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September 27, 2004

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Claims piling up from trio of storms

By DAVE LENCKUS and SALLY ROBERTS

Hurricane Ivan may have inflicted up to $14 billion in insured damage as the deadly storm ripped through the Southeastern United States and the Caribbean. That would bring the total losses from the Atlantic hurricane season to more than $26 billion so far, according to some estimates.

And businesses and insurers feared even more damage late last week as Hurricane Jeanne headed for the Florida coast. If Jeanne continues on its predicted path and makes landfall along Florida's southeast coast, insured losses could range from $2 billion to $5 billion, according to EQECAT Inc.

While none of the major hurricanes that have hit the United States in 2004 has centered on a major metropolitan area, the losses are continuing to pile up and test the resources of insurers' claims adjusters.

Adjusters were tackling claims that industry observers said could be difficult to sort out. A particularly knotty adjusting problem in areas struck by more than one storm will be determining how much damage each storm contributed to

See STORMS/page 34

PHOTOS: NOAA, ZUMA

As adjusters worked to gauge property damage from Hurricane Ivan, Hurricane Jeanne was threatening to deliver another blow to a storm-battered Florida.

No fast-track OK for Whirlpool plan to fund benefits

Other review pending

By JERRY GEISEL

WASHINGTON—Whirlpool Corp. will continue to seek regulatory approval of its innovative retiree health care benefits funding proposal following a Labor Department ruling this month that the plan does not qualify for fast-track approval.

In late July, Benton Harbor, Mich.-based Whirlpool requested expedited approval of a plan involving a Whirlpool-established and -funded voluntary employee beneficiary association, the Vermont branch of Whirlpool's Bermuda-based captive, a fronting insurer and a group universal life

See WHIRLPOOL/page 33

Calls for TRIA extension growing louder in Senate

But bill, introduced in July, still awaits markup

By MARK A. HOFMANN

WASHINGTON—Senate interest in extending the government's terrorism insurance program may be on the upswing.

Nearly every member of the Senate Banking, Housing and Urban Affairs Committee who participated in a hearing last week concerning the state of the insurance industry voiced support for reauthorizing the federal financial terrorism insurance backstop created by the Terrorism Risk Insurance Act. The federal program, which would help private insurers cover losses stemming from a future catastrophic terrorist attack, is slated to expire at the end of next year. Insurers, policyholders, brokers and others have called for an extension of the program through at least the end of 2007.

The House has already heeded that call. The House Financial Services Committee has scheduled a markup of the Terrorism Insurance Backstop Extension Act for this week. Although a bipartisan Senate Terrorism Risk Insurance Extension Act was introduced in July, it has not been scheduled for markup.

And with the adjournment of Congress looming, swift action in both houses is critical if TRIA is to be reauthorized in time to prevent some disruptions in the property/casualty market as underwriters struggle to price policies that could cover periods after the current sunset date, extension advocates say.

During last week's hearing, senator after senator called for extension of TRIA, and soon.

"We ought to work very expeditiously" to reauthorize TRIA, said Sen. Jon Corzine, D-N.J., a co-sponsor of the bill. Another co-sponsor—Sen.

See TRIA/page 33

Late News

Oklahoma commissioner resigns before trial

Three days shy of a state Senate trial, Oklahoma Insurance Commissioner Carroll Fisher resigned last week, breaking his vow to never leave office voluntarily. The twice-elected commissioner was impeached earlier this month by state House lawmakers on charges that include neglect of duty and corruption. His trial in the state Senate was set to begin Sept. 27. The former commissioner still faces criminal charges accusing him of embezzling campaign donations and insurance education funds and illegally operating a charity. Deputy Insurance Commissioner Daryl England was named acting commissioner.

Mr. Fisher

Risk manager pay varies widely: Survey

Risk managers' salaries vary considerably depending upon their position and geographic location, a survey concludes. Risk managers with corporatewide responsibilities earn a median of $133,500 according to the "2004 Risk Management Compensation Survey," a joint project of Mercer Human Resource Consulting and the Risk & Insurance Management Society Inc. But pay levels for all risk management professionals in Pacific states are more than $13,000 higher, on average, than those for risk managers in the Atlantic states.

SEC may charge AIG over PNC deals

Staff members of the U.S. Securities and Exchange Commission are considering recommending that the agency bring a civil action against American International Group Inc. and its AIG Financial Products Corp. subsidiary for alleged violations of federal securities law. The move stems from the SEC's investigation of PNC Financial Services Group Inc., a diversified financial services company, and certain transactions between PNC

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Spotlight Report

RENDEZ-VOUS DE SEPTEMBRE

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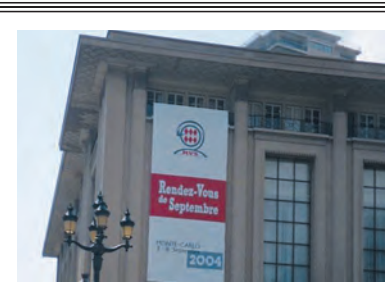

NEWSPAPER

Suspected insurance fraudster awaiting extradition to U.S.

SACRAMENTO, Calif.—The alleged architect of a long-running offshore insurance fraud is awaiting extradition from Canada after his arrest in Toronto on a U.S. warrant leveling conspiracy, mail fraud and money laundering charges.

Canadian authorities earlier this month apprehended a man who has used the alias Robert Lewis Brown for a decade to operate the allegedly fraudulent Tri-Continental Exchange Ltd. of St. Vincent & the Grenadines.

Tri-Continental has purported to manage a pool of insurers that included "Nationwide Insurance," "Globe Indemnity" and others. While Mr. Brown represented these to be U.S.-licensed insurers, they were actually unrelated to legitimate U.S. companies with similar names and were, in fact, shell corporations created in St. Vincent, federal prosecutors in Sacramento, Calif., charge.

Tri-Continental, which wrote commercial auto, trucking and contractor risks, has been hit with cease-and-desist orders by regulators in eight states and the province of Ontario since 1995. The alleged scam has netted at least $20 million, with policyholder premiums collected through a mail drop in Phoenix and wired to bank accounts in Jersey, the Channel Islands; St. Vincent; the Cayman Islands; and Gibraltar, prosecutors allege.

Mr. Brown assumed his alias in 1994, using the Social Security number and birth date of a man named Robert Lewis Brown who died in 2001, according to a complaint filed by the U.S. attorney for the Eastern District of California in Sacramento.

Prosecutors say they have not discovered Mr. Brown's actual identity.

If convicted, Mr. Brown would face maximum sentences of five years on the conspiracy and mail fraud charges against him and 20 years on the money laundering charges.

Mr. Brown could not be reached for comment.

—By Douglas McLeod

MOST EFFECTIVE CARE

Top scoring health plans in effectiveness-of-care measures

Organization	Plan type
Blue Cross & Blue Shield of Massachusetts Inc.	HMO/POS
ConnectiCare Inc.	HMO/POS
Fallon Community Health Plan	HMO/POS
Group Health Cooperative of South Central Wisconsin	HMO
Harvard Pilgrim Health Care of New England	HMO/POS
Harvard Pilgrim Health Care Inc.	HMO/POS
Health New England Inc.	HMO/POS
Kaiser Foundation Health Plan of Colorado	HMO
Touchpoint Health Plan	HMO
Tufts Associated Health Maintenance Organization Inc. dba Tufts Health Plan	HMO/POS

Source: NCQA

Health care quality improves in 2003, NCQA study finds

By JOANNE WOJCIK

The quality of care provided by health plans that reported their performance to the National Committee on Quality Assurance showed significant improvement in 2003, demonstrating that transparency and accountability works, the organization's supporters say.

But because those scores represent only about 25% of the health plans operating in the United States, there is still a quality chasm, leading to as many as 79,000 preventable deaths each year, nearly 66.5 million avoidable sick days and more than $1.8 billion in unnecessary medical costs, according to the NCQA's annual State of Health Care Quality report, released last week.

"The data we have tell a great story—health care quality for some is improving consistently and dramatically," said NCQA President Margaret E. O'Kane during a news conference last week in Washington. "But we only have data for accountable health plans. Why don't we have performance data for the other 75% of the U.S. health care system? All types of health plans, hospitals and doctors should report their performance. Accountability is causing a movement forward (which) translates into a lot of lives saved."

Rising to that challenge, CIGNA HealthCare Senior Vp and Chief Medical Officer Dr. Allen Shaffer announced during the NCQA news conference that the Bloomfield, Conn.-based company's preferred provider organization would participate in the annual quality measures beginning this year. Until now, NCQA measured the performance only of health maintenance organizations and their related point-of-service plans but none of the nation's PPOs,

See **NCQA**/page 32

IUMI 2004 Singapore

Marine insurance executives see need for more discipline

By PETA MILLER

SINGAPORE—Until marine insurers and reinsurers become more disciplined, buyers will continue to enjoy inexpensive capacity and the marine market overall will keep posting lackluster results, experts say.

This lack of discipline also is preventing the market from capitalizing on opportunities arising from the current financial health of the shipping industry, the experts said, speaking at the International Union of Marine Insurance's recent conference in Singapore.

Tore Forsmo, chairman of IUMI's Facts and Figures Committee, told conference delegates that the organization's members' total premium volume in 2003 was $15.3 billion, up 14% compared with 2002. Taking into account the effects of the weakened of the U.S. dollar, though, Mr. Forsmo calculated that the real increase in global marine insurance premiums was closer to 6%.

IUMI coverage continues on page 23

Mr. Forsmo, who is also managing director of the Oslo, Norway-based Central Union of Marine Underwriters, explained that this figure represents about 97% of the true total, because not all member marine insurance organizations

See **IUMI**/page 22

PHOTO: SAMSUNG HEAVY INDUSTRIES/AFP/GETTY

Hull underwriters have not achieved rate increases needed to keep coverage prices in line with growth in the size of vessels, some experts contend.

Inside Business Insurance

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info about your own event.
- Searchable **directories** provide access to all the listings of industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Will the hurricanes that have hit Florida this year reverse the softening in the property insurance market?

Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

Business Insurance (ISSN 0007-6864) Vol. 38, No. 39, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. $5 a copy and $97 a year in the U.S. $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A.

Gallagher to form Canadian trucking captive

Group vehicle for midsize companies seeks to expand market for liability coverage

By MICHAEL BRADFORD

ITASCA, Ill.—Canadian trucking companies will soon have a new market for liability coverages.

Broker Arthur J. Gallagher & Co. is forming a group captive insurer for midsize trucking firms to bring some relief to a severely restricted marketplace, said Mike Lopeman, a vp in Itasca, Ill.-based Gallagher's captive services division.

An established Canadian trucking insurer warns, though, that the new insurer could face some significant underwriting hurdles.

"We are in the middle of putting it together," Mr. Lopeman said, and the vehicle could be in place by the end of the year. The captive, which has yet to be named, will be based in a Caribbean domicile, he said. Gallagher will manage the insurer, which it is forming with Brownstone Insurance Services Group L.L.P., a consulting firm in Mississauga, Ontario.

Plans are for the captive to write general liability, automobile liability, physical damage and cargo coverages for Canadian truckers with fleets of 50 to 300 vehicles. Limits on the liability coverage will be written to $2 million Canadian ($1.5 million).

Mr. Lopeman said the captive's developers are working with 10 accounts that are expected to be member-owners of the insurer.

"This is a whole new concept for the Canadian market," said Mr. Lopeman, noting that truckers have few markets to choose from when covering their expsoures and no group captives for midsize risks like those the new captive will target.

One of the markets for Canadian truckers is Markel Insurance Co. of Canada, a 50-year-old insurer that writes nothing but coverage for trucking risks that range from single operators to large companies.

Mark J. Ram, president and chief executive officer of Toronto-based Markel, said that, "historically, Canada has had three or four insurers at a time" that were markets for trucking coverages, "which is where we are today."

It's a tough market to make a profit in, Mr. Ram said, and, as for the new captive, he finds it "curious that they are bringing this thing to Canada."

A trucking risk, Mr. Ram said, "is

See TRUCKING/page 31

Canadian truckers have few insurers to choose from when seeking coverage for their liability exposures, insurance market sources say.

Transsexual workers gaining protection from discrimination

By JUDY GREENWALD

More employers are likely to confront the issue of discrimination involving transsexual employees as state and federal law moves in the direction of affording such workers greater protection.

The issue can leave even well-meaning employers with some difficult problems to resolve, including designating appropriate restrooms without also offending the sensibilities of other employees.

A transsexual is someone whose innate sense of gender conflicts with his or her anatomy. Some, but not all, transsexuals undergo medical treatments, including hormone therapy and surgeries, so that they appear physically in harmony with their gender identity.

There are no reliable statistics on the number of transsexuals in the United States, in large part because there are no agreed-upon definitions of what constitutes such an individual. Some, for instance, believe undergoing hormonal treatments is sufficient to meet the minimum definition, while others contend more extensive treatments are required. An often-cited, although controversial, estimate is that one in 30,000 males and one in 100,000 females seek sex-reassignment surgery.

According to the Washington-based Human Rights Campaign, four states have laws that prohibit discrimination based on gender identity as well as sexual orientation: California, Minnesota, New Mexico and Rhode Island. The District of Columbia also bars such discrimination.

In addition, seven states have state courts, commissions or agencies that have interpreted existing state law to include some protection against discrimination for transgendered individuals, including transsexuals.

See TRANSSEXUAL/page 32

Bill would halt efforts to overturn bias ruling against IBM plan

House moves to bar action on cash balance ruling

By JERRY GEISEL

WASHINGTON—The House last week approved legislation that would bar the Treasury Department from taking any action to assist in overturning a 2003 federal court ruling that held IBM Corp.'s cash balance pension plan discriminates against older employees.

The proposal, made by longtime cash balance plan critic Rep. Bernard Sanders, I-Vt., was approved by the House on a 237-162 vote as an amendment to a broader bill, H.R. 5025, for appropriating funds to the Treasury Department and several other federal agencies. The House also passed the broader bill last week. The entire bill, including the cash balance provision, now moves to the Senate.

If enacted, the cash balance provision would apply through Sept. 30, 2005. During that period, the Treasury Department could not do anything that would have the effect of undoing a July 31, 2003, decision by U.S. District Court Judge G. Patrick Murphy, who issued a ruling that IBM's cash balance plan was discriminatory.

Rep. Sanders

Armonk, N.Y.-based IBM and the plaintiffs now are in settlement discussions over possible remedies, but, regardless of the outcome of those discussions, IBM said it will appeal the court's finding that its plan is age discriminatory.

The House is mirroring action it took last year when it passed the identical Sanders amendment, though by a somewhat greater margin.

However, the Senate last year

See SANDERS/page 6

2004 NAIC Fall National Meeting

SMART draft criticisms aired

By MEG FLETCHER

ANCHORAGE, Alaska—Consumer advocates and state legislators voiced strident opposition to a draft federal insurance modernization bill both publicly and privately during the fall quarterly meeting of the National Assn. of Insurance Commissioners in Anchorage, Alaska, earlier this month.

Representatives of both groups specifically criticized many parts of the 300-plus-page discussion draft of the State Modernization and Regulatory Transparency Act, which was released late last month by Rep. Richard Baker, R-La., chairman of the House Committee on Capital Markets, Insurance and Government Enterprises. The measure reflects a joint effort with Rep. Michael Oxley, R-Ohio, chairman of the House Financial Services Committee, which oversees that subcommittee's activities (*BI*, Sept. 6).

The draft's major provisions would pre-empt most states' rate regulation of commercial and personal lines coverages, enforce the adoption of several NAIC models to standardize marketplace operations and create a seven-member federal entity with three NAIC members that would oversee and coordinate—but not regulate—what proponents predict would be a more uniform and competitive market.

State insurance regulators themselves are especially wary of the federal pre-emption of rates and the creation of the coordinating entity, according to comments by Gregory V. Serio, New York state insurance superintendent and NAIC spokesman (*BI*, Aug. 30). The NAIC has not yet commented formally on the proposal.

Birny Birnbaum, an NAIC-designated consumer spokesperson, said in an interview that the SMART bill is "really an insurer's dream—no rate oversight and yet, at the same time, (insurers) being allowed to work together on pricing and determining the terms and limits of coverage."

The result will "simply not be a competitive insurance market…because (the draft bill) strengthens the market position of insurers to the

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Sanders: Cash balance bill OK'd

Continued from page 4

modified the Sanders proposal. That modification—proposed by Sen. Tom Harkin, D-Iowa, and which Congress later passed—directed the Treasury Department to develop a legislative proposal to require employers to provide transitional relief to older and longer-service employees when they convert traditional plans to cash balance plans.

The Treasury Department released such a proposal earlier this year, but no action has been taken on it.

Rep. Sanders, while conceding that IBM deserves its day in court like any other litigant, said: "Taxpayer money should not be used to support an age-discriminatory cash balance plan."

But Rep. Ernest Istook, R-Okla., said it shouldn't be the job of the Congress to "decide a particular court case." Additionally, Rep. Sam Johnson, R-Texas, described the Sanders amendment as "ill-timed," which could undermine congressional efforts to pass broader pension reform legislation.

The fate of the Sanders' amendment is not clear, though, Rep. John Boehner, R-Ohio, who chairs the House Education and the Workforce Committee, earlier said the Senate once again will not accept it.

In the Senate, one of the chief critics of cash balance conversions—Sen. Harkin—has been working, so far without success, to develop a consensus to resolve various cash balance issues.

"It is hard to predict what the Senate will do," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

Some say, though, that Congress could accept the amendment.

"There is so much misinformation out there" with many legislators incorrectly believing that employers converting traditional plans to cash balance plans can cut earned benefits, said Lynn Dudley, vp-retirement policy with the American Benefits Council in Washington.

Paul Winston

For Kryptonite, response is key

What if the Internet had been around decades ago, in Lex Luthor's time?

The criminal genius could have simply used the mass communication medium to share with the entire world the secret of defeating his nemesis, Superman, by exposing the Man of Steel to Kryptonite, a radioactive mineral from his home planet of Krypton that is harmful to Superman, rendering him weak and vulnerable.

