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Business Insurance®

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Late News

Nine insurers win Part D approval

The Centers for Medicare and Medicaid Services has approved nine insurers to provide stand-alone prescription drug coverage nationwide under the Medicare Part D prescription drug program that starts Jan. 1, 2006. They are: Aetna Life Insurance Co.; Connecticut General Life Insurance Co.; Medco; MemberHealth Inc.; PacifiCare Life & Health Insurance Co.; Silverscript Insurance Co.; UniCare; UnitedHealth Group Inc.; and WellCare Health Plans Inc. Several other companies have been approved to provide regional coverage.

Insurer seeks review of Utah partner order

Utah's Public Employees Health Program will ask a state court to decide whether it can legally provide domestic partner benefits under an executive order signed by Salt Lake City Mayor Rocky Anderson. The mayor signed the executive order Wednesday, giving same-sex partners of city workers some of the benefits

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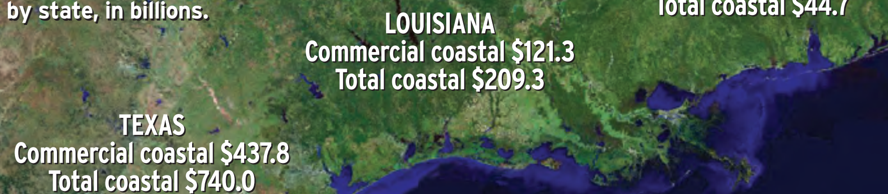
STORM SURGE



Texans evacuated last week as Hurricane Rita threatened to bring more misery to states along the Gulf Coast.

PHOTOS: GLOBE XPLORER & PARTNERS, INSET: GETTY PHOTO

Few cover options as storm season worsens

By GAVIN SOUTER and SARAH VEYSEY

Some insurers and reinsurers already reeling from losses from Hurricane Katrina were scrambling to buy backup coverage before Hurricane Rita struck the Gulf Coast last week, but, for the most part, coverage was unavailable or too expensive for many buyers, reinsurance brokers say.

Cedents with exhausted coverage or just one reinstatement remaining after Katrina sought extra coverage, while reinsurers whose own retrocessional or industry loss warranty programs were wiped out were also looking for additional protection, they say.

But although at least one insurer secured additional reinsurance coverage, others faced the storm without additional protections in place.

As a result, many cedents will likely go back to the market over the next few weeks to find replacement coverage for the remaining weeks of the 2005 hurricane season.

For many cedents and reinsurers, there just wasn't time to secure additional coverage between Katrina striking and Rita barreling into the Gulf, said William J. Adamson, chief executive officer of Carvill America Inc. in Chicago.

"The window between losses was such that there wasn't the opportunity to get backups purchased," he said.

Although some reinsurers at midweek were looking to secure industry loss warranties, "very few people were offering to sell, or the rates on line were such that no one was willing to buy," Mr. Adamson said. Industry loss warranties, or ILWs, are index-linked coverages that are triggered when total industry losses surpass an agreed amount.

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KATRINA RITA

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Increased hurricane activity likely.
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Marsh faces more charges as Blumenthal amends suit

Settling Spitzer charges doesn't end problems

By SALLY ROBERTS

HARTFORD, Conn.—Despite hopes of nationwide adoption of its $850 million settlement reached with New York Attorney General Eliot Spitzer earlier this year, Marsh & McLennan Cos. Inc. is once again facing fraud and anti-competition charges—this time from Connecticut Attorney General Richard Blumenthal.

PHOTO: STEVEN E. FRISCHLING/ BLOOMBERG NEWS /LANDOV

"Our new and significant allegations seek money back for hundreds of Connecticut consumers."

Richard Blumenthal
Connecticut Attorney General

Mr. Blumenthal last week amended his pending lawsuit against MMC to include new allegations of bid rigging, price fixing and illegal steering against the world's largest brokerage.

The suit charges that New York-based MMC illegally steered business to insurers paying the highest contingent commissions and of developing a scheme whereby insurers agreed to provide Marsh with fictitious quotes so it could channel business to favored insurers.

Nearly 300 Connecticut clients of Marsh were hurt by the illegal practices, either by paying premiums that contained secret contingent commissions, by paying inflated premiums or by purchasing inferior insurance coverage, Mr. Blumenthal charged.

"Our new and significant allegations seek money back for the hundreds of Connecticut consumers—

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Few risk management cases on high court's docket

That could change with the confirmation of John G. Roberts as chief justice.
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Mississippi lawsuit could bring deluge of new problems

Forcing personal lines insurers to pay for excluded flood damage could impact the commercial market, an editorial says.
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Equitable drops lawsuit against Ernst & Young

Failed insurer will pursue a claim against 15 of its former directors.
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Online poll - [9/19 - 9/23]

Do you think Hurricane Katrina increases or decreases the chances that Congress will extend some version of the Terrorism Risk Insurance Act before TRIA expires on Dec. 31?

60.78% Increases

17.65% Decreases

21.57% Not certain

Participate in *BI*'s online polls at *www.businessinsurance.com.*

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Swett & Crawford's new owners expect to expand wholesale broker

By ROBERTO CENICEROS

WOODLAND HILLS, Calif.—Swett & Crawford Group will start a growth phase following its purchase by a group of investors, which was announced last week.

The nation's largest wholesale brokerage will hire more brokers and eventually acquire other wholesalers as it seeks to make the most of its new independence, the investors say.

But the long-term ownership of Swett & Crawford, like other companies owned by equity groups, is still unknown, as investors will eventually need to cash in their stakes.

Aon Corp. announced last week that it reached a definitive agreement to sell Swett & Crawford to an investor group for an undisclosed amount. The group includes private equity investment firm Hicks, Muse, Tate & Furst Inc.; Banc of America Capital Investors; and Emerald Capital Group Ltd., a private consulting and investment firm.

Swett at a glance

Premium volume	$2,775,000,000
Gross revenues	$246,143,000*
Employees	850
Wholesale employees	850
Commercial lines	99%
Admitted business	39%
Nonadmitted business	61%

* *BI* estimate
Source: *BI* survey

The deal is expected to close in 45 to 60 days.

Under Aon's ownership, Swett has long been under a hiring freeze, said Andrew Rosen, a partner at Dallas-based HMTF, which is the controlling investor. But HMTF expects that under its leadership, Woodland Hills, Calif.-based Swett will expand its brokerage and underwriting functions through hiring and acquisitions.

"It's an opportunity for us to lift that freeze and start adding people," Mr. Rosen said. Aon announced in February that it planned to sell Swett & Crawford.

The wholesaler will now look to expand into regions where it formerly lacked offices, added David Hartoch, Swett & Crawford's chairman and chief executive officer. Potential areas of expansion include Arizona, Nevada, Florida and Tennessee.

Mr. Hartoch said that the wholesaler's headquarters will move to Atlanta, where

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American Airlines teams with doctors, health plan to improve quality care

By JOANNE WOJCIK

DALLAS—In an rare three-way initiative, a large employer is teaming up with physicians and a health plan in an attempt to directly influence how well the doctors who regularly treat its employees follow established medical treatment guidelines for cardiac care.

The project, which began in June but was just announced publicly, is believed to be the first time that a group of physicians, an employer and a health plan have collaborated on standards to improve the quality of care for a particular health condition.

Participants include 55,000 of American Airlines' Dallas- and Fort Worth-based employees and their family members, and 98 north Texas physicians who regularly treat those patients as part of UnitedHealth Group Inc. provider networks. Minnetonka, Minn.-based UnitedHealth administers American Airlines' self-insured health benefit plan.

"By working collaboratively with primary care physicians who are treating American Airlines' DFW-based employees, we will model an outpatient care improvement project," said Dr. Paul Solomon, market medical director for UnitedHealth in Dallas.

Although at first blush the program may look like a typical disease management program, it is much more than that, according to those who are involved in the project.

Many employers have active health promotion and disease management programs, but their effectiveness is often stymied by a lack of involvement by employees' personal physicians in a proactive care management process, said Virginia Nisbet, health strategies director at American Airlines and president of the Dallas-Fort Worth Business Group on Health, which is spearheading the project.

"This differs from our existing wellness programs in that we are working directly with area physicians and our health plan administrator to proactively manage the care of at-risk patients," said Ms. Nisbet.

"It's not a disease management program," insisted Dr. Solomon. "This is really the first time in our market and maybe in other markets that a business coalition, a large employer and health insurance company have partnered together in an innovative way to demonstrate that quality improvement really has many stakeholders."

Before the cardiac care improvement project began, UnitedHealth established baselines of both patients' conditions and physicians' adherence to established treatment protocols.

"We've identified from claims data the presence or absence of those tests…that indicate whether a physician is performing these recommended interventions," Dr. Solomon explained.

The doctors were also given checklists to remind them which tests should be performed regularly on patients who either already have cardiovascular disease or who have conditions that may lead to heart disease, such as hypertension and high cholesterol.

As the program progresses, the partici-

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PHOTO: WILLIAM PHILPOTT/AFP/GETTY IMAGES

BP P.L.C. was self-insured for the losses related to a March 23 explosion at a refinery in Texas.

BP to pay $21 million in plant blast deaths

By MEG FLETCHER

WASHINGTON—BP Products North America Inc. will pay a fine of $21.4 million for safety and health violations following a March 23 explosion at its Texas City, Texas, refining plant that killed 15 workers and injured more than 170 others.

The Occupational Safety and Health Administration, which announced that record fine last week, also required the Chicago-based subsidiary of BP P.L.C. in London to obtain consulting services from a process safety manager and communications expert.

"BP has accepted responsibility for the March 23 explosion," although under the terms of the agreement, "BP does not admit the alleged violations or agree with the way OSHA has characterized them," according to a BP statement.

BP, which is self-insured for its losses related to the plant blast, has set aside $700 million to compensate victims and is working to resolve claims, a BP Products spokesman said.

In addition, BP Products appointed three new managers at the refinery. It also leased offsite offices for workers whose presence is not required at the refinery, following the deaths of workers in office trailers near the site of the explosion.

In a report issued in May, BP said the explosion occurred because managers and operators overfilled a tower with combustible fluids at the isomerization unit that produces components of unleaded regular gasoline. The fluid level was 20 times higher than it should have been, according to the report.

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Whistleblower retaliation claims challenging employers

Cases growing rapidly since Sarbanes-Oxley Act introduced

By JUDY GREENWALD

Employers can expect to face a growing number of retaliation claims by employees under the whistleblower provisions of the 2002 Sarbanes-Oxley Act, say observers.

"It's a continuing and increasing distraction for employers," said attorney Phillip M. Berkowitz, with Nixon Peabody in New York. "These aren't going away."

While from one perspective, Sarbanes-Oxley is just one of the many laws employers already cope with, its whistleblower provisions also present unique challenges, say observers. Among them is that employers may find themselves forced to reinstate terminated employees even before their retaliation complaint is resolved.

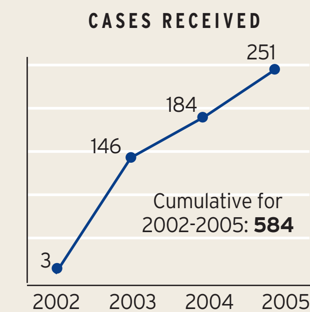
Section 806 of the 2002 Sarbanes-Oxley Act provides legal protection against retaliation to employees of public companies who report suspected corporate fraud or other activities related to fraud against shareholders. Employers subject to its prohibitions include publicly traded companies as well as their subsidiaries, contractors and shareholders.

Employees who believe they have been retaliated against because of their whistleblowing activity must file a claim with the U.S. Department of Labor within 90 days of the alleged retaliatory act.

If an administrative law judge of the Labor Department's Occupational Safety & Health Administration fails to reach a decision within 180 days—which observers say is increasingly likely given its growing case load—employees can have their cases heard in federal court.

Complaints growing

Retaliation claims have risen sharply since 2002.



Source: Department of Labor

Employers may have to reinstate the employee, and pay back wages with interest as well as compensation for any special damages sustained as a result of the discrimination, including litigation costs.

The number of cases filed is growing fast. According to the Labor Department, there were 251 cases filed this year as of Sept. 12, compared with 184 for all of 2004.

So far, employers largely have been successful in defending these claims. Out of the 491 complaint determinations since 2002, which includes multiple complainants from individual cases, 343 were dis-

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PHOTO: STEPHEN CROWLEY/THE NEW YORK TIMES

Chief Justice nominee John G. Roberts has indicated he would like to see the Supreme Court take on a larger case load.

High court to tackle few liability cases in upcoming term

By MARK A. HOFMANN

WASHINGTON—The U.S. Supreme Court approaches its new term with few risk management-related cases on its docket, but court observers say that could change in the not-too-distant future.

One factor that could change the court's agenda is the pending—and nearly certain—Senate approval of the nomination of U.S. Appeals Court Judge John G. Roberts as chief justice.

As David C. Frederick—a partner in the Washington law firm Kellogg, Huber, Hansen, Todd, Evans & Figel—noted in two previews of the coming Supreme Court term last week, Judge Roberts has indicated that he would like the high court to accept more cases for review.

In addition, both Mr. Frederick and Roy T. Englert Jr.—a partner in the Washington law firm of Robbins, Russell, Englert, Orseck & Untereiner L.L.P.—said during a preview at the Washington Legal Foundation that issues involving application of the new Class Action Fairness Act and states' treatment of class actions are likely to wend their way through the lower courts to the high court in the next few years.

The aftermath of Hurricane Katrina could also give rise to a "whole host of claims" that will make it to the Supreme Court, Mr. Frederick said last week during a court preview at the National Chamber Litigation Center Inc. Claims involving environmental impairment, insurance disputes and even charges against the federal government are likely to arise, he said.

"Certainly, in the insurance industry, there's got to be a lot of apprehension," he said.

The Supreme Court's decision in *State Farm Mutual Automobile Insurance Co. vs. Campbell*, which held that under most circumstances, punitive damages that exceed actual damages by double-digit multiples are unconstitutional, is also likely to generate more review, said Gene C. Schaerr, litigation partner in the Washington office of Winston & Strawn L.L.P.

In that 2003 ruling, the court also held that in some cases, punitive damages that exceed the underly-

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NYC mayor doesn't buy bill requiring grocers to fund health care benefits

By JERRY GEISEL

NEW YORK—New York Mayor Michael Bloomberg has vetoed legislation that would require grocery stores and other retailers selling groceries to make a substantial contribution toward their employees' health insurance coverage costs.

The legislation would apply to grocery stores with at least 35 employees or other retail stores with 10,000 square feet of food products.

Covered employers would be required to contribute an amount equal to the prevailing employer contributions New York City grocers now make towards their employees' health insurance coverage.

New York City would conduct surveys to determine this amount. The Brennan Center for Justice, a public policy think tank in New York, estimates that amount currently is about $2.50 to $3.00 per employee per hour.

Employers covered by the mandate would have broad flexibility in how they make the contributions. For example, employers could contribute the funds to employees' health savings accounts or reimburse employees' for their medical claims.

In his veto message, Mayor Bloomberg said the measure,

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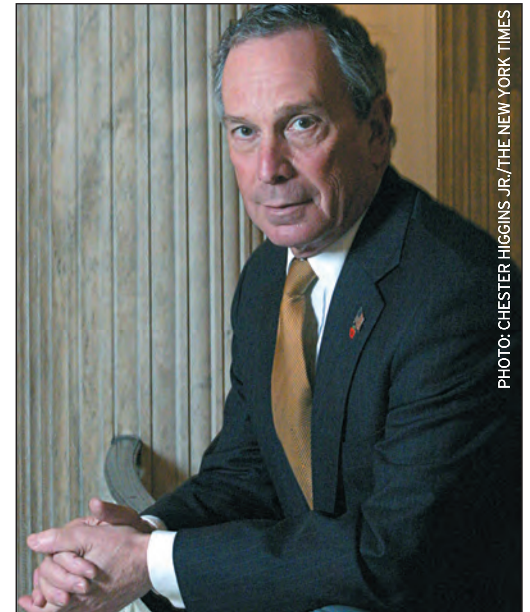

PHOTO: CHESTER HIGGINS JR./THE NEW YORK TIMES

New York Mayor Michael Bloomberg says an effort to force grocers to make health care contributions is pre-empted by ERISA.

E&S market sees rate growth resulting from storm losses

By ROBERTO CENICEROS

SAN FRANCISCO—Hurricane Katrina losses will force more policyholders in catastrophe-prone areas to layer property coverage and pay more to obtain desired limits, surplus lines insurers and brokers say.

Prices are also likely to rise, or at least halt their recent decline, even for properties located away from catastrophe areas as some insurers and reinsurers look to recoup hurricane-related losses, the attendees at the National Assn. of Professional Surplus Lines Offices Ltd.'s annual convention said.

But while some insurers will reduce their capacity, wholesalers attending the convention say that other surplus lines insurers that did not previously insure Gulf Coast risks are already stating that they will now offer coverage in the region as prices rise.

Surplus lines casualty business could also see an impact as insurers attempt to maintain profitability in the wake of Katrina, brokers, insurers and managing general agents added.

NAPSLO's annual meeting provides wholesalers, surplus lines insurers and managing general agents a venue to reinforce their relationships and discuss future coverage arrangements. Hurricane Katrina dominated many discussions during the convention held Sept. 14-18 in San Francisco, before Hurricane Rita threatened the Gulf Coast.

Some property insurers talked of raising rates by 10% or at least holding them flat for catastrophe area coverage while others have already begun restricting their available limits, said Ronda Whaley, a surplus lines property broker for wholesaler Brown & Riding in Los Angeles.

Some property markets may pull back from catastrophe-prone areas, which would increase pricing pressure, said Shaun E. Kelly, president of Lexington Insurance Co., a Boston-based surplus lines unit of American International Group. But that would create additional need for non-admitted insurers with the financial wherewithal to step up their coverage.

