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European flood risks gaining new emphasis

By SARAH VEYSEY

Although Europe suffered record heat and drought conditions this summer, risk managers remain attuned to the risk of flooding, which in recent years has produced billions of dollars in devastating losses in the autumn months.

Widespread flooding in Europe in 2002, 2000 and 1999 has spurred growing interest in flood risk management. While insurance remains generally available for flood losses in Europe, adequate coverage can be diffi-



PHOTO: AFP

The streets of Melk, Austria, in August 2002, after the nearby Danube River overflowed its banks.

cult to obtain in some flood-prone areas.

Most recently, in August 2002 a series of heavy rain-

falls led to significant flooding in many parts of Europe including Austria, the Czech Republic and Poland. See **FLOODS/page 6**

Global companies limiting property insurance options

European multinationals too focused on domestic markets: Aon

By NEIL HODGE

Many European multinationals are too reliant on domestic markets for property insurance capacity and may be missing out on more favorable terms and conditions being enjoyed by U.S. companies, a report concludes.

The report, published by Aon Ltd., contends that European buyers may be suffering higher prices and more restrictive terms because of their preference for domestic markets.

"Until recently, most European buyers could access sufficient capacity locally," said

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RIISING COST OF D&O INSURANCE DRAWS U.K. SCRUTINY

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LATE NEWS

U.K. indicts rail operator in Paddington crash

A U.K. court issued a summons last week to Thames Trains Ltd. to answer charges that the railway operator breached safety legislation in the 1999 Paddington rail crash, in which 31 people died and 259 were injured. A hearing at the City of London



PHOTO: AFP

Magistrates' Court is set for Nov. 12. The Health and Safety Executive, the U.K. safety watchdog, first announced in March 2002 that it intended to prosecute both Thames Trains and Railtrack P.L.C., now known as Network Rail Ltd., for their roles in the crash. But it was not until August that the Crown Prosecution Service indicated it would not bring corporate manslaughter charges against Thames Trains. In the 1999 accident, a westbound Thames Train went through a red signal at Ladbroke Grove in west London, colliding with an eastbound First Great Western train.

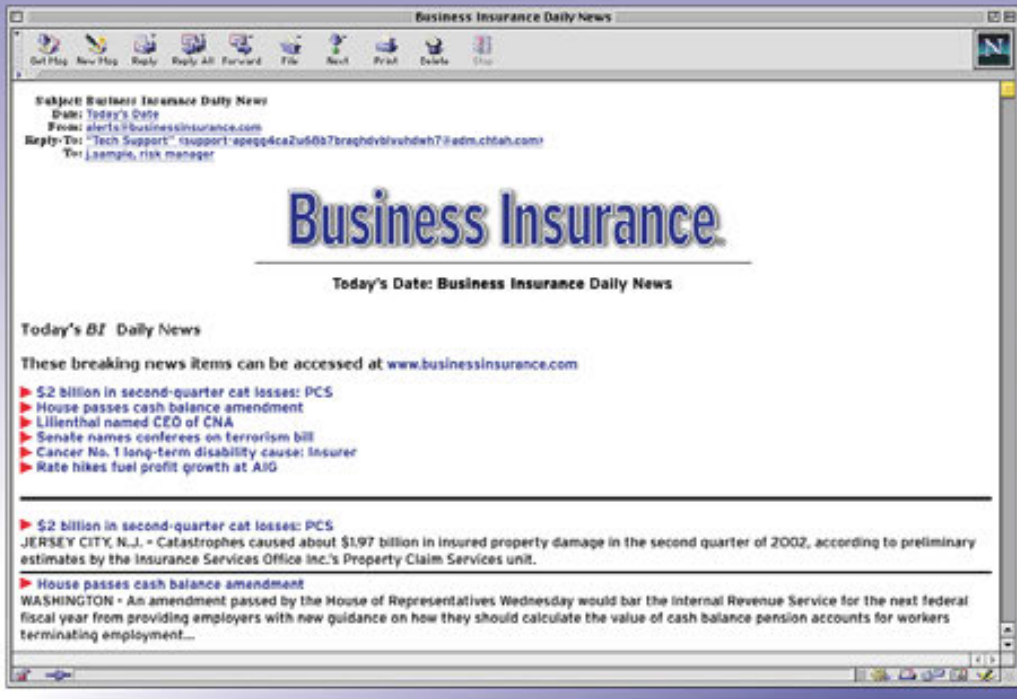
Singapore to lower capital requirements

Singapore plans to lower its minimum paid-up capital requirement for insurers in a bid to attract more specialty insurers. Singapore's Deputy Prime Minister Lee Hsien Loong said that the government would lower the minimum paid-up capital requirement to \$10 million Singapore (\$5.8 million) from \$25 million (\$14.4 million) Singapore for multiline insurers and cut the capital requirement to \$5 million Singapore (\$2.9 million) for monoline insurers, according to a transcript of a speech made last week.

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Survey: Multinationals limiting options

Continued from page 1

Oliver Schofield, director of the property global practice group at Aon Ltd. in London and one of the report's authors. "Now, though, rate increases and declining domestic capacity determine that if buyers are not prepared to look beyond their borders, they will be missing out."

Aon's report is based on the responses of a total of 50 clients and underwriters based in 11 European countries.

Mr. Schofield added that there have traditionally been strong ties between European-headquartered multinational companies and the large domestic insurers based in their home countries, which has meant that most buyers have tended to renew their business with their existing insurer.

