The prosecutors claim that documents in their possession prove that the Scandinavian Star's ownership transfer did not take place until Aug. 30, almost five months after the cruise liner sank. The prosecutors described the transfer of ownership a week before the disaster as "a pure invention."

Court documents lodged by lawyers representing families of the victims allege that the ship's owners deliberately arranged for the fire to be started on board so that they could "claim massive insurance payouts." Lawyers for the families have also presented witness accounts claiming that the fire was "deliberately started" by two of the ship's "senior officers."

The prosecutors' office said it would decide, on the basis of its final investigation, whether criminal charges should be brought.

## PBMs: Market impact debated

Continued from page 3

stock for every share of AdvancePCS they own. After the deal, Caremark will move its headquarters to Nashville, Tenn., from Birmingham, Ala.

The deal, announced Sept. 2, combines two very different PBMs, and the companies should complement one another, experts note.

Caremark's focus has been on distributing specialty drugs—those for a specific illness—with limited demand, while AdvancePCS has a stronger business with health plans and has programs that encourage the use of generic prescriptions, observers note.

In addition, most of Caremark's business is done directly with self-funded employers, while AdvancePCS typically works as a PBM for managed care companies, including several Blue Cross & Blue Shield plans.

"It's a logical combination of two PBMs with complementary attributes," said Sean Brandle, vp at The Segal Co. in New York.

And because its larger size should bring greater efficiency, the merged company should be able to achieve higher profits, Mr. Gibson said.

Observers differ on what the deal will mean for employers.

Consolidation in the PBM industry, like that in other areas of the health care industry, means fewer choices for employers, said John Miall Jr., director of risk management and benefits for the City of Asheville, N.C.

And a "lack of competition ultimately hurts consumers and payers," he said.

"One less competitor is not a really good thing," said Mr. Brandle of Segal.

But Helen Darling, president of the Washington Business Group on Health, said that the deal shouldn't significantly reduce choice for em-

ployers. "We've still got a lot of competition," she said.

The extent of competition in the market depends on how the market is defined, said John Richardson, director of Medicare at The Health Strategies Consultancy L.L.C. in Washington. While there are about 50 to 60 PBMs operating in the United States, there are just four large, national companies, said Mr. Richardson, who testified in June before the Federal Trade Commission about competition in the PBM field.

"This is really something that the FTC will have to look at," Mr. Richardson said.

The current big-four PBMs control about one-half to one-third of the marketplace, depending on

what calculation is used, Mr. Richardson said. So, he said, a sizable chunk of the market is controlled by other companies. Given that, the acquisition won't change the landscape for large employers that much.

"They won't see anything all that different if they look around," Mr. Richardson said.

Despite the loss of one major PBM player, employers still have several options, said Ralph Kimmich, director of compensation and strategic initiatives at Southwest Airlines Co. in Dallas. Southwest is a client of AdvancePCS.

"Right now, there is still enough out there to have plenty of competition," he said.

For clients of Caremark or AdvancePCS, the deal might mean better pricing for their drugs, Mr. Brandle said. The size of the combined company could bring additional negotiating leverage with the drug makers, he said.

Mr. Richardson, however, said the company's bigger size will have virtually no impact on prices. "There is not an opportunity to leverage better negotiating," Mr. Richardson said.

Southwest's Mr. Kimmich said he does not expect the PBM's larger size to result in significantly better drug prices.

Mr. Gibson also sees little potential change in pricing, as the two PBMs already were large enough to negotiate good prices.

And even if Caremark were able to obtain better prices, it could be a while before employers see any of savings, said Howard Tarre, managing director at Synhrgy HR Technologies in Saddle Brook, N.J.

He noted that the PBM might wait until the expiration of current contracts—many of which have three year terms—to pass along additional savings.

### PCS TIME LINE

After Caremark Rx Inc.'s purchase of AdvancePCS is finalized, the PCS name will be retired.

**July 1994**  
McKesson Corp. sells its PCS Health Systems Inc. unit for \$4 billion to Eli Lilly & Co.

**November 1998**  
Rite Aid Corp. buys PCS for \$1.5 billion from Eli Lilly.

**July 2000**  
Rite Aid sells PCS to Advance Paradigm Inc. for \$1 billion, which then forms AdvancePCS.

**September 2003**  
Caremark Rx Inc. purchases AdvancePCS and will stop using the PCS name.

## California: Pay or play plan assessed

Continued from previous page  
Los Angeles.

As a result, "for many employers, particularly those with low margins and those with high increases in their health care costs, the potential financial implications of this legislation are enormous," said Ms. Bosley. "It is certainly alarming to the large employer."

Roger Arlen, chief executive officer of the San Francisco-based consulting firm ArlenGroup, also noted that the mandate for dependent coverage could create a financial burden.