Of course, Superman is a fictional comic book character. But the power of the Internet to spread information with potentially devastating consequences is all too real. Just ask Canton, Mass.-based Kryptonite Lock Inc., a unit of Ingersoll Rand Co. that faces such a threatening scenario today.

Paul Winston

Earlier this month, a few folks discovered a low-tech way to defeat the company's ubiquitous steel bicycle locks, which the company manufactures under the Kryptonite brand, using a simple ballpoint pen in place of the circular key. And they began exchanging news of how to accomplish this feat over the Internet.

It's not clear to me whether this information sharing was guided by the desire to boast about knowledge that would give theft-minded individuals a criminal edge, or if was intended to warn about flawed security in the public interest. Biased as I am in favor of cyclists, I suspect it was the latter.

Soon, at least one individual, curious whether the method worked, tried it and then posted a small video of exactly how to defeat the well-known locks by using a simple ballpoint pen. Within a short while, news of the susceptibility of the locks had spread like a computer virus, causing an instant crisis for the company.

As media coverage of the problem spread the information, Kryptonite Lock swiftly launched a massive recall campaign to correct this design flaw, which renders some of its locks as impotent as Superman under the influence of the toxic mineral from his home planet.

The company—which until now had been so confident of the integrity of some of its locks that it offered multiyear guarantees against theft—faced a public relations nightmare. According it its Web site, it has received such a huge tide of customer calls and complaints in the past week that its phone lines are swamped and it is adding additional lines to handle incoming calls. Bike shops across the country pulled the product from their shelves, consumers are using other locks for their bikes, and other lock manufacturers are circling like sharks that smell blood in the water.

Kryptonite Lock's recall program offers to exchange the flawed locks of concerned customers and cover all shipping costs. The cost of this recall is no doubt enormous. Kryptonite has sold hundreds of thousands of these locks over the past few decades in more than 50 countries.

Despite the expense, it is an essential step to preserving the company's reputation as a manufacturer of anti-theft devices and protecting its financial future. After all, what good is a lock that everyone knows how to pick?

This occurrence illustrates the potential for information about product flaws to spread across the Internet faster than a speeding bullet—and potentially to bring down a tall company in a single bound.

This information-sharing phenomenon occurs regularly with computer security flaws, as notification of security flaws and viruses are rapidly shared among computer users across the Internet. But it's rare for a consumer product's flaws to be identified and communicated on such a scale so quickly.

More typically, product faults are reported slowly, separated by time and distance, and it takes time to connect the dots and gain enough critical mass to draw widespread attention from other individuals and the media. As a result, a company has more time to learn of potential problems and devise a response well before the problem reaches crisis mode.

For manufacturers of all kinds, though, Kryptonite Lock offers a cautionary tale that any flaws with their product, real or imagined, can explode into a full-blown crisis in a matter of days, if not hours. If there's a silver lining to Kryptonite Lock's woes, perhaps it's that the same rapidity with which the problem emerged also forced the company to respond promptly and begin to find a way to combat the problem as quickly as possible.

Superman repeatedly figured out a way to escape from the effects of Kryptonite and defeat his archenemy Lex Luthor. Perhaps Kryptonite Lock will have the same luck.

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Business Insurance

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Editorial

Sanders amendment deserves defeat

IF FEDERAL LEGISLATORS are trying to understand why employers are exiting the defined benefit pension plan system, they need do no more than look at their own action taken last week.

As we report on page 4, the House of Representatives last week approved an amendment by Rep. Bernard Sanders, I-Vt., that would bar the Treasury Department from any activity that would assist in overturning a 2003 U.S. District Court ruling that held that IBM Corp.'s cash balance plan violates age discrimination law.

We don't question that Congress has the right to take action after court rulings. In 1978, for example, Congress rewrote civil rights law to effectively overturn an earlier U.S. Supreme Court decision that said it was legal for employers to deny disability benefits for pregnancy while providing coverage for other medical conditions.

But that congressional action occurred after the nation's highest court had ruled on the issue. By contrast, in the case of the Sanders amendment, it is incomprehensible to us why a majority of House members would want to elevate to law a single federal judge's ruling even before it has been reviewed on appeal.

Indeed, there exists nothing like a judicial consensus that cash balance plans such as IBM's discriminate against older employees. Several months ago, a federal judge in Baltimore came to the opposite conclusion, as did a federal judge in Indianapolis a few years before then.

As a practical matter, the Sanders amendment is of limited importance. The Treasury Department, at the direction of Congress, already has produced a cash balance legislative proposal recognizing the legality of the plans. The proposal, though, is prospective and thus would have no direct bearing on the IBM case.

Symbolically, though, the Sanders amendment is of huge importance. In essence, it says that all cash balance plans are age discriminatory, and Rep. Sanders has acknowledged as much.

Is that the message Congress wants to deliver to employers? If so, what employer would ever want to convert a traditional plan to a cash balance plan, knowing of this congressional hostility?

Of course, that is exactly what Rep. Sanders hopes will happen. What Rep. Sanders and his misguided and obviously uninformed allies don't understand is that putting an end to cash balance plans would not mean a return to old-style defined benefit plans. If such plans did not make sense from the standpoint of delivering benefits back when they were dropped, they wouldn't make any more sense being revived today.

And those employers that still have traditional plans but want to move away from them would simply adopt defined contribution plans that resemble cash balance plans in certain ways but lack such features as protection for employees from investment risk and federal pension insurance coverage that cash balance plans offer.

Surely, legislators would not want that to happen. If so, they should soundly defeat the Sanders amendment.

Rendez-Vous sets tone for market

RISK MANAGERS AND employee benefit managers may well wonder why they should care about the sundry meetings that took place earlier this month in Monte Carlo, Monaco, at the annual gathering of the world's reinsurance executives.

The main topics of conversation at this year's Rendez-Vous de Septembre, as we report beginning on page 10, included financial security, catastrophe losses and market discipline. These are important considerations, as reinsurers set the tone for the primary market and exercise great influence on primary insurance rates and capacity worldwide. And all of the world's largest reinsurance companies were represented in Monte Carlo.

The good news out of the Rendez-Vous for insurance buyers is that reinsurers are not contemplating drastic changes in capacity or rate increases. Some companies are reducing their premium volume and becoming more selective about the business they write, but there is consensus that coverage availability will not be a problem.

Losses from the recent hurricanes are expected to halt a slide in rates for property catastrophe coverage, at least temporarily. Companies at the Rendez-Vous are hopeful that the market will stay firm, though other observers are not so sanguine.

Barring major industry losses, we think the firming of rates will be short-lived. Buyers and their brokers are pressuring reinsurers to reduce prices after several years in a row of top- and bottom-line growth. Before Charley, Frances, Ivan and the looming threat of Jeanne, property rates dropped, and even some casualty lines showed clear signs of easing.

Reinsurers are stressing the need for disciplined underwriting going forward. But renewals at the end of this year and midyear renewals in 2005 will tell whether the softness in the market cycle will stick.

Stay tuned.

Schillerstrom

Following is a list of the beats and the principal reporters for each:

Agents/brokers: Sally Roberts.
Asian markets: Michael Bradford.
Aviation/space risks: Peta Miller.
Benefits–health care and ancillary benefits: Joanne Wojcik.
Benefits–retirement savings/pensions: Jerry Geisel.
Canada–risk management and benefits: Gloria Gonzalez.
Captives/alternative risk transfer: Michael Bradford.
Claims management: Meg Fletcher.
E.U. regulatory/legislative: Sarah Veysey.
Employment practices: Judy Greenwald.
Environmental risk management: Sally Roberts.
European benefits management: Sarah Veysey.
European industry operations: London bureau.
European public entity risks: Carolyn Aldred.
European reinsurance: Sarah Veysey.
European risk management: Peta Miller.
Federal regulation/legislation–benefits: Jerry Geisel.
Federal regulation/legislation–risk management: Mark A. Hofmann.
Health care industry operations: Gloria Gonzalez.
Inland marine/transportation: Michael Bradford.
Insurance coverage litigation: Douglas McLeod.
Insurance fraud: Douglas McLeod.
Latin American markets: Roberto Ceniceros.
Marine risks: Peta Miller.
Property/casualty industry operations: Judy Greenwald.
Professional liability: Dave Lenckus.
Property loss control/catastrophe risks: Mark A. Hofmann.
Regulation of insurance: Meg Fletcher.
Reinsurance: Judy Greenwald.
Risk management profession: Dave Lenckus.
Risk securitization/capital markets risk financing: Carolyn Aldred.
Runoffs/receiverships: Douglas McLeod.
Safety/ergonomics: Meg Fletcher.
Surplus lines/wholesalers: Roberto Ceniceros.
Tort reform: Mark A. Hofmann.
Work/life benefits and EAPs: Sally Roberts.
Workers compensation: Roberto Ceniceros.

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Rendez-Vous de Septembre

Security worries spur interest in cancellation clauses

By SARAH VEYSEY and GAVIN SOUTER

MONTE CARLO, Monaco—Cedents are increasingly demanding ratings-linked cancellation provisions in reinsurance contracts as they seek to secure reinsurance programs backed by companies with A-level ratings.

The surge in ratings downgrades over the past two years has made cedents more sensitive to the creditworthiness of reinsurers and their ability to meet their financial liabilities, reinsurers and brokers say.

In addition to pushing for cancellation clauses, cedents are seeking collateralization provisions, a greater range of reinsurers on their programs and other provisions in attempts to guard against reinsurance collection problems, they say.

A recent surge in downgrades has made cedents more sensitive to security issues.

Like last year, ratings and financial security were major issues at the 48th Rendez-Vous de Septembre held in Monte Carlo, Monaco, earlier this month.

And that continued concentration on security comes despite pressure on reinsurance rates in the first six months of 2004, said James P. Bryce, president and chief executive officer of IPC Holdings Ltd. in Pembroke, Bermuda.

The sharp increase in catastrophe losses in the summer of 2004 and recent downgrades on reinsurers have ensured that Rendez-Vous participants "talked about ratings rather than rates," he said.

And the continued interest in reinsurer security has been highlighted by greater demand for downgrade clauses—also known as "rating triggers" or "cliffs"—to be

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Largely stable renewals expected in January

By GAVIN SOUTER and SARAH VEYSEY

MONTE CARLO, Monaco—Hurricane losses and the downgrade of a major reinsurer will likely put the brakes on the downward trend in reinsurance prices during year-end renewals, but they are unlikely to lead to much acceleration in rates, according to executives kicking off renewal negotiations at the Rendez-Vous de Septembre.

"Flat," "stable" and "disciplined" were the words commonly used to describe expectations for the renewal season at the gathering in Monte Carlo, which is generally acknowledged as the first major year-end renewal meeting of the year.

Although before the Rendez-Vous, cedents may have expected a continuation of the softening price trend that typified the July 1, 2004, property catastrophe renewals, those expectations should be put on hold for the foreseeable future as reinsurers prepare to pay possibly in excess of $20 billion in cumulative hurricane and typhoon-related losses that have occurred since midyear, reinsurers and brokers report.

And the increased focus on reinsurer financial security that has followed the downgrading of Converium Holding A.G. should ensure that cedents are prepared to pay similar rates as last year in order to purchase secure coverage in other lines, too.

Most casualty rates should hold steady, but noncatastrophe property and other lines, such as aviation and energy, will likely see continued pressure on rates, executives said.

Meeting shortly after Hurricanes Charley and Frances had ripped through Florida and while Hurricane Ivan was preparing to wreak havoc on the Gulf Coast, many reinsurers were adamant that most market participants would maintain "underwriting discipline."

A focus on providing an adequate return on shareholders' capital and memories of the losses suffered in the soft market of the late 1990s will ensure that reinsurers will hold the line on rates, they said.

Several reinsurance executives acknowledged, though, that the newfound discipline has yet to be tested and that increasing capacity will

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Downgrades trigger quick losses of business for Converium

By SARAH VEYSEY

MONTE CARLO, Monaco—Reinsurers with A-level ratings are already picking up business that was previously written by downgraded reinsurer Converium Holding A.G., according to several reinsurer executives at the Rendez-Vous de Septembre.

Rating triggers that allow cedents to void or commute contracts once a reinsurer is downgraded to a B-level rating have led to sizable chunks of Converium's business in the United States moving to other reinsurers on the programs, they say.

And despite frequently voiced support for the reinsurer and its management, many participants at the meeting said Converium will face a tough time holding on to much of its other business when the contracts come up for renewal.

Participants at the Rendez-Vous predict that Converium will face a difficult few months at the least.

Cedents' intolerance for reinsurers with ratings outside of the A range and the lack of national market support that may have helped other downgraded reinsurers, such as SCOR S.A., will mean that Converium will face a difficult few months at the least, they said.

Zug, Switzerland-based Converium faced problems in the two weeks prior to the Rendez-Vous after it was downgraded to B++ from A- by A.M. Best Co. Those problems were compounded when Standard & Poor's Corp., on the eve of the Rendez-Vous, downgraded the reinsurer two notches to BBB from A- (*BI*, Sept. 20; Sept. 6).

After the downgrades, Converium announced that it would abandon plans to inject capital into one of its U.S. units and place both U.S.

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Panel examines compensation culture page 20

Shedding light on GE's rebranding page 21

Market: Stable renewals likely

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test the capital management strategies of reinsurers.

Still, several major reinsurers at the meeting insisted that they would rather let large chunks of business walk away than significantly lower their rates.

A relatively buoyant mood pervaded many of the meetings at the 48th Rendez-Vous, held Sept. 11-16 even as Hurricane Ivan progressed through the Caribbean, making landfall in the United States as the meeting drew to a close.

That hurricane and the fate of Converium dominated discussions in many of the small half-hour meetings between executives at cafes, bars and hotel lobbies in Monte Carlo that make up the Rendez-Vous.

Overall, the events will likely stop any significant softening in most lines of reinsurance, they said.

Nikolaus von Bomhard, chairman of the board of management of Munich Reinsurance Co., said rates are still adequate in most lines, "and we expect them to stay adequate overall."

"There may be a slight movement downwards on some prices, especially on some pockets of property (business) in the U.S.," he said.

But recent developments, such as the hurricanes, should prevent drastic rate decreases, he said.

Hurricane losses

Although there has been pressure on property catastrophe reinsurance rates and in some other areas of property reinsurance, the 2004 hurricane losses should mean that rates will not decline sharply at year end, said Henry Keeling, chief executive of reinsurance operations at XL Capital Ltd. in London.

"I don't see them falling off a cliff," he said.

While losses from the hurricanes are manageable for the industry, they will likely have the effect of slowing down reductions in property rates, according to Adrian Colosso, managing director of Heath Lambert Group Ltd. in London.

Losses from the hurricanes will have a stabilizing effect on rates, but "even without the hurricanes, rates would not have weakened significantly," said Wilhelm Zeller, chairman of the executive board of Hannover Reinsurance Co.

The recent hurricanes will "halt any slide on U.S. catastrophe rates," said Andrew Carrier, active underwriter on Kiln P.L.C.'s Lloyd's of London syndicates 510 and 557. "Whether it will impact on nondollar business, it is hard to say," he added.

"The catastrophe market is probably the most disciplined" segment of the overall property/casualty market, said Kenneth LeStrange, chief executive officer of Endurance Specialty Holdings Ltd. in Hamilton, Bermuda. "It has more standardized terms and conditions; they're fair and appropriate for most customers," he said.

But Jeremy Scott, chairman of the global financial services group at PricewaterhouseCoopers L.L.P. in London, believes the recent hurricanes could slow, but won't stop, the softening of rates. "The storms may counteract it, but I fear it may be temporary," he said. Industry losses could grow if other storms follow Ivan, but "there's not a significant impact on the industry from hurricanes so far," he said.

Losses from hurricanes in the United States and typhoons in Asia collectively have ensured that 2004 is a significant catastrophe year for reinsurers, said James P. Bryce, president and CEO of IPC Holdings Ltd. in Pembroke, Bermuda.

"It's got to the point where rates, instead of stabilizing, will go up," he said.

Although there have been some significant rate declines in the past year for some property reinsurance treaties, as reinsurers enjoyed a relatively benign period for catastrophe losses, the spate of hurricanes in 2004 will likely curb the extent of future rate cuts, said Jeremy Goodman, CEO at broker Cooper Gay North America in New York.

On the other hand, reinsurers remain well capitalized. "There's still an enormous amount of capital in the market, and the capital needs to

Continued on next page

PHOTO: REGIS COCCIA

Monte Carlo's cafes and bars serve as informal meeting spots for executives attending the Rendez-Vous de Septembre.

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be serviced," Mr. Goodman said.

In some areas, facultative reinsurance rates, for example, have already fallen between 10% and 15% this year as reinsurers that had previously withdrawn from the market returned, attracted by the profitability in that sector over the past two years, he said.

And generally, reinsurance underwriters at Lloyd's and in Bermuda are looking to expand their books of business, including in areas of reinsurance that they do not currently cover, Mr. Goodman said.

Cedents will still expect a continuation of rate softening for most lines of business, said Clement Booth, chairman and CEO of Aon Re International in London.

Any move on the part of underwriters to increase catastrophe rates would be met with huge resistance from buyers, he said. "If you write catastrophe reinsurance, you do expect sometimes to have claims," he said, and this is factored into the price of coverage.

> **'I do believe that managements and investors in companies are driving an increased degree of discipline and that discipline will stay there.'**
>
> *David Priebe*
> *Guy Carpenter Europe*

And noncatastrophe property business, as well as several other lines, will see even more pressure on rates, Mr. Booth said.

Price is "the No. 1 issue on their list," he said. Rate decreases are being seen "across the board," said Mr. Booth. "The areas where it is most pronounced are aviation, property and energy."

On international, nondollar-denominated business, "rates are under pressure," according to Hugh Price, chairman of London-based brokerage Alwen Hough Johnson Ltd. For example, he said, the company has just placed the renewal of a Scandinavian account at a rate reduction of more than 10%.

Casualty coverage

Casualty lines have seen increased rates over the past several renewals, but those rates may now at least have reached a plateau, said David Priebe, president of Guy Carpenter Europe in London.