"Many multinationals in Europe seem to rely on the hope that premium rates will remain affordable because they have had a long-term relationship with their insurers, but the market no longer works like that," said Mr. Schofield.

He added that large companies could be paying far higher premiums and receiving less coverage because of their reluctance to consider insurers elsewhere in Europe, the United States or Bermuda.

"Similarly, there has been little encouragement to consider alternative, less conservative program structures that may involve higher levels of self-insurance, for example,"

Mr. Schofield said.

The report notes that London is still widely perceived by European multinationals as the most important and influential center for European property business, followed closely by Paris; Munich, Germany; and Zurich, Switzerland.

Respondents also believe that these cities represent the biggest targets for potential ter-

'Many multinationals in Europe seem to rely on the hope that premium rates will remain affordable because they have had a long-term relationship with their insurers, but the market no longer works like that.'

*Oliver Schofield
Aon Ltd.*

rorist threats in Europe. According to the report, buyers believe that if their businesses are not mainly based in these cities, then their "operations are unlikely to become targets and that terrorism cover is an irrelevance," a view that Mr. Schofield calls "gravely misjudged."

Among the report's other findings, it says that property rates have flattened out, with

some signs of a downward movement, while capacity is still adequate, though less plentiful.

But the report also finds that underwriters are insisting on obtaining more detailed risk information before they provide coverage. In addition, insurers are requiring more risk retention by buyers and are reducing the coverage they are willing to write. The report adds that buyers believe that underwriters' information requirements are "excessive."

U.S.-based multinationals, said Mr. Schofield, have "a longer tradition of satisfying the risk management and information requirements that underwriters impose before offering cover."

In addition, U.S. companies are "much more likely to look to the international market for insurance needs than focusing mainly on domestic players," he said.

Aon also does not believe that either the United States or Bermuda will gain a significant foothold in the European property insurance market for the next few years at least. "Generally speaking, the new Bermuda capacity has been a slow entrant into the European property market, primarily due to Bermuda's low initial staffing levels and its focus on U.S. business," says the report.

The report, "On The Edge: European Property Report 2003," is available at www.aon.com.

D&O cost draws risk manager scrutiny

By NEIL HODGE

LONDON—The United Kingdom's Assn. of Insurance & Risk Managers has established a task force in response to the soaring price of directors and officers liability insurance.

The group of risk managers plans to investigate ways to reduce the cost of D&O premiums and to explore alternatives to traditional insurance.

The AIRMIC task force is chaired by Paul Hopkin, director of risk management at London-based leisure and entertainment company the Rank Group P.L.C.

"We want to talk to insurers and brokers about a best-practice guide so that underwriters can differentiate between firms that manage their D&O risk effectively and those that do not," Mr. Hopkin said in a statement. "However, we do not rule out the possibility of looking outside the conventional insurance market for at least some of our cover."

"Although the main interest comes from

firms with exposures in North America, everyone has experienced an increase in D&O premiums, often combined with much stricter coverage wordings," said Mr. Hopkin.

"The task force has been inundated with volunteers who feel that the price of D&O cover has become impossible to justify," said AIRMIC Executive Director David Gamble in a statement.

Meanwhile, in another D&O development last week, four U.K. organizations jointly released guidance for D&O insurance buyers.

The Institute of Chartered Secretaries & Administrators, the City of London Law Society, the Assn. of British Insurers and the British Insurance Brokers Assn. have been working on the guidance since January, following the publication of the Higgs Report on corporate governance.

Recommendations of the Higgs Report, including that companies have D&O coverage, will be included in the latest version of the U.K. Combined Code of Corporate Govern-