The 80% threshold "should not present any kind of significant issue relative to employee-only coverage" for large employers, Mr. Arlen said. But in many instances where funds are limited, employers may now be offering less coverage for dependents, he said.

Furthermore, the bill defines employees as workers who work at least

100 hours per month, or about 23 hours a week. Large employers in industries including retail and hospitality rely on part-time help, but many offer their part-timers either less-generous coverage or none at all, said John Small, San Francisco-based leader of Towers Perrin's health and welfare consulting practice in the West region.

As a result, "you're going to have to provide 80% of benefits for perhaps double or triple the number of people whom you provided for today, so that's going to be an enormous financial burden that, frankly, I'm not sure they're going to be able to bear," said Mr. Small.

Bob McAdam, vp of corporate affairs for Bentonville, Ark.-based Wal-Mart Stores Inc., pointed out that the law exempts unionized employers, which gives such companies an unfair advantage.

Wal-Mart, which is not unionized, "is opposed to the legislation

primarily because it creates an uneven playing field," he said. "It's very likely that their employees are going to have lesser benefits than

**'I think there's a safe bet there'll be a challenge under ERISA' to the California legislation.**

John Small  
Towers Perrin

employees from nonunion employers," said Mr. McAdam.

In addition, he noted that "primarily, it's a one-size-fits-all health care mandate, and we like to provide a lot of choices for our associates." Mr. McAdam said it is still unclear how many Wal-Mart employees would be affected by the legislation.

Representatives of several other companies said they have not yet

had time to study the legislation.

Some observers say large employers may be exempt under ERISA, which pre-empts state laws or regulations that relate to employee benefits. Hawaii's law preceded ERISA and was grandfathered in.

"I think there's a safe bet there'll be a challenge under ERISA" to the California legislation, said Mr. Small. "States have the authority, clearly, to regulate insurance, but here's been a question about a state's ability to regulate coverage."

Steven Thompson, vp for government affairs at the CMA, said, "I don't think anybody will know the answer to that question until the courts opine," and the issue may ultimately be decided by the U.S. Supreme Court.

There are other still unanswered questions associated with the legislation as well, said Ms. Kirby. "What if an employer provides benefits that are richer than a required mini-

mum. Can they charge more? What about flex plans? What about the concept of increasing consumerism among employees? What about the issue of getting to the root causes of health care costs increases? That's where large employers have been focused, so this could clearly be a major setback," she said.

Also unclear is the degree to which employers would prefer to participate in the state-run fund rather than obtain their own health care coverage, say observers. "Maybe employers who liked the concept of a defined contribution arrangement might prefer to wash their hands of managing a medical plan on behalf of their employees. We don't see a lot of evidence of that, though," said Ms. Bosley.

In addition, some observers note that the legislation could serve as an impetus for similar efforts elsewhere.

"Certainly, whatever happens here in California is watched carefully throughout the country," said Kathy Mallen, senior vp with Aon Consulting in Los Angeles.

## Rulings: Could complicate subrogations

Continued from page 3

"So it's not a voluntary payment at all. It's a contractual obligation. That's why I think this case is screwy."

By applying the doctrine in the case, the courts already have discouraged settlements and complicated subrogations in the 5th Circuit, which encompasses Louisiana, Mississippi and Texas, Messrs. Perillo and Harckham agreed.

For example, a component part manufacturer facing a product liability claim in the 5th Circuit now might be unwilling to settle that claim until all potential defendants in the case agree up front to contribute to the settlement, Mr. Perillo said. "This strikes me as bad policy and bad law," he said.

According to court papers, Wausau and Genesis contributed to a \$400,000 settlement that resolved a claim filed against their policyholder, President Riverboat Casino-

Mississippi Inc. in Biloxi, Miss. The claim was filed by a casino guest who was struck by a casino-owned shuttle bus as the guest attempted

**'The insurer's liability is to the policyholder. So it's not a voluntary payment at all. It's a contractual obligation. That's why I think this case is screwy.'**

Finley T. Harckham  
Anderson Kill & Olick P.C.

to cross a drop-off area at the casino in April 1996. Wausau was President's automobile fleet insurer.

When the injured guest amended her claim in 2001 to include a count of premises liability against the casino for allegedly failing to

maintain a safe crosswalk, Wausau reserved its right to deny coverage for that claim.

The casino then filed a claim with Genesis, its commercial general liability insurer. But Genesis argued that the casino's CGL coverage was excess of Wausau's \$1 million auto policy limits.

Three days before the scheduled trial over the claim in March 2001, the case was settled. Wausau paid half of the settlement, and Genesis and President equally split the other half.