Several reinsurers in Bermuda who had previously concentrated largely on property reinsurance have now expanded their casualty business, adding capacity to the market, he said.

On some casualty lines, reductions of about 5% to 10% are being seen, said Charlie Cantlay, chairman of Aon Re Specialty in London, but rates are remaining firm for liability coverages such as directors and officers and medical malpractice, he noted.

Casualty business is still being written at rates and on terms and conditions that are attractive to reinsurers, according to Hannover Re's Mr. Zeller.

Stephen Searby of Standard & Poor's in London said that, "Going forward, the real battleground is going to be casualty—particularly for large groups." Rate increases are still being seen for casualty business, though there have been some rate decreases on U.S. D&O and errors and omissions business, he noted.

S&P believes the market for casualty business will likely remain hard until 2005 to 2006, Mr. Searby said.

Casualty lines are "a tough business and getting tougher," said Ron Pressman, chairman, president and CEO of Kansas City, Mo.-based GE Insurance Solutions, formerly known as Employers Reinsurance Corp.

"The U.S. markets are almost impossible" to underwrite profitably consistently, he said. With loss cost inflation and tort costs becoming a global problem—"growing at 8% to 10% a year—we need rates, terms and conditions to keep pace with this."

Casualty underwriting "needs much more rating increases than the market is giving. Many companies have been slow to catch up with the reality of loss performance," Endurance Specialty's Mr. LeStrange said.

Casualty rates remain "fairly firm," and rate increases are still being pushed through for European and middle-market U.S. reinsurance programs, said XL's Mr. Keeling.

Converium's decision to stop writing U.S. business has affected the middle market, as the company was a significant reinsurer of U.S. casualty programs, he said.

Underwriting discipline

Overall, reinsurers say that year-end renewals will likely be stable, as most underwriters stick to their resolve to maintain underwriting discipline and not write coverage at what they view as inadequate rates.

"The market will balance in 2005. Demand and supply will roughly meet, which would mean that a generalized downward cycle would not happen," said Denis Kessler, chairman and CEO of Paris-based SCOR S.A.

In addition to the impact of the recent hurricanes and the effects of legacy issues on reinsurers, the financial markets are another driver of pricing discipline for the reinsurance market, Mr. Kessler said.

"I do believe that managements and investors in companies are driving an increased degree of discipline and that discipline will stay there," said Guy Carpenter's Mr. Priebe.

But it remains to be seen how reinsurers utilize their capital, he said. If reinsurers don't return excess capital to shareholders, there may be a softening in rates, "but I don't think there is going to be a free fall in the next 12 months," he said.

Both insurers and reinsurers would like to avoid returning to a market where there are wide fluctuations in price, said Michel Liès,

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PHOTO: REGIS COCCIA

Le Grand Casino de Monte-Carlo is near the center of activity at the annual Rendez-Vous de Septembre in Monaco.

Market: Stable renewals likely

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head of division Europe in the Property & Casualty Business Group at Swiss Reinsurance Co. in Zurich, Switzerland.

"Going from paying 100 and then 50 and then, after two or three years, 120 is not good for the financial security of the industry," he said.

Also, reinsurers are now more aware of investors' requirements for return on capital, and that also leads to more consistent pricing, Mr. Liès said.

In addition, large reinsurers will be able to use their influence in the market to relieve the pressure on some rates, he said.

For example, though some pressure remains on property rates, that can be offset by providing casualty coverage to the same cedents, Mr. Liès said. The casualty market is more restricted, so cedents are willing to pay higher property rates to get secure casualty capacity, he said.

But whether reinsurers hold the line on rates or lower them as they chase premium volume aggressively—as they have in previous soft markets—remains to be seen, some participants said.

"The test is yet to come," said John Berger, president and CEO of Chubb Re Inc. in Bernardsville, N.J.

"There are companies that have had very good results and are looking to expand, which will raise the competitive pressure, but we do see a reasonable, disciplined approach in the market," said Dwight Evans, chairman and CEO of Arch Reinsurance Ltd. (Bermuda).

While sufficient capacity is available for most lines of business, there is not an overabundance of capacity, he said. "We are approaching a time in the cycle when it's an underwriters market; the easy money has been made and now it is all about capital allocation," he said.

Reinsurers resolve will be tested by cedents who will be prepared to shop around for lower rates, said Mr. Booth of Aon.

But reinsurers say they are prepared to watch business walk away rather then lower their prices.

Munich Re will continue to shrink its premium volume if it does not believe prices are adequate. "You can't say you want adequate pricing but push on the top line too much," said Mr. von Bomhard. "We are talking billions here....We are ready to let business go."

Mr. Zeller of Hannover Re said the company already had reduced its top line and would "practice what we preach."

Now that buyers are looking for wider terms and conditions on U.S. casualty business, and many are indicating that they will take greater retentions, Chubb Re will decrease the amount of U.S. casualty business it underwrites in 2005 compared with 2004, according Mr. Berger.

Terms and conditions

Several reinsurers said they also will hold firm on the terms of the coverage they are offering.

GE Insurance Solutions does not intend to let terms and conditions erode in upcoming renewals, said Mr. Pressman. "We want clients to look back on us and say we brought consistency and service."

Generally, terms and conditions have not relaxed significantly over the past year, and they are unlikely to at year end, said Mr. Keeling.

There has been some pressure from cedents, though, to extend the hours clause in catastrophe reinsurance contracts to 96 hours from 72 hours, to lessen the chance of them using up more than one deductible for one event, he said. "And I am comfortable with that as long as we get paid for it," Mr. Keeling said.

An extension in the hours clause is available for the right price, said Mr. Bryce of IPC.

"As an underwriting company, we do not have a problem changing anything in a contract. Anything can be negotiated for a price," Mr. Bryce said. However, in most cases, cedents are not willing to pay the price that reinsurers would demand for an extension in the hours clause, he said.

Regis Coccia contributed to this report.

Ratings: Cancellation clauses in demand

PHOTO: REGIS COCCIA

Rating triggers in reinsurance contracts were a major topic of conversation during meetings at the annual Rendez-Vous de Septembre as many reinsurers have experienced rating downgrades.

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included in reinsurance contracts, said Clement Booth, chairman and CEO of Aon Re International in London.

"In the last few years, (rating) triggers have been a major feature," said Mr. Booth. And they will be a big topic during the Jan. 1, 2005, renewals, he predicted.

"Downgrade triggers are not a gimme" in coverages, noted Charlie Cantlay, chairman of Aon Re Specialty in London, "and reinsurers resist them, but they are a big issue now."

Such protections can take the form of clauses whereby coverage is canceled once a reinsurer's rating drops below a level specified by the buyer, or where some form of collateral must be supplied to cedents when a reinsurer's rating falls.

The demand for such clauses is driven by buyers' heightened awareness of counterparty credit risk, said Grahame Chilton, chief executive of London-based broker Benfield Group Ltd.

"You want to buy security from someone higher-rated than you," he said. And if buyers are purchasing security from a company with a lower rating than their own, they frequently require some form of collateralization, he noted.

'Year after year, we reiterate to the market that these fairly arbitrary ratings cliffs are not the way ratings should be used.'

Stephen Searby
Standard & Poor's Ratings Services

Collateralization requirements often force reinsurers to provide letters of credit to cedents in the event that they are unable to meet their obligations.

But the ratings-related clauses have to be reasonable, said Hans Rohlf, managing director and chief underwriting officer in Hannover Reinsurance Co.'s North American treaty division.

The key is that the clauses be reasonable, he said. Insistence on triggers for slight downgrades, such as to A- from A, and demands for additional collateral following a downgrade, are not reasonable, Mr. Rohlf said.

Stephen Searby, a director at Standard & Poor's Ratings Services in London, said that such downgrade clauses are a misuse of financial strength ratings. "Year after year, we reiterate to the market that these fairly arbitrary ratings cliffs are not the way ratings should be used," he said.

He noted that while such triggers are often designed to kick in when a reinsurer is downgraded to any B-level rating, "the real split is between BBB and BB. That is the real cliff—the difference between investment grade and noninvestment grade."

Given the downward trend in ratings, cedents may have to start accepting lower-rated reinsurers in order to complete their programs, said Jose Sanchez-Crespo, general manager at A.M. Best Co. in London.

"At some point, reinsurance buyers will have to change their attitude on rating levels," he said.

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But most cedents who insist that their reinsurance programs be backed only by reinsurers with an A-level rating are unlikely to lower their requirements, said David Priebe, president of Guy Carpenter Europe in London.

"At this point, most companies' secure lists insist on A- or better," Mr. Priebe said, referring to cedents' lists of eligible reinsurers.

But ratings should not be the only tool used to assess the security of reinsurers, said Dwight Evans, chairman and CEO of Arch Reinsurance Ltd. (Bermuda).

"Clients need to assess security themselves, as there is a lot more that goes into it than just a rating," he said.

The history of reinsurers, the quality of their management, the classes of business they write and their ownership are all qualitative assessments that cedents must make, Mr. Evans said.

The market should move to a more efficient system in which the benefits of a strong rating are more explicitly recognized in the price of reinsurance, said Steven Dreyer, managing director and practice leader in the North America Insurance division of Standard & Poor's Corp. in New York.

"To some extent, clients will accept different prices for different ratings," noted Aon Re's Mr. Booth.

"Most clients acknowledge that there is a price to pay for security," said Henry Keeling, chief executive of reinsurance operations at XL Capital Ltd. in London.

> **'Downgrade triggers are not a gimme' in coverages, 'and reinsurers resist them, but they are a big issue now.'**
>
> *Charlie Cantlay*
> *Aon Re Specialty*

But despite cedents' general wariness of lower-rated reinsurers, some buyers remain loyal to their reinsurers even when their ratings are slashed, said Mr. Chilton of Benfield. He cited the example of SCOR S.A., which, despite a downgrade to BBB last year, has retained many of its clients.

And Rob Jones, an analyst at S&P in London, pointed out that there is now an increased acceptability of reinsurers and insurers in the BBB-range, citing SCOR and Gerling Group—a primary insurance company—as examples of companies that have managed to retain sizable numbers of clients despite downgrades.

For the most part, SCOR was not affected by ratings triggers when it was downgraded last year, said Denis Kessler, chairman and CEO of the Paris-based reinsurer. SCOR, he said, had only a few contracts that contained such clauses.

In addition to placing business with secure reinsurers, some cedents are seeking to diversify their reinsurance programs to ensure that they are not heavily exposed to a small number of reinsurers, said Mr. Priebe of Guy Carpenter.

"Clients are continuing to focus on making sure that they don't have too much concentration with any one counterparty," he said.

But while diversification can be achieved on short-tail lines by using the new Bermuda capital, it is not as easy on casualty programs that are more sensitive to ratings, said Mr. Keeling.

Regis Coccia contributed to this report.

Converium: Downgrades trigger quick loss of business

Continued from page 10

units in runoff. Proceeds from a proposed share issue would instead be used to strengthen Converium's capital base.

Converium will continue to underwrite U.S. business from Zurich and Bermuda, said Benjamin Gentsch, chief executive of Converium's Zurich-based operations, but he noted that because U.S. buyers are so sensitive to rating downgrades the company expects to lose much of its U.S. business.

Converium's problems first emerged in July, when it announced that it would bolster its reserves, principally for U.S. casualty business written between 1997 and 2001 when it was still part of Zurich Financial Services, by $384.7 million (*BI*, Aug. 2). And last month, Converium said it may need to boost reserves still further before the end of the year.

Despite these developments and the ratings downgrades, Mr. Gentsch said the company remains optimistic about its future prospects.

"We intend to keep the company alive and kicking. We still have an excellent franchise," he said. "Our people are extremely committed, and people are in a positive mood—we'll go for it!"

"I think we'll get business at decent rates. We're instructing our underwriters not to bend on price," said Mr. Gentsch. "Depending on the market remaining healthy, I think Converium can get business at good prices. My view is that the market will remain hard."

The company will strive to regain an A-level rating, he said, but he noted that it was impossible to predict how quickly this could be achieved.

According to Stephen Searby, a director of Standard & Poor's Rating Services in London, rating agency concerns about Converium center mainly on its ability to retain clients and attract business going forward.

Although several brokers and cedents expressed support for Converium during the Rendez-Vous, some market sources reported that the company had already lost large chunks of business because of rating triggers or downgrade clauses.

'We intend to keep the company alive and kicking. We still have an excellent franchise.'

Benjamin Gentsch
Converium Holdings A.G.

Many of Converium's clients, particularly in the United States, had such clauses in their contracts and have, in many cases, invoked them, sources said.

"We have already picked up some of Converium's business in the U.S.," noted Wilhelm Zeller, chairman of the executive board of Hannover Reinsurance Co. "The market reacted overnight" to Converium's downgrade by Best, he said.

Where downgrade clauses were invoked and outstanding premiums returned to cedents, brokers showed other reinsurers the business—in some cases giving them just three hours to decide whether they wanted to underwrite it, noted Mr. Zeller.

Because some of the reinsurers were already on the same programs, they were able to act quickly, he said. "We were fast to pick up many, many shares of Converium's business," he noted.

"Over the last two weeks, we picked up five programs in casualty and 15 in property" where Converium had provided capacity, said Hans Rohlf, managing director and chief underwriting officer in Hannover Re's North American treaty division.

"It seems like Converium gave up in the U.S. market pretty quickly,"

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Converium: Downgrades trigger quick loss of business

Continued from page 10

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Where downgrade clauses were invoked and outstanding premiums returned to cedents, brokers showed other reinsurers the business—in some cases giving them just three hours to decide whether they wanted to underwrite it, noted Mr. Zeller.

Because some of the reinsurers were already on the same programs, they were able to act quickly, he said. "We were fast to pick up many, many shares of Converium's business," he noted.

"Over the last two weeks, we picked up five programs in casualty and 15 in property" where Converium had provided capacity, said Hans Rohlf, managing director and chief underwriting officer in Hannover Re's North American treaty division.

"It seems like Converium gave up in the U.S. market pretty quickly,"

Continued on next page

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Continued from previous page

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There will be opportunities for Chubb Re to underwrite some of the business that Converium will shed, noted Mr. Berger, "but how much, I don't know." If anything, he said, the events may "further strengthen buyers' resolve not to buy" reinsurance and instead increase their retentions, he said.

"As a new reinsurer, we should pick up business as a result of Converium, but on a broader perspective it's not good for the industry that things changed so dramatically for Converium so quickly," said Dwight Evans, president and CEO of Arch Reinsurance Ltd. (Bermuda) in Hamilton, Bermuda.

The survival of Converium would be good for the reinsurance market,

'So everybody is looking around now and wondering who is next.'

John Berger
Chubb Re Inc.

said Henry Keeling, chief executive of reinsurance operations at XL Capital Ltd. in London.

"I would have a strong preference to see it survive," he said. "Reinsurance is all about a promise to pay, and if one of the major players fails in that, then it reflects on the industry as a whole."

The problems at Converium caught many in the market by surprise, Chubb Re's Mr. Berger noted, and will likely further heighten buyer concerns about reinsurance security (see story, page 10).

"I don't think that anyone, a year ago, would have predicted that Converium would" have had the problems it now faces, said Mr. Berger. "So everybody is looking around now and wondering who is next."

"I sincerely wish that Converium will find a way to overcome its problems," said Denis Kessler, chairman and CEO of SCOR S.A. in Paris.

Mr. Kessler said he saw similarities between Converium's recent announcements of reserve deficiencies and SCOR's announcements on the same issue and its subsequent downgrade last year. "I said at the time, it is an industrywide problem," he noted. "Converium is suffering from the same disease we caught, but we detected the disease earlier," he said.

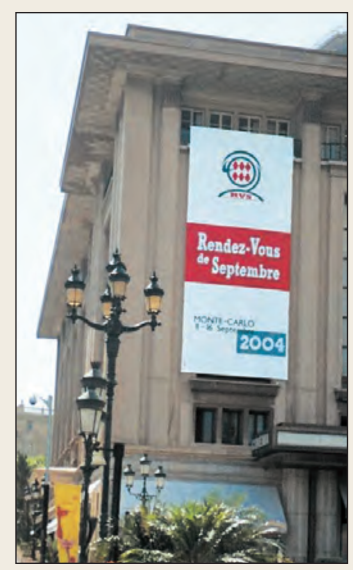
After SCOR was downgraded, its book of business shrank considerably as some clients did not renew and the reinsurer moved out of rating-sensitive business. Several observers at the Rendez-Vous, though, said it would be a struggle for Converium to follow the same route as SCOR. The French reinsurer had a well-established franchise and name and strong support in the French market, they said. Converium, though, was spun off from Zurich and renamed in 2001 and it does not have the same position in the Swiss market that SCOR has in France, they say.

Clement Booth, chairman and CEO of reinsurance intermediary Aon Re International in London, said he did not want to comment on Converium's circumstances specifically, but he did note that "there is no shortage of capacity in the A-range. To find highly rated security is not difficult."

"It is a significant downgrade; there is no getting around that," he added.

The events at Converium will likely have a "firming influence" on U.S. casualty rates, according to Grahame Chilton, chief executive of the London-based reinsurance broker Benfield Group Ltd.

Regis Coccia and Gavin Souter contributed to this report.



Delegates drawn to Monte Carlo

MONTE CARLO, Monaco—About 2,300 delegates preregistered for the Rendez-Vous de Septembre, held Sept. 11-16 in Monte Carlo, Monaco. More delegates registered on site for the annual reinsurance meeting, noted a spokesman for the organizing committee.

Last year, the organizing committee said, about 2,500 delegates attended the meeting.

Next year's meeting will be held Sept. 10-15. Details are available at *www.rvs-monte-carlo.com*.