He said his message to clients at

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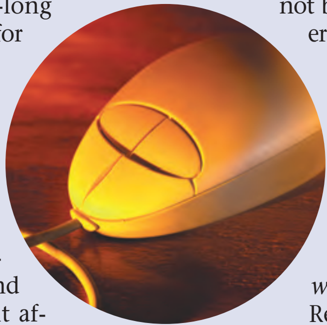
Webinar to help buyers prepare for risk of TRIA's nonrenewal

Time is running out for Congress to act on renewing the Terrorism Risk Insurance Act.

What this might mean for your business and the insurance industry is the subject of an upcoming online panel discussion sponsored by *Business Insurance*. This webinar—a free, hour-long audio program online—is scheduled for 1:30 p.m. EDT Oct. 12.



The panelists for this event, "A World Without TRIA: Why A Terrorism Insurance Backstop is Vital," are: Ramani Ayer, chairman and chief executive officer of The Hartford Financial Services Group Inc.; Bradley Wood, senior vp-risk management of Marriott International Inc.; and Joel Wood, senior-vp of government affairs for the Council of Insurance Agents & Brokers. The discussion will be moderated by *Business Insurance* Senior Editor Mark A. Hofmann.

These experts will discuss the challenges of winning congressional approval for TRIA, what impact Hurricane Katrina will have on reauthorization efforts, why they believe TRIA is vital to U.S. businesses and the insurance industry, and how businesses and insurers should plan for the possibility that the act will not be extended, resulting in a loss of a federal backstop of insurance coverage for future terrorism risks.

Anyone concerned with the TRIA reauthorization efforts should attend, including risk managers, brokers, insurers, reinsurers, regulators and industry association executives.

Register today to attend this free online panel discussion by visiting: *www.businessinsurance.com/webinars.*

Registered attendees of the live event will have the opportunity to ask questions of the panelists. In case you are unable to attend the live event, an archived version of the live webinar will be available afterward at the above URL.

Mandate: Bloomberg vetoes benefit legislation

Continued from page 4

while well-intentioned, "suffers from several legal deficiencies that render the bill invalid," the most significant being that it is pre-empted by the federal Employee Retirement Income Security Act.

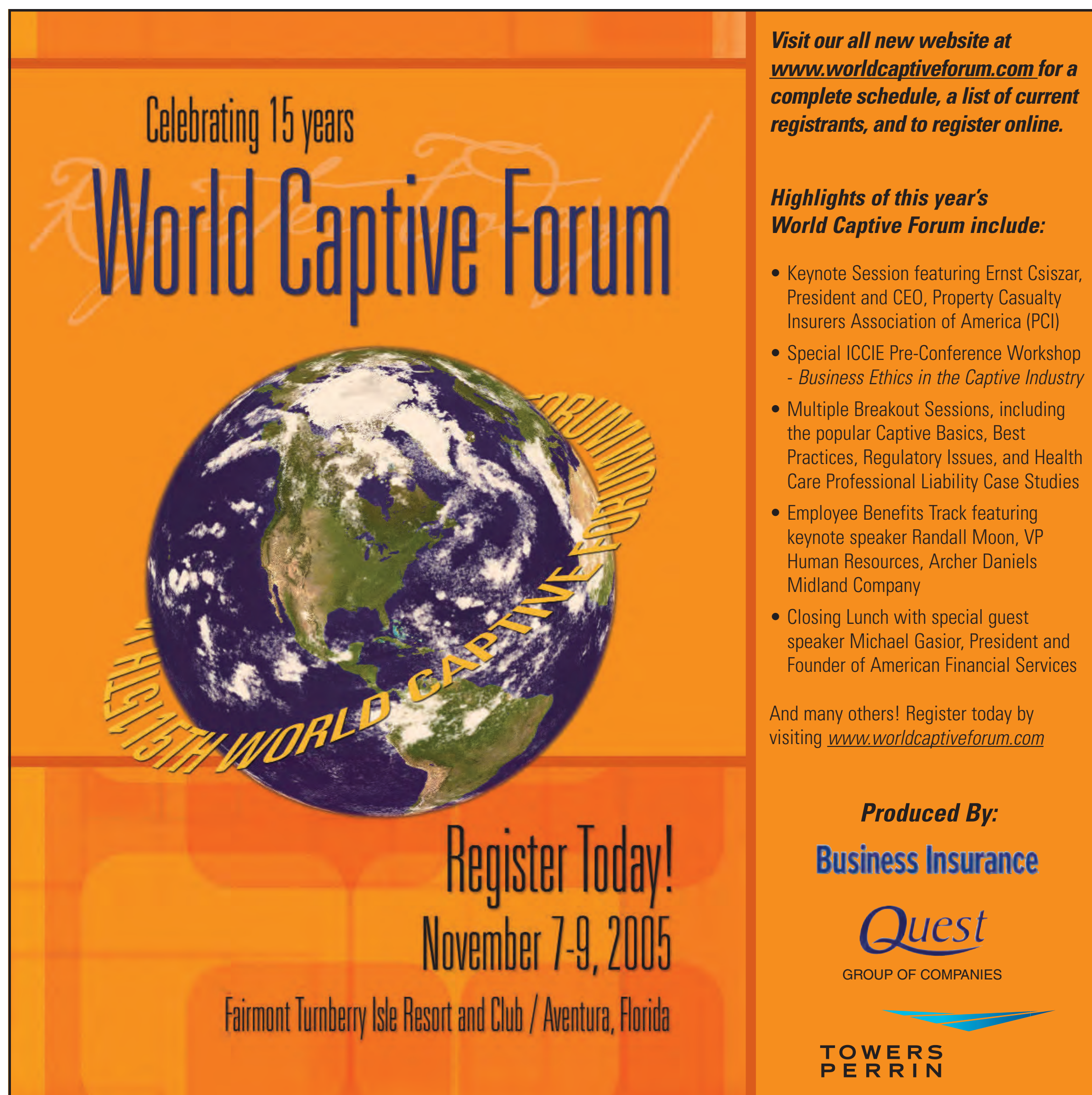
"Numerous judicial decisions have struck down as pre-empted state and local laws mandating employee benefit structures," Mayor Bloomberg said.

Mayor Bloomberg also said the mandate was "arbitrary and capricious" and would not be an "effective mandate for the countless workers and families across New York City who would remain uninsured under this proposal."

Backers of the mandate said they were disappointed with the mayoral veto.

"This is innovative legislation that expands health care for thousands of New Yorkers and protects responsible businesses and taxpayers. These seem like principles the administration would support," said Adrianne Shropshire, executive director of Jobs with Justice, a coalition of more than 75 labor and community organizations in New York.

An effort is expected by the City Council to override the mayoral veto. Thirty-four votes are necessary for an override. The City Council approved the measure in August on a 46-1 vote.



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- Employee Benefits Track featuring keynote speaker Randall Moon, VP Human Resources, Archer Daniels Midland Company
- Closing Lunch with special guest speaker Michael Gasior, President and Founder of American Financial Services

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TOWERS PERRIN

PAUL WINSTON

Editorial Director

Short short games head

Business often relies on analogies drawn from games to illustrate a point. You step up to the plate. You roll the dice. You're just a pawn. You do not pass "Go."

Similarly, games are often designed to mirror real life. The struggle between the haves and have nots (Monopoly). Geopolitics and colonialism (Risk). The freakish ability of some to retain useless information (Trivial Pursuit).

But some games, especially classic board games, do not hold up as well today, I feel, and could use some updating.

Take Monopoly, for example, which was developed in the 1930s and remains one of the best-selling games of all time. At the time, being sent to jail or being driven into bankruptcy under a crushing load of bills was seen as the worst that could happen.

Today, Monopoly could use a bit more verisimilitude. How about a card that says a Superfund site was found on Baltic Avenue, and you have to foot the bill for the cleanup? Or maybe a card that says you tripped on Park Place and sprained your ankle, allowing you to sue the owner for pain and suffering? Or one that says your property is plagued with toxic mold, so you have to pay every player who lands there for fear of becoming ill?

And where is the reality in just being able to buy homes and plunk them down on your property? I know mortgage rates are low, but all those homes—and especially the hotels—should require players to shell out for big umbrella policies, too.

At the very least, the game would go a lot faster, as players would be quickly wiped out by unforeseen liabilities, rather than slowly bled to death by tax and mortgage burdens.

Operation was a fun game when it came out, mostly because it used electricity to raise the stakes. If you made a mistake, the patient would buzz and his nose would light up. In fact, it was fun to screw up.

Today, the surgical tweezers should be electrified, giving the player a jolt at any misstep. That would be the shock of malpractice lawsuits. A second jolt would represent the high cost of malpractice insurance premiums.

To simulate the restraints imposed by managed care, players would have to perform their delicate operations with their eyes closed and using the opposite hand.

Mr. Potato Head and Cootie Bug were once harmless fun. Today, assembling these odd little creatures might hit a little too close to home. That's because of the nefarious threat of genetically modified food and what it might mean for plants, insects and humans. Suddenly, having an eyeball where an ear should be isn't as playful and amusing anymore.

Some games clearly are anachronisms from a bygone era. Candyland? Today, we know that encouraging gluttony is bad, especially when aimed at children. Just ask McDonald's. Chutes and Ladders? Sorry, but few playgrounds today even have such dangerous equipment for fear of injuries and the resulting lawsuits.

In fact, maybe it's time for a new board game that captures the spirit of our times.

It could be called Sue Everybody! Players would roll dice to move their game pieces along a path. The goal would be to amass income and property as you go, and reach the end without being sued penniless.

Along the way, players would have an opportunity to purchase insurance and legal services for protection. If their luck holds out, they might make it all the way without any disasters.

But throughout the course would lurk numerous risks. Several spots would include lawsuits, allowing a player to sue a competitor. A roll of the dice would determine the size of jury awards. Class action cards would allow all other players to join in and sue a lone player.

Players caught in such legal quagmires would hope to have picked up insurance and defense cards along the way. But a roll of the dice would determine their effectiveness, too. Sometimes, the player will come out ahead, sometimes he or she won't.

Other spots could feature such perils as coverage disputes, requiring a player to forfeit the protection of an insurance policy. Reservation of rights cards. Or the sleeping defense counsel card.

The game would capture all the mindless glee of being able to sue someone else into oblivion, as well as the persistent dread of moving through a risky landscape fearing a lawsuit or ineffective insurance or legal representation.

What family wouldn't love to pull this board game out and teach their children such valuable lessons about the world we live in. Don't steal my idea, though, or I'll sue.

Editorial director Paul Winston is on vacation. This commentary is from the BI archives and was originally published on Feb. 10, 2003.

Editorial Director Paul Winston's ccommentary appears fortnightly. He can be reached at pwinston@businessinsurance.com

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Editorial

Forcing flood payouts will create more problems

WHILE WE DON'T WANT to appear heartless in the wake of Hurricane Katrina, we can find nothing to recommend Mississippi Attorney General Jim Hood's effort to help hurricane victims by suing insurance companies to, in effect, make them provide coverage for a peril—flood damage—they specifically exclude.

The suit doesn't specifically say that insurers have to cover flood damage. It seeks to bar them from getting policyholders to sign forms acknowledging that there is flood damage to a property. Mr. Hood says that the insurers can deal with the forms later—right now, they should pay up.

The issue is a personal lines one, for the moment. If Mr. Hood prevails, the results could have unfortunate effects on the commercial lines marketplace as well.

If the courts interpret insurance polices as covering a specifically excluded peril, insurers will find themselves in a difficult situation, with serious public policy implications.

At a minimum, insurers will become embroiled in disputes with their reinsurers, who won't, without a fight, pay for a loss they didn't intend to reinsure in the first place. In the event that reinsurers win those battles, the insurers themselves will face the possibility of insolvency, which will put more financial pressure on remaining insurers. And if both insurers and reinsurers are forced to pay for excluded flood coverage, all policyholders in the affected regions, at least, should expect even bigger rate hikes at renewals.

Meanwhile, politically ambitious attorneys general in other states will certainly follow suit—pardon the choice of words. Private bad-faith lawsuits inevitably would follow.

And such political grandstanding is particularly dangerous given that we appear to be in the midst of perhaps 20-plus years of above average hurricane activity. Requiring insurers to pay flood claims that they specifically excluded will provide a perverse incentive to build in hurricane exposed areas.

The result could be the emergence of a vicious cycle. Faced with the possibility of insolvency, insurers will be forced to withdraw from states that require them to toss the underwriting guides.

By surrendering their personal lines licenses, the chances are good that insurers will have to surrender their commercial lines licenses as well. That happened in Massachusetts in the late 1980s as insurers balked at writing personal auto coverage in a difficult market.

Therefore risk managers have a definite stake in this. Fewer insurers means fewer choices. In what promises to be a hardening property market—perhaps accelerated by Rita—that's bad news.

No one can understate the seriousness of the tragedy Hurricane Katrina has wrought. The situation faced by residents of the Gulf Coast is indeed bad, and must be alleviated. Unfortunately, actions such as Mr. Hood's, designed to make that situation better, can only make it worse, and make it worse for people and enterprises far beyond the hurricane's impact zone.

Schillerstrom

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Relief welcome but should be expanded beyond Katrina

SPEED IS NOT A WORD that usually comes to mind when describing the pace at which federal legislators or regulators consider employee benefit issues.

Indeed, it is not uncommon for years to pass before legislators and regulators act on an issue.

Given that track record, it is a surprise, a pleasant one, to see how quickly both the legislative and regulatory branches have responded to resolve some benefit issues—important ones—affecting victims of Hurricane Katrina.

Congress, as we report on page 30, just three weeks after Katrina hit the Gulf Coast, passed a tax relief bill that, among other things, waives, for Katrina victims, the 10% penalty tax that applies on pre-retirement distributions from savings and pension plans, while increasing the maximum loan amounts that can be borrowed from savings plans.

Regulators also have responded with great speed. Last week, the Department of Labor and the Internal Revenue Service issued rules that will give Katrina victims more time to decide whether or not to opt for COBRA health care continuation coverage provided by their former employers, as well as more time to pay COBRA premiums.

And earlier this month, the IRS relaxed certain procedural requirements to make it easier for Katrina victims to make hardship withdrawals or borrow funds from their 401(k) plans.

Certainly, all these actions are necessary—given the losses suffered by those affected by Katrina—and we applaud the speed at which legislators and regulators have acted.

Still, we are troubled at the way legislators and regulators have applied the relief. Basing the applicability of relief on geography strikes us as not quite right. Is it fair, for example, that an individual who lived in New Orleans and whose house was washed away by Katrina-driven floods should be able to take a 401(k) plan distribution without paying a pre-retirement penalty tax, while an individual living in Kansas whose house was destroyed by a tornado would not be entitled to the same tax relief?

We think not. We hope legislators, and perhaps regulators, examine in the months ahead if geography should be the sole criteria in providing benefit plan relief or whether there should be a broader basis for such determinations and if the determinations can be made on a permanent, not ad-hoc basis.

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Spotlight

Reinsurance: Rendez-Vous Report

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Finite reinsurance remains a valid tool, execs say / 19

Industry urged to help solve global terrorism problem / 22

Katrina reverses downward rate trends

New storms could firm conditions dramatically

By GAVIN SOUTER, and SARAH VEYSEY

Reinsurers gather annually in hotels and cafes near the Grand Casino du Monte Carlo in Monaco to discuss trends in the industry. This year, Hurricane Katrina dominated discussions at the Rendez-Vous de Septembre.

MONTE CARLO, Monaco—The downward trend in reinsurance rates has been abruptly reversed as a result of Hurricane Katrina, but, like the size of the loss itself, the extent and range of rate increases remains unclear.

U.S. property catastrophe rates are almost sure to see large increases, as are marine and energy rates for risks in the Gulf of Mexico, reinsurers and brokers say.

But how large a range of rate increases will be imposed on property accounts outside of the affected region, as well as the extent of any casualty reinsurance rate hikes, will not be known for several more weeks or months, they say.

Coverage terms will also likely see changes but, given the restrictions that have remained in place since the hard market of the past four years, there is little scope for limiting coverage, they say.

Despite the uncertainty that surrounds the extent of reinsurance losses from the storm, most observers say the industry as a whole should be able to bear the losses and move forward.

However, the impact of additional storms this season—such as Hurricane Rita—could alter the situation dramatically.

Though capacity may be tighter at year-end renewals, due in part to restricted retrocessional capacity, the Katrina losses are unlikely to lead to a slew of startup reinsurers in the same way that new reinsurers were rushed in to fill capacity gaps after Hurricane Andrew in 1992 and the World Trade Center losses in 2001, they say (see story, page 16).

Although Katrina will lead to significant changes in the reinsurance market, the event has not shocked that market in the same way as the Sept. 11, 2001, terrorist attacks, nor has it come at a time when the reinsurance market had seen several years of depressed prices, as was the case in 1992.

As a result, the market is in good shape to meet its obligations from Katrina even though the storm could produce the largest ever loss to the insurance and reinsurance markets, they said at the 49th annual Rendez-Vous de Septembre held earlier this month in Monte Carlo, Monaco.

> "It will be a market-changing event, but it is unclear how significant the change will be."
>
> **Dwight R. Evans**
> Arch Worldwide Reinsurance Group

The Rendez-Vous is the traditional start of the year-end renewal season. Senior executives from reinsurers, brokers and cedents descend on the tiny principality for one week and hold numerous meetings in cafes and hotel lobbies to gauge the mood of the market and begin the negotiation process.

In the weeks prior to the 2005 meeting, the expectation was that participants would generally be discussing how far rates would decline. Everything changed, however, on Aug. 29, when Hurricane Katrina ripped into Louisiana, Mississippi and Alabama, causing widespread wind and flood damage. On Sept. 9, the day before the Rendez-Vous began, Risk Management Solutions Inc. revised its estimated Katrina losses to $40 billion to $60 billion, which would make it the largest insured loss in history.