In response to Genesis' and the casino's court motion seeking to compel Wausau to cover the entire cost of the claim, Wausau filed a motion for summary judgment. Wausau argued that because Genesis and the casino voluntarily contributed to the settlement, they are barred by the voluntary payment doctrine from seeking any reimbursements.

In a summary judgment, a federal district court ruled in June 2001 that the doctrine applies because Genesis and the casino were not compelled to settle the claim and that their contribution did not result from a fraudulent act.

A three-judge panel of the 5th Circuit unanimously overturned that ruling on Aug. 21. The appeals panel ruled that e-mails between the two insurers and a letter from Genesis to Wausau were strong enough evidence to suggest that Wausau had an oral agreement

with Genesis to later resolve each insurer's exact liability.

But, under the appellate panel's ruling, Wausau still may be able to invoke the voluntary payment doctrine. The panel remanded the case to the lower court to determine whether there is conclusive evidence of an oral agreement. If the lower court does not find sufficient evidence, the court could again allow Wausau to invoke the voluntary payment doctrine.

*Genesis Insurance Co. and President Riverboat Casino-Mississippi Inc. vs. Wausau Insurance Cos., 5th U.S. Circuit Court of Appeals, Aug. 21; No. 02-60807.*

## NAIC: Defends state regulation

Continued from page 4

tains specific goals toward achieving greater efficiencies or reforms in each of several categories. Those are: consumer protection, market regulation, property/casualty rate regulation, insurance policy form approvals, producer and company licensing, financial condition examinations and mergers and acquisitions.

The plan also sets a schedule for states to implement some reforms. For example, all state insurance departments are expected to adopt uniform transmittal documents for submitting insurance products for regulatory review by the end of this year. Also, it gives them until the end of 2008 before they must integrate other regulatory tools into their product

approval process.

Although the plan was adopted unanimously, a California regulator sitting in for Commissioner John Garamendi expressed that state's continuing reluctance to yield its authority for the sake of standardized "interstate collaboration."

While he acknowledged that that comment underscores some lingering tensions, Mr. Pickens said that California's continuing desire for such independence does not weaken the plan. In fact, the new document has more support from other larger states than did the previous Statement of Intent, he said. Texas Insurance Commissioner Jose Montemayor concurred.

Most industry representatives were generally supportive of the plan.

"I think it's a brilliant move on the part of the (NAIC) leadership," said Lenore S. Marema, vp-legal and regulatory affairs for the Alliance of American Insurers. New commissioners have now taken ownership of it, and their commitment is essential before any plan can be implemented, she said.

But Robert Zeman, senior vp and assistant general counsel for the National Assn. of Independent Insurers, was concerned because so-called "speed-to-market" initiatives mentioned only commercial lines coverages. "We feel they missed a huge opportunity to modernize personal lines," he said.

Mr. Zeman said, though, that the plan's rate-related initiatives are expected to consider both types of coverages.

## Deadline approaching for safety directory

*Business Insurance* will publish its online directories of safety consultants and rehabilitation service providers in conjunction with the Oct. 20 issue. The issue will feature a Spotlight report on workers compensation as well as rankings of the largest independent safety consultants and rehabilitation service providers.

The online directories will be available to subscribers on [www.businessinsurance.com](http://www.businessinsurance.com) and will be included in *BI's* 2003/2004 Market Sourcebook, a special printed compilation of all of *BI's* directories and rankings that will be published December.

The directories are published as an editorial service, and there is no charge to be included.

To be listed in the safety consultants directory, companies must provide unbundled safety consulting services directly to corporate or institutional clients. In addition, companies must generate \$200,000 or more in revenues from these services

and disclose their total gross revenues.

To be listed in the directory of rehabilitation service providers, a company must provide unbundled rehabilitation management services directly to employers for workers compensation or liability cases.

*BI* defines rehabilitation management as providing all services included in the medical management or vocational rehabilitation of an injured or ill worker. In addition, companies must generate \$200,000 or more in revenues from these services and disclose their total gross revenues.

If your company meets the requirements and has not received a questionnaire, please request one immediately by calling Directory Editor Kevin P. Edison at 312-649-5279. Copies of the questionnaires also can be printed from [www.businessinsurance.com](http://www.businessinsurance.com).

Completed questionnaires must be submitted by the extended deadline of Oct. 3.

# Funding: Pension contribution rules

Continued from page 1

on a voice vote, also would require the Treasury Department to develop a new way to value pension liabilities.

But Bush administration officials warn that relaxing funding requirements for underfunded plans could expose the financially ailing Pension Benefit Guaranty Corp. to even bigger losses, increasing the likelihood that the premiums employers with defined benefit plans pay to support the insurance program would have to be increased.