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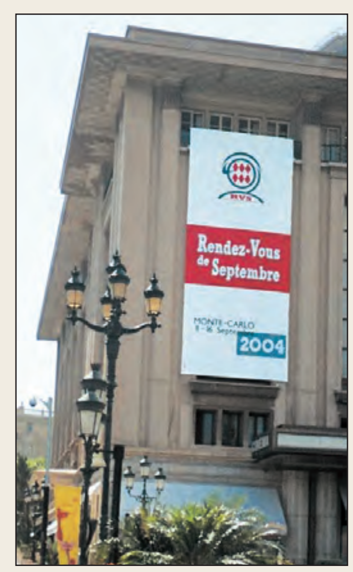

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Growing litigiousness trying insurers

By REGIS COCCIA

MONTE CARLO, Monaco—A growing "compensation culture" in North America and Europe is a costly problem that the insurance industry must address, according to speakers at the Rendez-Vous de Septembre earlier this month in Monte Carlo.

A panel comprising a well-known U.K. broadcaster, a U.S. federal appellate court judge and a U.K. reinsurance lawyer discussed changes in societal attitudes toward claims, the nature of the judicial system and the impact of lawsuits on insurers.

John Humphrys, a longtime television and radio broadcaster for the British Broadcasting Co., spoke about how prevalent the fear of liability is today, compared with a few decades ago, when tragic accidents did not automatically result in lawsuits.

"We need to find the right balance between responsibility and risk," he said. "Compensation culture is a product of a shift in perception that there is no risk or personal responsibility."

The BBC broadcaster cited reports that U.K. playgrounds are removing gym equipment to reduce their risk of liability for injuries, and he shared a personal experience in which a public park forbade his young son from climbing a tree, also out of fear of claims.

Mr. Humphrys recalled one of the first news stories that he broadcast early in his career. On an October morning in 1966, 144 people were killed in Aberfan, Wales, after a slagheap outside a coal mine collapsed, burying houses and a school. More than 100 of the casualties were children, many of them the sons and daughters of miners.

What didn't happen following that coal mining disaster contrasts sharply with responses to similar tragedies today, Mr. Humphrys pointed out. The miners, grief-stricken as they were over the loss of family and friends, did not file any claims, he said.

"Thirty-eight years ago, 'trauma' and 'stress' were not words on people's lips," he said. Today, though, claims seeking compensation for emotional trauma and mental stress are common—or at least they appear to be, he noted.

"Perception is often a more potent force than reality," Mr. Humphrys said. "In 2002, more than half of awards (in the United Kingdom) were for less than £3,000 ($5,370)," he said. "There are 700,000 initial claims filed in the U.K. each year, and most of those are thrown out."

Yet insurers are losing money on compensation claims, he said. Mr. Humphrys said he fears "we're moving from one world to another with no pause halfway" to consider the implications of a blame-and-claim culture.

While attorneys are often criticized for promoting litigiousness, Mr. Humphrys said people should realize that "for every shyster chasing ambulances, there are hundreds (of ethical lawyers) helping people."

Patrick Snowball, group executive director of London-based multiline insurer Aviva P.L.C., moderated the panel and cited economic figures to illustrate the high cost of compensation claims. "Is compensation culture reality or myth? Does it really matter? In the U.K., £10 billion ($17.9 billion) a year is spent on compensation, and 40% of it goes to the legal profession," he said. Compensation claims translate into 0.6% of gross domestic product in the United Kingdom, 0.8% in France and 1.9% of GDP in the United States, he said.

Another panelist, Judge Richard Posner of the 7th U.S. Circuit Court of Appeals in Chicago, outlined the U.S. tort system and noted some of the challenges insurers face in claims seeking compensation.

Cases involving injuries or illnesses with long latency periods pose particular difficulties for insurers, Judge Posner said. For example, the anti-nausea drug DES, once commonly prescribed for pregnant women, was found years ago to result in problems for women many years after their mothers took the drug, he explained. "With a novel risk, there is no history to base premiums on," the judge said.

"Injury seems straightforward, but it's very subtle," Judge Posner said. With asbestosis claims, "does injury occur at the inhalation of fibers or not until symptoms develop? The question is critical for insurers."

"Science is increasingly detecting subtle causal connections," which is playing out in compensation cases, Judge Posner said. "We can't slow the progress of science, and it puts courts under enormous pressure."

One of the challenges in the United States for both claimants and defendants is that "there is no single tort system. Each state has its own tort laws," the judge said. Federal courts generally hear diversity cases, or those involving parties from different states, whereas state courts deal with intrastate lawsuits, he said.

"The principal problems in the American tort system are regional problems, not national ones," Judge Posner said. West Coast courts, for example, tend to issue rulings hostile to businesses. A lack of uniformity in the tort system "is exacerbated by elected judges, who often are supported by the trial bar," he said.

"Compensation culture imposes an invisible premium on our cost of living," said David Hunt, Lord of Wirral, a solicitor at the London law firm of Beachcroft Wansbrough who specializes in insurance.

"The industry must convey to the public that every euro, every dollar, every pound" paid out in claims impacts jobs and the community, Lord Hunt said.

2004 Rendez-Vous de Septembre

GE Insurance Solutions focused on improved service

By REGIS COCCIA

MONTE CARLO, Monaco—The rebranding of Employers Reinsurance Corp. as GE Insurance Solutions is giving the reinsurance group more than just a new name, its chief executive said.

Ron Pressman, chairman, president and chief executive officer, emphasized that there is substance behind the company's recent rebranding, which brings more than a dozen operating units under the banner of GE Insurance Solutions.

Specifically, the reinsurer is focusing on improving service with regard to quotes and claims payments, and offering clients better analytics through claim audits and benchmarking, Mr. Pressman said at the Rendez-Vous de Septembre earlier this month in Monte Carlo.

"The expectations are so low in our industry on the service front, the industry doesn't know how to talk" about that aspect, Mr. Pressman said. "We see it as a wonderful opportunity for competitive differentiation."

Kansas City, Mo.-based GE Insurance Solutions will use its new name in marketing the products and services written by its various reinsurance and primary insurance units, including GE ERC, GE Re, GE Frankona Re and Westport Insurance Co. Those units will retain their existing legal names, though, and the policies they write will reflect those entities.

Going forward, GE Insurance Solutions is serious about improving its financial results and its standing with customers, Mr. Pressman said. And the insurance industry has plenty of room for improvement, he said, noting that it has been consistently outperformed by the larger diversified financial services industry, which includes banks, over the last decade.

Rick Smith, GE Insurance Solutions' chief operating officer, said at the Rendez-Vous that the last several years have been a time of rebuilding at the company.

"We exited $4 billion worth of business. We're focused on repositioning the company to profitably grow in the next hard market," Mr. Smith said. As part of that effort, GE Insurance Solutions has shifted its book of directors and officers liability business "away from big public company risks" to focus on privately held companies and nonprofits, he said.

That rebuilding is starting to pay off. For the first half of 2004, the former Employers Re reported net income of $248.7 million on net premiums written of $1.78 billion. In the year-earlier period, the reinsurer reported net income of $279.7 million on net premiums written of $2.27 billion. Its combined ratio for the first half of 2004 was 102.2%, compared with 103.6% in the first half of 2003. The company will report its next set of results when its parent, General Electric Co., releases its earnings in October.

Some observers have pointed to turnaround efforts as a sign that GE is looking to sell Employers Re, but Mr. Pressman said that GE CEO Jeffrey Immelt has been pleased with the reinsurance unit's results.

"He has said insurance is not strategic to GE, that we've got to earn our place in GE," Mr. Pressman said. Among the reinsurer's goals as GE Insurance Solutions are to book 13% to 15% returns on equity and "do this consistently by 2006 or 2007," he added.

For the time being, GE Insurance Solutions is no longer looking to shed business, Mr. Pressman said.

'We're not going to be the market share leader; we're going to be the best.'

Ron Pressman
GE Insurance Solutions

"We feel very good about the portfolio we have and want to maintain the larger context of relatively consistent business," he said. "We're not going to be the market share leader; we're going to be the best."

Among the lines the reinsurer would like to grow are short-tail, low-hazard casualty; aviation facultative reinsurance; and property catastrophe, Mr. Smith said.

Bill Donnell, GE Insurance Solutions' global casualty leader in Overland Park, Kan., said the reinsurer sees room to grow its casualty business in narrow niches, especially in the middle market. "We're looking to align ourselves with companies that have distribution and underwriting expertise," such as regional U.S. insurers writing a geographic or specialty niche, he said. Generally, GE Insurance Solutions is seeking to achieve "a balance between premiums and limits" and to "keep loss costs consistent," Mr. Donnell said.

IUMI: Lack of discipline seen in marine market

Continued from page 4

returned their data. In addition, he said, it does not include protection and indemnity or marine mutual clubs.

Total premiums for the marine industry are not keeping pace with loss and expense costs, Mr. Forsmo said.

He estimated that marine hull business overall would post a gross loss ratio of 90% for 2003. Assuming an expense ratio of 30% for management and acquisition costs, "premiums continue to be insufficient to sustain claims," he said.

"There is still no technical break-even result for any of the underwriting years presented," he said. Cargo insurance, though, looks much healthier, with an expected loss ratio of 60% for 2003, Mr. Forsmo added.

"Although the situation is shaping up, we are still not, on the whole, a profitable industry," Mr. Forsmo said.

"This is bad news, not only for the marine insurance industry but also for the clients we serve," he said. "Unless we, as marine insurers, come to our senses and return to sustainable underwriting and use the words 'no' and 'more' to a much greater degree, we will have reached the top of the cycle without making a profit."

In a presentation on the state of the hull market, Simon Beale, chairman of the IUMI Ocean Hull Committee, noted that rates do not reflect current realities in the shipping industry.

Looking at shipping statistics, Mr. Beale noted that the number of vessels in the world's merchant fleet increased 13% between 1993 and 2003, while the average size of the vessels rose by 19% over that period.

As a result, "there is significantly more exposure on our books," said Mr. Beale. "Therefore, we should have significantly increased premium since 1993."

And shipowners could afford an increase, Mr. Beale said, because they have "never had it so good." He noted that freight rates—the rates shipowners are paid to transport cargo—are at $30,464 per day in 2004, up from $10,948 per day in 1993, according to the ClarkSea Index, which is published by Clarksons, a London-based provider of shipping services.

But despite such changes, premiums are not increasing, Mr. Beale said. The global hull premium income of $3.9 billion in 2003 is still only 69% of the $5.6 billion achieved in 1994 at the peak of the last hard market.

Mr. Beale noted that, whereas marine hull underwriters took $8.30 per dead weight ton in 1994, they took almost half that at $4.70 per DWT in 2003. A dead weight ton is the weight a ship can safely carry when fully loaded.

"However we look at it, we are severely underpricing the risk we are exposed to," Mr. Beale said.

Assessing underwriting practices, Mr. Beale noted a large disparity between prices charged by lead insurers and those charged by following markets.

He found that, in one case, the lead market charged $1.23 million but the five following markets charged an average of 68% of this, with the lowest price at $610,000.

On average, following markets charge less than 60% of the lead price, he noted.

"I can only conclude that there is a severe lack of underwriting technical expertise. International dynamics can only be a result of that," Mr. Beale said.

Speaking from the floor, Clive Washbourn, head of marine risks at Lloyd's of London insurer Beazley Group P.L.C., echoed those concerns.

"If reinsurers stopped supporting some of this capacity, we might be able to make a profit. My one plea is: Can reinsurers search their brains and start being selective?" he said.

Questioned after the session about comments from the floor, Mr. Beale said that there is too much capacity for too little business, in part because of reinsurance support.

But he added that "capital cannot lose money year after year without, at some point, the problem bursting."

More than 400 attend conference

SINGAPORE—Around 420 delegates attended the International Union of Marine Insurance's 2004 conference.

The gathering was held Sept. 12-15 at the Raffles City Convention Center in Singapore.

Next year's conference is scheduled for Sept. 19-21 in Amsterdam, Netherlands. For more information, visit IUMI's conference Web site at *www.iumi2005.com.*

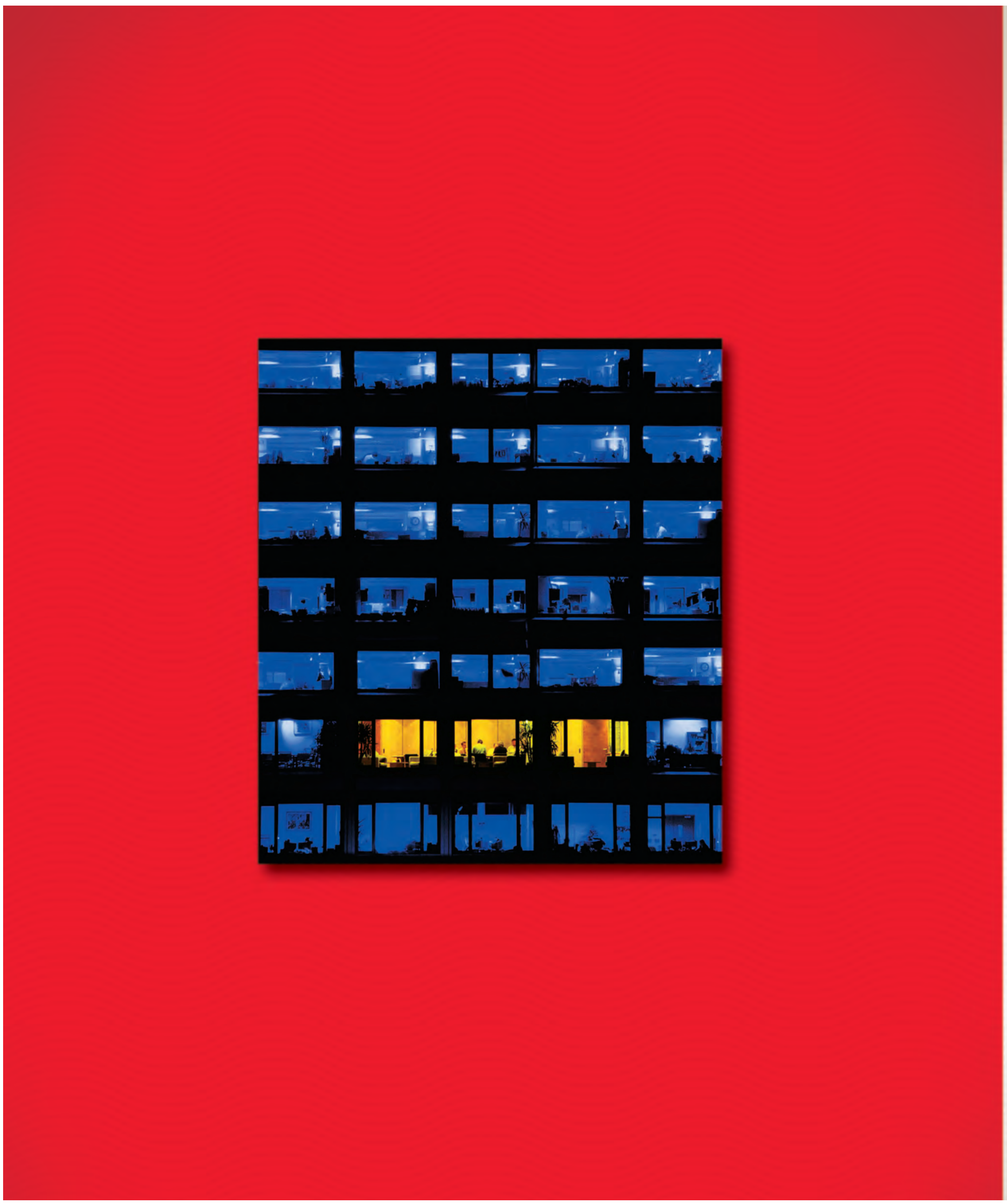

PHOTO: AFP

Marine underwriters faced a $310 million loss after the 113,000-ton luxury cruise liner Diamond Princess caught fire in a shipyard in Nagasaki, Japan, in October 2002. The liner was about 80% finished.

IUMI 2004 Singapore

Shipyard losses drive repricing

By PETA MILLER

SINGAPORE—A spate of large losses in the shipbuilding industry has prompted insurers to toughen their standards and limit coverage for shipyards, according to marine underwriters.

Speaking at a workshop at the International Union of Marine Insurance conference earlier this month in Singapore, Simon Beale, chairman of IUMI's Ocean Hull Committee, noted that seven major losses in shipyards between October 2002 and January 2004 cost marine underwriters a total of $738 million.

Insurers' losses included $310 million stemming from an October 2002 fire on the Diamond Princess, which was under construction at a Japanese shipyard; and a $228 million loss for the Pride of America, which flooded and sank while under construction in Germany in January.

In contrast, total international annual premium for shipbuilding risks was only $100 million in 2003, said Mr. Beale, who is also divisional underwriter at Amlin P.L.C. in London.

"That demonstrates the need for a dramatic repricing of the building risk market and the decision to (hold) this workshop and devote it to building risks," he said.

And because of increasingly sophisticated ship designs and construction methods, shipyards, in some cases, are losing sight of basic principles such as vessel safety, stability and integrity during construction, according to John Lillie, managing director of the London-based Salvage Assn.

Also eroding standards is the growing use of subcontractors, which can lead to a loss of control over safety and construction practices, he said.

Financial pressures also are contributing to the problem, Mr. Lillie said.

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Tim Huxley, managing director of London-based shipping services provider Clarksons, said that although ship owners are profiting from high revenues, shipyards are not faring as well.

Ships due for delivery this year were contracted at much lower prices than what they fetch today, and the costs of steel and labor are rising, so shipyard profits are marginal, he said. In addition, shipyards are facing growing competition as new players such as China enter the market, Mr. Huxley noted.

The risk of fire is a particular concern, especially until appropriate fire-suppression systems have been installed in a vessel under construction.

"At the start of construction, there is little flammable material, and fire is easily controlled. But later, there is more, and fire can have serious consequences," said John Curley, marine manager for Southeast Asia at Lloyd's Register Group, a marine risk management organization in London.

"Until fire protection systems are in place, the vessel is dependent on temporary systems and physical fire watches," he said.

The shipyard losses were exacerbated by underwriters providing coverage that was too broad and too long term, according to Peter McIntosh, hull underwriter at Wellington Underwriting P.L.C.'s syndicate 2020 in London.

See LOSSES/next page

Losses: Shipyard risks

Continued from previous page

Underwriters also failed to pay adequate attention to the aggregation of risk, particularly with regard to natural perils and to riders broadening coverage, he said.