Winds of change

The potential effects of the storm on the insurance market dominated discussions at the meeting, with most participants viewing Katrina as a market-changing event.

"It will be a market-changing event, but it is unclear how significant the change will be," said Dwight R. Evans, chairman and CEO of Arch Worldwide Reinsurance Group in Hamilton, Bermuda.

What areas of the reinsurance market will be affected by the loss

See RENDEZ-VOUS/page 12

Coming next: Readers Choice Awards . . . Oct. 10

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Reinsurers, insurers and brokers often visit the Cafe de Paris, a prime meeting spot at the Rendez-Vous de Septembre in Monte Carlo.

Rendez-Vous: Katrina reverses downward trend

Continued from page 11

and how they will be affected will largely depend on the ultimate size of the insured losses, he said.

Property and marine and energy exposures will almost certainly see sharp increases in pricing and changes in coverage terms. The retrocessional reinsurance market will also feel a severe impact from the loss (see story, page 15). But it is still unclear whether the casualty reinsurance market will be affected as well, Mr. Evans said.

David Foreman, chief underwriting officer at London-based Wellington Underwriting P.L.C., said that before Hurricane Katrina, the company had planned to reduce its underwriting capacity at Lloyd's of London because of softening rates. "But this event has changed things," he said.

Hurricane Katrina will result in a significant reinsurance loss that will "at least partially change the market," according to Benjamin Gentsch, executive vp for specialty lines at Zug, Switzerland-based Converium Holding Ltd. "No one is talking about price reductions," he said.

The losses from Katrina will clearly be more than "an earnings event" for the reinsurance market, said Henry C.V. Keeling, chief executive of XL Re in London, a unit of XL Capital Ltd. If, for example, the ultimate insurance loss is $50 billion and about half of that is paid by reinsurers, the loss will eclipse the annual earnings of the reinsurance industry.

Before the hurricane, "property rates were sliding, and the softening market was beginning to gain momentum," said Adam Fox, a senior partner at London-based broker Glencairn Ltd. "That has stopped."

The effect of Hurricane Katrina, recent European flooding and the fear of further "climatic events" means that "globally, no one will be getting property reinsurance rates any cheaper," he said.

Property catastrophe reinsurance rates will certainly increase as a result of the Katrina losses and other catastrophe losses in 2005, said Rick Pagnani, president of the reinsurance division at Quanta U.S. Holdings Inc. in New York. "And not just in the U.S. We'll see increases by peril and by zone."

"On property catastrophe rates, very obviously, rates will increase," probably an average of 25% for affected accounts, said Hans D. Rohlf, managing director and chief underwriting officer of Hannover Reinsurance Co.'s North American Treaty Division.

Konrad Rentrup, president and CEO of Hannover Re (Bermuda) Ltd., said that U.S. property catastrophe business, especially that with windstorm exposure, likely will see rate increases of between 25% and 30%, he said. For U.S. property catastrophe business that is not windstorm exposed, rate increases of between 10% and 15% are likely, he said.

Indeed, catastrophe business definitely will see rate increases, said Victor Peignet, managing director of the nonlife operations of Paris-based SCOR S.A. But the loss will also likely have a global effect, and rates will stabilize across the board, he said.

Wide impact

Hurricane Katrina losses will have an impact "everywhere," said Nikolaus von Bomhard, chairman of the board of management of Munich Reinsurance Co. in Munich, Germany.

Prices for catastrophe reinsurance certainly will rise as a result of the loss, he said, while rates for marine energy also will be affected, and aviation reinsurance rates also may rise as an indirect consequence of the loss. Rate increases are likely "pretty much across the book," he said, with the only possible exception being casualty business.

Katrina "is not a straight wind loss. In the end, maybe 60% will be wind, and the other parts will be flood and casualty elements—even workers compensation, pollution," said Mr. Rohlf. "It's a much more complicated loss than the hurricanes were last year."

As a result, Mr. Rohlf said he expects Katrina will lead to discussions on increasing rates for casualty as well as property risks.

See RENDEZ-VOUS/page 14

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The Bermuda insurance industry celebrated 25 years in Monte Carlo this year at its annual reception during the Rendez-Vous.

Rendez-Vous: Katrina reverses downward trend

Continued from page 12

"D&O will not make any money in 2005, so things have to change. Will (the market condition following Katrina) have an effect on middle-market umbrellas? I think it will," he said.

Average casualty rate increases for all accounts will perhaps be 10%, with larger accounts seeing even bigger hikes, Mr. Rohlf said.

Unlike the four hurricane losses last year, losses from Hurricane Katrina largely will hit the reinsurance market "and so one can expect, on a worldwide basis, prices will go up," said Mr. Rentrup of Hannover Re (Bermuda).

But the market must be careful about how it reacts to the hurricane, said Glencairn's Mr. Fox. Reinsurance buyers in areas totally unaffected by the hurricane may not be happy about accepting, say, a 10% rate hike, he noted.

"Reinsurers are trying to test the waters" about how far rates can be raised, Mr. Fox said.

Some observers, however, said that the impact of Katrina could be limited. The degree to which rates will increase is uncertain because the size of potential losses is still so uncertain, said Seymour Matthews, managing director of the reinsurance division at broker Heath Lambert Group in London.

But the event is unlikely to have an effect on reinsurance worldwide, he said.

"In the past, the whole world would have paid," he noted. But, he said, it is unlikely that rates for Asian reinsurance business, for example, will be hiked as a result of Hurricane Katrina losses. Those rates might stabilize, but unless there is a local-market event such as a typhoon, it is unlikely that rates in that area would drastically increase, Mr. Matthews said.

Ultimate losses

Whether global reinsurance capacity will shrink for 2006 will depend in part on the ultimate marketwide loss from Katrina, said Jonathan Isherwood, president of global property products for GE Insurance Solutions in Munich, Germany.

"Does this end up as a $20 billion event, with all the residential flood loss being picked up by the government? If this is a $40 billion to $45 billion event, it's a completely different game" for the industry, Mr. Isherwood said. "If (underwriters) are hurting, there will be a capacity pullout."

Kenneth LeStrange, CEO of Pembroke, Bermuda-based Endurance Specialty Holdings Ltd., said, "We would expect that pricing and terms and conditions will have moved significantly" after the January renewals, he said.

"Many surprises will be negative" from Katrina, Mr. LeStrange said. "Many companies have said they're having to go to the capital markets."

However, it is tough to see how coverage terms can be tightened much for many coverages, said William J. Adamson, chief executive officer of Carvill America Inc. in Chicago.

"You can't say that terms have been flexible over the past couple of years. There has been some slippage in property rates but not much broadening in terms," he said. There may be some discussion about hours clauses and other coverage details, but there is not much room for movement, Mr. Adamson said.

The loss may prompt increased demand for property catastrophe reinsurance coverage, as many cedents likely will experience large losses in their self-insured retentions, said Grahame Chilton, CEO of London-based broker Benfield Group Ltd.

There will be "a huge loss" on many cedents' self-insured layers, he said. "Even if (the loss) doesn't erode the capital of insurers or reinsurers, there will be an erosion of capital of self-insured" retentions, he said. "So what will be the appetite for risk transfer? What is the demand going to be?"

"I think the damage here is going to be so great that there will be a decrease in self-insured (retentions) and demand for insurance, especially catastrophe insurance, will increase," Mr. Chilton said.

Regis Coccia contributed to this report.

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Retro market 'wiped out' after losses from Katrina

By GAVIN SOUTER
and SARAH VEYSEY

MONTE CARLO, Monaco—The huge losses from Hurricane Katrina will slice through retrocessional reinsurance programs and other high-layer coverages, disrupting reinsurers' own protections and forcing them to curb coverage for cedents and hike prices, reinsurance market experts say.

The up to $60 billion insured loss that is currently being predicted from the deadly storm could perhaps have its greatest impact on the highly concentrated retrocessional market, generally the last link in the insurance coverage chain, they say.

The size of the losses from Katrina could knock some players out of that market, and other reinsurers may be unwilling to fill the gap due to the difficulty in underwriting retrocessional business, they say. Others, though, could see it as an opportunity to take advantage of rocketing rates.

The lack of conventional retro coverage could lead to increased use of other high-level protections, such as industry loss warranties or securitization products, some observers say.

"We think most retro programs will be decimated by this event," said Hans-Peter Gerhardt, chief executive officer of AXA Re, the reinsurance arm of Paris-based AXA S.A.

As a result, any retro capacity that is available next year will likely be sold at drastically increased rates, which will then be passed on to cedents through higher reinsurance rates, he said.

AXA Re no longer writes any retrocessional business, noted Mr. Gerhardt, though four years ago it was one of the largest players in that market segment, he noted. The company decided to exit the retrocessional market because "you can't protect yourself, and it is difficult to make money there."

"The retro market is pretty much wiped out if the figures are right," said James H. Veghte, president and CEO of XL Reinsurance America Inc. in Stamford, Conn. "Once the loss gets over $30 billion, it starts to go out of the retro market."

XL does offer some retro coverage through its London operations, and it will continue to do so, but such business represents only about 10% of XL's catastrophe premiums, Mr. Veghte said.

Many retrocessional programs will be exhausted by Hurricane Katrina losses, said Jeremy Goodman, CEO of broker Cooper Gay North America in New York. A "big question will be, which retrocessionaires pull out?" he said. "There could be some new retro players that come in—there is a huge amount of capital out there."

Unlike last year, where the chain of hurricanes that hit Florida and elsewhere did not produce single-loss events that were sufficient to penetrate many retro programs or industry loss warranties, Katrina will have a big impact on those coverages, said William J. Adamson, CEO of Carvill America Inc. in Chicago.

Industry loss warranties, or ILWs, are reinsurance coverages that are tied to an index of total industry loss figures. The coverage is triggered once the industrywide loss figure that is agreed on for each contract is surpassed.

The impact of Katrina on the retro market could increase interest in ILW coverages, Mr. Adamson said.

Already, there is increased activity in the ILW market, as reinsurers seek to buy coverage to protect them for the final six months of the year, he said. The price has increased significantly, and during the week of the Rendez-Vous, a typical ILW premium to cover the remainder of 2005 would be about the same as the annual rate for coverage, Mr. Adamson said.

The lack of traditional capacity could also lead to greater use of securitized products, said John Coomber, chief executive officer of Swiss Reinsurance Co.

Although Swiss Re buys little retro coverage, "we may, over time, use securitization rather than retro," he said.

The use of catastrophe bonds is an alternative to buying retrocessional cover, but the use of such bonds instead of traditional retrocession cover generally has been limited, said Nikolaus von Bomhard, chairman of the board of management of Munich Reinsurance Co. But there could be increased demand for catastrophe bonds as a result of Hurricane Katrina, particularly if prices for retro coverage rise significantly, said Mr. von Bomhard.

Despite the alternative coverages, the expected reduction in retro capacity will like reduce overall reinsurance capacity for the year-end renewals, said David H. Priebe, president and CEO Europe of Guy Carpenter & Co. Ltd. in London.

"It is likely that retro market available capacity will be reduced, and companies that use that will likely need to reduce their gross writings. So, we'll see a contraction of capacity," he said.

Some retro writers currently are not quoting for business because they are, at present, unsure of how big their losses from Hurricane Katrina will be, said Seymour Matthews, managing director of the reinsurance division of Heath Lambert Group in London.

That could delay the reinsurance renewal season, since some reinsurers will not begin quoting until they know whether they are going to be able to secure retrocessional cover, he said.

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Marine insurers likely to rethink Gulf market

By GAVIN SOUTER

MONTE CARLO, Monaco—After suffering $2.7 billion in losses from Hurricane Ivan in 2004 and the likely huge losses from Hurricane Katrina, marine and energy reinsurance coverage for Gulf of Mexico risks is set to harden further.

Reinsurers, who imposed sizable increases on marine and energy risks after Ivan struck, will make further hikes and likely will rethink how they underwrite risks in the Gulf, reinsurers and brokers say.

Increased catastrophe loads and restructured coverage likely will feature in renewing programs, they said at the Rendez-Vous de Septembre in Monte Carlo, Monaco, earlier this month.

Marine and energy reinsurance rates increased by about 15% to 20% on average for Gulf of Mexico risks last year, and there likely will be "drastic" rate increases for those exposures this year, said Ulrich Wallin, a member of the executive board at Hannover Reinsurance Co. in Hannover, Germany.

Some underwriters are currently "rethinking their involvement" in the Gulf of Mexico, and some capacity likely will exit that area of the market, he said. In addition, "terms and conditions (likely) will change quite significantly" as a result of Hurricane Katrina, he noted.

The marine and energy market has faced two years of large events in the Gulf, which likely will lead reinsurers to consider whether the fundamental structure of the market is appropriate, said David H. Priebe, president and chief executive officer Europe at Guy Carpenter & Co. Ltd. in London.

"It all starts with the original business and pricing and how they cover natural catastrophes," he said.

The offshore energy market in the Gulf will "change dramatically" as a result of Hurricane Katrina, said Dwight R. Evans, president and CEO of Arch Worldwide Reinsurance Group in Hamilton, Bermuda. "That's where we could see some of the biggest percentage increases."

Generally, reinsurers have not imposed a significant catastrophe loading on offshore risks, he said.

"They had not had a significant loss, but they have had last year and this year," Mr. Evans said. The catastrophe losses will be "multiples" of the premium charged for wind exposures in the Gulf, Mr. Evans said.

Energy risks should expect to see a tightening in terms and conditions, said John R. Berger, president and CEO of Chubb Re, a unit of Chubb Corp. in Bernardsville, N.J.

Rate increases, higher deductibles and restrictions on contingent business interruption coverage will all likely feature in the year-end renewal discussions, he said.

Sarah Veysey contributed to this report.

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Katrina less likely to encourage startups

By GAVIN SOUTER

MONTE CARLO, Monaco—Hurricane Katrina may turn out to be the largest insured loss in history, but it may not be followed by the waves of startup reinsurers that have followed other large catastrophes.

Market conditions before and after the 2005 storm are notably different to those surrounding the Sept. 11, 2001, terrorist attacks and Hurricane Andrew in 1992, both of which prompted a flood of capital into new reinsurers in Bermuda.

Although capacity needs could change in the event of another large storm—such as Hurricane Rita—reinsurers and brokers meeting at the Rendez-Vous de Septembre in Monte Carlo, Monaco, earlier this month were largely skeptical about the need for more reinsurance companies.

While several capital providers are keen to access the reinsurance industry, they may prefer to do so by providing capital to existing reinsurers, they said. Indeed, several reinsurers obtained or announced plans to obtain additional capital through share issues following the meeting, including Montpelier Re Holdings Ltd., Platinum Underwriters Holding Ltd. and PXRE Group Ltd.

Today, unlike after Hurricane Andrew, there are many reinsurers with an appetite for property catastrophe business, and the economic conditions of the industry are markedly different than they were in 2001, when the industry was just coming off a prolonged soft market and dealing with a sharp fall in investment income, observers say.

The price of reinsurance is unlikely to increase as much following Katrina as it did following the World Trade Center loss, in particular, as the reinsurance industry is better positioned to deal with a large loss, said Thomas Hess, head of economic research and consulting at Swiss

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Modeling helpful but no substitute for underwriting

By REGIS COCCIA

MONTE CARLO, Monaco—As catastrophe modeling companies quickly revised their estimates of insured damage from Hurricane Katrina earlier this month, questions about the adequacy of the models arose during the annual Rendez-Vous de Septembre reinsurance gathering.

Risk Management Solutions, for example, issued an estimate ranging up to $60 billion after giving an initial estimate of $25 billion shortly after the storm. EQECAT and AIR Worldwide Corp. issued estimates ranging from $15 billion to $25 billion.

Sources interviewed in Monte Carlo agreed that modeling risks is important but stressed that models are not a substitute for exercising underwriting judgment.

"Models have done a poor job in the ability to predict loss, with related pricing consequences," said Kenneth LeStrange, chief executive officer of Pembroke, Bermuda-based Endurance Specialty Ltd. Using modeling "is certainly far better than not doing any," he said.

"Use of models is essential. There's nothing wrong with models, but it depends on the quality of the inputs," said Jeremy Scott, chairman of the global financial services team at PricewaterhouseCoopers L.L.P. in London. "Last year, assumptions were made about what could and couldn't happen."

2004 was an unusual year, in which four major hurricanes struck the Southeastern United States, three causing widespread damage in Florida.

A Reinsurance Assn. of America study of 15 ceding insurers in each of the four 2004 U.S. hurricanes found "a huge variation" in what was modeled vs. what occurred, said Jonathan Isherwood, president of global property products at GE Insurance Solutions in Munich, Germany.

"What the modeling companies have said so far (about Katrina) could go up," he said.

"We're in a period of greater climate uncertainty," said Mr. Scott. "Is enough variety being put into models, such as nonhistoric events? There seems to be a much greater frequency of climatic events in the last 20 to 30 years," he said.

"You have to have underwriting skill" to effectively assess catastrophe exposure, said Philip Calnan, a partner in assurance and business advisory services at PwC in London. "At the end of the day, you can't take the human element out of it."

Mr. LeStrange said that "models did pretty well last year with the hurricanes, but where people failed was in more subjective criteria.... Our modeled losses are lower than we expect" from Katrina. Therefore, it's important "to apply judgment on top of models," he said.

Endurance pays careful attention to monitoring its loss aggregates as well as specific data for the risks it underwrites, Mr. LeStrange said. "The rule of thumb is you want to manage your exposures by ZIP code. Down in the Gulf, we know by platform, by insured, what our exposures are," he said.