The pension reform legislation, introduced by Committee Chairman Sen. Charles Grassley, R-Iowa, would, for the next three years, allow employers to value pension liabilities based on the four-year weighted average of yields on long-term corporate bonds.

The Treasury Department would develop a corporate bond index to be used for this calculation. After that, liabilities would be valued through a new corporate bond yield curve, in which interest rates used to value liabilities would vary based on when those liabilities come due. The closer a pension plan participant is to retirement age, the lower the interest rate that would be used to value the liability (BI, July 14).

Under current law, employers use

a rate equal to up to 120% of the four-year weighted average of the yield on 30-year Treasury bonds. But that formula is set to expire at the end of this year. Unless Congress acts to change the rules, after 2003, employers would value pension liabilities with a rate equal to up to 105% of the four-year weighted average of the yield on

PHOTO: ROY KARTEN



**A yield curve 'is Finance 101. It is out there in the financial world. It just hasn't been used in the pension world'**

William Sweetnam  
U.S. Department of the Treasury

the 30-year Treasury bond.

The lower yield will require employers to significantly increase their contributions to their pension plans.

Employers have long sought to replace the current pension valuation methodology with one based on corporate bond yields. They say yields on the 30-year Treasury bond, which no longer is being issued by the government, are artificially low, resulting in an inflation of employer pension liabilities and higher than necessary contribu-

tions to their plans.

"We are delighted with this change" proposed in the Senate legislation, said Janice Gregory, a vp with the Washington-based ERISA Industry Committee, which would like the use of a long-term corporate bond index to value liabilities to be made permanent.

But many benefit experts have

what government officials say could be as much as \$30 billion in pension plan contributions that otherwise would be required.

Under this provision, employers whose pension plans were at least 90% funded in 2000—or employers whose plans were at least 80% funded in 2000 and at least 90% funded in 1999 and 1998—automatically would escape a requirement that they accelerate contributions when their plans become underfunded. This funding requirement is known as the deficit reduction contribution, or DRC.

Under the Senate legislation, as long as the plans were not subject to the DRC in 2000, the plans also would be exempt from the DRC in 2004, 2005 and 2006—regardless of how low their funding levels were in any of those years.

Sources say the DRC exemption was originally drafted to specifically help the financially battered airline industry, which faces massive pension contributions over the next few years. But the provision later was broadened to aid any employer whose pension plan was well-funded in 2000—before the stock market fell heavily—and has since become underfunded and subject to the DRC.

In all, the provision would result in a \$30 billion reduction in plan

contributions over three years and, including investment income lost as a result of those contributions not being made, a \$40 billion increase in plan underfunding, government officials say.

The Bush administration strongly opposes the provision, as it could expose the PBGC, the federal agency that guarantees pension plan benefits through an employer-funded insurance program, to even bigger losses if any of the plans given funding relief later terminates.

"If the plans terminate, it creates additional pressures on the insurance program," said PBGC Executive Director Steve Kandarian. The PBGC's single employer insurance program, battered over the last year by the biggest pension failures in its 30-year history, currently has a \$5.7 billion deficit.

PBGC officials warn that if the DRC is waived, pension plans that it takes over would be even more underfunded, exacerbating its deficit.

But Lynn Dudley, a vp with the American Benefits Council in Washington, said the likelihood of large losses is low and the temporary exemption from the DRC would give Congress time to come up with legislation to amend the DRC, which, she said, is too harsh.

The DRC "hits companies too hard and too fast," she said, adding that the waiver is a way of buying some time while Congress studies long-term fixes to the DRC.

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## AGENDA

### MONDAY, NOVEMBER 17, 2003

8:00 AM - 2:00 PM  
**World Captive Forum Golf Tournament**  
*Sponsored by the State of Vermont*

3:00 PM - 6:00 PM  
**Opening Workshops**  
*Track 1: Captive Basics: The Expanding Horizons*  
*Track 2: Employee Benefits in Captives: The Opportunities and the Imperatives*

6:00 PM - 7:30 PM  
**Welcome Reception with Exhibitors**  
*Sponsored by A.M. Best Company*

### TUESDAY, NOVEMBER 18, 2003

7:30 AM - 9:00 AM  
**Breakfast in the Exhibit Hall**  
*Sponsored by Dempsey Myers & Co.*

7:45 AM - 9:00 AM  
**Domicile Info Breakfast**  
Network with domicile representatives at informational breakout sessions scheduled during breakfast

9:00 AM - 10:30 AM  
**Keynote Address:**  
**What's Driving the Insurance Markets?**  
*Featuring Dr. Sean F. Mooney, Sr. Vice President and Chief Economist for Guy Carpenter & Co.*