"At the moment, there is a fine balance, and market capacity could easily slip away if there is continued loss in this marketplace. And that is no good for any of us, especially the buyers," he said.

"There are many reinsurers, I imagine, (that) will not be offering the retentions and cover they were offering in the past," Mr. Beale added.

Underwriters are insisting that shipyards conduct risk assessments, Mr. McIntosh said.

The Joint Hull Committee, which represents Lloyd's of London and London company market hull underwriters, has developed a warranty—JH 143—that requires shipyards to undergo a risk assessment before policies are issued or renewed, he noted.

In addition, the market is considering applying cancellation and review provisions to policies, which would allow underwriters to adjust terms or cancel coverage prior to renewals, he said.

IUMI 2004 Singapore

Iraq cargo coverage expensive

By PETA MILLER

SINGAPORE—Cargo insurance remains available for goods traveling into and out of Iraq by land, despite the growing risks of hijacking and theft, according to a Middle East insurance executive.

However, the insurance is expensive, and there can be confusion about what type of coverage applies when claims occur, said Max Zaccar, chairman of Commercial Insurance in Beirut, Lebanon.

And if the security situation in Iraq worsens, cargo risks may have to go bare, Mr. Zaccar said during a presentation at the International Union of Marine Insurance's recent conference in Singapore.

Shipments in and out of Iraq surged after an embargo, imposed in 1990, was lifted in November 2003, following the ousting of Iraqi President Saddam Hussein. As a result, there has been great demand for items such as second-hand cars, and shippers also are transporting the equipment and materials needed to rebuild the war-torn nation, including generators, Mr. Zaccar told delegates.

Most shipments travel into and out of Iraq through Syria, via the Al Waleed border crossing; from Jordan, via the Trebil crossing; from Turkey, via the Zakho crossing; and from Kuwait, Mr. Zaccar said.

The journey inland to Baghdad is roughly 375 miles from any of those points, with the first and last 125 miles considered relatively safe, he said. During the middle stretch, though, there is a greater risk of attack by insurgents or thieves, particularly near the city of Fallujah, he continued.

Most of the cargo insurance claims in Iraq involve the hijacking of the entire truck and its merchandise, he said. Hijackers often demand a ransom of around 30% of the value of the cargo to return it and on occasion have also kidnapped and murdered drivers, Mr. Zaccar said.

As a result, land transit risks, including United Nations shipments allowed under the Oil for Food Program, usually require all-risk cover.

Several all-risk clauses have been developed, including one in Lebanon that was created by the Assn. des Compagnies d'Assurances au Liban, Mr. Zaccar said.

Lebanese insurers, though, generally limit the journey time, and require the date of departure, the vehicle's license number and the name of the driver. They also generally require that the shipments be undertaken by well-known firms and that the trucks travel in a convoy.

Other Middle Eastern markets generally follow similar practices, Mr. Zaccar said.

In addition, the Arab War Risks Insurance Syndicate, which was set up in Bahrain in 1981 to provide war cover during the Iran/Iraq war, provides insurance for cargo transported by land, sea and air.

In 1999, AWRIS developed coverage, called War and Strike, Riot and Civil Commotion Inland Transport Cover, specifically for terrorist acts and other risks. However, that coverage excludes hijacking and is expensive, at more than 1% of the value insured.

A total of 104 companies from 18 countries share the primary retention of AWRIS, and the rest is reinsured by international markets, Mr. Zaccar said.

However the interplay between the all-risks and the war-and-strike coverage in the event of a hijacking or theft can be unclear, he said.

"To avoid any misunderstanding with the consignees, insurance companies should provide an all-risks as well as a war-and-strike cover. The difficulty resides, when an accident occurs, in determining under which cover a claim should be settled," said Mr. Zaccar.

"Rates applied should take into consideration the risks of the present situation in Iraq, the scarce information which can be obtained following an accident, and the absence of any recoveries," he said.

And if security continues to worsen, cargo risks in Iraq will soon have to go without insurance, he added.

NAIC: Groups air criticism of SMART draft bill

Continued from page 4

detriment of commercial and personal lines policyholders," said Mr. Birnbaum, who is executive director of the Center for Economic Justice in Austin, Texas.

In a recent formal comment letter to the Reps. Baker and Oxley and others, the Washington-based Consumer Federation of America described the draft as "an extraordinary step back for insurance consumers."

"Rather than 'modernize' insurance regulation, this draft would reopen the door to some of the worst insurance abuses of the past, such as cartel pricing and redlining, and tie the hands of states that attempt to stop abusive insurance practices and unfair and disparate pricing," wrote co-authors J. Robert Hunter, director of insurance, and Travis B. Plunkett, legislative director.

In an interview, Barry I. Llewellyn, senior divisional executive for regulatory services the National Council on Compensation Insurance Inc., disagreed with that interpretation. He acknowledged that, under the SMART proposal, insurer advisory groups such as the NCCI would continue to use shared data to calculate loss costs. In setting premium rates, though, insurers would still compete on factors including profits, cost trends and some expenses, said Mr. Llewellyn, who is based in Hoboken, N.J.

The specific impact of the SMART bill on commercial lines of insurance was not discussed at the meeting.

A spokeswoman for the New York-based Risk & Insurance Management Society Inc., however, previously said that deregulation of rates "will result in a more competitive marketplace for commercial lines of insurance." The spokeswoman added that multistate risks should benefit from efforts to achieve uniformity among states (*BI*, Aug. 30).

Members of the National Conference of Insurance Legislators are "very concerned" about the SMART Act because it will hand over "unprecedented authority to the NAIC" and may violate state sovereignty laws, State Rep. Brian Kennedy, D-Hopkinton, R.I., said at the NAIC's Industry Liaison Committee meeting. The act would be "the beginning of the end of state regulation," said State Rep. Frank Wald, R-Dickinson, N.D., in an interview.

In NCOIL's recent formal response letter to Reps. Baker and Oxley, President Steven Geller said NCOIL could not support the SMART act. He cited several reasons, including several provisions that could "undermine the role of state legislatures…nullify and preempt many state statutes (and) hand over unprecedented legislative authority to the NAIC, a nongovernmental organization not directly accountable to voters." Mr. Geller is a Democratic representative to the Florida House from Broward County.

NCOIL fears that the act may threaten state sovereignty because the McCarran-Ferguson Act grants an antitrust exemption for insurers only to the extent that states regulate the industry, NCOIL spokes-

See NAIC/page 28

Comings & Goings


Ms. Rossano


Mr. Martin


Mr. Lowndes


Mr. Flood

Agents/Brokers:

Willis Group Holdings Ltd. has made several senior-level appointments.

Lyn Rossano has been named senior vp and life sciences practice leader in Willis' Bethesda, Md., office. Previously, she was a vp.

Simon Hornby has been named managing director of the global specialties division in Miami. Before joining Willis, Mr. Hornby was managing director of Global Risk Partners, a management consulting firm he owned.

Greg Martin has been named global practice leader for client advocacy in New York. Previously, Mr. Martin was managing director for Marsh & McLennan Cos. Inc.'s global client development practice.

Willis also named four new senior vps at its Florham Park, N.J., office. All four previously worked for Marsh.

Kevin Houston previously was a casualty client adviser; **Richard O'Callaghan** was a client executive; **Nicholas Trent** was a group leader in Marsh's property and international practice; and **Richard Wright** led the advanced large account division.

Glen Allen, Va.-based Hilb Rogal & Hobbs Co. has made several senior-level appointments.

Jennifer Caldarella has been named president and chief executive officer of the brokerage's Stamford, Conn., office. Before joining HRH, Ms. Caldarella led a risk management sales team for Marsh.

J. Glenn Dockery has been named executive vp and Southeast regional leader for the executive risk operations. Before joining HRH, Mr. Dockery was senior vp at Willis.

Also at HRH, **Anne Carney** was named president of the Tampa, Fla., office. Previously, Ms. Carney was a principal at Hobbs Group L.L.C.

Birmingham, Ala.-based McGriff, Seibels & Williams Inc. has made three senior-level appointments in its new Irvine, Calif., office. All are former employees of Marsh.

Daniel Carreras has been named executive vp and head of office.

Lauri Stang and **Adam Grosz** have been named senior vps.

London-based Cooper Gay & Co. Ltd. has made several senior-level appointments.

Mark Lowndes has been named director of the special risks division in London. Previously, he was an executive director in the financial and professional risks division of Heath Lambert Group Ltd.

Dermot Flood has been named director of the nonmarine treaty team in London. Previously, Mr. Flood was a director in the reinsurance division of A.J. Gallagher UK Ltd.

John Barrett has been named senior vp in New York. Before joining Cooper Gay, Mr. Barrett was a senior vp at NAPCO L.L.C.

Reinsurance:

New York-based Guy Carpenter & Co. Inc. has named **Beverly McIntosh** senior vp in the company's San Francisco office. Previously, Ms. McIntosh was an account executive at Swiss Reinsurance Co.

Hamilton, Bermuda-based XL Capital Ltd. has named **Mark W. Callahan** chief actuarial officer of XL's insurance operations. Previously, Mr. Callahan was a senior underwriter for XL Financial Solutions Ltd.

Other providers:

Universal Life Resources, a national group life, accident and disability consulting company in San Diego, has appointed **John Hearn** president of the Southeastern region, which includes Florida, Georgia, North Carolina, South Carolina and Tennessee. Previously, Mr. Hearn, who will be based in Atlanta, was vp of disability management.

Also at ULR, **Andrew Newman** has been named director of absence management data in the Walnut Creek, Calif., office. Before joining ULR, Mr. Newman was research director at the Integrated Benefits Institute.

Commentary

Pension system in need of saving

This isn't a good time to be a retiree of a big, old-line company in a competitive industry—an airline, for instance.

With bankrupt United Airlines threatening to dump its 120,000 plan participants and $6.4 billion in unfunded liabilities on the Pension Benefit Guaranty Corp.—and other shaky companies potentially following suit—retirees could be looking at a sizable cut in the monthly benefits they were promised.

United, which stopped funding its plans in July, says it has to shed the debt to attract financing it needs to emerge from bankruptcy. While the PBGC would pick up most of the obligations, United employees and retirees would lose about $2 billion in benefits not covered by the agency.

Plan terminations by United and another bankrupt carrier, US Airways Group Inc., would nearly double the PBGC's current deficit of about $9 billion.

And it could get much worse.


Douglas McLeod

In a speech to the U.S. Chamber of Commerce last month, PBGC Executive Director Bradley D. Belt noted that the liabilities of the nation's defined benefit plans exceed their assets by $400 billion, and that the agency has $85 billion in exposure to companies with junk bond-level credit ratings.

A ballooning PBGC deficit could be dealt with in two ways. One would be to impose huge increases in employer premiums, which would be a self-defeating step because it would drive employers with well-funded plans out of the defined benefit arena. (United, if it terminates its plans, will have paid $50 million in PBGC premiums since 1974 to shed its $6.4 billion in obligations, according to Mr. Belt.)

The agency's other option would be a taxpayer bailout.

The analogy between a looming pension crisis and the savings-and-loan scandal of the 1980s isn't perfect, but the two would be similar in one respect: Both would involve systems whose structural flaws led to a massive transfer of private sector obligations to the government. Deregulation allowed S&Ls to gamble—and lose—depositors' money on risky investments; pension rules have allowed employers to make big promises without setting aside the money to pay for them. Taxpayers may foot the bill in both cases for poorly designed systems and—too often—reckless behavior by corporations that know they can count on the government to save them.

Companies are right to complain about the things they can't control. Plans have been hammered, for example, by stock market losses that reduced plan assets and low interest rates that inflated the value of plan liabilities.

Arcane funding rules also limit the tax-deductible contributions employers can make in profitable years—when they can afford it—while sometimes requiring big contributions in lean years when they can't. Troubled companies are allowed exemptions that put off their obligations for years.

None of that excuses bad behavior, though. Troubled companies and their labor unions have a "powerful temptation" to make rich benefit promises—often in lieu of wage hikes—that they know they can't pay for, Mr. Belt observed, calling the level of moral hazard in the pension system "staggering."

Bethlehem Steel Corp., which saddled the PBGC with its biggest claim to date, failed to make any contributions to its hugely underfunded plan for three years before termination, even as it continued to make benefit promises that "it clearly had no ability—and arguably no intention—to fund," Mr. Belt charged.

The nature of corporations is to boost profits by externalizing costs, and nothing externalizes more costs for some companies than shedding pension debt. It's up to government to apply the brakes by enforcing responsible corporate behavior and fair treatment of retirees.

Congress clearly needs to follow through on pension reforms. Employers should be required to fully fund their plans, and funding rules should be changed to lift contribution limits that have inhibited full funding in the past. The law should bar employers and unions from making benefit promises they know they're unlikely to keep.

The PBGC should also have the power to place liens on the assets of companies in bankruptcy to discourage those companies from using Chapter 11 to skip required pension contributions.

No one who's been promised a comfortable retirement after years at work should see that promise disappear at the last minute.

Senior Editor Douglas McLeod can be reached at dmcleod@businessinsurance.com.

NAIC: SMART criticism aired

Continued from page 26

men said.

NAIC members themselves share some of NCOIL's concerns, according to comments made after the meeting by NAIC President Diane Koken, the Pennsylvania insurance commissioner who was elected to the organization's top leadership post at the meeting (*BI*, Sept. 20). Regulators are "extremely concerned by the sweeping pre-emptions of state laws, the provisions that deregulate rates and the role of the federal government," she said.

In addition, she said, "state legislators will continue to play an important role in each of our states as we work collaboratively to enact modernization initiatives," including producer licensing and market conduct reforms.

Meanwhile, most representatives of insurance industry trades said during the meeting that that they support many aspects of the SMART draft.

2004 NAIC Fall National Meeting

Study calls for med mal data

By MEG FLETCHER

ANCHORAGE, Alaska—A lack of data prevents state insurance regulators from determining why medical malpractice liability coverage costs have risen for health care providers, according to a new white paper the National Assn. of Insurance Commissioners formally adopted earlier this month.

The report, in more than 125 pages, echoes a 2003 General Accounting Office conclusion that a lack of uniform data hinders the efforts of Congress, state regulators and others in analyzing the problem and the effectiveness of attempted solutions.

"More than anything, this document is evidence that medical malpractice is an extremely complicated matter that is very challenging to qualify and quantify," said Texas Insurance Commissioner Jose Montemayor, who also chairs the NAIC's Property and Casualty Committee. "It is a product that varies greatly from state to state and calls for different solutions based on local market circumstances," he said in a statement.

The report makes no formal recommendations about ways to improve the marketplace, apart from urging that the NAIC help states collect appropriate data in the future.

In other business, NAIC regulators:

- Voted 31-20 to adopt the Market Conduct Surveillance Model Law, which is identical to the model adopted by the National Conference of Insurance Legislators this summer.

The model establishes a framework for insurance departments' market-conduct actions, including a process and database-oriented system that requires state departments to report complaints and allows them to coordinate exam schedules. That will help them prioritize problems and procedures to coordinate and communicate regulatory actions among states, according to an NAIC statement.

- Delayed the Workers Compensation Task Force's adoption of a long-researched white paper on the role of large deductibles in workers comp programs because of a new controversy over its proposed banning of "deductible reimbursement" policies.

The 63-page white paper, which was jointly drafted with the International Assn. of Industrial Accident Boards & Commissions, discussed some possible problems with such policies, such as differences in how states recognize them and questions about whether the policies involve risk transfer.

The report cautioned that insurers could write such coverage for employers that are retaining little or no risk.

New York-based American International Group Inc. wrote to regulators seeking to eliminate the ban, though, because risk managers have used such policies primarily as "alternative collateral." Many states have approved such policies, which have been in use for more than decade, AIG wrote.

Representatives of other insurers, including the American Insurance Assn., said they will soon send their comments on the topic to regulators.

- Approved adding the Commonwealth of the Northern Mariana Islands as its newest member, pending the entity's payment of dues. The cluster of islands is in the Pacific Ocean between Hawaii and the Philippines.
- Reaccredited the Maryland Insurance Department.

Most employers already offer same-sex partner benefits

Marriage rulings not costly in Canada

By GLORIA GONZALEZ

Recent Canadian court rulings striking down barriers to same-sex marriages will have little impact on Canadian employers, because most already offer same-sex partner benefits to their employees.

On Sept. 16, a Manitoba judge found that the opposite-sex requirement in the province's common law definition of marriage violated the equality rights guaranteed by the Canadian Charter of Rights and Freedom. The judge ordered that the common law definition be modified to allow the union of two persons regardless of sexual orientation.

Then, last week, a court in Nova Scotia issued a similar ruling, making it the sixth jurisdiction in Canada to allow same-sex couples to legally marry. Earlier this year, similar restrictions in the marriage provisions of Quebec and Yukon law were formally struck down. Both Ontario and British Columbia also allow same-sex couples to marry.

The rulings permitting same-sex marriages, however, are not expected to have a major impact on Canadian employers from an employee benefits perspective, as most have offered benefits to same-sex partners for many years, consultants say.

"The advent of legal same-sex marriages has had very little impact on benefits," said Alison Schofield, a principal with Mercer Human Resource Consulting in Toronto. "Most employers had already accommodated same-sex couples."

Canada has a broader definition of common-law partnerships than does the United States, and same-sex

See PARTNERS/page 31

PHOTO: ZUMA

A couple weds at Toronto's Metropolitan Community Church in Ontario, a Canadian province that allows same-sex marriages.

Insurers may fund NHS' costs for work injuries

Move would raise price of employers liability coverage by 5% on average, insurer group says

LONDON—The U.K. government is considering plans that would allow National Health Service hospitals to recover from insurers the costs of treating workplace accident victims.

U.K. Health Minister Rosie Winterton Friday published the proposal, which would expand the authority of the tax-funded NHS to recover costs from insurers. Currently, the NHS Injury Costs Recovery Scheme allows hospitals to recover costs associated with treating car accident victims.

Interested parties have until Dec. 17 to comment on the plan, which is slated for introduction next year.