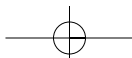
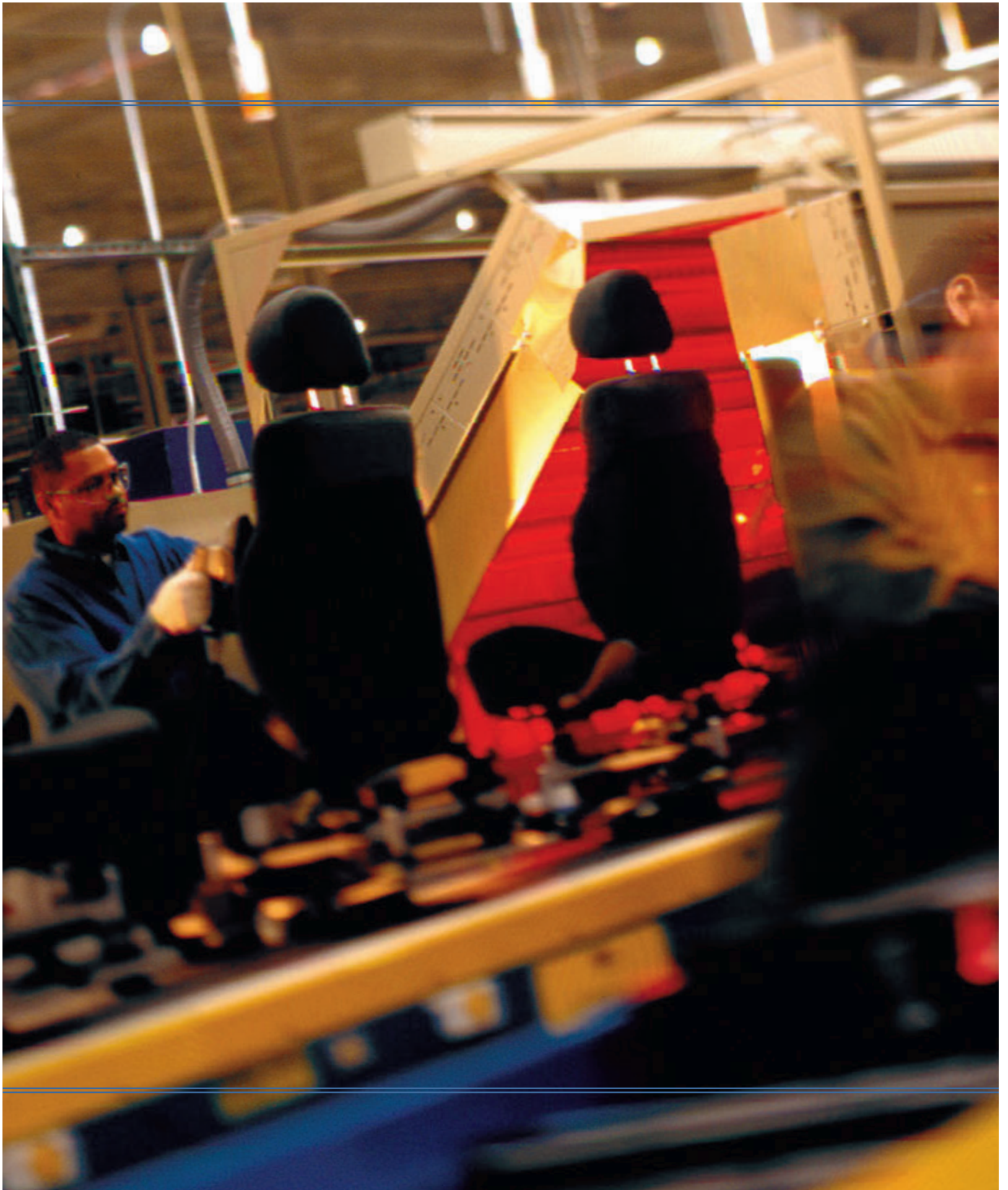
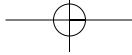
nance, which takes effect Nov. 1.

Paul Fegan, head of liability insurance at the ABI, said in a statement: "This new guidance will provide useful assistance for the liability market and companies seeking D&O insurance."

Among other advice, the guidance urges directors to examine policies and to understand how the coverage will apply to them.

The D&O guidance is available at www.icsa.org.uk/news/guidance.php.

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*Gary Bridgeford, Director-Corporate Risk Management
Johnson Controls, Inc.*

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Floods: Risk gains new emphasis

Continued from page 1

Republic, Germany and the United Kingdom, causing estimated insured losses of up to \$3.5 billion.

In October 2000, a series of storms in Western Europe caused an estimated \$2.8 billion in losses, including widespread flood damage in France, Italy, Switzerland and the United Kingdom.

And in 1999, heavy rainfall and windstorms in much of Western Europe caused an estimated \$5 billion in insurance losses.

While experts say it is too soon to predict a trend, climate-change projections do indicate that flooding is likely to become more frequent in Europe, said David Crichton, visiting professor at the Benfield Greig Hazard Research Centre based at University College London. "There is no room for complacency. I think we will be seeing more frequent flood events throughout Europe," he said.

In the countries hardest hit by last year's flooding, insurers and risk managers continue to examine ways to improve flood risk management to minimize their exposure.

Germany

In Germany, last year's floods caused total economic losses of about 10 billion euros (\$11.7 billion), according to Swiss Reinsurance Co. About 10% to 20% of this total was insured, according to Swiss Re.

Flood insurance is available in Germany for large conglomerates and mid-sized companies as part of property coverages, according to Johannes Fischer, risk manager for manufacturing company Scott-Zeiss Assekuranzkontor GmbH in Mainz, Germany.

But in some cases, German insurers are reluctant to provide flood coverage for businesses in high-risk areas, said Jens Mehlhorn, head of the flood group at Swiss Re in Zurich.

Following the 2002 floods, the German insurance association—Der Gesamtverband der deutschen Versicherungswirtschaft e.V.—created a zoning system for flood, backwater and heavy rainfall assessment.

"From that perspective, there may be some differences in the premium structure (for flood cover) in the future," said Mr. Fischer, who is also president of the German risk management association, the Bundesverband Firmenverbundener Versicherungsvermittler und Gesellschaften e.V. "But, for the time being, it is nevertheless possible to buy these coverages," he said.

However, he noted that some German companies' exposure to flood risks may be much larger than the limits offered by insurers. "I think there is additional capacity available from the reinsurance industry," he noted, "but that is going to cost you a lot more

money."

In the wake of the 2002 floods, discussions have been taking place between the German government and the insurance industry about making some form of flood insurance cover mandatory, said Wolfgang Kron, head of hydrological risks in the GeoRisks Department of Munich Reinsurance Co. in Munich.

One solution that has been proposed is that, starting in July 2004, every commercial or household fire insurance policy coming up for renewal would also include flood coverage. But Mr. Kron said that no agreement has been reached on this proposed approach.

Czech Republic

The Czech Republic has been hit by severe flooding twice in the last six years.

In addition to experiencing significant flood problems last summer, the country in 1997 suffered insured losses of 9.7 billion Czech koruna (\$355.7 million) from flooding, according to the country's insurer association, the Ceska Asociace Pojistoven. The 2002 floods caused insured losses of 1.1 billion euros (\$1.29 billion), CAP estimates.