10:30 AM - 11:00 AM  
**Cookies & Milk Break**

11:00 AM - 12:15 PM  
**Breakout Sessions**  
*Track 1: Cell Captives: Uses and Developments*  
*Track 2: The Health Care Crisis*

12:15 PM - 1:45 PM  
**Buffet Luncheon with Exhibitors**

1:45 PM - 3:00 PM  
**Breakout Sessions:**  
*Track 1: New Cell Captive Strategies*  
*Track 2: The How and Where of Reinsurance Markets*

3:00 PM - 5:00 PM  
**Networking Poolside Break**  
*Sponsored by Watson Wyatt Insurance & Financial Services, Inc.*

7:00 PM - 10:00 PM  
**Captive Cabaret** featuring the internationally known *Jimmy Keys*

### WEDNESDAY, NOVEMBER 19, 2003

7:30 AM - 9:00 AM  
**Breakfast in the Exhibit Hall**  
*Sponsored by Barbados Investment & Development Corporation*

7:30 AM - 8:45 AM  
**Contingent Capital - The Basic Alternatives**

9:00 AM - 10:30 AM  
**Captive Case Studies**

10:30 AM - 11:00 AM  
**Beverage Break in Exhibit Hall**

11 AM - 12:30 PM  
**Tax and Legal Developments**

12:30 PM - 1:30 PM  
**Box Lunch and Prize Drawing**

1:30 PM - 2:30 PM  
**Conference Round-Up**

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# Isabel: Storm damage not as severe as was feared

Continued from page 1

North Carolina and Virginia, ordering federal aid to both states. The governors of Delaware, Maryland, New Jersey, Pennsylvania and West Virginia declared state emergencies.

Although the storm packed a powerful punch, losses from Hurricane Isabel are far from record-setting.

"Isabel will be a significant storm in insured losses, but not necessarily a historic storm," said P.J. Crowley, vp of the New York-based Insurance Information Institute, which estimates that insured damages will approach \$1 billion.

Hurricane Floyd, which hit the same general area in 1999, caused \$2 billion in insured losses, the III noted.

Boston-based catastrophe modeling company AIR Worldwide Corp., which earlier last week had predicted that Isabel could cause between \$1 billion and \$2 billion in insured property damage, lowered its estimate to "a little under \$1 billion" on Friday due to lower-than-expected wind speeds. The storm's winds topped out at just under 100 mph.

Losses from flooding, however, will likely cause an additional \$1 billion in damage, some of which may be insured in the commercial market, AIR and III predict.

"Because it made impact on a fairly swampy area right up along the coast, there will be a significant amount of flooding damage," said Peter Dailey, manager of the atmospheric science department at AIR. Though flooding is largely excluded from homeowners policies, it is covered in some commercial policies.

Brokers were just beginning to get a handle on the commercial damages caused by Isabel late last week, but initial claims activity was relatively light.

"From a pure commercial business insurance standpoint, I think it's about as good as you could hope

with something like this," said Steve Montgomery, managing director of the Carolinas for Aon Group Inc. in Charlotte, N.C. "If there is a good place for it to hit the East Coast of North Carolina, the Outer Banks is it. Outside of the tourism industry, there's not a lot of commerce there," he said.

"Clearly, some resort properties have been damaged, but in the whole scheme of things it could have been a lot worse," Mr. Montgomery said.

He said that as of Friday afternoon, he had not received many claims. "It's been very, very quiet. We have a large grocery chain that probably had as much exposure as any of our clients, and they've been quiet. We think it hasn't been too bad for them."

"We've had numerous claims reported to us. I don't think they sound overly serious yet, but it's kind of too early to tell right now," said Paul McVey, a managing director at Marsh Risk Consulting in New York, which deployed its catastrophic response team to Richmond, Va., last week.

"What we're seeing is various roof damages and water damages to office buildings," Mr. McVey said. "I think more of our concern right now is the power outages, which are still prevalent down there outside of Richmond and down into some areas of North Carolina, and there are a lot of access problems to roads due to fallen trees and power lines," he said.

Indeed, early assessments from claims adjusters and insurers indicate that Isabel caused far more personal lines than commercial lines losses.

"Most of the commercial lines insurers are breathing a sigh of relief," noted Robert J. Barnett, the national catastrophe coordinator for independent claims adjuster VeriClaim Inc. of Chicago.

"We expect more water than

wind damage," said a spokeswoman for Factory Mutual Insurance Co. of Johnston, R.I., which does business as FM Global.

As of mid-morning Friday, Boston-based Liberty Mutual Insurance Co. had 816 homeowners claims, 186 automobile claims and three commercial claims, according

to a spokesman. erage, and many commercial risks in water-ravaged coastal areas still had not assessed their damage Friday.

Business interruption claims also could be relatively significant, sources say.