"This policy will encourage employers to take steps to prevent employees being injured," Ms. Winterton said in a statement. "It is unacceptable that taxpayers have to pay for the medical treatment of someone injured at work simply because employers fail to take adequate steps to protect their workforce."

The Assn. of British Insurers said that the proposal would drive up the cost of employers liability insurance, which employers must buy to cover employee injuries and illnesses.

In a statement, the London-based ABI said that costs for the coverage could increase by 5% on average if the NHS proposal is enacted.

More information on the proposal is available at *www.dh.gov.uk/Consultations/fs/en.*

—By Sarah Veysey

Asbestos fund inquiry faults execs

James Hardie misled stock exchange about trust's adequacy: Report

By ELIZABETH FRY

SYDNEY, Australia—Australian securities regulators are investigating senior executives of James Hardie Industries NV, following a government commission's finding that the executives made knowingly false statements about the adequacy of an asbestos compensation fund the company set up before relocating.

As part of its 2001 redomestication to Amsterdam, Netherlands, building supplier James Hardie set up a trust, the Medical Research & Compensation Foundation, providing $293 million Australian ($154 million) to pay all claims related to its former asbestos-producing subsidiaries. In February 2001, the Sydney-based company attested to the Australian Stock Exchange that the fund was adequate to cover its asbestos liabilities, citing an actuarial assessment of the funding level.

However, unions and asbestos victims groups subsequently claimed that that the company had vastly shortchanged the foundation, prompting the formation of the New South Wales government commission of inquiry to look into the trust.

The MRCF's funding shortfall is currently projected at $2.0 billion Australian ($1.44 billion) (*BI,* Aug. 16).

The NSW commission, in reporting its findings earlier this month, found that James Hardie Chief Executive Officer Peter Macdonald knew at the time that statements about the trust made to the Australian Stock Exchange were false

PHOTO: NEWSPIX

Mr. Macdonald

and misleading.

"In my opinion, the conduct of James Hardie in publishing the (statement) in the form in which it did was misleading and deceptive. In my view, there was evidence that Mr. Macdonald knew that the information provided to the ASX was false and misleading," David Jackson, a Sydney-based lawyer who headed up the commission, said in his report.

James Hardie's claim to the stock exchange that the MRCF "would be able to generate investment income, and capital growth, and would have surplus funds when all future claims have been concluded was fanciful. The level of outgoings from the inception of the Foundation meant it was on the way to being a financial basket case," Mr. Jackson wrote.

The commission's finding that several executives may have broken the corporations law by engaging in misleading and deceptive conduct prompted the Australian Securities and Investments Commission to launch an investigation.

"Our investigation will include the conduct of certain directors and officers of the James Hardie group of companies and associated parties, and market disclosures made by the companies and individuals," ASIC Chairman Jeffrey Lucy said in a statement.

James Hardie said in a statement that it acknowledges the seriousness of the findings and Mr. Jackson's comments and will issue a response after a full analysis of the report has been undertaken.

In his report, Mr. Jackson faulted Mr. Macdonald and James Hardie Chief Financial Officer Peter Shafron for withholding critical data from actuarial firm Trowbridge Deloitte, which advised James Hardie in 2001 on the likely cost of future asbestos claims.

"Insofar as Mr. Macdonald and Mr. Shafron are concerned, in my view they breached their duties as officers of (James Hardie Industries) by encouraging the board to act on the Trowbridge report in forming a view that the foundation would be

See REPORT/next page

World Updates

Converium may seek outside investors

Converium Holding A.G.'s planned capital raising likely will entail either an issue of shares to current shareholders or a so-called "split-tranche" approach, in which some shares would also be offered to outside investors, said Chief Executive Officer Dirk Lohmann. He noted that the Swiss reinsurer is in advanced discussions with such investors. Converium's shareholders will vote on the plan on Sept. 28. The Zug-based reinsurer has suffered downgrades into the B range following the announcement of reserve adjustments and its decision to close its U.S. units.

Best downgrades AXA Re P&C

A.M. Best Co. has downgraded the financial strength rating of New York-based AXA Re Property & Casualty Insurance Co. to B++ from A- because of losses from hurricanes Charley, Frances and Ivan. The Oldwick, N.J.-based rating agency said in a statement that the cumulative impact of the storms will reduce the reinsurer's surplus by as much as $39 million, despite strong reinsurance protection. At the beginning of 2003, Paris-based AXA Re Group announced it would phase out its U.S. program business, for which AXA Re P&C was a primary underwriter.

Restructured Goshawk reports first-half profit

Goshawk Insurance Holdings P.L.C. reported a profit of $10.0 million for the first six months of 2004, compared with a $50.9 million loss for the prior-year period. Due to a restructuring of the company, Goshawk's gross written premiums dropped to $61.1 million in the first half, from $480.8 million in the comparable period last year, the company said. The company has restructured from a multiline insurer to one focused on short-term property and marine business.

Briefly noted

AGF Group, the Paris-based subsidiary of Allianz A.G. Holding, reported net income of 532 million euros ($647.2 million) for the first six months of 2004, an 8.3% increase over the year-earlier period. Premiums grew 2.6% to 8.93 billion euros ($10.86 billion)....**Chaucer Holdings P.L.C.** reported aftertax profits of £16.6 million ($30.1 million) for the first half of 2004, attributing the 44% increase over the prior-year period to sound underwriting conditions. The Lloyd's of London insurer's gross premiums were £221 million ($400.8 million), up 9.8%.

Report: Inquiry faults executives

Continued from previous page

'fully funded,'" Mr. Jackson wrote.

In addition, Mr. Jackson said that advice provided by Trowbridge "fell below the standards of professional care and engaged in misleading conduct" because it did not warn incoming MRCF directors that its report had limitations.

Furthermore, Mr. Jackson said that Trowbridge's financial model assumed an earnings rate of 11.7% per year for 50 years, a rate of return which Mr. Jackson claimed was selected simply because it achieved a figure that suited James Hardie's position.

"The credibility of the selection of 11.7% as the earnings rate is affected, rather adversely in my opinion, by the fact that it was not selected because it was an appropriate rate. Rather, it was selected because it was the earnings rate necessary to be applied to arrive at a fund which could still have some assets at the end of 50 years," Mr. Jackson wrote.

In response to the report, Sydney-based Trowbridge said in a statement that it believes that its actuarial methodology was appropriate for the scope of work specified by James Hardie and that it was that company's misuse of the report that created the funding shortfall.

While Mr. Jackson found that there were grounds for criminal charges against senior James Hardie executives for deceptive conduct, he did not find that the company was now legally obliged to pick up the entire shortfall.

James Hardie in July offered to establish an additional compensation program to meet asbestos claims not covered by the MRCF, though it has not said how much additional funding it would be willing to provide (*BI*, July 19).

"We note remarks by Commissioner Jackson in the report in support of a scheme as the best long-term solution for satisfying asbestos liabilities, and in this regard, the company reconfirms its funding proposal and its willingness to work with all relevant stakeholders in developing a satisfactory compensation solution for asbestos claimants," James Hardie said in its statement.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Petition of Gareth Howard Hughes and Martin Fishman, as Joint Liquidators of **BRADSTOCK LIMITED**, Debtor in a Foreign Proceeding.	In a Proceeding Under Section 304 of the Bankruptcy Code. Case No. 04-B-14311 (ALG)

NOTICE IS HEREBY GIVEN THAT, in connection with the petition filed on June 22, 2004, pursuant to section 304 of the Bankruptcy Code (the "Petition"), with respect to **Bradstock Limited** (the "Company"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has entered a Permanent Injunction Order dated September 13, 2004 (the "Order"):

1. Permanently enjoining all persons and entities from seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds of such property;

2. Permanently enjoining all persons and entities from commencing or continuing any action or legal proceeding in the United States in connection with any claim (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim against the Company, or any property in the United States that is involved in the foreign proceeding, or any proceeds thereof, and seeking discovery of any nature against the Company;

3. Permanently enjoining all persons and entities from enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award obtained in connection with any claim (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim against the Company in the United States or any of its property in the United States, or any proceeds thereof;

4. Requiring all persons and entities in possession, custody or control of the Company's property in the United States or the proceeds thereof to, upon due demand therefor, turn over and account for such property or its proceeds to the Petitioners;

5. Requiring that every person and entity that has a claim of any nature or source and that is a party to any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, to place the Petitioners' United States counsel (Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, Attn: Francisco Vazquez, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives: (a) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and, (b) any and all correspondence, or other documents circulated to parties named in the master service list;

6. Providing that any action taken by the Petitioners, their successors, agents or representatives, or any of them, or their counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the foreign proceeding, the section 304 proceeding or any adversary proceeding in connection therewith shall not be deemed to constitute a waiver of the immunity afforded the Petitioners, their successors, agents or representatives pursuant to section 306 of the Bankruptcy Code;

7. Providing that nothing in the Order shall prevent any person or entity from asserting a claim against the Company in its compulsory liquidation pending before the High Court (as defined in the Order); and

8. Providing that except with respect to the matters over which the Bankruptcy Court has expressly retained jurisdiction, the ancillary proceeding with respect to the Company is closed, subject to it being reopened pursuant to section 350(b) of the Bankruptcy Code.

Copies of the Order and Petition are available upon written request to the undersigned counsel.

CHADBOURNE & PARKE LLP
Attorneys for the Petitioners • 30 Rockefeller Plaza • New York, New York 10112 • (212) 408-5100
Attn: Howard Seife, Esq. • Francisco Vazquez, Esq.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Petition of Gareth Howard Hughes and Margaret Mills, as Joint Liquidators of **BRADSTOCK BLUNT & CRAWLEY LIMITED**, Debtor in a Foreign Proceeding.	In a Proceeding Under Section 304 of the Bankruptcy Code. Case No. 04-B-14312 (ALG)

NOTICE IS HEREBY GIVEN that, in connection with the Petition filed on June 22, 2004, pursuant to section 304 of the Bankruptcy Code (the "Petition"), with respect to **Bradstock Blunt & Crawley Limited**, (the "Company"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has entered a Permanent Injunction Order dated September 13, 2004 (the "Order"):

1. Permanently enjoining all persons and entities from seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds of such property;

2. Permanently enjoining all persons and entities from commencing or continuing any action or legal proceeding in the United States in connection with any claim (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim or cross-claim against the Company, or any property in the United States that is involved in the foreign proceeding, or any proceeds thereof, and seeking discovery of any nature against the Company; provided, however, that AAHRU and Sedgwick (each, as defined in the Order) are permitted to continue the prosecution of all of their claims in the AAHRU Litigation (as defined in the Order) against the Company in the Pennsylvania Court (as defined in the Order) for the sole purpose of liquidating the amount of their claims, if any, against the Company; provided, that, unless otherwise ordered by the High Court (as defined in the Order), any costs awarded against the Company in connection with the AAHRU Litigation shall be treated as a general unsecured claim against the Company and not as a cost or expense of the liquidation of the Company;

3. Permanently enjoining all persons and entities from enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award obtained in connection with any claim (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, to create, perfect or enforce any lien, setoff, garnishment, attachment or other claim against the Company in the United States or any of the Company's property in the United States, or any proceeds thereof;

4. Requiring all persons and entities in possession, custody or control of the Company's property in the United States or the proceeds thereof to, upon due demand therefor, turn over and account for such property or its proceeds to the Petitioners;

5. Requiring every creditor party (other than the parties to the AAHRU Litigation) to any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, to place the Petitioners' United States counsel (Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, Attn: Francisco Vazquez, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives: (a) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and, (b) any and all correspondence, or other documents circulated to parties named in the master service list;

6. Providing that any action taken by the Petitioners, their successors, agents or representatives or any of them, or their counsel in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the foreign proceeding, the section 304 proceedings or any adversary proceeding in connection therewith, shall not be deemed to constitute a waiver of the immunity afforded the liquidators, their successors, agents or representative, or any of them, or their counsel pursuant to section 306 of the Bankruptcy Code;

7. Providing that nothing in the Order shall prevent any person or entity from asserting a claim against the Company in its compulsory liquidation pending before the High Court; and

8. Providing that except with respect to the matters over which the Bankruptcy Court has expressly retained jurisdiction, the ancillary proceeding with respect to the Company is closed, subject to it being reopened pursuant to section 350(b) of the Bankruptcy Code.

Copies of the Order and Petition are available upon written request to the undersigned counsel.

CHADBOURNE & PARKE LLP
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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF ROLF ĀBJÖRNSSON,
AS OFFICIAL RECEIVER OF
ATERFORSAKRING AB LUAP,
DEBTOR IN A FOREIGN PROCEEDING
CASE NO. 03-10945 (PCB)

NOTICE IS HEREBY GIVEN THAT ON SEPTEMBER 13, 2004, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. §304 ORIGINALLY ENTERED IN THIS CASE ON FEBRUARY 19, 2003. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING SCHEDULED TO BE HELD ON MARCH 9, 2005 AT 2:30 P.M. (THE "RETURN DATE") BEFORE THE HONORABLE PRUDENCE CARTER BEATTY, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT LOCATED AT ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING THE CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE PRUDENCE CARTER BEATTY AND SERVED ON COUNSEL FOR THE OFFICIAL RECEIVERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE OFFICIAL RECEIVERS.

CHADBOURNE & PARKE LLP
ATTORNEYS FOR THE OFFICIAL RECEIVERS
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112
(212) 408-5100
Attn: HOWARD SEIFE, ESQ.
FRANCISCO VAZQUEZ, ESQ.

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF DAN YORAM
SCHWARZMANN, AS ADMINISTRATOR OF
FOLKSAM INTERNATIONAL INSURANCE COMPANY (UK) LIMITED,
DEBTOR IN A FOREIGN PROCEEDING
CASE NO. 02-14070 (PCB)

NOTICE IS HEREBY GIVEN THAT ON SEPTEMBER 13, 2004, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. §304 ORIGINALLY ENTERED IN THIS CASE ON SEPTEMBER 9, 2002. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING SCHEDULED TO BE HELD ON MARCH 9, 2005 AT 2:30 P.M. (THE "RETURN DATE") BEFORE THE HONORABLE PRUDENCE CARTER BEATTY, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT LOCATED AT ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING THE CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE PRUDENCE CARTER BEATTY AND SERVED ON COUNSEL FOR THE PETITIONER LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONER.

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Partners: Marriage rulings not costly in Canada

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partners in Canada do not have to be legally married to be benefits-eligible, observers say.

Thus, the main impact of the Manitoba ruling—and similar rulings in other provinces—is that legalized marriage would eliminate, for married same-sex spouses, the one- to three-year waiting periods often imposed on common-law partners seeking to receive benefits, said Karen Busby, a professor of law at the University of Manitoba in Winnipeg.

While some Canadian companies still require same-sex couples to live together for three years before they become benefits-eligible, most now have either a one-year waiting period or none at all, Ms. Schofield said.

'The impact it will have is minimal in Canada, because human rights codes...have prohibited discrimination on the basis of sexual orientation.'

Karen Busby
University of Manitoba

FedEx Canada requires same-sex couples to live together for at least one year to be eligible for benefits, a spokeswoman for the Ontario-based company said. FedEx has offered same-sex couples a full range of benefits, including health care, dental, vision and life insurance, since 1996.

Toronto-based KPMG Canada introduced same-sex couple benefits for its employees in 1993, which was "a relatively progressive practice at the time," a spokeswoman said.

A series of events previously forced Canadian employers to revise their benefit policies to offer same-sex spousal or partner benefits, observers say.

- In the 1980s, several provinces began revising their human rights codes to prohibit discrimination based on sexual orientation.
- In 1996, the federal government amended the Canadian Human Rights Act to prohibit such discrimination.
- In 1999, a key Supreme Court of Canada case—known as *M. vs. H.*—was the "death knell" for laws that treated same-sex partners differently from opposite-sex partners, Ms. Busby said. In this decision, the court said the Family Law Act violated the rights of same-sex couples because it gave unmarried opposite-sex couples rights that it failed to give to same-sex couples, such as the right to seek financial support from a partner following dissolution of a common-law relationship.
- In 2000, the federal income tax act was amended to change the definition of common-law partner to include same-sex couples who were living together.

"Those are the decisions that effectively added same-sex partners as common-law dependents under group benefit plans and pension plans, not really the changes that effectively legalized same-sex marriages," Ms. Schofield said. "Common-law dependents were covered on a same-sex basis prior to that."

The judge's ruling in Manitoba simply allows the province's government to come into compliance with the changes to human rights codes and the court rulings banning discrimination based on sexual orientation, Ms. Busby said. "The impact it will have is minimal in Canada, because human rights codes on both the federal and provincial levels have prohibited discrimination on the basis of sexual orientation," she said.

The number of Canadian companies offering same-sex couple benefits has risen steadily in recent years. A 2004 Mercer survey found that 89.3% of surveyed employers offer same-sex spousal benefits, up from 87.4% in 2003 and 79.8% in 2002.

"The vast majority of companies are in compliance with human rights codes," Ms. Busby said. "That doesn't mean some still don't."

The companies that do not offer same-sex couple benefits have probably never been asked to do so by their employees, but legally they cannot decline to offer the benefits, she said.

For the companies that do offer same-sex couple benefits, the cost impact has been minimal, because many employees are still hesitant to ask for benefits for same-sex partners, said Michael Wolpert, a consultant with Towers Perrin in Calgary, Alberta. In addition, their partners may already have benefits through their own jobs, he noted.

"The impact has been negligible," Mr. Wolpert said. "My impression is that it's been a nonissue."

Trucking: Captive to offer coverage

Continued from page 4

the poster boy for what doesn't work in captives."

"Captives make sense in lines where there is a low loss ratio" and little chance of multimillion-dollar claims, Mr. Ram said. "Basically, they work in lines that are the opposite of trucking."

'Captives make sense in lines where there is a low loss ratio....Basically, they work in lines that are the opposite of trucking.'

Mark J. Ram
Markel Insurance Co. of Canada

He said that Markel writes around $275 million Canadian ($212.5 million) in annual gross premiums and has a combined ratio of around 101%. Markel will write coverage for trucking operations of any size at limits of "pretty much whatever they want," according to Mr. Ram.