There is fairly high demand for flood cover from businesses that experienced losses from one of those events, said Doug Pritchard, managing director of broker Willis Group Ltd.'s Prague office.

Commercial insurance coverage for flood risk is available in the Czech Republic but is usually subject to limits of 100 million Czech koruna (\$3.7 million), said Mr. Pritchard.

But it is possible to get higher limits or to buy additional cover, he said. A large part of the Czech economy is now foreign-owned, and many of the insurance buyers in the country are part of large multinational organizations, Mr. Pritchard explained. "If you have got an international insurance program, you can probably get the limits you want," he noted.

And while it is possible to buy additional coverage, it can be fairly expensive, he said.

But there are risk management techniques businesses can employ to reduce their risk and be viewed more favorably by potential insurers, Mr. Pritchard explained. Steps as simple as elevating equipment on racks, or placing it on a higher floor within a building can reduce potential flood losses, he noted.

Insurers also are taking steps to reduce their exposure and improve their underwriting.

Swiss Re earlier this year launched a flood risk assessment tool principally designed for use by primary insurers in the Czech Republic. The tool, which includes a flood zoning calculation based on digital terrain models, is being used by the CAP and Swiss Re cedents in the country.

In addition, London-based brokerage Benfield Group Ltd. launched a flood risk model for the Czech Republic after the 2002 inundation.

United Kingdom

In the United Kingdom, flood insurance is widely available for homeowners, though insurers tend to treat business flood insurance on a case-by-case basis, according to Mr. Crichton from University College. This has prompted many businesses to look carefully at flood risk management, he said.

In particular, over the past few years many U.K. businesses have set up their own private flood defenses, such as flood walls or temporary barriers, Mr. Crichton said.

This approach is also taking hold in the United States and could gain in popularity in continental Europe, he added.

One problem for some U.K. risk managers is the runoff water from newly built industrial or housing estates, said David Gamble, executive director of the Assn. of Insurance & Risk Managers in London.

If those developments are not built with adequate regard to flood risk, nearby businesses can face problems from water runoff, he explained.

Continental Europe

Across Europe, the level of insurance penetration for flood risk varies greatly, as do the approaches of governments and insurers to the problem, according to Mr. Crichton.

"In the Netherlands, insurance is virtually nonexistent for flood," he noted, adding that a debate is currently taking place as to whether the government should encourage insurers to offer insurance cover for flood.

In France, flood insurance is backed up by the state-funded reinsurer Caisse Centrale de Reassurance, which covers natural disasters, he noted.

And in Portugal, flood insurance and earthquake insurance are bundled together, and one cannot be bought without the other, said Mr. Crichton. Because earthquake insurance is widely bought in Portugal, there is also a high penetration of flood insurance, he said.

In much of Switzerland, Mr. Kron noted, flood insurance is sold as part of a package with fire insurance.

Paul Taylor, vp of the Federation of European Risk Management Assns., said that while FERMA is not considering any particular initiatives related to flood risk, the issue is being looked at by risk managers. One risk manager, he noted, is lobbying the European Union for funding to create a flood risk map for all of Europe.

Late News

Continued from page 1

CNA suing defectors who joined Quanta

A CNA Financial Corp. unit is suing four of its former professional liability underwriting officers, part of a group of 12 former employees who "resigned en masse" last month to join Quanta Capital Holdings Ltd., a newly formed Bermuda-based specialty insurer and reinsurer. CNA filed its complaint in U.S. District Court in Chicago only weeks after suing Thomas F. Taylor, a former top officer who left CNA in February 2001 and who recently joined Quanta as chief executive officer of its U.S. operations. That suit charged Mr. Taylor with violating a three-year noncompete agreement under which CNA was to pay him \$12 million after his departure. Mr. Taylor resigned his post at Quanta on Sept. 11 and has consented to an injunction barring him from trying to hire or form business relationships with current or former CNA employees until the three-year agreement expires Feb. 28, 2004.

Equity firm plans new Bermuda reinsurer

A new Bermuda-based reinsurer is being formed from a former multimedia company, and a well-known local insurance professional is considering heading up the new venture. River Capital Ltd., a private equity investment company on the island, is merging with Oxford Media Corp. and will transform Oxford Media into a publicly traded reinsurer, said Howard Taylor, chief executive officer of River Capital. Oxford Media had operated as a subsidiary of eSynch Corp., a multimedia company based in Irvine, Calif. Mr. Howard said talks are under way with Robin Spencer-Arscott to head the new reinsurer. Mr. Spencer-Arscott has been active in the Bermuda market for many years.

Briefly noted

Lloyd's of London managing agency **Catlin Underwriting Agencies Ltd.** is opening a trading floor for brokers in its offices in the London Underwriting Centre. Starting Oct. 1, brokers will be able to place business with Catlin's multiline syndicate 2003 either on the trading floor or at Catlin's underwriting box at Lloyd's....**U.S. property/casualty insurers** reported profits of \$14.5 billion for the first half of 2003, a 229.5% increase over the same period in 2002, according to the Insurance Services Office Inc.

FIFA issues bond for risk of World Cup cancellation

ZURICH, Switzerland—The Federation Internationale de Football Assn. has issued a \$260 million bond to cover the risk of cancellation of the 2006 World Cup tournament to be held in Germany.

Investors in the bond will bear the risk of the event being canceled for any reason, excluding certain risks, such as world war or boycott. If the tournament is canceled because of terrorism risk, the bond will pay out, a spokesman for Zurich-based FIFA said.