One factor that could drive up business interruption claims is that many areas in the storm's path were evacuated well in advance of Isabel mak-

noted.

Representatives for personal lines insurers said Friday that estimating their losses would be difficult for several days, until residents had an opportunity to return to their homes, assess the damage and file claims.

Nationwide Mutual Insurance Co. of Columbus, Ohio, could estimate losses only in North Carolina. The insurer expected 25,000 to 30,000 claims there, including

PHOTO: NASA



to a spokesman.

Some industry sources say, however, that commercial damages could in fact be worse than initially predicted.

"I think a lot of the significant damage has yet to happen as the tremendous amount of rain that landed in the Shenandoah Valley up along the Western part of Maryland flows down the rivers and affects the businesses that are situated along there," said Dan Lentz, co-director of the insurance claims division of Ernst & Young L.L.P. based in Washington.

"It's not necessarily the wind and the storm that creates a lot of the damage, it's really the water," agreed Dan Torpey, co-director Ernst & Young's insurance claims division based in Dallas. "And sometimes the water damage can be deceptively complex" for businesses, he said.

Rob Meyers, assistant vp-property for claims adjuster GAB Robins North American Inc. of Parsippany, N.J., noted that commercial property policies often include flood cov-



PHOTO: NOAA

Photos from the International Space Station (top left) and from U.S. weather satellites (above) showed the huge scale of Hurricane Isabel as it approached the East Coast last week.

ing landfall, III's Mr. Crowley said. That would trigger commercial policyholders' business interruption waiting period earlier than normal, which could mean businesses would still be closed after their time deductibles expired.

In addition, because of extensive power disruptions caused by downed lines, many grocery risks likely will face lost business due to food spoilage, insurance experts

6,000 to 7,000 automobile claims, a spokesman said.

By comparison, the insurer faced 76,000 claims from Hurricane Fran in September 1996 and 45,000 claims from Hurricane Floyd-related losses in September 1999, the spokesman said.

Munich Reinsurance Co., the world's largest reinsurer, estimated Friday that its losses would total less than \$100 million.

## WorldCom: AEGIS says D&O cover is limited

Continued from page 3

zalez granted WorldCom's motion to stay the lawsuits; the judge found that the policies are the property of the WorldCom estate and are subject to bankruptcy court jurisdiction.

WorldCom has since filed a motion asking Judge Gonzalez to rule that the excess insurers must abide by a severability provision in its primary D&O and fiduciary liability policies. Enforcing the severability provision would mean that excess insurers could not rescind coverage of innocent directors and officers based on the alleged wrongdoing of culpable WorldCom officials. That motion is pending.

Meanwhile, AEGIS has asked Judge Gonzalez to throw out WorldCom's entire declaratory judgment action, arguing that the bankrupt company's settlement with National Union and its recently filed reorganization plan com-

bine to virtually eliminate most excess D&O coverage for WorldCom itself.

WorldCom's decision to give up its National Union entity coverage automatically voids entity coverage in all of the following form excess policies, AEGIS contends.

The D&O program also allowed WorldCom to seek coverage for amounts it reimburses covered directors and officers for defense and settlement costs. The company's reorganization plan, though—currently the subject of bankruptcy court hearings—would place a \$25 million limit on nonculpable officials' claims for defense cost reimbursement from the WorldCom estate. The reorganization plan would also treat the director and officer claims as relatively low-priority unsecured claims, the AEGIS filing notes.

"It is currently uncertain whether the WorldCom estate will have suf-

ficient assets to fund" any of those claims, AEGIS says. In addition, the \$25 million limitation means that WorldCom claims would never reach the \$10 million excess of \$70 million layer written by AEGIS or—the filing suggests—most of the layers above National Union's \$15 million primary limit.

The insurers' actual coverage dispute, AEGIS argues, is with individual WorldCom directors and officers, and that dispute should not be heard as part of the WorldCom bankruptcy.

If Judge Gonzalez ultimately refuses to dismiss WorldCom's suit, AEGIS has also asked the judge to stay the action pending the outcome of criminal proceedings against several former WorldCom officers.

A hearing has been scheduled for Oct. 7.

WorldCom filed for Chapter 11 protection in 2002 after a series of

disclosures of accounting errors totaling more than \$9 billion. The company has been hit with at least 62 shareholder lawsuits and 17 fiduciary liability suits stemming from the precipitous fall in its stock price.

WorldCom's \$100 million D&O program consists of National Union's \$15 million primary policy; successive \$15 million layers written by Continental Casualty, Swiss Reinsurance Co. and Twin City; and successive \$10 million layers written by Bermuda-based Starr Excess Liability Insurance International Ltd., AEGIS, Gulf Insurance Co. and National Union.