Mr. Lopeman said that Canadian trucking companies "have really been held hostage, if you will," by the lack of markets at a time when coverage prices have risen dramatically. As for premiums, "to say they have doubled and tripled is very realistic," he said.

Mr. Ram said reinsurance could be expensive for the new trucking insurer.

"Try throwing $5 million to $10 million claims in your captive and watch what happens to your reinsurance rates," Mr. Ram said.

"We can buy reinsurance much cheaper because of our leverage. A captive will pay much higher reinsurance costs than we have," he said.

Ted Puccini, a partner with Brownstone, said premiums will be set to account for the possibility of catastrophic losses within the captive.

"I'm sure reinsurers are building in some assumptions and protections against an event like that" as well, he added.

Gallagher's expertise in selecting strong, well-managed risks for the captive is another way the risk of catastrophic losses is lessened, Mr. Puccini noted. And, large claims are not as common in Canada as they are in the more litigious United States, he said.

Transsexual: Workplace bias protections increasing

Continued from page 4

They are Connecticut, Florida, Illinois, Hawaii, Massachusetts, New Jersey and New York.

California has the most recently enacted legislation. A.B. 196, which was signed by former Gov. Gray Davis in August 2003 and took effect in January, expands the prohibition on sex discrimination and harassment to include gender in the definition of sex. This means the law protects individuals who exhibit traits that are not stereotypically associated with their sex at birth.

The law still permits employers to require employees to adhere to reasonable workplace appearance and standards, but only provided they are allowed to dress consistently with their gender identity.

Lizbeth V. West, an employer attorney with Weintraub Genshlea Chediak Sproul in Sacramento, said the legislation "answered the question that gender, including gender identity, is a protected class in California."

It does, though, raise "practical difficulties for employers" with regard to day-to-day management, including the implementation of dress codes and the use of restrooms, said Ms. West.

If a transsexual, for instance, has not completed the sex-change operations needed to transition from a male to a female but is living out a female identity, should an employer let that individual use a women's restroom, which may make other employees uncomfortable? asked Ms. West. The privacy of such employees must be balanced with accommodating or respecting a transgendered employee's identity, she said.

James McDonald Jr., an employer attorney with Fisher & Phillips in Irvine, Calif., said there are several approaches that can be taken to address this issue. Some employers have taken the position that the transgendered individual "has to use the restroom of his or her prior gender until the gender process is complete."

Another approach is that "once the employee has announced he or she is going through the gender transition process, they should at that point be allowed to use the restroom of the new gender." That, however, "tends to be disturbing to employees." A third approach is to have a separate restroom facility for the transgendered individual. "That's fine if you have one that you can use" and it is acceptable to the employee, said Mr. McDonald.

Little case law

With few states so far that protect gender identity, there is "not enough case law to guide employers at this point," particularly in California, where the issue is relatively new, said Ms. West.

One decision observers say is significant is an opinion by the 6th U.S. Circuit Court of Appeals in Cincinnati in *Smith vs. City of Salem, Ohio*, which was originally issued in June then revised by the court and reissued in August.

The case involves Jimmie L. Smith, a lieutenant in the Salem, Ohio, fire department. After being diagnosed with "gender identity disorder," Mr. Smith began "expressing a more feminine appearance on a full-time basis," according to court papers. After he was suspended for a 24-hour shift based on his alleged infraction of a policy, Mr. Smith filed suit in federal district court, claiming sex discrimination and retaliation.

'My feeling is, with these kinds of cases out there, wise human resources professionals are going to include language in their training that people deserve to be treated with respect regardless of gender.'

Paul Mollica
Meites, Mulder, Burger & Mollica

In overturning a lower court decision that dismissed his claims, a unanimous three-judge panel ruled that Mr. Smith could pursue his claims of sex discrimination against the city under Title VII of the Civil Rights Act of 1964 and the equal protection clause of the Constitution's 14th Amendment.

The appellate court referred to the U.S. Supreme Court's 1989 decision in *Price Waterhouse vs. Hopkins*, in which the high court held that Title VII bars gender discrimination, including discrimination based on sex stereotypes. "After Price Waterhouse, an employer who discriminates against women because, for instance, they do not wear dresses or makeup, is engaging in sex discrimination because the discrimination would not occur but for the victim's sex.

"It follows that employers who discriminate against men because they do wear dresses and makeup, or otherwise act femininely, are also engaging in sex discrimination, because the discrimination would not occur but for the victim's sex," said the appellate court. The case was remanded to the district court for further proceedings.

The 6th Circuit "is the first circuit in the country to find that Title VII sex discrimination protection explicitly protects transgendered people from workplace discrimination," said HRC Senior Counsel Liz Seaton. Many courts are now examining this issue for the first time and are "looking very broadly to see what kind of interpretations and language is out there," Ms. Seaton said. From that perspective, she said, the 6th Circuit decision will be influential.

John D. Canoni, an employer attorney with Nixon Peabody in New York, also called the decision significant. Initially, he said, transsexuals met with little success pursuing discrimination claims in the courts because they sought protection solely on the grounds of their status as transsexuals. "The courts would not entertain those claims," he said. More recently, though, transsexuals have had success on the grounds of gender stereotyping, an approach that has now been endorsed by the 6th Circuit decision. "That theory is absolutely solid," said Mr. Canoni. "I think transsexuals finally have redress."

Mr. McDonald said some circuits, such as the 9th U.S. Circuit Court of Appeals in San Francisco, "may view this as something that's covered by Title VII. Other courts, I think, will take the position that Title VII doesn't go that broadly, and maybe someday the Supreme Court is going to have to resolve it."

Decisions such as the 6th Circuit's will have an impact on the workplace, though, said Paul Mollica, a plaintiffs attorney with Meites, Mulder, Burger & Mollica in Chicago. "My feeling is, with these kinds of cases out there, wise human resources professionals are going to include language in their training that people deserve to be treated with respect regardless of gender."

The trend toward greater protection of transsexuals will continue, say observers. The 6th Circuit decision "reflects a growing trend in the country toward both interpreting existing law as well as making explicit law to protect transgendered people from discrimination," said the HRC's Ms. Seaton.

"I think we're seeing an increasing amount of protection, both in case law and in local and state ordinances, so I think the overall picture is pretty encouraging," said Janis Walworth, director of the Bellingham, Wash.-based Center for Gender Sanity, which assists with transgender issues in the workplace.

NCQA: Study finds health care improvements

Continued from page 3

which provide care to the majority of Americans today.

"We are the first national company to make such a commitment …to achieve the same advances in quality for PPO members as for our HMO members," Dr. Shaffer said.

The performance improvements recorded last year by the 563 health plans that reported results were among the biggest since the organization began measuring health care quality, according to NCQA. The reporting plans cover a total of 69 million people.

For example, in the effectiveness of care measures for controlling high blood pressure, plans improved to 62.2% in 2003 from 58.4% in 2002, 55.4% in 2001 and 51.5% in 2000, the first year that NCQA began taking measures.

Health plans are also doing a better job of prescribing beta blockers after heart attacks, with 94.3% of reporting plans doing so in 2003, compared with 93.5% in 2002, 92.5% in 2001 and just 89.4% in 2000.

Leading the pack of top-performing health plans was Wellesley, Mass.-based Harvard Pilgrim Health Care Inc., which scored the highest in both quality and patient satisfaction (see chart).

But while the plans reporting their results to NCQA have showed steady improvement, the quality gap between those plans and the rest of the nation's health plans is significant, Ms. O'Kane said.

For example, the baseline for beta blocker treatment after heart attacks is still just 86%, and just 48.6% of the rest of health plans nationally are doing an adequate job of controlling patients' blood pressure, she said.

Ms. O'Kane also noted that the appropriate treatment of behavioral health conditions leaves much to be desired at all health plans nationally.

The report states that performance scores for antidepressant medication management showed no significant change in 2003 from the previous year. In addition, the percentage of members who received at least three follow-up office visits in the 12-week acute treatment phase after a new diagnosis of depression continues to have the lowest rate of all measures, at 20.3%.

Part of the health care system's failure to follow best practices can be blamed on the current payment system, which compensates physicians and hospitals based on the amount of care they provide and discourages the use of new treatments and therapies that may make patients well sooner, the NCQA report suggested.

"We need to reform the payment system. We need to stop punishing quality," Ms. O'Kane said.

To encourage payment reform, this year's NCQA report identified several pay-for-performance programs being piloted around the country.

"It would never be acceptable to say, 'I'm sorry we didn't save your loved one. We knew how, we just didn't do it,'" said Ellen Stovall, president and chief executive officer of the Silver Spring, Md.-based National Coalition for Cancer Survivorship, who attended the NCQA conference to point out shortcomings in cancer treatment.

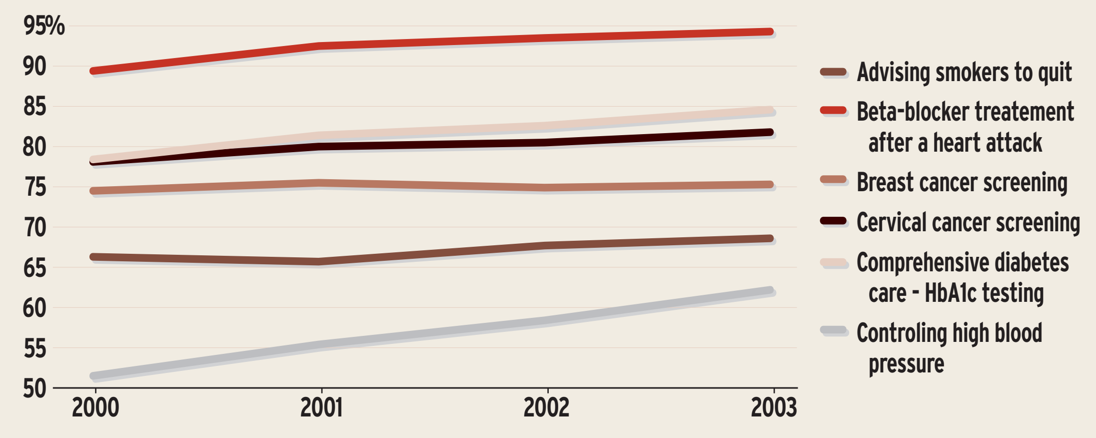
"But these quality gaps show us that that actually happens thousands of times every year," Ms. Stovall said, adding that as many as half of all patients treated for cancer die within five years because of the lack of appropriate follow-up care.

"Every time it happens, it represents a failure to put health care knowledge into practice," she said. "Surely we can do better."

The complete "State of Health Care Quality 2004" report is available at no charge on the Web site of the National Committee on Quality Assurance, www.ncqa.org.

QUALITY OF CARE ON THE RISE

Six key measures of health care performance have show improvement since 2000



Source: NCQA

Whirlpool: No fast-track OK of benefits funding plan

Continued from page 1

insurance policy.

Under the proposal, Whirlpool would contribute at least $100 million to a VEBA to fund part of the health care obligations of retired union employees. Whirlpool estimates the unfunded accumulated benefit obligation of this group at $164 million.

The VEBA would then purchase a group universal life policy from Newark, N.J.-based Prudential Life Insurance Co. of America to insure retiree health care plan participants. The group life policy would be 100% reinsured by the Vermont branch of Bermuda-domiciled Whirlpool Insurance Co. Ltd., which Whirlpool established in 2002 and currently uses for workers compensation and property risks.

If a retiree health care participant were to die, the life insurance proceeds from the Prudential-written policy would go to the VEBA. Whirlpool would pay its retirees' medical claims and then seek reimbursement from the VEBA.

The arrangement offers several tax advantages, including the tax deduction that Whirlpool could take for its VEBA contribution and the tax break the VEBA would get on death benefit proceeds generated from the life insurance policies it holds.

In addition, the arrangement could increase the likelihood that Whirlpool could take a tax deduction for property/casualty insurance premiums paid to its captive, outside experts have speculated (*BI*, Aug. 16).

Earlier, Whirlpool said the structure "would provide a cost-effective way for us to fund retiree health care liabilities while providing significant benefit enhancements and security to retirees."

Whirlpool had asked the Labor Department for expedited consideration of its plan under a rapid-review procedure in which the department must make its initial decision within 45 days of the receipt of an application for a so-called prohibited transaction exemption.

To qualify for rapid consideration, an applicant has to cite two substantially similar exemptions the department has approved in the last five years. Whirlpool cited three exemptions involving captive benefits funding proposals—those by Herndon, Va.-based Columbia Energy Group; Decatur, Ill.-based Archer Daniels Midland Co.; and Stamford, Conn.-based International Paper Co.—it said were similar to its own.

But the department disagreed, saying that Whirlpool did not demonstrate that its arrangement is substantially similar to those transactions the government had earlier approved.

In the other transactions, the employers proposed using their captives to reinsure benefit policies written by commercial insurers. In contrast, in the Whirlpool proposal, the captive and the fronting life insurer would play a role in the generation of revenue that ultimately would fund retiree health care liabilities.

Outside observers say they weren't surprised by the Labor Department decision that the plan does not qualify for expedited approval, given the ways in which Whirlpool's proposal differed from previously approved plans.

"The Department notes that, among other things, the transaction involves the reinsurance of life insurance contracts which fund the plans rather than the reinsurance of post-retirement medical benefits provided by the plans," the Labor Department said in its rejection letter.

Additionally, the department said Whirlpool did not demonstrate that it satisfied another condition required to obtain fast-track approval of a prohibited transaction exemption: that the transaction pose little, if any, risk to plan participants.

The department noted that if retirees' medical claims were to exceed the VEBA's working capital, the VEBA might have to obtain policy loans on the life insurance contracts or "partially surrender the life insurance policies to meet its cash flow needs."

As a result, the department said, "the structure and terms of the subject transaction raises issues that would be more appropriately handled" outside the expedited consideration program.

A Whirlpool spokesman said the company will seek a standard review of its application. That process can take anywhere from several months to a year.

Outside observers say they weren't surprised by the Labor Department's decision, given the ways in which Whirlpool's proposal differed from previously approved plans.

"There are factual differences between this one and the exemptions Whirlpool cited," said Henry Saveth, an attorney with Mercer Human Resource Consulting in New York.

Others say the Labor Department's rejection of Whirlpool's request for fast-track approval will have little bearing on how the department ultimately rules on the application.

"This is more of a procedural issue than one of substance," said Nancy Gerrie, a partner with the law firm of McDermott, Will & Emery in Chicago.

If approved, Whirlpool would become the sixth employer to have received regulatory clearance for a captive benefits funding-related arrangement since the Labor Department in 1999 became more flexible in its consideration of such transactions.

Aside from the approvals of Columbia Energy, ADM and International Paper, the department earlier this year approved the application of Swedish paper, packaging and consumer products producer Svenska Cellulosa Aktiebolaget to use a U.S. Virgin Islands branch of its Ireland-based captive to reinsure long-term disability, life insurance and accidental death/dismemberment coverage for SCA's U.S. employees.

And last month, the department approved a proposal by Fort Worth, Texas-based Alcon Laboratories Inc., a subsidiary of Swiss pharmaceutical eye care company Alcon Inc., to use an Alcon Laboratories Vermont-domiciled captive to reinsure LTD and life insurance coverage for Alcon's U.S. employees.

TRIA: Louder Senate calls for extension

Continued from page 1

Elizabeth Dole, R-N.C.—said that she has heard from numerous North Carolinians who "are very concerned" what might happen to the economy absent TRIA reauthorization.

"There's a sense on the part of some that we have time on this issue," said Sen. Christopher Dodd, D-Conn., who is the bill's original sponsor. But, in reality, with insurance contracts affected by TRIA being discussed even now, Congress really only has about 12 weeks in which to act without having a negative impact on the economy, he said.

'The need for federal action in the area of terrorism coverage is a clear example of the limits of state regulation.'

Albert R. Counselman
Riggs, Counselman, Michaels & Downes Inc.

"We continue to urge sooner rather than later," Sen. Dodd said.

Most of the panel appearing before the committee agreed. New York Insurance Superintendent Gregory Serio, testifying on behalf of the National Assn. of Insurance Commissioners, said that "nothing more important could be done to stabilize the economy" than reauthorizing TRIA. "Time is of the essence," Mr. Serio said.

"This is not a next-year issue; it's a this-year issue," said Albert R. Counselman, president and chairman of Baltimore-based brokerage Riggs, Counselman, Michaels & Downes Inc. and a past chairman of the Council of Insurance Agents & Brokers.

Mr. Counselman said that the existence of TRIA demonstrates that federal action is sometimes necessary to overcome the shortfalls of state insurance regulation. "The need for federal action in the area of terrorism coverage is a clear example of the limits of state regulation," he said. Although state regulators worked hard in the period following the terrorist attacks of Sept. 11, 2001, to bring stability to the insurance marketplace, the states alone did not have the ability to move quickly to create a uniform approach to address the terrorism insurance question, he said.

William McCartney, senior vp-government and industry relations for San Antonio-based United Services Automobile Assn., made much the same point as he appeared before the committee on behalf of the American Insurance Assn. Calling for the creation of a system of optional federal chartering for insurers, Mr. McCartney—himself Nebraska's former insurance director—cited TRIA as an example of successful federal involvement in property/casualty insurance and called for an extension of the program.

While most members of the committee expressed support for a swift extension of TRIA, one critical member did not mention the issue at all. Instead, the committee's chairman—Sen. Richard Shelby, R-Ala.—focused much of his attention on alleged abuses connected with the sale of life insurance products to military personnel.

'I think it's important that virtually every member of the committee participating stressed the importance of the extension of TRIA.'

Julie Gackenbach
Property Casualty Insurers Assn. of America

Nevertheless, supporters of TRIA extension this year took heart from what they heard during the hearing.

"I think it's important that virtually every member of the committee participating stressed the importance of the extension of TRIA," said Julie Gackenbach, assistant vp-federal affairs in the Washington office of the Property Casualty Insurers Assn. of America. She noted that extension enjoys bipartisan support and that a majority of the members support extension this year.

"They're taking the opportunity to stress how limited the time is and how important it is" to pass an extension during that limited period, she said.