Hannover, Germany-based Hannover Reinsurance Co. similarly uses a combination of modeling techniques and underwriting judgment, said Hans D. Rohlf, managing director and chief underwriting officer of Hannover Re's North American Treaty Division. For Katrina, "we built in market modeling and company modeling (using RMS and AIR models) and looked at all the programs we insure and made an underwriting guess," Mr. Rohlf said.

"This claim is an eye-opener to cedents as much as us," he said. "You can't just apply a wind model. Catastrophe scenarios include a lot of other things. You could look at the last five years and see events that were never modeled. To say we could've thought about four hurricanes in one year or the attacks on the World Trade Center, it would be hard. It's not the modeling companies' fault," Mr. Rohlf said.

PHOTO: DAVID SKINNER

"The rule of thumb is you want to manage your exposures by ZIP code. Down in the Gulf, we know by platform, by insured, what our exposures are."

Kenneth J. LeStrange
Endurance Specialty Holdings Ltd.

"We, like everyone else, will have to recalibrate" our models, said Hans-Peter Gerhardt, chief executive officer of AXA Re in Paris.

The need for companies to look again at their models to fully determine what their exposures are will likely mean it is a late renewal season this year, he noted.

Kansas City, Mo.-based GE Insur-

See MODELING / next page

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Startups: New companies less likely after Hurricane Katrina

Continued from page 16
Reinsurance Co. in Zurich, Switzerland.

"There was a soft market before 9/11, liability losses and a stock market crash," he said.

The reinsurance industry today is in better financial shape, so the price increases may not be sufficient to prompt another wave of Bermuda startups, Mr. Hess said.

In addition, the WTC loss had such a huge impact in part because it was unexpected, said William J. Adamson, chief executive officer of Carvill America Inc. in Chicago.

"Nobody had thought about that happening, but we have had lots of hurricanes over the years…there was advanced notice because the models can contemplate it," he said.

There is, however, capital waiting and ready to come into the reinsurance industry, Mr. Adamson said.

The 2001 terrorist attacks were a huge shock, and they came at time when reinsurers were beginning to realize just how bad the liability losses since 1997 were going to be, said John R. Berger, president and CEO of Chubb Re, a unit of Chubb Corp. in Bernardsville, N.J.

But in retrospect, the capital that came into the market later in 2001 and in 2002 was not needed, he said.

"The new companies were not really needed then…and the industry is stronger now," Mr. Berger said.

But, Mr. Berger noted, capital providers are keen to enter the reinsurance industry.

"These are smart people who are lining up good people to do business with, so that could have a dampening effect on rate increases," he said.

Any capital coming into the market may not be channeled to new companies, though, said Patrick Thiele, president and CEO of PartnerRe Holdings Ltd. in Pembroke, Bermuda.

"After the last two large ones, we saw more companies, but I kind of doubt it this time," he said. PartnerRe was one of eight highly capitalized reinsurers that set up in Bermuda following Hurricane Andrew.

In 2005, there is enough capital in the market, and the increase in pricing will not be as sharp as it was after the previous events, Mr. Thiele said.

In addition, several venture capital companies still have money tied up with reinsurers that were established in 2001 and 2002, so they may be more likely to inject more money into those companies than into startups, he said.

Judith A. Blades, Senior Executive Vice President
Property & Casualty
The Hartford

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Modeling: Can't replace underwriting

Continued from previous page
ance Solutions "licenses all three major vendor models—which I call 'the three wise men'—but we take those with a grain of salt," Mr. Isherwood said.

For the Gulf Coast region affected by Katrina, "I would stress that the models are not as sophisticated for this area as for Florida," he said. It's a matter of looking at concentration of insured values, so the focus has been on Florida, Mr. Isherwood said.

One shortcoming Mr. Isherwood thinks the models have is a lack of data for modeling certain risks. "I don't think the models cover flood or business interruption," he said. "Cedents are going to have to add on flood and B.I." to determine their total exposure, Mr. Isherwood said.

"If New Orleans is going to be empty for months, every B.I. policy's limits will be gone. There will be a knock-on effect for the commercial market and industrial risks," he said.

> "A lot of former modelers are now underwriters, and they recognize there are limitations."
>
> **Jeffrey S. Berg**
> **Moody's Investors Service**

"Catastrophe models are useful to the industry, but the industry has accepted the flaws in the models and appreciates them," said Jeffrey S. Berg, vp and senior analyst in property and casualty insurance at Moody's Investors Service in New York. "One of the shortcomings was the lack of a complex flood model and an appreciation of unmodeled risks," he said.

Hurricane Katrina "shows there are events out there that models don't look at," said Robert L. Riegel, managing director at Moody's in New York. "With the last four years and this year, people are bringing into question (the models') frequency assumptions," he said.

Some cedents are now buying more cover than models would suggest they need, because losses are expected to exceed initial predictions, according to Seymour Matthews, managing director of the reinsurance division of broker Heath Lambert Group in London.

"A lot of former modelers are now underwriters, and they recognize there are limitations," Mr. Berg said.

Losses from Katrina will be a learning opportunity for the future," Mr. Rohlf said. "Underwriting judgment will now be more needed than ever. It's a lesson learned from this."

Sarah Veysey contributed to this report.

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Finite coverage can be structured to satisfy regulators

By REGIS COCCIA

MONTE CARLO, Monaco—Demand for finite reinsurance may decrease, but forms of it remain valid tools, legal and accounting sources said at the annual Rendez-Vous de Septembre reinsurance gathering earlier this month.

Finite reinsurance, now often called "structured" reinsurance, has come under scrutiny in the United States and elsewhere after regulators and New York Attorney General Eliot Spitzer launched investigations into whether major insurance and reinsurance companies have improperly accounted for finite deals. Officials' probe of a finite deal between American International Group Inc. and General Reinsurance Corp. led, in part, to the ouster of longtime AIG Chairman and Chief Executive Officer Maurice R. Greenberg and to AIG restating several years of financial results.

In the aftermath of the investigations, demand for finite coverage has fallen sharply (see story, page 20). But the coverage shouldn't be written off, observers say.

"Finite reinsurance, if it's used by the wrong people for the wrong reasons, it's wrong," said Philip Calnan, a partner in assurance and business advisory services at PricewaterhouseCoopers L.L.P. in London. "On the other hand, finite reinsurance is a perfectly fine financial management tool."

"If you enter a deal where it'll only work if you don't disclose it—that's wrong," said Jeremy Scott, chairman of the global financial services team at PwC in London.

Some question whether finite risk sellers ought to have to question buyers about a deal's purpose.

"I don't see why (finite is) different" and requires sellers to investigate a user's intentions, Mr. Scott said. "If you're a gun (seller), you're not required to ask the customer what he's going to do with it. There are double standards with finite reinsurance."

But at least one reinsurance attorney believes writers of finite reinsurance do have an obligation to investigate how the counterparty is accounting for the contract.

"If you book it one way and they book it another, it's out there. You have a duty of inquiry. There's a liability there," said Julius Rousseau, a partner at Herrick Feinstein L.L.P. in New York.

"Your basic loss-portfolio transfer is a finite deal. There's still a need for that. It's not one-way," he said.

"What Enron and WorldCom taught us is, it doesn't matter if it's compliant, it matters if it's deceptive," said Elliott M. Kroll, also a partner at Herrick Feinstein in New York. "Any time there's a problem, you have a duty of disclosure," he said. "If it's a public entity, with the (Securities and Exchange Commission) over that, there's another level of disclosure. And a third level of disclosure is to auditors," he said.

"The essence of structured reinsurance deals is, was there adequate disclosure?" asked Mr. Kroll.

"There is nothing illegitimate to (finite reinsurance); it's responding to needs," said Hans D. Rohlf, managing director and chief underwriting officer of the North American Treaty Division at Hannover Reinsurance Co. in Hannover, Germany.

Hannover Re is one of the world's largest writers of finite reinsurance. "We have a significant portfolio outside the United States, and it's growing," Mr. Rohlf said.

"There is nothing inherently wrong in finite reinsurance as a financial tool," said Colin Croly, head of the reinsurance and international risk team at London law firm Barlow Lyde & Gilbert. "What you have to ensure is transfer of risk, not just a plain loan," he said.

Legitimate finite reinsurance deals "must be transparent. No more can it be kept quiet with a side letter," Mr. Croly said. "It can be a useful tool for any company."

In the early 1990s, regulators adopted the so-called "10/10 rule," which stipulates that finite deals must entail at least a 10% risk of a 10% loss, said Clive O'Connell, a partner in the reinsurance and international risk team at Barlow Lyde & Gilbert. "The origins of transfer of risk (in finite reinsurance) aren't just regulatory, they're fiscal," he said.

"The documentation has to be complete on its face," said Nick Pearson, a partner in the insurance and reinsurance department at Edwards & Angell L.L.P. in New York. "No one should be engaging in it with side letters. That was problematic at best."

Regulations evolving

Mr. Pearson said he thinks finite reinsurance regulations will evolve. "There will be greater clarity of transfer of risk in statutory accounting," he said. "The finite market has been around for a while. It's just wrong to try and impose a bright-line standard" now, he said.

"It's not as though (finite coverage) is going to go away. People are keeping their heads down until the Spitzer storm blows away, and they'll go back to business as usual," said Andrew Pincott, a partner at London law firm Elborne Mitchell.

Michael Cook, associate director of Navigant Consulting, said that the spate of subpoenas in the United States over finite reinsurance deals has prompted many companies to study deals they have entered into to ensure that they would stand up to

See FINITE/page 20

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Long, tough recovery ahead for finite coverage

By GAVIN SOUTER
and REGIS COCCIA

MONTE CARLO, Monaco—Finite risk coverage may not be dead, but it will likely face a difficult recovery period that could last several years, reinsurer and brokerage executives say.

While accountants and lawyers try to figure out how finite or structured reinsurance deals can now pass muster with regulators and prosecutors in light of recent investigations, buyers and sellers of the coverage have largely put their activities on hold.

And that is a blow for some companies that have relied on the product's coverage as cost-effective and necessary reinsurance coverage, they say.

But given the need for the coverage, the finite risk market will revive in a form that will involve more risk transfer between the participants in the contracts, they say.

The interest in finite coverage in the United States declined significantly earlier this year after investigations into the products took hold. And, more recently, demand for finite coverage has slackened in Europe, said Patrick Thiele, president and chief executive officer of PartnerRe Ltd. in Pembroke, Bermuda.

"We are still getting inquiries, but nobody wants to use the term 'finite,'" he said. In the future, the so-called "structured" deals likely will need to contain more risk transfer than they have in the past, and that will increase the price of the coverage.

"The more structure you put into a deal, the cheaper the product," Mr. Thiele.

The lack of availability of finite coverage and the increased price of future structured deals could be felt most by small catastrophe insurers in Florida that cannot afford to buy traditional excess-of-loss reinsurance, he said.

Often, those companies buy quota-share products that contain at least an element of structured coverage, Mr. Thiele said.

Finite coverage can still be used, and XL Capital Ltd. units are still active in the area, said Henry C.V. Keeling, chief executive of XL Re in London.

"Finite reinsurance, when it is done properly, is a legitimate part of the insurance and reinsurance industry, but it has to be done properly," he said.

Munich Reinsurance Co. will continue to do finite reinsurance deals that it thinks are "appropriate," said Nikolaus von Bomhard, chairman of the board of management of the Munich, Germany-based reinsurer. But he noted that demand for such cover has decreased.

As long as there is risk transfer involved, finite risk is a viable product, in today's environment, most product, said David H. Priebe, president and CEO Europe of Guy Carpenter & Co. Ltd. in London.

"But there are no real clear rules, and in today's environment, most leaders of insurance companies don't want to enter into anything that doesn't have clarity," he said.

But regulators in the United States and elsewhere are developing guidelines for its use, so some form of finite coverage could again be a useful and cost-effective reinsurance product, Mr. Priebe said.

"There are structured deals that totally pass regulatory scrutiny," said Charlie Cantlay, deputy chairman of Aon Re International, a unit of Aon Corp. in London. "The risk transfer element of structured reinsurance" is what most people are suspicious of, he said. "In the (deals) which have been done poorly or didn't pass regulatory muster, there was no risk transfer," he said.

"We live under such an enormous regulatory spotlight, whether the purpose is totally bona fide or not, most people don't want the hassle," Mr. Cantlay said.

Demand for structured reinsurance "is not as big as it was a year ago, but that's more psychological than anything else," said Hans D. Rohlf, managing director and chief underwriting officer of Hannover Reinsurance Co.'s North American treaty division. He believes some company chief financial officers are afraid to sign off on such deals. "I think there will be a return to normal" within two years, he said.

Kenneth LeStrange, chief executive officer of Pembroke, Bermuda-based Endurance Specialty Holdings Ltd., however, said that finite reinsurance "has no future for U.S. and U.S.-style companies," such as those in Bermuda that report results in U.S. generally accepted accounting principles.

"It seems like the regulations are a lot more opaque and flexible" in the European Union and Switzerland, Mr. LeStrange said. "My sense is that most finite risk structures are gone" in the United States.

Sarah Veysey contributed to this report.

Finite: Tool's need remains

Continued from page 19

regulatory scrutiny.

"The consequence of the storm and fury on the other side of the Atlantic meant there was a late addition" to the European Union reinsurance directive "to allow special regulatory provisions for finite reinsurance and special-purpose vehicles," which are widely used in structured reinsurance deals, Mr. Pincott said. "It seems to be a direct consequence of the Spitzer campaign."

The issue of finite reinsurance is a delicate one, but one that needed to be "put on the table" during the creation of the E.U. reinsurance directive, according to Daniel Schanté, executive director of the Brussels-based Comité Européen des Assurances.

Under the directive, member states of the European Union will have some flexibility in deciding how finite reinsurance is treated, but it is important that there is transparency in the reporting of such deals, he said.

But increased transparency or reporting requirements should not "restrain reinsurers from finding innovation," he said.

"We do not need to stop reinsurers using financial reinsurance, but we do need to find a way to report it transparently," he said.

Sarah Veysey contributed to this report.

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* The Survey of Cedant Perceptions about Reinsurance and Reinsurers is conducted every two years by the Flaspöhler Research Group to measure North American property and casualty reinsurance buyers' views on reinsurers. The 2005 Survey was Flaspöhler's 7th biennial survey of the United States market.

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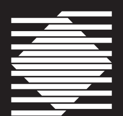

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Industry must find own solution to terrorism: Panel

By REGIS COCCIA

MONTE CARLO, Monaco—The next major terrorist attack is a question of when, not if, and the insurance industry must find a solution to the problem, panelists at the recent Rendez-Vous de Septembre reinsurance gathering agreed.

"Terrorism is perhaps the biggest threat today to peace in our world and our industry," said Ron Pressman, chairman and chief executive officer of GE Insurance Solutions in Kansas City, Mo., who moderated the panel discussion.

"We're here to protect people, property and communities and help rebuild after catastrophes. Now it's time for our industry to stand tall and fulfill our mission to help recovery efforts in the Gulf Coast," Mr. Pressman said, adding that terrorism remains a significant risk. "If anything, it's almost a certainty that further attacks...lie in store for people around the world."

"Terrorism is perhaps the biggest threat today to peace in our world and our industry."

Ron Pressman
GE Insurance Solutions

Joe Plumeri, chairman and CEO of London-based Willis Group Holdings Ltd., said "the global insurance brokers have a key role to play in the industry's response to terrorism risks.... But if elements of hurricanes are unpredictable, terrorism is even more difficult to chart."

He said "the question of the next terrorist attack is not if," and this situation requires a comprehensive, systemic solution.

The Terrorism Risk Insurance Act was an important step following the Sept. 11, 2001, attacks, but the industry needs to find a permanent solution to the problem of terrorism, Mr. Plumeri said.

"Action, reaction, fade from memory" is the sequence that has resulted since 9/11 and other catastrophes, he said. "There is no permanency to (solving) an issue that's permanent. A solution must be found," Mr. Plumeri said.

Congress is considering legislation that would reauthorize TRIA beyond its Dec. 31, 2005, sunset, but observers do not consider approval to be assured.

"The uncertainty of TRIA's future" has led underwriters to be uncertain on whether to include terrorism in policies renewing Jan. 1, 2006, Mr. Plumeri noted. "The government and the insurance industry need to come together and develop a mechanism" to solve the problem. "Not acting puts us all at extraordinary risk," he said.

Outlining developments in international terrorism, a leading researcher painted a frightening picture of what lies ahead. Rohan Gunaratna of Nanyang Technological University in Singapore, said several significant developments have occurred in the past four years.

"The global insurance brokers have a key role to play in the industry's response to terrorism risks."

Joe Plumeri
Willis Group Holdings Ltd.

One is "a shift of international terrorism from Afghanistan to Iraq. The epicenter of global terrorism is in Iraq, with links to 30 other countries," said Mr. Gunaratna, who is head of the International Centre for Political Violence & Terrorism Research at the university's Institute of Defence & Strategic Studies. "The threat of terrorism from Iraq will affect Europe," he said.

A second development is that "Al Qaeda as an organization has atomized, so the threat has been dispersed through Asia, Africa and Europe," Mr. Gunaratna said. "After 9/11, every three months we are seeing a significant attack" somewhere in the world. "In many ways, Al Qaeda's achievement has been to infect local jihad groups that had local agendas. They are now seeking to target the United States and its friends," he said.

The third development is that terrorist groups "in the past spoke of chemical and biological weapons, but today they are experimenting with them, making very significant investments in this area," Mr. Gunaratna said. Evidence turned up in Afghanistan and Pakistan, for example, showed that Al Qaeda had tested chemical agents on dogs, he said.

Mr. Gunaratna suggested that while European and North American security forces have disrupted more than 100 potential attacks, an ongoing effort is needed. Security forces must conduct operational counterterrorism, in which "they identify cells planning attacks and disrupt them," as well as strategic counterterrorism, which strikes at the root causes of terrorist activity, he said.