The company's \$50 million fiduciary program consists of a \$10 million AIG primary policy; successive \$10 million layers written by Gulf, Continental Casualty and Twin City; and additional \$5 million layers written by Continental Casualty and Gulf.

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## Late News

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according to Tom Donahue, president of the U.S. Chamber of Commerce. Sen. Frist "has committed to moving ahead with class action," he said shortly after meeting with the Senate leader last week. Mr. Donahue said that the Class Action Fairness Act, which would, among other things, allow plaintiffs or defendants to move interstate class actions to federal from state courts under some circumstances, currently has "57 sure votes" in the Senate.

### FDA warns importer of Canadian drugs

The U.S. Food and Drug Administration is stepping up its efforts to shut down the Canadian drug importation program launched in July by the city of Springfield, Mass. Last week, the FDA issued a letter to the city's drug importer, CanaRx Services Inc., warning the company that it is violating federal law by importing prescription drugs from Canada. The FDA contends that importing the drugs puts U.S. consumers at risk because, without U.S. oversight, consumers cannot be sure of the safety of the drugs. CanaRx has 15 days to respond to the FDA's letter. Meanwhile, the office of Illinois Gov. Rod Blagojevich announced it is examining whether Illinois should reimburse state employees and retirees who purchase prescription drugs from Canadian pharmacies. Gov. Blagojevich has commissioned a study to examine whether the state could save money by reimbursing its 230,000 employees and retirees for buying drugs from Canada.

### California plans offer discount on generics

Four major health plans in California have launched an initiative designed to encourage their members to purchase generic drugs. Under the



program, dubbed The Generic Advantage, the health plans will distribute coupons that providers can give to members of the plans, entitling patients to \$10 off their first purchase of a generic prescription. Blue Cross of California, Blue Shield of California, Health Net of California and PacifiCare of California last week announced the program.

### California governor gets worker lawsuit bill

A bill sent last week to California Gov. Gray Davis would allow employees to sue their employers and seek civil penalties for labor code violations, including certain workplace safety violations. Under the legislation, "aggrieved employees" would be able to recover labor code violation penalties and sue employers in cases where California's Labor and Workforce Development Agency fails to enforce the law.

### Texas voters uphold medical malpractice caps

Texas voters narrowly ratified a state constitutional amendment that will limit certain types of medical malpractice awards. The amendment—Proposition 12—was one of 22 amendments before the voters in a special election on Sept. 13. It confirms the constitutionality of a Texas law that caps noneconomic damages against individual physicians in medical malpractice cases at \$250,000 and those against hospitals and other health care facilities at \$500,000.

### ESG Re sues auditor over contract termination

Bermuda-based reinsurer ESG Re Ltd. has sued Deloitte & Touche

L.L.P., charging the accounting firm with professional negligence and breach of contract over the termination of its auditing contract with ESG. The complaint charges that the timing of Deloitte's termination of its auditing contract with ESG led to the reinsurer's inability to make third-quarter 2002 filings with securities regulators. ESG alleges that this, in turn, caused the reinsurer to be delisted from the NASDAQ stock exchange and its debt rating to be downgraded.

### FASB proposal would increase plan disclosures

A proposal by the Financial Accounting Standards Board would require publicly held companies to increase significantly the information they must disclose about their pension plans. Under the proposal, which would go into effect for fiscal years beginning after Dec. 15, 2003, employers would have to disclose annually how much their pension plans expect to pay out in benefits in that year and how much they expect to pay out in five-year brackets. Additionally, employers each year would have to disclose how much they expect to contribute to the plans.



A restaurant and convenience store in Barriere, British Columbia, is one of many businesses in the province lost to brushfires.

### Insured losses mounting from Canadian brushfires

Property insurers have collectively reserved more than \$200 million Canadian (\$146.6 million) to pay property owners whose homes and

businesses were lost in the rash of brushfires that have been ravaging British Columbia since late July. "And we expect that to climb," said Dennis Prouse, manager of government relations for the Insurance Bureau of Canada in Vancouver. The blazes represent the largest insured fire loss in Canadian history, according to the IBC.

### Federal health program's premium hikes decrease

Insurance premiums for the health benefits program the federal government administers for its employees and retirees will rise next year by an average of 10.6%, a small increase compared with the those other big employers are seeing. Next year's increase in the Federal Employees Health Benefits Program—the nation's largest program at more than 8 million participants—is down from this year's 11.1% increase and the 2002 increase of 13.3%.