"I thought it was very impressive that senators on both sides of the aisle took the opportunity to call for extension of TRIA this year," said Julie Rochman, a senior vp at the AIA. "We know the House is going to go first. Time is short, and the more members who are actively looking for ways to get TRIA done, the better chance we have of success," she said.

"Obviously, Sen. Shelby is very important; we know that there are a lot of Alabama businesses and policyholders who are communicating about their desire to see TRIA extended as soon as possible and we hope the chairman will listen to them," Ms. Rochman said.

Joel Wood, senior vp-government affairs for the CIAB, said that the "chances are quite good" that the House will approve a TRIA extension before adjournment.

He noted that 10 senators—five from each party—spoke in favor of TRIA extension at the banking committee hearing, as did seven of the eight witnesses.

"Ultimately, the decision will come to Chairman Shelby, and we're hopeful he can see his way clear with a simple extension while his committee considers longer-term solutions when Congress reconvenes. So on the TRIA front, the hearing was probably as good as it could be," said Mr. Wood.

Storms: Claims pile up from hurricanes

Continued from page 1

each individual loss. That analysis is important for insurers, so they can apply the appropriate deductibles to each loss.

After rampaging through the Caribbean, the deadly Category 3 Ivan made landfall in the United States on Sept. 16 in Gulf Shores, Ala. It then spun north and east, pummeling the Southeast with high winds and drenching rains.

The storm was blamed for at least 60 deaths in the United States after killing 70 in the Caribbean.

Ivan could have been even deadlier and more destructive if it had not weakened slightly before making landfall and if it had struck Mobile, Ala., head on, noted Hemant Shah, chief executive officer of catastrophe modeling company Risk Management Solutions Inc. of Newark, Calif.

But the storm refused to die last week. A remnant spun off and reformed as a tropical storm in the Gulf of Mexico and dumped rain on the Louisiana and Texas coast.

Loss estimates

Last week, Oakland, Calif.-based modeling company EQECAT, a subsidiary of risk management consultant ABS Group Inc. of Houston, estimated U.S. losses from Ivan would be $4 billion to $10 billion.

Property catastrophe modelers RMS and AIR Worldwide Corp. of Boston estimated insured U.S. damages from the storm at between $3 billion and $6 billion. The loss estimates include contents and business interruption losses.

EQECAT estimated that Caribbean islands, primarily the Caymans, sustained $2 billion to $4 billion in insured damage. AIR and RMS estimate the storm caused between $1 billion and $2.5 billion in insured damage in the area.

The range of estimated insured damage reflects some uncertainty by modelers about Ivan’s exact size and path and how insurers will handle deductibles and sort out uninsured from insured losses. Also unclear at this point is how much flood damage will be covered by commercial insurance policies.

The estimates do not include losses that would be covered by captives or other alternative risk financing facilities, such as oil industry mutual Oil Insurance Ltd. of Bermuda.

Additional business interruption claims are expected from businesses in New Orleans, which Ivan spared. But the low-lying city was evacuated when meteorologists warned that the hurricane threatened it. (*BI*, Sept. 20).

Few insurers last week had tallied their individual Ivan-related losses. But Swiss Reinsurance Co. of Zurich, Switzerland, the world’s second-largest reinsurer, reported it sustained $110 million of losses in the United States and $80 million of losses in the Caribbean.

Altogether, Ivan and hurricanes Charley and Frances socked the Southeast, Gulf Coast states and the Caribbean with between $14 billion and $26 billion of damages, catastrophe modelers estimate.

This week, the Insurance Services Office Inc.’s Property Claim Services unit expects to release its estimate of the insured damage that Ivan caused. PCS estimates that Charley and Frances caused $11.2 billion of insured damage.

While some energy companies and hotel chains sustained heavy damage during the hurricanes, “relatively few major companies were affected” by the storms, and much of those losses fell within deductibles, noted Kenneth J. LeStrange, chief executive officer of Endurance Specialty Holdings Ltd. of Hamilton, Bermuda. Endurance writes property per risk treaty reinsurance, property catastrophe reinsurance and primary property coverage.

Among most major commercial clients of New York-based Marsh Inc., for example, manuscript property policies provided windstorm and flood coverage that are subject to a deductible equal to a percentage of the total insured value or replacement value of the damaged property, said Paul McVey, managing director and national property claims practice leader. As a result, some of the deductible attachment points are so large that they may not pierce the insurance coverage, he said.

As of last Friday, Aon Corp. had received 200 reports of wind and flood damages from clients from the three storms, according to Gary Marchitello, managing director-national property syndication for Aon Risk Services Cos. Inc. in New York. “Of that 200, our estimate is that 20% of those incidents will result in insured claims exceeding the deductible,” he said.

Still, Ivan took a toll on commercial risks—destroying or damaging numerous hotels, restaurants, public entity properties and other businesses in seaside communities—as well as private property.

Offshore damages

Before hitting the Gulf Coast, Ivan blew through the outer continental shelf, where energy companies employ between 25,000 and 30,000 workers to operate 4,000 platforms and 33,000 miles of pipeline, according to figures from the U.S. Interior Department’s Minerals Management Service.

The energy companies evacuated personnel from their offshore operations ahead of the storm. According to the latest MMS figures, Ivan set adrift five mobile offshore drilling units, all of which have been found; extensively damaged one mobile unit; destroyed seven fixed platforms and extensively damaged four others; apparently sunk one rig derrick and caused another to lean over the edge of the structure on which it was installed; extensively damaged two rig derrick structures; and caused 13 pipeline leaks, one of which resulted in a fire that has since burned out.

There have been no reports of any injuries, fatalities or significant pollution, according to the MMS.

Houston-based Diamond Offshore Drilling Inc. said that it had five gas and oil drilling rigs operating in the path of Hurricane Ivan, four of which sustained some damage.

A spokesman said Offshore Drilling was still preparing its damage estimate.

The company is insured for losses sustained above a $650 million deductible, he said. “We don’t have any insurance against loss of day rate that we would earn while (the rigs are) down, but the equipment is all insured” through Lloyd’s of London, the spokesman said. “It looks like our maximum exposure would be about $650 million worth of a deductible. It may not get to that; we just don’t know.”

ChevronTexaco Corp. also discovered structural damage at many of its oil and gas production platforms in the Gulf, a spokesman said.

Damage “ranges from communications towers to some of the support beams for the platforms to general structural damage on crew quarters and things along those lines,” he said. “We have so many platforms in the Gulf of Mexico, we’re still in the assessment phase.”

The spokesman said that the San Ramon, Calif.-based energy giant has excess coverage above a $100 million retention for offshore damages and a $100 million retention for any onshore damages.

Upon making landfall, Ivan battered beachfront structures, including hotels, restaurants and condominiums.

Two hotels owned by Starwood Hotel & Resorts Worldwide Inc. sustained “some damage” from Ivan and remain closed, a spokesman for the White Plains, N.Y.-hotel chain said. The Westin Casuarina Resort & Spa in Grand Cayman, B.W.I., is expected to remain closed until Oct. 11 and the Four Points by Sheraton Fort Walton Beach hotel in Fort Walton Beach, Fla., is expected to remain closed until Oct. 4, he said. He had no further information on the extent of damages.

In Florida, winds from Ivan exceeding 100 mph hit approximately 225,000 homes, according to Thomas Larsen, a senior vp with EQECAT. Altogether, winds exceeding 100 mph from Ivan, Charley and Frances hit approximately 750,000 homes—or 10% of all homes—in Florida, Mr. Larsen said.

Building quality

A lot of the damage from Ivan can be attributed to less stringent building codes along the Gulf Coast compared to the building codes in Florida, observers say.

“The building quality comes down in those areas,” said Atul Khanduri, manager of wind risk modeling for AIR.

For example, builders along the Gulf Coast have incorporated a plasterboard-like facade into their designs because the material provides good insulation and can be formed easily, Mr. Khanduri noted. But the material does not hold up well in windstorms, he said.

In northern Florida, wood frame structures are far more prevalent than in the southeastern part of the state, where building codes were more stringent for several years and there has been much more masonry construction, Mr. Khanduri said.

The lack of stringent building codes is “a problem for everybody in hurricane-exposed states,” said Colin Mayo, an Atlanta-based vp and property catastrophe business leader at First Specialty Insurance Corp., a nonadmitted unit of GE Insurance Solutions.

Alexandra Glickman, area vice chairman and managing director of Arthur J. Gallagher & Co.’s real estate and hospitality services group in Glendale, Calif., predicts that “there’s going to be a much more rigorous approach to underwriting the catastrophe prone areas.”

For example, “I’ve been told by underwriters that there’s going to be a lot more attention given to the year built and engineering status of assets, because those that clearly are newer are coming through these storms with a better position because of the (building) code upgrades,” she said.

Improved building codes, however, would not have prevented many large losses caused by the 16 to 40 storm surges that Ivan pushed ashore in some areas, said Clay Humphries, a Nashville, Tenn.-based assistant vp and general manager at claims adjusting company GAB Robins North America Inc.

In the Caribbean, Grand Cayman suffered heavy damage with many older structures being flattened.

Other problems

Adjusters last week were dealing with several problems caused by the quick succession of storms.

Before adjusters were able to investigate some losses caused by Charley, Frances hit and traced or crossed part of Charley’s wake. As a result, some risks were damaged by both storms, which means insurers will be applying one deductible for the damage Charley caused and another deductible for the loss Frances caused. That damage assessment will not be easy for adjusters to make if they had not visited the site between the time the two hurricanes stuck, adjusting representatives and insurer executives said.

Meanwhile, insurers and ultimately their policyholders likely face additional costs from the storms, observers said.

EQECAT’s Mr. Larsen estimated the loss adjusting expenses would total between 3% and 7% of the total insured damage from the three hurricanes. That would add between $450 million and $1.2 billion of adjusting costs to insurers’ losses.

And, with several weeks left in this year’s active hurricane season, just one more storm making landfall could mean insurers would face a severe shortage of adjusters, according to adjusting firms.

“The industry is at a stress point,” said Mr. Humphries of GAB Robins.

“We advised clients before Ivan hit that our guys were really stretched thin around the country and that it was taking a toll on us personally,” said Steve Boyer, vp-property at Gallagher Bassett Services Inc. in St Louis.

Losses from Ivan, Charley and Frances will, at minimum, stabilize the reinsurance and insurance market, according to market executives.

At the annual Rendez-Vous de Septembre in Monte Carlo, where reinsurance executives had gathered the week Ivan struck, discussions indicated that the damage caused by Ivan, Charley and Frances would at least stabilize what had been a softening reinsurance, property catastrophe and primary property insurance markets.

“People are expecting more price stability in all three segments,” said Endurance Specialty’s Mr. LeStrange.

Nick Dunlop, director of global markets for North America Operations at Willis Group Holdings Ltd. in London, said the three hurricanes will not likely turn the property market. Instead, “there will be a focus on stopping rates from falling in catastrophe areas,” he said.

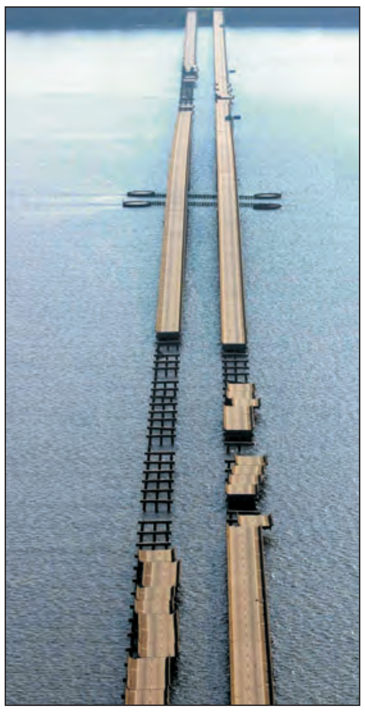


PHOTO: SIPA

Part of the Interstate 10 bridge over Escambia Bay in the Florida Panhandle was severely damaged by Hurricane Ivan.

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Late News

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and AIG Financial Products, according to New York-based AIG. The PNC investigation involved the company's transfer of $762 million of volatile, troubled or underperforming loans and venture capital assets to three special-purpose entities in 2001, which resulted in a "material overstatement of earnings," according to the SEC. PNC reached an agreement with the SEC last year over the issue that included the establishment of a $90 million restitution fund and a $25 million penalty. AIG said in a statement that it "believes that the proposed action would be unwarranted."

Congress OKs extension of mental health parity

Legislation that would extend by one year a soon-to-expire federal law requiring employers to offer limited parity for mental health care expenses in their health care plans is on its way to President Bush for his signature. Tucked into the broad tax cut bill H.R. 1308 that Congress gave final approval last week is a provision that extends to Dec. 31, 2005, a 1996 federal law that bans health care plans from offering lower annual and lifetime dollar limits on coverage for mental health conditions than for other medical conditions. The 1996 law, which Congress has renewed several times previously, currently is set to expire on Dec. 31, 2004.

PHOTO: KYODO NEWS

Typhoon Chaba hit Japan in August.

Typhoon claims to hit $720 million in Japan

A deadly typhoon that raked parts of Japan in late August will cost insurers at least $720 million. The General Insurance Assn. of Japan said 22 of its member companies have reported losses from Typhoon Chaba, which tore through the country Aug. 30-31. The storm, which was responsible for at least 13 deaths, had winds of around 98 mph when it reached Kyushu, the southernmost island of Japan. It caused widespread flooding and extensive property damage.

Rate of workplace deaths stable, BLS reports

The rate of workplace fatalities remained steady at 4 deaths per 100,000 workers between 2002 and 2003, according to a report released by the Bureau of Labor Statistics. The BLS said that 5,559 workplace deaths were reported in 2003, up slightly from the 5,534 in 2002. Although fatal highway incidents fell to 1,350 in 2003, they still accounted for the highest number of fatal work injuries, according to the BLS.

Punitives in tobacco suit cut to $50 million

Philip Morris USA Inc. will get a new punitive damages trial if a cancer victim's survivors do not agree to take half of the $100 million earlier awarded, an appeals court ruled. The 2nd District Court of Appeal in Los Angeles ruled that it was reducing the award to $50 million, approximately nine times the $5.5 million in compensatory damages awarded to Richard Boeken, who died of cancer after his suit was filed against the tobacco company.

Maryland county urges Canadian drug purchases

The council of Montgomery County, Md., has adopted a resolution urging county agencies to implement a health benefits program for employees and retirees that includes the option of purchasing prescription drugs from Canada. The program, which would be limited to 90-day supplies of certain maintenance drugs approved by the Food and Drug Administration, could save $15 million to $20 million annually, according to council estimates. The county spends an estimated $70 million annually on prescription drugs for employees, retirees and their families.

Court affirms ruling on asbestos arbitration

A Philadelphia federal court has affirmed a 2003 arbitration ruling in favor of The St. Paul Travelers Cos. Inc. on policies covering the asbestos bodily injury claims of ACandS Inc. ACandS sued last year to vacate the arbitration decision, which found that the asbestos claims were subject to aggregate limits in the policies, which had been exhausted. The U.S. District Court for the Eastern District of Pennsylvania threw out ACandS's suit, though, finding that the arbitration panel did not exceed its authority, as ACandS had argued.

Briefly noted

The Treasury Department has begun mailing a second round of questionnaires to risk managers and underwriters, seeking their input on the **state of the terrorism insurance market** and the effectiveness of the Terrorism Risk Insurance Act. Treasury has already conducted one such survey and plans to conduct another early next year before it issues its mandated report on TRIA to Congress by June 30, 2005....The **International Foundation of Employee Benefit Plans**, after canceling its 50th Annual Employee Benefits Conference due to the threat of Hurricane Ivan, has rescheduled the conference for Nov. 30-Dec. 4 in New Orleans. For details, visit *www.ifebp.org*.... In a letter sent Friday to United Airlines Chairman Glenn Tilton, 140 members of Congress, mostly Democrats, said they are dismayed at United's threat to terminate its **massively underfunded pension plans**. The lawmakers urged United to retain the plans and to fund them at adequate levels as soon as possible.

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Online Poll

[9/20 - 9/24]

Do you think Congress will extend the Terrorism Risk Insurance Act before it adjourns in October?

Yes	47.8%
No	16.2%
Do not know/ Do not care	36%

BI Stock Index

[9/20 - 9/24]

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

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

BI Stock Index	2217.59	-2.27
Dow Jones	10047.20	-2.31
S&P 500	1110.11	-1.63

Largest gains

Gainsco Inc.	26.92%
American Safety Insurance	8.33%
ACE Ltd.	5.13%
SCOR	4.83%
Vesta Insurance Co.	4.26%

Largest losses

Clark Inc.	-17.10%
Citigroup	-5.96%
SAFECO Corp.	-5.68%
UNUM Corp.	-4.93%
AEGON N.V.	-4.35%

Weekly change by market segment

Brokers	-2.00%
Insurers/Reinsurers	-1.20%
Managed Care Organizations	-0.65%

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

Lucent makes more retiree benefit cuts

By RUPAL PAREKH

MURRAY HILL, N.J.—Lucent Technologies Inc. is making, for the second time in a year, cuts to its management retiree health care benefits, eliminating coverage for thousands of retirees' dependents.

Retirees were informed of the changes in a letter stating that effective Jan. 1, 2005, Lucent will no longer subsidize the cost of medical coverage for the dependents of former managers who retired on or after March 1, 1990, and whose annual base salary at retirement was $65,000 or more. The retirees themselves, though, will retain their medical coverage.

A spokesperson for the Murray Hill, N.J.-based telecommunications company said the action will affect approximately 7,400 dependents of 5,400 retirees.

"This was not a decision we made lightly. Given the impact of health care costs on our business, we have no choice but to take this step," Lucent's letter states.

In January, the company eliminated medical subsidies for dependents of retirees whose salary at retirement was $87,000 or more. Those cuts affected 9,000 dependents of 7,300 retirees, a company spokesman said.

Last year's employee benefit changes, according to the company, saved Lucent about $75 million a year, reducing retiree health care costs to about $800 million annually.

Corporate asset governance rules permit the company to eliminate coverage for 10% of covered plan participants in a given year, an action that can be taken only twice in a five-year period.