FIFA announced last month that it would turn to the capital markets for its cancellation risk after an evaluation of the traditional insurance market, which, it said, "no longer covers FIFA's needs as required."



In the wake of the Sept. 11, 2001, terrorist attacks in the United States, FIFA's insurers, lead by a German unit of Paris-based AXA S.A., withdrew cancellation coverage for the 2002 World Cup event.

FIFA found alternative coverage for that event but said last month that it required any future insurance arrangements to be immune from the risk of withdrawal.

A spokesman for FIFA said that it is involved in legal proceedings in a German court to contest the withdrawal of the 2002 tournament's cancellation coverage. A decision is expected by the end of the year, he said.

—Sarah Veysey

Finland's power utilities must pay for outages

By GERARD O'DWYER

HELSINKI, Finland—A new law requires Finland's power utilities and electricity grids to reimburse commercial and residential customers for lengthy power outages.

Given frequent outages in the country, including one in late September caused by windstorms, utilities are purchasing insurance policies to cover the compensation risk. At the same time, the power industry is considering forming a pool to fund the risk.

The compensation requirement is contained in the Energy Interruption Refund Act, which was first proposed in 2002 and became law on Sept. 9. The law, which invalidates "acts of god" limitations on power companies' liability for outages, requires the companies to compensate customers if outage periods and disruptions last longer than 12 hours.

Under the act, power companies are required to settle "valid claims" automatically and without customers having to apply for reimbursement. Customers suffering power loss for between 12 and 24 hours—regardless of the cause—are entitled to receive 60 euros (\$70.13) in compensation. Legislation sets a maximum ceiling of 700 euros (\$818.15) to a single customer in any single calendar year.

"The new law covers loss of power supply. It does not cover any losses companies might have from lost production and downtime due to outages," said Lauri Bjorklund, direc-

tor of the production and logistics division of KONE Oyj, an industrial engineering company based in Helsinki. Companies will continue to rely on business interruption insurance coverage for such risks, he said.

The most significant aspect of the new law is its potential for making power companies more intent on maintaining their energy networks, according to Mr. Bjorklund.

"The better reliability of supply companies enjoy, the less the risk of regular outages and loss due to disruption of production. This may prove to be the best feature of the act from the point of view of the country's business and industry," he said.

Sener, a trade group for Finnish electricity companies, says its members are exploring the creation of a group captive insurer as an alternative to insurance for funding compensation claims.

"Insurance cover can be expensive, and the formation of a common cash refund pool would be a cost-effective means of minimizing costs while managing risk," said Matti Kaisjoki, vp of utility Pohjolan Voima Oy.

Although the law has come too late for electricity users in Helsinki, who experienced a general blackout lasting between 8 and 14 hours on Aug. 22 and 23, power companies are anticipating 5,000 to 8,000 claims arising from gale-force winds that downed power lines and caused short outages in large areas of Finland on Sept. 22 and 23.

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*Source: Fortune Global 500, Xchanging Ins-sure Services, December 2002.

New Bermuda reinsurer sued over CNA defections/ 3

California reforms comp but more change sought/ 3

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\$4

Manulife, Hancock form giant

Little overlap seen in group operations

By JUDY GREENWALD

TORONTO—The proposed merger of Manulife Financial Corp. and John Hancock Financial Services Inc. will create a new life insurance powerhouse, but for employer customers it will be business as usual. Based on a combined market capitalization of \$25.6 billion, the new company would be the second-

largest life insurer in North America and the fifth-largest in the world. But despite the size of the companies involved, the deal is not expected to have a major impact on employer customers of either company, because the two insurers focus on different areas of the group market. Toronto-based Manulife is a major provider in small employer 401(k) business in the United

States, while Boston-based Hancock is a big player in group long-term care business as well as guaranteed investment contracts. "The deal is complementary," said Robert Riegel, managing director at Moody's Investors Service in New York. "There's not a lot of overlap in the business operations of Hancock and Manulife." The proposed deal is valued at

\$11 billion in Manulife stock. John Hancock common shareholders will receive 1.19 Manulife common shares for each John Hancock common share. The deal is expected to close in 2004's second quarter, subject to regulatory and shareholder approval. As of last Friday, Manulife shares were trading at \$28.78 per share and Hancock shares were trading at \$33.94. Dominic D'Alessandro, Manulife's president and chief executive officer, will retain those positions. **See MERGER/page 34**

Late News

Folksamerica buying CNA treaty business

CNA Financial Corp. is selling the renewal rights for most of its treaty reinsurance business to Folksamerica Reinsurance Co. for an undisclosed amount. At the same time, CNA will withdraw from the assumed reinsurance business and will manage the runoff of its retained liabilities, according to the company. Folksamerica is a wholly owned subsidiary of White Mountains Insurance Group Ltd.



Former Enron Corp. Chairman Kenneth Lay faces a suit from Enron 401(k) participants.

Judge allows Enron 401(k) suit to proceed

A federal court judge has cleared the way for former Enron Corp. employees to sue ex-Chairman Kenneth Lay and Northern Trust Corp., which administered the company's 401(k) plan, for allegedly failing to protect employees from the potential risk of investing too heavily in Enron stock. The decision states that Mr. Lay and Northern Trust had a responsibility to ensure that the plans' investments were prudent, and that this responsibility included decisions about how much Enron stock employees held in their retirement accounts. The company's stock price plummeted amid accounting scandals in 2001.