"For every terrorist arrested, another has been born. Nations need to invest more in education and ideological response and work together in partnership with Muslim communities," Mr. Gunaratna said. "America made a fatal mistake going into Iraq, but an even bigger mistake is to withdraw. It's our war now," he said.

"Less than 1% of Muslims support terrorism. We must be proportional in our response," Mr. Gunaratna said. "Terrorists are spawned in conflict zones," where there is suffering and internal displacement, and these are areas that nations must address, he said.

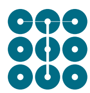
Stephen Patrick Cain, a former British Army officer and counterterrorism expert who is a member of the board of advisers of the World Institute for Security Enhancement, suggested there may be an economic solution long-term.

"No terror movement, national or transnational, has ever been defeated by military arms," Mr. Cain said. "Military arms per se and alone are useless in putting down terrorism. Security forces are merely Band-Aids on a hemorrhage."

He used the example of the Irish Republican Army, which fought British troops for 35 years. A relative handful—about 200 principals—held down more than 15,000 trained troops during that time, Mr. Cain said. And the number of Islamic terrorists worldwide is far greater, he noted.

"I keep hearing the phrase, '9/11 changed everything,' but have we really changed?" Mr. Cain asked. "We must really know our enemies before we can defeat them, and in so doing we must know who is not our enemy."

As the Allies did with the Japanese and the Germans after World War II, "we must begin to trade in the Muslim world" and engage them as trading partners, Mr. Cain said. "Education on both sides of the divide is an effective tool."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PRODUCTS & SERVICES

Guy Carpenter releases cat reinsurance report

NEW YORK—Guy Carpenter & Co. Inc. has released its annual report on the property catastrophe reinsurance market, which was published before Hurricane Katrina made landfall.

"The World Catastrophe Reinsurance Market 2005" study covers 22 countries and four regions. Chapters review catastrophe exposures and the availability of insurance from private or government sources, as well as summarizing market conditions in catastrophe reinsurance.

Some key findings in the report include: the price of catastrophe reinsurance protection declined in most markets in 2005; terror risk is still a major concern for U.S. cedents; and terror risk was less of an issue outside of the U.S.

To obtain a printed copy of the report, contact the company at *marketing@guycarp.com*. For more information, visit *www.guycarp.com*.

The Hartford forms alliance to offer law firm coverage

HARTFORD—The Hartford Financial Services Group Inc. has teamed up with Target Insurance Services, an Avon, Conn.-based managing general underwriter, to offer a professional liability product for lawyers.

The Lawyers Professional Liability Program is a stand-alone policy, which can be customized by individual law firms. It provides coverage for lawyers who are independent contractors and also covers bar association-related activities. In addition, it offers a reduced deductible for firms that agree to settle issues through mediation or arbitration, and an extended reporting period that follows lawyers into retirement.

The program limits are $10 million for each claim and $10 million annual aggregate.

For more information, contact Scott Williams, vp/general manager at 800-692-5752, ext. 133 or *swilliams@target-capital.com* and Shawna Reidy, underwriting manager, at 800-692-5752, ext. 114 or *sreidy@target-capital.com*.

I.I.I. launches site for commercial insurance

NEW YORK—The Insurance Information Institute has launched a Web site on the commercial insurance industry, with the goal of promoting a better understanding of commercial insurance basics.

The New York-based I.I.I.'s online edition of "The Commercial Lines Market" presents an overview of the commercial insurance industry by explaining what it is and how it works in simple terms. It explains the insurance process and includes information on underwriting, loss control and claims paying. It also expands upon investments, regulation and reinsurance, among other topics.

To learn more, visit the Web site at *www.commerciallines.org*. For more information on the I.I.I., visit *www.iii.org*.

Innovative Architects offers risk management tool

DULUTH, Ga.—Innovative Architects has developed an online risk management application to assist risk managers with collecting exposure-related data.

The risk management data collection application is a central database designed to collect pertinent risk characteristics for all operating companies, including annual renewal and annual audited information. It intends to help companies replace manual Excel data collection worksheets and reduce the time needed to compile risk information. The online program collects exposure-related data such as payroll by class code, information about automobiles and business interruption coverage. Risk managers can run consolidation reports and update information.

For more information, contact Dan Michaels, president, at 678-775-6851 or *dan.michaels@innovative architects.com*, or visit the company's Web site at *www.innovativearchitects.com*.

Guardian launches HDHP offering

NEW YORK—The Guardian Life Insurance Co. of America is offering health savings account-compliant medical plans.

The offerings consist of high deductible health plans that can be used in conjunction with any HSA offered by a financial institution. The plans include access to its national preferred provider organization network, provided by Waltham, Mass.-based Private Healthcare Systems, which has more than 450,000 providers. Other services include specialized care networks, wellness programs and registered nurses available at all times. Employers also have the ability to choose plan design options, as well as the level of benefits offered. New York-based Guardian is also offering an optional preventive care rider, which provides coverage for office visits, immunizations and standard screening services.

The HSA-compliant plans are currently available in California, Colorado and North Carolina. They will be available in Georgia in October and New Mexico and South Carolina in November. More state rollouts are expected.

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

St. Paul Travelers offers asset management policy

ST. PAUL, Minn.—St. Paul Travelers Cos. Inc. is offering an enhanced policy for investment advisers, mutual funds and hedge funds.

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COMMENTARY

Senior Editor Mark A. Hofmann

U.S. risk manager needed

Here's a help wanted ad I'd like to—but odds are never will—see.

Wanted: United States Risk Manager: World's largest enterprise is seeking seasoned professional or professionals with extensive experience in enterprise risk management. Must be able to identify, quantify and mitigate large-scale risks of all sorts, particularly of the natural catastrophe variety. Responsibilities include drafting and implementing a flexible national catastrophe preparedness, response and recovery plan. Qualified applicants should send resumes and references to G.W. Bush, President, United States of America, 1600 Pennsylvania Ave. N.W., Washington, D.C. 20500.

I don't expect to be reading this ad in *Business Insurance*, the Washington Post or any other publication anytime soon. But Hurricane Katrina and its aftermath have sadly underscored that professional risk management as generally practiced in both private and public sectors isn't a widespread philosophy in the federal government.

That was evident from the get-go. As both private and public sector risk managers along the Gulf Coast put catastrophe plans into effect as Hurricane Katrina approached—and they had ample warning that a killer storm was on the way—the feds seemed unaware of what was really happening. The aftermath was even worse.

The government of the United States, the richest and most powerful country on the planet, appeared confused and incapable of providing relief to its own citizens. The fact that public officials in New Orleans preferred blaming the feds for the aftermath rather than admitting that they, too, had failed to take adequate steps to protect their own citizens doesn't absolve the national government for what it failed to do.

A professional risk manager who failed so spectacularly in protecting his or her employer's assets would have been fired on the spot and probably would never find another job in the field of risk management.

But that was a big part of the problem—a lack of a professional at the top. The Federal Emergency Management Agency, though staffed by dedicated professionals, isn't required to be led by an emergency management professional.

In fact, FEMA's directors have generally come from the ranks of the politically connected rather than the professionally seasoned.

The mere fact of political connection doesn't necessarily mean a director is unqualified. James Lee Witt, who received plaudits for his performance as FEMA director under President Clinton, is a political animal. He also served as an elected official in Arkansas and was an ally of the former president. He also spent several years directing the Arkansas Office of Emergency Services before joining FEMA.

But the hapless Michael Brown, who headed FEMA until a couple of weeks ago, didn't have even that hands-on experience. He was a friend of a friend of the president and had a background in legal practice and association management, not catastrophe management.

That lack of a professional background showed all too clearly during Katrina and its aftermath. Although President Bush took responsibility for the federal failures, it was the man he called "Brownie" who bore the public blame for the deadly fiasco, enduring the public humiliation of a press conference where he was not allowed to speak before tendering his resignation.

Fortunately, the new acting head of FEMA, David Paulison, appears cut more from the same cloth as Mr. Witt, with an extensive resume in fire fighting. Unfortunately, Mr. Paulison was also the official who recommended using duct tape and plastic to seal off rooms as protection against terrorist attacks.

The federal response to the New Orleans catastrophe underscored the nation's lack of preparedness for the truly catastrophic, even four years after the terrorist attacks of Sept. 11, 2001. What makes the situation even more frightening is that everyone in a position of authority knew the hurricane was coming long before it made landfall, yet disaster ensued anyway.

Terrorists wouldn't allow us the luxury of knowing beforehand where and how they would attack. The response to Hurricane Katrina doesn't give me any great feelings of confidence that we'd handle another 9/11 any better.

That's why we could use a national risk manager. I can think of a dozen risk managers, past and present, public and private, who could perform better the first day on the job than some political appointees do after years behind the desk. Of course, I don't know if any of those dozen or their equally qualified colleagues would want the grief that would come with the job.

But if the job ever comes into being, I'd hope real risk management professionals would consider taking it. Katrina has taught us that the stakes are simply too high to entrust the responsibilities to amateurs ever again.

Tips and feedback from readers are welcome. Please send information to mhofmann@businessinsurance.com.

Court: Few cases scheduled, more coming

Continued from page 4

lying actual damages by any amount might be unconstitutional, he pointed out. How those limits will be interpreted will probably require further high court review, he said. The current court is already closely divided on the issue, and no one knows where Judge Roberts would come down, he said.

But most business observers hold that the high court's new session, which begins Oct. 3, lacks "blockbuster business cases" like *Campbell*, noted Mr. Schaerr during his presentation to the NCLC. Instead, the business cases before the court tend to seek answers to relatively narrow questions.

Question of jurisdiction

One such case is *Lincoln Property Co. et al. vs. Christopher Roche et ux.*, which involves allegations of personal injury stemming from toxic mold in a Fairfax County, Va., apartment. Mr. Roche and his wife sought to sue Dallas-based Lincoln Property Co. in state court for the damages they suffered, but Lincoln Property claimed that the case should be heard in federal court because the company is not based in Virginia.

On June 30, 2004, a three-judge panel of the 4th U.S. Circuit Court of Appeals ruled against Lincoln Property. "A party's mere allegation of diversity cannot justify its burden of establishing the (U.S.) district court's jurisdiction," held the judges. The judges noted that Lincoln had a partnership "authorized and registered in Virginia" and that correspondence concerning the dispute was conducted from Virginia addresses. In fact, the panel called the case "a classic landlord-tenant dispute, which most often is litigated in state court and is far less often the proper subject of federal jurisdiction."

Although Lincoln Property is incorporated in Texas, "from the record, it appears that the real and substantial party in interest is the Virginia subsidiary, be it a partnership, corporation or otherwise, rather than the Texas parent," wrote the appeals panel.

The question of jurisdiction in certain class actions involving plaintiffs and defendants from different states was addressed by the Class Action Fairness Act, which permits the removal of certain class actions to federal from state court. But the act does not deal with individual personal injury cases.

Oral argument is scheduled for Oct. 11.

Counting employees

The high court also will determine how to count employees when a plaintiff alleges sexual harassment under Title VII of the Civil Rights Act of 1964.

The case, *Arbaugh vs. Y&H Corp.*, asks whether certain people working in the New Orleans restaurant in which the alleged misconduct took place are employees for purposes of Title VII, which applies only to employers having at least 15 employees.

An appeals court panel held that delivery drivers, owners and the owners' wives did not count as employees even though they worked at the establishment for pay.

The high court will hear oral arguments on Nov. 7.

Business Resources

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Equitable drops lawsuit against Ernst & Young

By SARAH VEYSEY

LONDON—Equitable Life Assurance Society has dropped its High Court negligence lawsuit against its former auditors, Ernst & Young L.L.P., but will continue to pursue a claim against 15 of its own former directors.

Equitable Life announced Thursday that it would end its claims against the auditing firm and that each side would pay its own legal costs.

Equitable originally was seeking about £2.60 billion ($4.69 billion) from its former auditors but dropped part of its claim against Ernst & Young in July, reducing the damages it sought in its lawsuit to £700 million ($1.26 billion) (*BI*, July 25).

In a statement issued Thursday, Vanni Treeves, chairman of Equitable Life, said that while the company still believes its claim to be valid, it determined that "there is too great a risk that the judge would find as a matter of fact that the former directors would not have done anything differently, whatever E&Y had done and said."

Equitable had claimed that its auditors had failed to warn it of financial liabilities it faced from the sale of guaranteed annuity pension products during the 1990s.

In July 2000, the House of Lords ruled that Equitable owed guaranteed annuity rate policyholders about £1.50 billion ($2.25 billion) after it underfunded such pension plans.

After failing to find a buyer, Equitable stopped accepting new business in December 2000.

In a statement, Ernst & Young said it was "pleased but not surprised" by Equitable Life's decision to drop its claims.

Ernst & Young Chairman Nick Land said the decision was a "complete vindication" for the audit firm.

Alea downgraded, mulling a sale

Best cuts rating to B++

By SARAH VEYSEY

HAMILTON, Bermuda—Alea Group Holdings (Bermuda) Ltd. said Friday that it has abandoned plans to raise additional capital and would explore strategic alternatives, including a possible sale, after A.M. Best Co. on Thursday downgraded the reinsurer to B++ from A-.

Hamilton, Bermuda-based Alea previously had said it would seek to raise about $210 million through a share issue.

Oldwick, N.J.-based Best said the downgrade reflects concerns about the company's growth in net premiums written since 2001 coupled with "significant reserve shortfalls from prior underwriting years," which the rating agency said "have greatly weakened the company's operating performance" and placed strain on its risk-adjusted capitalization.

Best said it expected the Bermuda-based reinsurer's performance to deteriorate because of pressure on expenses caused by declining business volumes and catastrophe losses in the second half of 2005, among other factors.

Earlier this month, Standard & Poor's Corp. downgraded Alea to BBB+ from A- after the company announced pretax profits of $25.9 million for the first half of 2005, down 47% compared to the first six months of 2004; plans to cut back its U.S. long-tail reinsurance business; and the need to boost reserves by $34.7 million.

Net P&I claims surge

Combined figures of the International Group of P&I clubs show that claims net of reinsurance recoveries have been increasing.

Source: Aon Ltd. & International Club 2005 Reports & Accounts

P&I clubs facing wave of big claims

By SARAH VEYSEY

Shipowners should expect to pay more for liability coverage when they renew with protection and indemnity clubs next year, following a sharp increase in large claims in 2004, according to a report.

But despite the increased losses, P&I clubs should not try to push through large premium increases, as the claims pattern still falls within statistically predictable boundaries, according to one of the report's authors.

During 2004, large claims filed with P&I clubs—those of $6 million or more—totaled $206 million, compared with $138 million in 2003, according to the report, which was published by Aon Ltd. in London.

Stephen Hawke, executive director of Aon Marine, a unit of Aon Corp., said the increase in claims was linked to an increase in shipping and the growing value of ships. But, he said, this increase should not be used as an excuse for clubs to hike rates, as losses still fall within expected loss patterns.

According to the report, there were 16 large claims in 2004, compared with an average of 17.3 claims per year over the past 23 years, which is the period for which data is available.

When P&I coverages are renewed in February 2006, there will likely be an increase in rates, Mr. Hawke said. At this year's renewal, rates were increased by up to about 12.5%, he said, and similar increases should be expected in February.

The impact of Hurricane Katrina on the wider insurance and reinsurance market could also drive up rates for P&I coverage, Mr. Hawke said.

The International Group of P&I clubs, which comprises the 13 largest P&I clubs, relies heavily on reinsurance, which it buys collectively above an agreed sublimit, said Mr. Hawke, and much of that reinsurance is placed in the London market.

It remains unclear, though, how Hurricane Katrina will ultimately affect the reinsurance market, he said.

Copies of the report, "Protection and Indemnity: Mid-Term Review," are available from harriet.meikle@aon.co.uk.

Updates

Employers liability costs stabilize: Study

Employers liability insurance costs stayed stable or decreased in 2005 for most U.K. companies that took part in a recent Engineering Employers Federation study. The London-based organization surveyed 804 of its members in June and found that 62% of companies had either seen rates stay the same or decrease for their employers liability coverage. In a similar survey last year, 91% of respondents said they had seen rate increases for the coverage. Employers liability insurance is mandatory in the United Kingdom.

ARIG forms Takaful reinsurance company

Arab Insurance Group has formed a reinsurance company that will comply with Islamic principles. Takaful Re Ltd. will begin underwriting all major lines of property business "well in advance of business renewals for the year 2006," Manama, Bahrain-based ARIG said in a statement. The new Dubai-based company has authorized capital of $500 million and has been set up by ARIG in conjunction with several other local financial institutions. Takaful insurance, a set of principles acceptable to Islam, requires losses and liabilities to be spread across a mutual pool.

APRA bans another former HIH exec

The Australian Prudential Regulation Authority has banned another former executive of failed HIH Insurance Ltd. from acting as a director or senior manager of a general insurer. APRA announced that Peter Butler Thompson, who held various posts at HIH and related companies between 1997 and 2000—including chief executive of its U.K. division and general manager of its risk management and reinsurance division—has been disqualified from being a manager of a multiline insurer. APRA said Mr. Thompson failed to inform HIH's auditors of all the relevant circumstances surrounding certain reinsurance deals HIH entered. HIH collapsed in 2001.

JLT opens reinsurance office in Japan

London-based broker Jardine Lloyd Thompson Group P.L.C. has opened a reinsurance office in Tokyo. JLT said in a statement that JLT (Japan) Reinsurance Inc. would be headed by Managing Director Kimio Kameda. JLT said its representative office in Japan is part of a strategy to enhance its reinsurance capabilities. The broker plans to incorporate its reinsurance operations into a separate unit next year.

IUA issues guidance on finite products

By CAROLYN ALDRED

The International Underwriting Assn. has published guidance designed to help member companies follow regulatory requirements when buying and selling finite risk products.