### Briefly noted

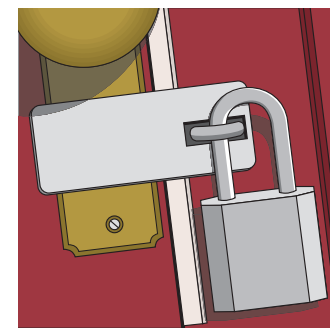
Hilb Rogal & Hamilton Co., the Richmond, Va.-based broker, has changed its name to **Hilb Rogal & Hobbs Co.** The name change reflects HRH's purchase of the Hobbs Group in July 2002....The Illinois Supreme Court has agreed to hear an appeal of a \$10.1 billion tobacco-related class-action award handed down against **Philip Morris Cos. Inc.** in Madison County, Ill. Madison County is often cited by tort reform advocates as one of the most plaintiff-friendly venues in the nation.

### Check out BusinessInsurance.com

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

## Online Poll

[ 9/15 - 9/19 ]



Would buyers be better protected if regulators shut down insolvent insurers more quickly?

Yes	76.03%
No	9.09%
Speed does not matter	11.57%
Do not know/do not care	3.31%

## BI Stock Index

[ 9/15 - 9/19 ]

Up-to-the-minute data for all 88 companies that comprise the *BI* Stock Index can be found at [www.businessinsurance.com](http://www.businessinsurance.com).

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

<b>BI Stock Index</b>	2044.44	↑ 2.35
<b>Dow Jones</b>	9644.82	↑ 1.83
<b>S&amp;P 500</b>	1036.30	↑ 1.73

### Largest gains

Navigators Group	12.58%
Axis Capital Holdings	9.44%
RenaissanceRe Holdings	7.14%
Oxford Health Plans	6.39%
Citigroup	6.12%

### Largest losses

Acceptance Insurance	-9.09%
Clark Bardes Holdings	-6.92%
Trenwick Group Ltd.	-6.90%
NYMagic Inc.	-6.38%
Seibels Bruce Group	-5.00%

### Weekly change by market segment

Brokers	0.59%
Insurers/Reinsurers	1.81%
Managed Care Organizations	0.87%

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

# Forum: Forces on industry discussed

Continued from page 4

think that's the way we're moving," he said.

Jacqueline L. Gardner, assistant commissioner for the insurance company solvency section of the Minnesota Department of Commerce had a similar view. "My view is you've got a choice of working with one big gorilla or 50 little monkeys," Ms. Gardner said, adding that those small entities are trying to take steps so they can, in some cases, act like that "big gorilla."

Wayne Baliga, senior vp and director of Virginia Surety Co. Inc. and president and chairman of Aon Technical Services Inc. in Chicago, said he thinks that regulators can do several things to improve the insurance market, including reducing barriers to entry and standardizing regulatory rules wherever possible.

They also should allow substan-

tial rate increases for lines where they recognize a danger of insurer insolvency, and they should push lawmakers in their states to pass meaningful tort reform, he said.

Mary Cannon Veed, a partner at Arnstein & Lehr L.L.P. in Chicago, noted that beyond laws of insurance regulation, "the laws of economics are doing some very strange things to the insurance industry."

Despite recent reports of the "extraordinary turnaround" in the financial results of the insurance industry, insurers' investment income is "down spectacularly," Ms. Veed said. And, "in the insurance industry, despite all the apparent profitability, loss reserving remains a moving target."

"It's amazing how little attention has been paid to it, but 2002-2003 has seen a spate of insurance insolvencies that rivals anything we saw in 1984-85," Ms. Veed added.

With those factors in mind, as an insurance buyer, "we're looking to spread our risk" among various insurers in the United States, Bermuda and Europe, said Mary C. Gardner, director, risk management at Sears, Roebuck & Co. in Hoffman Estates, Ill.

"But you know what? It's a tangled web you weave, because they're all interrelated; they're all insuring each other," Ms. Gardner said. "Another thing we, as risk managers, are worrying about—we want to know where our insurers are reinsuring."

Rating agencies, shareholders, stock analysts and the accounting profession are other nonregulatory factors influencing the insurance marketplace, said Michael P. Goldman, a partner at the law firm of Sidley Austin Brown & Wood L.L.P. in Chicago.

Ratings "dictate how the market behaves, and there's not a stitch of

regulation in any of those influences," he said.

Regarding shareholders and stock analysts, "you saw in the wake of Enron a market aversion and a significant drop in the market value of those entities that had significant off-balance-sheet financing mechanisms," he said. "That's another example of how market influences can police an industry."

The accounting profession, meanwhile, has become a sort of "quasi-regulation," Mr. Goldman said.

"I think particularly in the area of reinsurance, the emergence of FAS 113, accounting for reinsurance, has had a very significant effect on the way reinsurance is structured," said Lawrence M. Friedman, a partner in the Chicago office of Lord, Bissell & Brook L.L.P.

Kenneth Weine, associate director at Protiviti Inc. in Chicago, moderated the forum.