Employers can compel arbitration: 9th Circuit

Employers can make workers sign employment agreements that compel them to arbitrate discrimination complaints, the 9th U.S. Circuit Court of Appeals has ruled. The 8-3 decision in *Equal Employment Opportunity Commission vs. Luce, Forward, Hamilton & Scripps L.L.P.* reversed the court's position on the issue. The 9th Circuit's previous position had put it at odds with most other federal courts. **See LATE NEWS/page 35**

New Jersey polluters hope to tap old policies

By DAVE LENCKUS

As New Jersey environmental regulators push to recover vast sums of natural resource damages from alleged polluters, those targets might be able to tap insurance thought to be exhausted, policyholder attorneys say.

Several factors might allow general liability insurance policyholders to tap even policies central to so-called "global settlements" of earlier pollution liabilities, attorneys say. Under such settlements, policyholders typically agree to release insurers from all known and unknown future pollution liabilities, even if policy limits have not been exhausted.

Insurer attorneys, though, say policyholders' only hope of draining more coverage from those policies is New Jersey's anti-insurer judiciary.

See POLLUTION/page 35



The city of Melk, Austria, was among many along Europe's Danube River that suffered widespread flooding in 2002. Interest in flood risk management is growing as Europe enters a traditionally rainy season.

Europeans focusing more on loss control

Flood risk management rising

By SARAH VEYSEY

Although Europe suffered record heat and drought conditions this summer, risk managers remain attuned to the risk of flooding, which in recent years has produced billions of dollars in devastating losses in the autumn months.

Widespread flooding in Europe in 2002, 2000 and 1999 has spurred growing interest in flood risk man-

agement. While insurance remains generally available for flood losses in Europe, adequate coverage can be difficult to obtain in some flood-prone areas.

Most recently, in late summer 2002 a series of heavy rainfalls led to significant flooding in many parts of Europe, including Austria, the Czech Republic, Germany and the United Kingdom. The floods caused estimated insured losses of

up to \$3.5 billion. In October 2000, a series of storms in Western Europe caused an estimated \$2.8 billion in losses, including flood damage in France, Italy, Switzerland and the United Kingdom.

And in 1999, heavy rainfall and windstorms across Western Europe caused an estimated \$5 billion in insurance losses.

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Spotlight report

TRANSPORTATION RISKS

Begins on page 10



CNA suing former execs who went to Quanta Startup facing staff woes

By DOUGLAS McLEOD

HAMILTON, Bermuda—Quanta Capital Holding Ltd. is hitting a few bumps on the road to staffing its start-up specialty insurance and reinsurance business.

Bermuda-based Quanta, which raised \$550 million in a private equity offering last month, found itself without the services of Thomas F. Taylor, its chief executive officer for U.S. operations, who resigned after his ex-employer, CNA Financial Corp., sued him for violating severance agreement provisions.

Since then, Chicago-based CNA has sued four other former officers who it says "resigned en masse" with eight other CNA professional liability underwriting employees in early September to join Quanta.

"The en masse resignations could only have occurred as they did if orchestrated and implemented by defendants while officers of CNA," the insurer charges in its suit, filed last week in U.S. District Court in Chicago. "By implementing the raid of key employees, defendants violated fiduciary, contractual and statutory duties."

The suit names John Van Decker and John Lopes, both former senior

vps in CNA's nonmedical professional liability division; and Anthony Coddling and Cathy Cossu, vps who reported to Mr. Lopes. The eight other CNA specialty lines employees who left around the same time reported to Mr. Coddling, Ms. Cossu or Mr. Lopes, the suit says.

The complaint alleges that the four former CNA officers breached fiduciary duties and confidentiality agreements and misappropriated CNA trade secrets.

The suit seeks unspecified compensatory damages from the four employees but does not seek to bar them from working for Quanta.

John Siegal, a lawyer representing the four former CNA officials, said the suit is "without merit."

"It is our intention to fight this complaint vigorously, and we expect to prevail," said Mr. Siegal, who is a senior counsel at Proskauer Rose L.L.P. in New York.

None of the four defendants had noncompete or nonsolicitation agreements with CNA that would prevent them from working for another insurer, said a source familiar with their situation.

A spokesman for Quanta declined to comment.

Quanta was formed earlier this

year as a holding company for specialty lines insurance and reinsurance underwriting units in Bermuda and the United States. It plans to write reinsurance through Bermuda-based Quanta Reinsurance Ltd. and to acquire U.S.-licensed shell companies to write specialty lines insurance and reinsurance in the United States, according to A.M. Best Co., which assigned Quanta Re an initial rating of A- last month.

Tobey J. Russ, former president and CEO of Chubb Financial Solutions Inc., is Quanta's chairman, president and CEO. Mr. Taylor, a former CNA executive vp, was to be CEO of Quanta U.S. Holdings Inc.

Soon after Quanta's stock offering, though, CNA sued Mr. Taylor, charging he violated a three-year severance agreement that he signed when he left the insurer in February 2001 and that required CNA to pay him \$12 million. Within days of the filing, Mr. Taylor resigned his post at Quanta and consented to an injunction that bars him from trying to hire or form business relationships with CNA employees until the three-year agreement expires Feb. 28, 2004. CNA is separately seeking damages from Mr. Taylor in an arbitration, its court filings say.



PHOTO: AP / STEPHAN SAVOIA

Gov. Gray Davis signed the workers compensation reform legislation on Sept. 30 in Los Angeles.