Finite coverage has been the subject of regulatory investigations worldwide, as officials seek in particular to determine whether both insurance and noninsurance entities have been using finite products to manipulate their results.

In March, the Financial Services Authority wrote to the senior management of many FSA-regulated insurers asking them to provide information to allow the FSA to assess the extent to which financial engineering techniques, such as finite reinsurance, are used by the industry and to ensure that adequate systems and controls are in place.

"There has been much debate about the use of finite reinsurance in recent months, and we thought it was a useful exercise to clarify the current position for IUA members," Pam Byrnes, director of financial and compliance services at the London-based trade association, said in a statement.

The aim of the IUA's "Finite Reinsurance Guide" is to summarize the position of the United Kingdom's financial services regulator on finite reinsurance and to help companies understand the systems and controls necessary to meet the regulator's rules, according to the IUA.

The FSA issued a consultation paper on the use of financial engineering in 2002. While the regulator recognized the validity of methods such as finite reinsurance to help strengthen insurers' solvency, the regulator also warned that the use of such products and techniques could obscure the financial condition of an insurer.

"Those firms buying and selling such products, therefore, must ensure that contracts do actually constitute reinsurance under the relevant legislation and adhere to the central tenet of a genuine transfer of sufficient risk that is demonstrable," the IUA states.

"Many companies have reviewed their use of finite reinsurance with their lawyers and accountants," noted Jonathan Teacher, a lawyer with London-based law firm Kendall Freeman. "There is definitely a need for greater clarification, but we haven't seen the full implications yet because the FSA is still looking at the issue."

"Clearer guidance is needed on an international scale, and the regulators' thinking is still developing," said Nathan Willmott, a senior associate specializing in insurance regulation at the law firm Freshfields Bruckhaus Deringer.

A spokesman from the Financial Services Authority confirmed that the regulatory body was still consulting with companies about the use of finite reinsurance but noted that "there are no plans to change regulations at this stage."

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Health: Employer teams with doctors, health plan to improve quality care

Continued from page 3

pating physicians will be required to attend regular workshops and teleconferences to help them brush up on treatment standards, and they will be monitored throughout the year on how well they are treating targeted patients.

The participating physicians' treatment patterns and patient outcomes also will be compared with a control group of about 500 other UnitedHealth physicians not treating American Airlines employees.

According to the project timeline, final results will be shared with physicians in June 2006.

American Airlines' cardiac care initiative is part of a larger effort by the Dallas-Fort Worth Business Group on Health to enhance the value of health care being purchased by its 120 members, according to Marianne Fazen, executive director.

The coalition conducted a similar demonstration project in 2004 to test components of diabetes disease management programs, she said. That program, involving employees of the Federal Reserve Bank, found that early intervention—testing cholesterol and blood glucose before a patient is diagnosed with the disease—and participation in a weight-management program works better than just treating those who have already become diabetic, according to Ms. Fazen.

"Typically, diabetes disease management programs don't do this," she said.

Another 2004 demonstration project involving lipid management among employees of American Airlines, compared group coaching with one-on-one telephonic counseling from nurses. That experiment found that group coaching was far less expensive than the individual counseling because it made it possible to help more people at a time, Ms. Fazen said.

In addition to the cardiac care program with American Airlines, the business group is in the planning stages of a worksite "cultural proficiency" program involving Texas Instruments Inc.

The program, which will involve several large health plans, will be designed to ensure that employees from different cultural backgrounds receive necessary and appropriate health care, Ms. Fazen explained.

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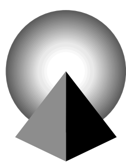

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	In a Proceeding under
MERCANTILE & GENERAL	Section 304 of the
REINSURANCE COMPANY	Bankruptcy Code
LIMITED,	Case No.
Debtor in a Foreign Proceeding	05-14076(BRL)

NOTICE OF ENTRY AND EFFECTIVENESS OF PERMANENT INJUNCTION AND ORDER PURSUANT TO SECTIONS 105(a) AND 304(b) OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that on September 7, 2005, the United States Bankruptcy Court for the Southern District of New York entered an order (the "Order"), pursuant to 11 U.S.C. §§ 105(a) and 304(b), inter alia, giving full force and effect to the Scheme of Arrangement (the "Scheme") pursuant to section 425 of the Companies Act 1985 of Mercantile & General Reinsurance Company Limited ("Mercantile"), which Scheme was sanctioned by the Court of Session, Scotland, by order dated September 1, 2005, (the "Sanction Order") and making the Scheme binding on and enforceable in accordance with its terms against all Scheme Creditors[1] and third parties in the United States. The Order went into effect upon the filing of the Sanction Order with the Registrar of Companies in Scotland on September 22, 2005.

PLEASE TAKE NOTICE that, except as provided in the Scheme, the Order permanently enjoins and restrains all Scheme Creditors from taking various actions; transferring any Property of Mercantile or the proceeds thereof; drawing down any letter of credit established by, on behalf of or at the request of Mercantile; and commencing, continuing, or enforcing any Proceedings, judgments or orders and other actions and conduct specified in the Order.

PLEASE TAKE NOTICE that the Order also requires all Scheme Creditors to: (a) turn over and account to Mercantile or the Scheme Advisors for any property of Mercantile, or proceeds thereof, that relate to any Scheme Claim, of which they have possession, custody or control; (b) deliver any books, papers or records of Mercantile that relate to any Scheme Claim, of which they have possession, custody or control, to Mercantile or the Scheme Advisors; and (c) to the extent they have a Claim of any nature or source against Mercantile or any Property or are a party to any Proceeding in which Mercantile is or was named as a party, or as a result of which a liability of Mercantile may be established, to notify Mercantile and the Scheme Advisors, in accordance with the terms of the Scheme, all as more particularly set forth in the Order.

PLEASE TAKE NOTICE that, subject to the terms and provisions of the Scheme, all Scheme Creditors shall be permanently enjoined and restrained from commencing or continuing any Proceeding against Mercantile, the Board, the Scheme Advisors, the Scheme Adjudicator, their successors, agents, attorneys or representatives.

PLEASE TAKE NOTICE that copies of the Order and the Scheme are available to parties in interest on the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at http://www.nysb.uscourts.gov (a PACER login and a password are required to retrieve a document) or upon written request to the Petitioners' counsel (including by facsimile or email) addressed to: **Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019, Attention: David A. Sullivan, (212) 878-8375 (Facsimile), david.sullivan@cliffordchance.com.**

Dated: New York, New York • September 22, 2005
CLIFFORD CHANCE US LLP
31 West 52nd Street, New York, New York 10019
(212) 878-8000, *Attorneys for the Petitioners*
Attention: Peter R. Chaffetz, Esq., David A. Sullivan, Esq.

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Order.

LEGAL NOTICE

IN THE COURT OF SESSION, SCOTLAND
AND
IN THE PETITION OF
THE MERCANTILE & GENERAL REINSURANCE COMPANY LIMITED
FOR AN ORDER SANCTIONING A SCHEME OF ARRANGEMENT
UNDER SECTION 425 OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an order dated 1 September 2005 made in the Court of Session, Scotland in the above named matter, the solvent scheme of arrangement (the "Solvent Scheme") to be made between the Mercantile & General Reinsurance Company Limited (the "Company") and its Scheme Creditors (as defined in the Solvent Scheme) pursuant to section 425 of the Companies Act 1985, which was voted on and approved by Scheme Creditors during the meeting held on 26 April 2005, was sanctioned. A copy of the order sanctioning the Solvent Scheme was delivered for registration to the Registrar of Companies in Scotland on 22 September 2005, and the Solvent Scheme became effective on that date.

Scheme Creditors are required to submit completed Claim Forms in respect of their Scheme Liabilities (as defined in the Solvent Scheme) to the Company in signed hard copy form. Completed Claim Forms must reach the Company at 30 St. Mary Axe, London EC3A 8EP marked for the attention of Richard Harris or Karen Veale on or before the Final Claims Submission Date (namely 5:00 p.m. London time on 20 January 2006).

Where no completed Claim Form is received by the Company by the Final Claims Submission Date, the Scheme Liabilities of that Scheme Creditor (other than Scheme Liabilities in respect of claims which have been agreed by the Company but not yet paid as at the Effective Date) will be valued at nil. Scheme Creditors will, however, be entitled to payment from the Company under, and subject to the terms of, the Solvent Scheme in respect of claims that have been agreed by the Company but not yet paid as at the Effective Date, whether or not a Claim Form setting out the requisite details of such claims has been received by the Company by the Final Claims Submission Date.

For these purposes, all references to claims being "agreed" shall mean only claims that are specifically agreed for payment under the Scheme by or on behalf of the Company. Therefore, Scheme Creditors are requested to confirm the status of any unpaid "agreed" claims with the Company and/or ensure that details of such claims are included in their Claim Forms.

Information regarding the Solvent Scheme is available from the Company's website at www.mgre.co.uk where a version of the Claim Form is also available to download.

Should you have any questions regarding this Notice, or wish to obtain a copy of the Solvent Scheme or a Claim Form, you may contact the Company, at the above address, or by email: mgre_info@mgre.co.uk; telephone: +44 (0) 20 7933 4688; or facsimile: +44 (0) 20 7933 6688.

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF BOARD OF DIRECTORS OF **CAVELL INSURANCE COMPANY LIMITED**, DEBTOR IN A FOREIGN PROCEEDING
CASE NO. 04-B-17990 (SMB)

NOTICE IS HEREBY GIVEN THAT ON SEPTEMBER 8, 2005, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") PURSUANT TO 11 U.S.C. § 304. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING TO CONSIDER WHETHER THE BANKRUPTCY COURT WILL (I) ISSUE A PERMANENT INJUNCTION ORDER, PURSUANT TO SECTION 304 OF THE BANKRUPTCY CODE, PROVIDING FOR, AMONG OTHER THINGS, RECOGNITION OF THE SCHEME OF ARRANGEMENT, SUBSTANTIALLY IN THE FORM SET FORTH IN THE AMENDED EXHIBIT "A" FILED WITH THE BANKRUPTCY COURT ON JANUARY 12, 2005, AS AMENDED, IN THE UNITED STATES AND/OR (II) CONTINUATION OF THE ORDER, WHICH HEARING IS SCHEDULED TO BE HELD BEFORE THE HONORABLE STUART M. BERNSTEIN, CHIEF UNITED STATES BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT, ONE BOWLING GREEN, NEW YORK, NEW YORK ON DECEMBER 6, 2005 AT 10:00 A.M.

CHADBOURNE & PARKE LLP
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Whistleblowers: Employees filing more retaliation lawsuits

Continued from page 4

missed, with the remainder withdrawn, settled or determined to have merit by OSHA.

But even if employers ultimately are victorious, defending these cases is costly, particularly if the employee decides to subsequently pursue his case in federal court. While only a relatively small number have done this so far, more are expected to do so.

And once in federal court, "You're then in a fully blown employment litigation, which can be extremely costly," because these claims tend to be very fact sensitive and so require extensive discovery, said Richard J. Cino, an attorney with Jackson Lewis L.L.P. in Morristown, N.J.

There are measures employers can take, though, to minimize their chances of being hit with a retaliatory claim (see related story).

Observers say they expect the number or claims to increase. So far, "there have been very few court cases, but that will certainly change with time and as more court decisions come out, then more and more people will be aware of the statute, and I think we'll likely see the number of cases continue to grow," said Robert Whitman, an attorney with Orrick, Sutcliffe & Herrington in New York, who observed that it is relatively easy for an individual to file a charge.

The law was hastily written and approved in response to the Enron Corp. and other financial scandals of the period, and may have been too broadly written, say observers.

Observers say one major problem with the law is that once a terminated employee establishes a prima facie case that there may have been retaliatory action, the employer must offer "clear and convincing evidence" that it would have taken the same adverse action even if there had been no whistleblowing, which is a higher evidence standard than is required in other federal anti-discrimination laws.

Otherwise, OSHA may order the employee to be reinstated, even before final resolution of the case. This is different from other employment laws, where there is generally no reinstatement order until the very end of proceedings, said Carole Katz, a Pittsburgh-based attorney with Morgan Lewis & Bockius L.L.P.

It can put employers in an awkward situation. "You can imagine the tension" when a whistleblower "who has visibility into the inner workings of the company, and who is in an adversarial stance, is ordered to be reinstated," said Bradford K. Newman, an attorney with Paul, Hastings, Janofsky & Walker L.L.P. in Palo Alto, Calif.

Furthermore, under the law, an administrative law judge "is compelled to find in the employee's favor and grant full relief" if the whistleblowing "appears to have played any role in the decision to take the adverse action," however minor, said Mary E. Pivec, an attorney with Sheppard, Mullin, Richter & Hampton L.L.P. in Washington.

Some observers say fear of being associated with a Sarbanes-Oxley whistleblower suit is leading some employers to settle even when they feel the claim has no merit. "They fear the potential bad publicity," said James S. Urban, an attorney with Jones Day in Pittsburgh.

However, Robert P. Riordan, an attorney with Alston & Bird in Atlanta, said, "My experience has been the opposite, that companies ordinarily are thoroughly convinced that the whistleblower is not accurate in their accusation," and the last thing they want to do is pay him and have somebody "characterize that as some sort of admission of improper practice."

Sarbanes-Oxley is also encouraging employees of organizations that do not fall under the law, such as nonprofits, to take advantage of the many state whistleblower laws, which can be broader in scope than the federal law, say observers.

"I have definitely seen in the past two years an increase" in the number of non-Sarbanes-Oxley whistleblower cases brought at the state level, said Heidi Goldstein Shepherd, an attorney with Goodwin Procter L.L.P. in Boston. Sarbanes-Oxley "has had a spillover effect in that it's sort of raised awareness among the plaintiffs bar," she said.

Furthermore, a growing number of discrimination and harassment claims are being accompanied by charges that the employer engaged in inappropriate conduct, said Mr. Berkowitz. "Plaintiff lawyers are recognizing that simple allegations of discrimination may not get them as far as if they were to couple it with charges that somebody's cooking the books."

Sarbanes-Oxley Complaints

When receiving complaints, the Department of Labor counts cases filed; for outcome of the complaints, the department counts individuals affected. Settled cases are a subset of merit cases.

COMPLAINT DETERMINATIONS

Year	Withdrawn	Dismissed	Settled/Merit	Total
2002	1	0	0	1
2003	14	56	9/11	81
2004	24	127	23/29	180
2005*	35	160	27.34	229
Cumulative	**74**	**343**	**59/74**	**491**

* Through 9/12/05
Source: U.S. Department of Labor

Steps for employers to avoid such lawsuits

Setting up complaint procedures, encouraging employees to speak freely when they see a problem and carefully documenting issues with problem employees can help reduce employers' chances of being hit with a retaliation claim under the whistleblower provisions of the Sarbanes-Oxley Act, say observers.

Sarbanes Oxley, in fact, has provisions that require employers to establish procedures that allow employees to confidentially file internal whistleblower complaints.

Some employers may have already introduced such procedures to deal with the risk of age or sex discrimination claims, observers say.

Employers need to establish policies that make it plain what constitutes unethical conduct and to then implement procedures for employees to follow if they feel there has been a violation of these policies, said Philip M. Berkowitz, an attorney with Nixon Peabody in New York.

"I strongly recommend cultivating an atmosphere of trust with employees" so they are encouraged to come forward internally, rather than approach either an attorney or state agency, said Sara Goldsmith Schwartz, an attorney with Schwartz, Hannu P.C. in Andover, Mass.

It is also important to carefully document poor performance.

Most employers already have an "intuitive sense" when it comes to terminating women or minorities to be sure everything is documented and then communicated to the person involved, said Robert F. Dow, an attorney with Arnall Golden Gregory L.L.P. in Atlanta. With Sarbanes-Oxley, "You have to extend that kind of thought process into the accounting arena."

—By Judy Greenwald

Marsh: Connecticut A.G. amends suit to add bid-rigging charges

Continued from page 1

corporate, nonprofit, government and individual alike—harmed by Marsh's illegal kickback schemes," Mr. Blumenthal said in a statement.

Final settlement eludes Marsh

- **Oct. 14, 2004:** New York Attorney General Eliot Spitzer sues Marsh, alleging fraud and bid-rigging.
- **Jan. 21, 2005:** Connecticut Attorney General Richard Blumenthal sues Marsh over an alleged secret commission payment.
- **Jan. 31:** Marsh settles bid-rigging and other charges with Mr. Spitzer and establishes $850 million fund to repay clients nationwide.
- **Sept. 21:** More than 30 insurance regulators, through the National Assn. of Insurance Commissioners, adopt the settlement.
- **Sept. 22:** Mr. Blumenthal amends his suit to add charges of bid-rigging and client steering.

The amended suit comes nine months after the brokerage agreed to change its business practices and to pay $850 million in restitution to clients nationwide to settle similar claims leveled by Mr. Spitzer.

Because none of the $850 million was considered a fine or penalty against MMC, observers say a fine is the likely outcome of Mr. Blumenthal's suit.

ACE settles

The Connecticut Attorney General originally sued MMC, its Marsh USA Risk Services unit and ACE Financial Solutions Inc. in January, alleging the brokerage steered an $80 million state workers compensation contract to ACE Financial for a secret $50,000 commission (*BI*, Jan. 24).

ACE last week agreed to pay $40,000 to settle the lawsuit. In a Securities and Exchange Commission filing, ACE said the decision to settle "avoids the cost of further litigation." An ACE spokesman declined to comment further.

"While we would have preferred that an amended complaint not be filed, we are continuing to cooperate with the Connecticut Attorney General," an MMC spokesperson said. "These are essentially the same types of allegations that were previously resolved with the New York Attorney General and Superintendent of Insurance through the establishment of our $850 million nationwide compensation fund, which permits our policyholder clients to receive payments without having to show they were harmed in any way."

Clients had until Sept. 20 to decide whether to opt into the settlement.