California comp law likely to lower rates Employers call for further reforms

By ROBERTO CENICEROS

LOS ANGELES—The workers compensation reforms that California Gov. Gray Davis signed into law last week should help reduce rates in California, but further reforms are needed, employers say.

In particular, objective protocols for permanent disability injuries are still needed to cut costs for employers in California, they note.

Still, the legislation should result in enough systemwide cost savings to warrant rolling back workers comp pure premium rates by 2.9% for 2004 renewals, according to the state's rating bureau.

In July, before passage of S.B. 228 and A.B. 227 and other reform bills, California's Workers' Compensation Insurance Rating Bureau had recommended increasing 2004 pure premium rates by 12%. But it revised its view in light of the legislation, which should trim \$4.1 billion off 2004 costs from California's \$29 billion system, according to the San Francisco-based WCIRB's

actuarial analysis.

Under California's open rating law, Insurance Commissioner John Garamendi cannot dictate rates charged by insurers. But he relies on the WCIRB's pure premium rate analysis to recommend to insurers how they should set their rates. Pure premium rates, a major component of workers comp premiums, are associated with loss expenses and do not include other expenses, such as commissions insurers may pay.

Among other changes, the legislation creates:

- An outpatient surgery facility fee schedule.
- A requirement for greater use of generic drugs and a pharmaceutical fee schedule.
- A 24-visit limit for chiropractor and physical therapy visits in workers comp cases, unless otherwise authorized by an insurer.

While it may take time for insured employers to see some rate relief, the legislation should im-

See CALIFORNIA/page 30

U.S. suit not expected to hurt Medco dealings with clients

By MICHAEL PRINCE

PHILADELPHIA—Employers are not expected to move their business away from Medco Health Solutions Inc. in response to the federal lawsuit recently brought against the prescription benefit manager.

U.S. Attorney Patrick Meehan on Sept. 29 filed the civil suit against the nation's largest PBM. The complaint, which alleges violations of both state and federal laws, was filed in U.S. District Court for the Eastern District of Pennsylvania in Philadelphia.

The suit largely incorporates charges brought in a February 2000 suit by a New Jersey physician, Dr. Joseph Piacentile, and a 1999 complaint by George Bradford Hunt and Walter Gauger, two pharmacists who worked at a Medco mail-order pharmacy in Las Vegas until 1998. The government brought its suit because it uses Franklin Lakes, N.J.-based Medco as the PBM for some federal benefit programs.

The federal lawsuit, which seeks unspecified monetary damages, states that Medco "has defrauded patients, clients, and the United States"

by canceling and destroying prescriptions, switching patients' prescriptions without their consent, shipping and billing patients for drugs they never ordered, creating false records of contacts with doctors, and by receiving incentives from its former parent—Merck & Co. of Whitehouse Station, N.J.—to use its products in filling prescriptions.

In particular, the complaint states that certain managers at Medco's mail-order pharmacies failed to complete certain complicated, hard-to-fill prescriptions and falsi-

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Inside Business Insurance

Panel selected to judge risk management awards

Ten independent judges will pick the 2004 Risk Manager of the Year and Risk Management Honor Roll. **Page 4**

Readers offer opinions on lawyer commentary

Paul Winston shares readers' feedback on a recent column about the legal profession. **Page 6**

RRG expansion proposal worth considering

A plan to let risk retention groups write property risks should be considered, an editorial says. **Page 8**

European risk managers may scout other markets

An Aon survey finds European buyers may seek property coverage outside their home markets. **Page 31**



Finnish utilities liable for power outages

A new law passed by Finland's Parliament requires utilities to compensate customers for extended electricity failures. **Page 31**

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

• New **Opinion Poll** for readers: How important are rating agency ratings in your choice of insurers?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

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Ruling ranks shutdown benefits over agency exposures PBGC solvency takes a hit

By JERRY GEISEL

YOUNGSTOWN, Ohio—The Pension Benefit Guaranty Corp. will appeal a federal court ruling that could, if affirmed, exacerbate the PBGC's already-precious financial condition by increasing its exposure to billions of dollars in unfunded pension shutdown benefits.

The ruling last week by U.S. District Court Judge Peter Economus means the PBGC will be liable to pay about \$96 million in shutdown benefits to about 2,500 former em-

ployees—members of the United Steelworkers of America—who once worked for now-defunct steel bar manufacturer Republic Technologies International of Akron, Ohio. That PBGC liability for shutdown benefits is in addition to the \$108 million in regular pension benefits the agency will pay to the participants of the two Republic plans, which the PBGC terminated last year.

The USWA said the ruling ensures that members will receive benefits that they believe they were

entitled to receive.

"USWA members at RTI gave their entire working lives to this company with the expectation that they would receive shutdown pension benefits if the company went out of business," said USWA President Leo Gerard in a statement.

"It is a tremendous victory," added Gary Ford, a partner at The Groom Law Group in Washington and outside counsel to the USWA.

But the PBGC says the ruling is another blow to the financial sol-

See **PBGC**/page 34



PHOTO: REUTERS

Three ironworkers were killed when a crane collapsed in 1999 during the building of Miller Park in Milwaukee.

Court rejects punitives award for accident at Miller Park

By DAVE LENCKUS

MILWAUKEE—The families of three ironworkers killed in a construction accident at Milwaukee's Miller Park plan to ask Wisconsin's Supreme Court to overturn a state appellate court's Sept. 30 decision to throw out a \$94 million punitive damages award against the workers' employer.