More than 75% of policyholder clients, in dollar terms, have chosen to take part in the nationwide settlement and release Marsh from further claims, the MMC spokesperson said. In Connecticut alone, more than 1,000 clients will receive more than $20 million.

Observers say Mr. Blumenthal's lawsuit is not surprising given the number of state authorities still investigating MMC.

"Part of our negative outlook (on Marsh) is that there are some issues still unsettled and potential further litigation from sources such as this," said Gretchen Roetzer, a Marsh credit analyst with Fitch Ratings in Chicago.

Given that Marsh has done away with contingent commissions and changed its management and other business practices as part of its settlement with Mr. Spitzer, "this will be more of what will come out in terms of fines," she said of Mr. Blumenthal's complaint. "I think it's more of a cash issue."

MMC's settlement with Mr. Spitzer was structured as a nationwide settlement that returned money to Marsh clients that were affected. "Nobody has gotten any fines or penalties from Marsh," said Steven Ader, a Marsh credit analyst with Standard & Poor's Corp. in New York.

In terms of the allegations themselves, though, Mr. Ader said "there's nothing really new in this at all."

NAIC agreement

Meanwhile, MMC last week reached a multistate regulatory agreement with more than 30 state insurance regulators working collaboratively through the National Assn. of Insurance Commissioners.

Under the agreement, the participating regulators adopted MMC's nationwide $850 million settlement and will have the authority to enforce the reforms under that agreement. Regulators will receive ongoing compliance reports from MMC and will maintain their ability to continue ongoing investigations with MMC's cooperation.

"The regulatory controls that are embodied in this global agreement are prudent and comprehensive," Diane Koken, the NAIC president and Pennsylvania insurance commissioner, said in a statement. "We recognize that some customers of Marsh may have reasons not to opt into the monetary settlement, and we can certainly understand that. However, expediently returning as much money to as many consumers as possible was an important consideration in endorsing this global settlement."

In a statement, MMC President and Chief Executive Officer Michael G. Cherkasky said the agreement "represents an important step forward for Marsh and a reaffirmation of Marsh's commitment to business reform."

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Swett: Aon sells wholesaler to private investment group

Continued from page 3

Swett & Crawford president and chief operating officer Neal Abernathy resides. Mr. Abernathy is expected to succeed Mr. Hartoch when he retires.

Neither Aon nor the investor group provided details of the transaction.

HMTF said in a statement that several of Swett & Crawford's key employees and executives have invested in the transaction and that they will own a significant stake in the wholesaler.

Swett & Crawford's management will run day-to-day operations, while HMTF will sit on its board and provide guidance.

Mr. Hartoch said he intends to stay with Swett & Crawford for "awhile," although he did not provide details. The Swett & Crawford CEO, who headed the wholesale broker from 1997 to 2003, in March returned to oversee its divestiture.

Going private

The sale by Aon follows similar moves by its two largest competitors.

Earlier this month, Marsh & McLennan Cos. Inc. sold wholesaler Crump Group Inc. to private equity firm J.C. Flowers & Co. L.L.C. Previously, Willis Group Holdings Ltd. had sold Stewart Smith Group to American Wholesale Insurance Group Inc.

Observers say the moves by the world's largest three brokerages were motivated by a desire to eliminate perceived conflicts of interest arising from brokerages owning retail and wholesale operations.

The moves have also launched a trend of equity investors purchasing wholesale brokerages with plans to increase their size through additional acquisitions (*BI*, Sept. 12).

Wholesaler "fundamentals are stronger than ever right now," Mr. Rosen said, adding that rate increases are expected to follow Hurricane Katrina, which is helping drive excess and surplus lines activity, he said.

HMTF spent two years looking for a wholesaler of significant scale. But it wasn't until New York Attorney General Eliot Spitzer's investigations caused retail brokers to divest their wholesalers that opportunities opened up, Mr. Rosen said.

Swett & Crawford is HMTF's first wholesaler acquisition, Mr. Rosen said.

The company's new status as independent wholesaler also will fuel growth, Mr. Rosen said. Retail brokers competing with Aon are more likely to take their business to an independently owned wholesaler, he said.

John Wicher, principal at San Francisco-based John Wicher & Associates, agreed that independence is a good selling point for attracting business from retailers. Policyholders are also likely to perceive Swett & Crawford's independence from a retailer as a benefit, Mr. Wicher added.

However, how long the investor group will own Swett & Crawford is unclear. Observers have previously pointed out that equity firms typically hold their investments for limited periods after leveraging them for growth.

But Swett & Crawford's new owners want to build the wholesaler's long-term value and will not make decisions based on short-term gain, Mr. Rosen said. HMTF, however, must eventually find alternatives for repaying its investors' capital, such as taking the company public, selling it or merging it with another entity.

"We are not in a position where we can own assets for 20 years," Mr. Rosen said. "We do seek to achieve liquidity for our investors."

Some surplus lines rates still falling

By ROBERTO CENICEROS

SAN FRANCISCO—While some surplus lines casualty underwriters say they are trying to hold firm on rates and keep them from sliding further, other standard and nonadmitted insurers aren't following along.

Consequently, rate decreases are still occurring across several nonadmitted casualty lines, said surplus lines underwriters attending the National Assn. of Professional Surplus Lines Offices Ltd.'s 2005 Convention in San Francisco.

Rates for general liability policies, habitational business, products liability, and several professional liability lines are all seeing price decreases, underwriters said.

But some of the rate slide has slowed from a year ago, said Scott J. Bayer, senior vp for the general liability division at Liberty International Underwriters in New York. Brokers are, however, looking to wrangle primary casualty renewal rates for their clients that range from flat to a 10% decrease, Mr. Bayer added.

"But they are not getting it on every account. No way," Mr. Bayer said. "Every account stands on its own."

To hold the line, Liberty is turning down slightly more business than it did a year ago, he said.

Kansas City, Mo.-based GE Insurance Solutions is also declining some business rather than dropping its pricing below an underwriting profitability benchmark, said Brian E. Evans, vp-underwriting manager for E&S individual risk at GE in Overland Park, Kan.

Yet the insurer is obtaining a lower price for some products, such as nonadmitted general liability coverage, than it did a year earlier.

"Compared to our benchmarking of pricing on accounts, we are seeing competitors price to negative return levels, which we are not willing to do," Mr. Evans said. "We are shooting for being consistent in pricing to a return level that will keep us in business over time."

Others describe the casualty market as stabilizing.

"There are rate decreases, but not tremendous rate decreases on the (casualty) portfolio," said Shaun E. Kelly, president of Lexington Insurance Co., a Boston-based unit of American International Group Inc. "It is a relatively stable to down rate environment for both primary and excess casualty."

But one problem for surplus lines underwriters stems from standard markets' increased appetite for coverages such as products liability, construction liability and habitational business, underwriters said.

Additionally, insurers took an increased interest, beginning last year, in supporting casualty program business, said Lorna Parsons, managing director in Chevy Chase, Md. for managing general agent Victor O. Schinnerer & Co. Inc.

So those insurers now supporting program business are possibly more competitive with their rates to help grow that business, Ms. Parsons said. Insurers, meanwhile, say they want to maintain underwriting discipline. But with competitors dropping their rates, that gets tougher to do.

"We have, in our casualty operation, flattened our rates," Ms. Parsons said. "Some of our competitors appear to be cutting them precipitously."

NAPSLO: Rates likely to rise in cat-prone areas

Continued from page 4

NAPSLO was that Lexington does not plan to change its underwriting strategy toward catastrophe areas, and would look at accounts on a case-by-case basis, Mr. Kelly said.

But insurers that do not have Gulf Coast exposures and do not have to renew their reinsurance coverage soon, said they don't expect to raise rates or reduce limits, said Ms. Whaley of Brown & Riding.

Some programs could be restructured, though. Over the past several years surplus lines insurers have become increasingly comfortable providing larger accounts with enough property coverage so they did not have to layer policies to acquire desired limits, said Gary L. Tiepelman, senior vp of underwriting for Scottsdale, Ariz.-based Scottsdale Insurance Co.

"You will probably see (surplus lines insurers) getting away from that now," said Mr. Tiepelman. He also noted that as a result of Hurricane Katrina, some commercial surplus lines writers will feel "a little more pain" than standard insurers. That is because the standard market often rejected catastrophe prone risks on the Gulf Coast.

Reinsurance rate hikes

If the hurricane damage is as severe as some estimates project, it could impact Scottsdale's reinsurance rates when it renews its treaties next July. It is certain to impact insurers renewing them in January, Mr. Tiepelman said.

A. Gary Batten, vp and branch manager in Metairie, La., for wholesale broker Burns & Wilcox Ltd. said several insurers he met with at the convention said they were expecting reinsurance rate increases. Those increases would be passed on to policyholders who are now more likely to need to layer coverage, he said.

Mr. Batten said he expected to hear more of the same as he continued meeting with insurers. He also said he expected that hurricane-related rate hikes would be spread across property accounts nationwide, not just across those in catastrophe areas.

But it was not until April this year that insurers understood their total losses and set their pricing to fully account for the four hurricanes that struck the United States during 2004, said Maureen C. Caviston, president of Partner Specialty Group L.L.C. in Stamford, Conn. Therefore, it remains too early to tell just how much impact Hurricane Katrina might have on pricing for properties across the middle United States, she said.

Euclid Black, president of Henderson, Nev.-based wholesaler Black/White & Associates said some expectations for price increases and tightened limits may be overblown.

But one major insurer did tell Mr. Black that he was certain prices would firm abruptly, Mr. Black said.

"On the other hand, I had another property carrier that agreed to about a 20% discount over trailing year prices," Mr. Black added. But that insurer had not suffered any Katrina-related losses and over the past two years the insurer's rates had remained firm while other insurers cut rates, he said.

Brokers and insurers said they were less certain whether Katrina would impact the nonadmitted casualty market. If it does, the impact could vary. Some casualty underwriters could tighten rates, ending a slide in prices, in order to make up for Katrina-related losses, said Brian E. Evans, vp underwriting manager for E&S individual risk for GE Insurance Solutions in Overland Park, Kan.

On the other hand, some insurers could move their capacity out of the property market and move into the casualty market, said Lorna Parsons, managing director for managing general agent Victor O. Schinnerer & Co. Inc. in Chevy Chase, Md.

That would put even more downward pressure on casualty rates, which several NAPSLO attendees said continue to decline even though some insurers say they are attempting to hold the line.

San Francisco draws record 3,200 attendees to NAPSLO meeting

Speculation that Hurricane Katrina might reverse a softening insurance market was the center of many discussions at the National Assn. of Professional Surplus Lines Offices Ltd.'s 2005 Annual Convention.

About 3,200 people registered for NAPSLO's convention, held Sept. 14-18 in San Francisco, making the event the organization's largest meeting yet.

The 2005 convention saw Lawrence M. Wesson Jr., president and chief operating officer for Dallas-based U.S. Risk Insurance Group, elected as NAPSLO's president. Columnist George F. Will addressed the crowd.

NAPSLO's 2006 convention will be held Sept. 13-17 in Chicago. For more information, call 816-741-3910 or visit *www.napslo.org*.

Hartford receives another subpoena from Spitzer

HARTFORD, Conn.—The Hartford Financial Services Group Inc. has received an additional subpoena from New York Attorney General Eliot Spitzer's office, requesting information related to the company's sales of annuity products and reporting of workers compensation premiums.

The Hartford, in a Securities and Exchange Commission filing on Friday, said the latest subpoena specifically seeks information about purchases of or exchanges into the company's variable annuity products by New York residents during the past five years, in which: the transactions were funded using a tax-qualified plan; where the variable annuity purchased or exchanged for was a subaccount of a tax-qualified plan; or where it was later placed in a tax-qualified plan.

"In addition, the New York Attorney General's office has requested information from the company about issues relating to the reporting of workers compensation premium," the Hartford, Conn.-based insurer said as part of the 8-K filing.

The company plans to cooperate fully with the requests.

The Hartford's group annuity products have been a focus of recent regulatory inquiries, as the company in June disclosed that it received a subpoena from Mr. Spitzer's office regarding broker compensation arrangements linked to the sale of group annuity products, and also previously said it had been subpoenaed by Mr. Spitzer and Connecticut Attorney General Richard Blumenthal about variable annuity sales.

—By Rupal Parekh

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STORM SURGE

Casinos consider moving to guard against storms

By MICHAEL BRADFORD

GULFPORT, Miss.—Gulf Coast casinos rebuilding in the wake of Hurricane Katrina may rise from the rubble in safer locations if a change in Mississippi law allows them to move to higher ground.

The hurricane's impact was particularly harsh on casinos in the Mississippi cities of Gulfport and Biloxi. Some of the complexes, built as barges on the Gulf of Mexico, were lifted by Katrina's powerful storm surge and deposited blocks away from their original moorings. Others, built on pilings driven through the water, suffered less damage.

Where nature did not destroy some of the Mississippi casinos, man was required to finish the job. Harrah's Entertainment Inc.'s Grand Casino in Gulfport was moved by the Katrina's storm surge onto Hwy. 190, where a demolition team last week rigged explosives to the property and blew it apart to begin clearing the roadway.

In neighboring Louisiana, casinos built on waterways were not as hard hit as those in Mississippi, although some were damaged.

In the wake of the Gulf Coast catastrophe, momentum is building to change the Mississippi law that has left the state's coastline and riverbanks dotted with casinos. The legislation was passed in 1990 with the requirement that casinos be located over water as way to control their spread in the state and appease opponents of gambling.

Land-based casinos would have fared much better during Katrina, experts pointed out.

"The main problem is that they had built these things over water," said Donald McGhie, president of McGhie Consulting, a Reno, Nev.-based gaming consultant. "I think the laws will be changed so that they can build on land."

"The barges are significantly more vulnerable to wind and storm surge," said Kyle Beatty, a meteorologist with Risk Management Solutions in Newark, Calif.

The casino operations are a unique risk, Mr. Beatty said, because most have the gambling operation over water and parking structures and hotels on adjoining land. "The primary source of revenue is the element of the complex that is most vulnerable," he said.

State officials are hearing from casino operators regarding the rebuilding issue.

"I've been talking with them since the hurricane," said Mississippi representative Bobby Moak, D-Bogue Chitto, who is chairman of the House Gaming Commission. "I haven't had anyone say they didn't want to come back."

The casinos are interested in having the legislation changed, he said, because they want to remain in a state where they have developed a lucrative business. "They've got a lot invested not only in buildings, but also in creating the market."

It isn't clear when Mississippi lawmakers might address the gambling law, Mr. Moak said, but he expects the Legislature will "go back and revisit " the legislation.

At least one casino isn't committed to returning until its Mississippi properties are as safe as possible.

"We're waiting for the Legislature to determine whether or not casinos will have to remain over water or can be built on land," said Lance Ewing, Memphis-based vp of risk management at Harrah's. "Once that determination is made, we will determine what is best for Harrah's and our shareholders."

While casinos are still tallying their damages, it is likely that Harrah's suffered some of the largest losses among Mississippi casino owners. Heavily damaged or destroyed in Gulfport were its Grand Casino as well as an office complex and golf course the company owns in that city. Harrah's Grand Casino in Biloxi also was heavily damaged.

Mr. Ewing said last week that Harrah's had begun receiving payments from insurers that wrote coverage for the damaged properties. Lexington Insurance Co., a unit of American International Group Inc. was among the lead insurers on the Gulfport risks and thus far has done a "stellar job" in adjusting the claim, he said.

Around 40 insurers wrote coverage for Harrah's properties in Gulfport and Biloxi, Mr. Ewing said.

Also damaged was Harrah's land-based casino in New Orleans and a company-owned hotel under construction there, Mr. Ewing said. Coverage for those risks was written in a separate program from the Mississippi properties.

The Presidents Casino barge sits atop a Holiday Inn after being pushed ashore by Hurricane Katrina.

Hard Rock Cafe's recently opened hotel and casino in Biloxi also was heavily damaged. A spokeswoman for the property declined to provide information on the loss, but a demolition crew said in a television news report that it had been hired to tear down the facility, which would take six months.

Beau Rivage Resort in Gulfport, a casino and hotel owned by MGM Mirage will take a year to 18 months to rebuild, Terrence Lanni, MGM Mirage's chairman and chief executive officer said in a TV news report. The property was covered by "significant insurance," he said.

The Copa Casino in Gulfport was another that was lifted from its spot at the water's edge and left in a crumbling heap blocks away. Also heavily damaged was Casino Magic in Bay St. Louis and Boomtown Casino in Biloxi.

Mr. Moak said the Isle of Capri, Imperial Palace and Palace Casino Resort on the Mississippi Gulf Coast fared better in Hurricane Katrina.

The Imperial Palace released a statement saying gamblers could be at its tables in two to three months.

If casino properties being rebuilt are moved inland, they won't have to go far to gain significant protection from a storm surge on a scale of that produced by Katrina, according to Mr. Beatty of RMS.

In the Gulfport-Biloxi area, the damaging storm surge reached around a half-mile inland, he said.

Storms: Backup cover pricey, hard to find as market prepares for Rita

Continued from page 1

As the size and path of Hurricane Rita became clearer, many underwriters last week stopped quoting for reinstatement coverage or ILWs and were unlikely to resume doing so until the hurricane had passed, said Callum Stewart, a board member and head of the North American treaty team at London-based broker Alwen Hough Johnson Ltd.

Underwriters' appetite for providing backup cover was "limited at best" at the end of last week as Hurricane Rita neared Texas, according to Paddy Jago, president of Willis Re Inc. and managing director of property and casualty for the U.S. division of Willis Re in London.

The marine and energy reinsurance market has seen a flurry of activity from cedents seeking quotes on coverage since Hurricane Katrina, said Charlie Cantlay, deputy chairman of Aon Re U.K. Ltd. in London.

Brokers have been providing buyers with indications on backup covers, he said, and such coverage was still available. But some underwriters were offering it only with a post-Rita inception, Mr. Jago said.

Loss report

Several companies last week estimated their losses from Katrina, including:

- **Berkshire Hathaway Inc.**: 3% to 5% of the total industrywide loss. Under the highest estimate projected thus far—$60 billion—Berkshire Hathaway's losses could reach $3 billion.
- **American International Group Inc.**: third-quarter catastrophe losses, primarily from Katrina, estimated at $1.1 billion after tax.
- **St. Paul Travelers**: net losses of $800 million after tax.
- **AXIS Capital Holdings Inc.**: net losses of $500 million to $650 million.
- **IPC Holdings Ltd.**: net losses of $350 million to $600 million.
- **FM Global**: net losses of $300 million.
- **PXRE Group Ltd.**: net losses of $235 million to $300 million.
- **Arch Capital Group Ltd.**: net losses of $110 million to $160 million.

"A number of our clients requested backing coverage in light of Rita as a matter of prudence," Mr. Cantlay said. "But the terms that the market was quoting were quite expensive."

Mr. Cantlay said he is seeing interest in additional coverage reinstatements, as most marine and energy policies offer a single policy limit with two reinstatements. "Most cedents will see one policy limit gone from Katrina," he said.

"We're seeing reasonably significant activity in the property retrocessional market" for ILWs, he said.

But as Rita loomed last week, "nobody is going to quote anything at the moment," Mr. Cantlay said.

Many cedents and reinsurers are still unsure of the size of their losses from Hurricane Katrina, said Seymour Matthews, managing director of the reinsurance division of Heath Lambert Group in London.

As a result, many cedents are unsure about how much reinsurance protection they have left and how much additional cover they can afford, he said. So, while there is talk in the market about buying back up covers, there is still a great deal of uncertainty, Mr. Matthews said.

However, at least one insurer announced last week that it had secured additional reinsurance coverage. Assurant Inc. in New York said it had "recently purchased" third-event coverage to back up its previous program, which provided $185 million excess of $25 million plus one reinstatement. In a statement, Assurant said it expected its losses from Hurricane Katrina to fall within its reinsurance coverage limits.

If Rita blows through many reinsurance protections, there will likely be a flurry of activity as cedents and reinsurers coverage seek additional cover to last out the storm season, said Mr. Adamson.

After Katrina

As the market braced for Rita's impact, more insurers and reinsurers issued estimates of their losses from Hurricane Katrina (see box).

In addition, EQECAT Inc. last week raised its estimate of the industry's total loss, noting that energy and marine claims, as well as those from commercial flooding and other factors, bring its total insured loss estimate range to $26 billion to $43 billion.

Risk Management Solutions Inc., meanwhile, reiterated its estimate that insured losses from the storm would ultimately range between $40 billion and $60 billion.

One reinsurer that had announced a major hit from Katrina, Hamilton, Bermuda-based Montpelier Re Holdings Ltd., last week said that it had raised $600 million in a share issue.

Following the move, Standard & Poor's Corp. said that it had affirmed Montpelier Reinsurance Ltd.'s A- financial strength rating, which had been under review because of the reinsurer's Katrina exposure. Montpelier has estimated its losses from the storm at between $450 million and $675 million.

Regis Coccia contributed to this report.

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STORM SURGE

Deadlines relaxed for COBRA rules, coverage appeals

By JERRY GEISEL

WASHINGTON—The Bush administration is giving some employees affected by Hurricane Katrina more time to file for COBRA health care continuation coverage and to pay COBRA premiums.

Those living or working in the Hurricane Katrina disaster areas at the time the deadly storm hit, or whose employers are based in the region, are eligible for the extended deadlines.

The notice, issued jointly last week by the Department of Labor and the Internal Revenue Service, also extends time frames in certain other benefit areas, such as the amount of time employees have to appeal adverse health care claims decisions.

Benefit experts welcome the notice in laying out exactly how a variety of health care plan-related deadlines can be disregarded for employers and plan participants in Katrina-affected areas in Louisiana, Mississippi or Alabama that are eligible for individual assistance by the Federal Emergency Management Agency.

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Essentially, the DOL-IRS notice stops the clock from Aug. 29, 2005, through Jan. 3, 2006, in determining certain COBRA and other health care plan-related deadlines, with the clock resuming on Jan. 4, 2006.

"It is a classic freezing concept," said Andy Anderson, of counsel with the law firm of Morgan, Lewis & Bockius L.L.P. in Chicago.

For example, under COBRA, beneficiaries normally have 60 days from the time they receive a notice of eligibility to elect coverage. Under the notice, the period Aug. 29, 2005, through Jan. 3, 2006, would be ignored in counting off the 60-day election period.

The regulatory agencies provide an example of how the clock would start for the COBRA election period, assuming an employer provided COBRA election notices on Oct. 2, 2005. The period between Oct. 2, 2005, and Jan. 3, 2006, would be disregarded, with beneficiaries having until March 4, 2006, to decide if they want COBRA coverage.

Similarly, COBRA premiums due between Aug. 29, 2005, and Jan. 3, 2006, would be considered timely as long as they were paid by Feb. 2, 2006. Normally, the premiums must be paid within 30 days.

The notice also stops the clock in another health care coverage area: determining if there has been a break in the "creditable coverage" period. That issue largely affects employees with pre-existing medical conditions who change jobs.

Under a 1996 law, employers must offset the length of time they will exclude coverage for a new employee's pre-existing medical conditions by the period of time that individual had prior "continuous" coverage. Continuous coverage is defined as coverage without a break exceeding 63 days.

Additionally, the notice deals with deadlines plan participants face on appealing adverse coverage determination decisions. Under Labor Department regulations issued in 2000, plan participants have 180 days from the time they receive notification to appeal an adverse benefit determination decision.

The notice provides an example of an employee in a Katrina-affected area who received an adverse coverage determination notice on Aug. 10, 2005. By disregarding the period Aug. 29, 2005, through Jan. 3, 2006, the employee's last day to file an appeal would be June 14, 2006.

While the notice, published in the Sept. 21 Federal Register, deals with a plethora of statutory and regulatory deadlines, employers impacted by Katrina still need guidance on whether a relaxing of deadlines will be provided in other benefit areas, noted Mr. Anderson.

For example, employers affected by Katrina want to know if the Centers for Medicare and Medicaid Services will delay a requirement that employers provide to their Medicare-eligible employees and retirees a notice that tells them whether the prescription drug coverage they receive is at least equal to the drug benefits that will be provided under Medicare Part D. Those notices are due by Nov. 15.

Other situations not dealt with include how employees with flexible spending accounts are to prove an expense for reimbursement, if, for example, they received a service before Katrina hit and—because their provider's office was destroyed—are unable to get a receipt.

"There are some real-world situations for which additional guidance of this nature would be useful," said Sharon Cohen, an attorney with Watson Wyatt Worldwide in Arlington, Va.

Observers note that in an effort to get guidance out quickly, the regulatory agencies are likely to provide a series of notices rather than try to address all Katrina-related benefit issues in one huge notice.

"It is not reasonable to expect guidance on every benefit issue at once, if the guidance is to be timely," said Henry Saveth, an attorney with Mercer Human Resource Consulting in New York.

PHOTO: ZUMA PRESS

Those displaced by Hurricane Katrina would be able to take pre-retirement distributions from their 401(k) plans without facing the 10% federal penalty tax, under a measure approved by Congress.

Lawmakers, IRS move to ease 401(k) withdrawals for victims

By JERRY GEISEL

WASHINGTON—Legislation that received final congressional approval last week will reduce the cost for Hurricane Katrina victims taking pre-retirement distributions from their savings and pension plans, while separate, earlier action by the Internal Revenue Service will make it easier for those affected by Katrina to withdraw funds from the plans.

Congress took the broadest action. The bill, H.R. 3768, will allow those affected by Katrina to take a preretirement distribution without being hit with the 10% federal penalty tax that normally would apply.

The penalty tax waiver would apply for distributions received after Aug. 28, 2005, and would continue for one year. The waiver only would apply, though, for distributions up to $100,000.

The widest application of the waiver would be for 401(k) plans, where employers often allow employees to take hardship withdrawals. The 10% penalty tax is imposed if the plan participant is younger than age 59½.

The legislation also will affect employees in certain types of defined benefit plans, such as cash balance plans, that allow employees to take their benefit as a lump sum when they leave. The 10% penalty tax is imposed if employees are younger than 55 when they separate from service. The tax, though, does not apply for benefits taken as a monthly annuity.

Although the distributions still would be subject to regular income taxes, the distributions would be exempt from the 20% withholding tax that normally applies to preretirement distributions not taken as an annuity or rolled into another qualified plan.

Additionally, the taxes Katrina victims owe on the distributions would be prorated over three years, while individuals could recontribute—also over three years—the distributions to their employer's retirement plan, if allowed, or to an IRA.

The measure would increase the maximum loan amount Katrina victims could take from defined contribution plans. Employees could borrow up to $100,000 or their entire account balance, whichever is less. Under current law, the maximum loan that can be taken is $50,000 or half of an employee's account, whichever is less.

Finally, the measure would extend for one year the length of time Katrina victims would have to repay loans taken from defined contribution plans.

Benefit experts say they expect the legislation—in waiving the 10% penalty tax and boosting the maximum defined contribution loan amount—will result in an increase in pre-retirement distributions by Katrina victims.

"I would think those affected by the hurricane would take advantage of it, especially if these are the principal source of funds needed to rebuild their homes," said Brian Doughtery, a partner with the law firm of Morgan, Lewis & Bockius L.L.P. in Philadelphia.

The most significant administrative issue—one facing plan recordkeepers and trustees—will be changing their systems so that the 20% withholding tax is not automatically applied, said Michael Weddell, a consultant in the Southfield, Mich., office of Watson Wyatt Worldwide.

"They will have to adjust their procedures," said Mr. Weddell, adding that such a change should not be difficult.

On the regulatory side, the IRS is taking steps to provide broad-based relief to retirement plan participants affected by Hurricane Katrina.

Those steps include:

- Katrina victims can make hardship withdrawals from defined contribution plans by March 31 for any reason. Normally, such withdrawals are allowed only if the situation meets criteria set forth in IRS regulations.
- Employers that do not allow participants to take hardship withdrawals and loans can permit such features before they formally amend their plans in accordance with the change. Plans, though, would have to be amended by Dec. 31.
- Participants in 401(k) plans who take hardship withdrawals will immediately be allowed to make new contributions to the plans. Normally, there is a six-month ban on new contributions after a hardship withdrawal is taken.

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STORM SURGE

Above-average storm activity predicted

By MARK A. HOFMANN

WASHINGTON—The current period of above-average hurricane activity could last at least another 20 years, according to the director of the National Hurricane Center.

Fortunately, hurricane forecasting has grown more sophisticated, but more needs to be done, NHC Director Max Mayfield told the Senate Commerce, Science and Transportation Committee's Subcommittee on Disaster Prevention and Prediction last week.

"We need to be thinking about the next disaster," said the panel's chairman, Sen. Jim DeMint, R-S.C. "We must not be surprised again; we must be prepared."

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But Sen. DeMint praised rather than criticized the NHC and its parent, the National Oceanic and Atmospheric Administration, a sentiment shared by other members of the subcommittee. Sen. Ben Nelson, D-Neb., told Mr. Mayfield that the accuracy of the Katrina forecast contributed greatly to saving lives. This was an aspect of the Katrina "where things went terribly right, not terribly wrong," he said.

"While we must focus our energy on addressing the impacts of Hurricane Katrina, we also need to look to the future," said Mr. Mayfield.

After discussing various aspects of the way NOAA conducts its predictions, Mr. Mayfield made clear that all signs point to continued higher-than-normal hurricane activity for the foreseeable future.

At the time of his appearance, 17 tropical storms—nine of which grew into hurricanes, of which four were major hurricanes—had formed during the current hurricane season. He said that NOAA currently projects that 18 to 21 tropical storms will form this season, which runs though the end of November.

"The 1940s through the 1960s experienced an above-average number of major hurricanes, while the 1970s into the mid-1990s averaged fewer hurricanes," he said. "The current period of heightened activity could last another 10 to 20 years or more. This increased activity is due to natural cycles of hurricane activity, driven by the Atlantic Ocean itself along with the atmosphere above it," he said, declining to attribute the activity to global warming.

Another witness praised the forecasting performance of the Miami-based NHC during Hurricane Katrina, but he questioned the value of some current approaches to forecasting and categorizing hurricanes.

"Hurricanes, by nature, are notoriously difficult to predict," said Keith G. Blackwell, an associate professor of meteorology at the University of South Alabama's Coastal Weather Research Center in Mobile. "Within three days of a northern Gulf Coast landfall, the National Hurricane Center refined the forecast landfall to the area that eventually was impacted by the storm."

But, he said, "with Katrina last month, the three-day forecast was much more helpful in correctly portraying Katrina's landfall location than most of the five-day forecasts. At times, the five-day forecasts can be very misleading.... There are some storms which are absolutely unpredictable at the four- and five-day point."

Mr. Blackwell said that the inaccuracy of five-day forecasts "contributes to public cynicism." People believe that since the five-day forecast "always changes," they delay preparing or evacuating because they believe that a hurricane will change paths yet again.

Mr. Blackwell also criticized the Saffir-Simpson Scale, which places hurricanes into one of five categories depending on wind force.

"The Saffir-Simpson Scale is not representative of the true impact. Winds are only part of the story," he said. He favors creation of a new scale that would take into account storm surge, rainfall and inland flooding, and storm size to rate the destructive potential of a hurricane.

BI Stock Index [9/19 - 9/23]

Up-to-the-minute data for all 85 companies that comprise the *BI* Stock Index can be found at *www.businessinsurance.com*

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

Index	Value	Change
BI Stock Index	2610.43	-1.89
Dow Jones	10419.59	-2.09
S&P 500	1215.29	-1.83

Largest gains

Company	Change
EMC Insurance Group	4.32%
Sierra Health Services	4.13%
Hilb, Rogal & Hobbs	3.75%
Brown & Brown	3.44%
W.R. Berkley Corp.	3.37%

Largest losses

Company	Change
PXRE Corp.	-19.57%
Vesta Insurance Co.	-16.36%
IPC Holdings Ltd.	-14.98%
Tower Group Inc.	-9.62%
Endurance Specialty	-8.88%

Weekly change by market segment

Segment	Change
Brokers	1.53%
Insurers/Reinsurers	-2.52%
Managed Care Organizations	0.14%

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

Late News

Continued from page 1

provided to married couples, including health insurance. But the PEHP, which provides insurance to Utah state employees and those of Salt Lake City, said it decided to investigate the appropriateness of the order after being contacted by a lawmaker who warned that the benefits would be illegal under the state's Defense of Marriage Law.

Court rules volunteer cop can get comp benefits

A provision in Colorado's workers compensation law that gives a municipality the option of not providing workers comp benefits to volunteer police officers is unconstitutional, the state's Court of Appeals ruled Thursday. In a 2-1 vote, the three-judge panel found that the law violated equal-protection guarantees because other types of volunteers—including posse members, firefighters, rescue and ambulance teams—are considered employees and are eligible for workers comp.

OPL completes sale of reinsurance unit

Overseas Partners Ltd. has completed the sale of its defunct reinsurance subsidiary to Catalina Holdings Ltd. OPL earlier this month announced the deal to sell its Bermuda-based Overseas Partners Re Ltd. unit to Catalina, also of Bermuda, for $170.5 million. OPL Re as of June 30, 2005, had total assets of $363 million and gross loss reserves of $141 million, OPL said in a Securities and Exchange Commission filing Thursday. Hamilton, Bermuda-based OPL in 2002 placed the majority of its operations in runoff amid shareholder liquidity problems.

PBGC deficit inflated by rate assumptions: Report

The Pension Benefit Guaranty Corp.'s $23.3 billion deficit is inflated because the federal agency uses unrealistically low interest rate assumptions to value its liabilities, contends a report prepared for the American Benefits Council, a lobbying group. Last year, for example, the PBGC used an interest rate of just under 5% to value liabilities; that rate is based on the cost of purchasing annuity contracts from commercial insurers. However, if the PBGC used a rate—just over 6%—that is equal to the yield of investment-grade corporate bonds, its deficit would be $14.3 billion, the report notes. A PBGC spokesman says the agency uses generally accepted accounting principles in preparing its financial statements.

Workers prefer employers to choose health plans

Two out of three adults covered by employer-sponsored health plans prefer that their employer select a set of health plans for them rather than provide them with an account to purchase insurance on their own in the individual market, according to a new Commonwealth Fund study. In addition, almost three-quarters—72%—of people with employer-sponsored health care coverage said their employers do a good job in selecting high-quality health plans. The study also found that the ability to choose among health care providers matters more to people than having a choice of health plans. The study included responses from 3,293 adults.

Court dismisses Vermont Rx suit

A U.S. District Court judge has dismissed a lawsuit filed by Vermont state officials challenging a 2004 decision by Bush administration officials denying Vermont permission to set up a program to reimport Canadian prescription drugs for state employees and retirees. Judge William Sessions III in Burlington said Vermont lacked authority to compel the U.S. Food and Drug Administration to issue a ruling to certify Vermont's proposed plan. "The issue before the court is the legality rather than merit of Vermont's proposal," Judge Sessions ruled. In its suit, Vermont said the FDA's failure to certify the reimportation program was "arbitrary and capricious."

IE-Engine changes name to HighRoads

IE-Engine Inc., a benefit technology services company that specializes in streamlining employee benefit procurement and cost management for large employers, is changing its name to HighRoads Inc. The company also is expanding its services to encompass additional benefits administration services, including consulting, outsourcing, plan renewals, benefit communications, vendor performance management and contract management.

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New Online Poll: Has your organization made any changes to its risk management plans as a result of Katrina and Rita?

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