The workers were killed in July 1999 when a crane collapsed while lifting a 450-ton piece of the stadium's retractable roof in windy conditions. The incident delayed the park's opening by a year.

A jury in December 2000 found that the employer, New York-based Mitsubishi Heavy Industries America Inc., intentionally had disregarded the ironworkers' rights and ordered the contractor to pay the workers' families \$99.5 million in damages. Of that amount, punitive damages accounted for \$94 million.

In August 2001, a Milwaukee County Circuit Court judge ruled that Mitsubishi's insurers must cover the punitive damages award (*BI*, Aug. 13, 2001).

But in its 2-1 decision Tuesday, the appeals court ruled that the

award violated the state's 1995 punitive damages statute, according to the families' attorney, Robert Habush, a partner with Habush & Rottier S.C. of Milwaukee. The appeals court ruled that the plaintiffs failed to show that Mitsubishi intended to injure its workers or was sure that its actions would harm them.

Mr. Habush said the ruling misinterprets the punitive damages statute and subsequent case law, and he criticized the court for injecting a criminal case standard in civil litigation. Mr. Habush said the contractor intentionally disregarded its workers' rights by not providing them with a safe workplace.

Despite the ruling, the ironworkers' families will keep \$27 million of damages that three of Mitsubishi's insurers already had paid them, Mr. Habush said. Those insurers are: Travelers Indemnity Co. of Illinois, which wrote the first \$2 million of coverage for Mitsubishi; Royal Insurance Co. of America, which wrote the next \$5 million layer; and Indemnity Insurance Co. of North America, now an ACE USA subsidiary, which wrote the next \$20 million layer.

Risk management award judges represent profession

Ten independent judges from all sectors of the risk management and insurance profession will select the 2004 Risk Manager of the Year and Risk Management Honor Roll.

Nominations for the awards, which will be announced in April, will be accepted until Nov. 19, 2003.

The 2004 Risk Manager of the Year will be the 27th person to receive this honor. *Business Insurance* created the Risk Manager of the Year competition in 1977, on its 10th anniversary of publication, to recognize outstanding risk management practices. The first award was presented in 1978. Beginning with the 2002 awards, the Risk & Insurance Management Society Inc. joined *Business Insurance* in honoring the winners.

Business Insurance created the Risk Management Honor Roll in 1981 to recognize outstanding achievements in risk management in employment categories not represented by the Risk Man-

ager of the Year.

The winners will be profiled in the April 19 issue of *Business Insurance* and recognized during RIMS' 42nd Annual Conference and Exhibition in San Diego, April 18-22.

Ten independent professionals will judge this year's entries. Honorees are selected on the basis of the judges' opinions of each nominee's program as it is detailed in the nomination form.

This year's panel comprises the 2003 Risk Manager of the Year recipient, the 2003 Risk Manage-

ment Honor Roll members, two insurer executives, two brokerage executives, a risk management consultant and an insurance educator.

Judges for the 2004 awards are:
• Joseph H. Albert, chairman of J.H. Albert International Insurance Advisers Inc. of Needham, Mass., representing risk management consultants.

• Roger Andrews, 2003 Risk Management Honor Roll member and risk manager for E.D. Bullard Co.

See **JUDGES**/page 6

Judges for 2004 Risk Manager of the Year



Mr. Albert



Mr. Andrews



Ms. Blades



Mr. Browne



Mr. Chapin



Mr. de Grosz



Mr. Schuh



Ms. Small



Mr. Vitale



Ms. Zschomler

Malpractice proposal mimics workers comp

By MARK A. HOFMANN

WASHINGTON—Compensating certain medical malpractice claims through a system similar to workers compensation could help improve the quality of health care, according to Harvard University health care specialist.

But Michelle Mello, assistant professor of health policy and law at the Harvard School of Public Health in Cambridge, Mass., stressed that the type of administrative compensation system she advocates should not be called "no-fault," because that implies that health care providers would be absolved of accountability.

Instead, she told those attending a Sept. 29 Capitol Hill discussion of

medical malpractice reform sponsored by the Alliance for Health Reform, the system would make physicians, hospitals and insurers work together to improve patient safety.

Such a system would work best in so-called "channeled" enterprises, such as academic medical centers where physicians and hospitals had the same medical malpractice insurer. Claims would be handled through an administrative process, with compensation based on the avoidability of an injury. Noneconomic damages would be awarded according to a schedule that sets both floors and ceilings for awards, Ms. Mello said.

Scheduling allows limited, pre-

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Judges: Chosen

Continued from page 4

• Judith A. Blades, senior executive vp-property and casualty for The Hartford Financial Services Group Inc. in Hartford, Conn., representing stock insurers.

• Mark Browne, professor in the School of Business, Actuarial Science, Risk Management and Insurance at the University of Wisconsin in Madison, representing educators.

• William Chapin, 2003 Risk Management Honor Roll member and risk manager for the Diocese of Rockville Centre, N.Y.

• Frederick de Grosz, president and CEO of ABD Insurance & Financial Services Inc., representing regional brokerages.

• Dale Schuh, chairman and CEO of Sentry Insurance, A Mutual Company, of Stevens Point, Wis., representing mutual insurers.

• Sheila Small, 2003 Risk Manager of the Year and risk manager for Verizon Communications Inc.

• Mario Vitale, chairman and CEO of Willis North America, representing international brokerages.

• Johanna Zschomler, 2003 Risk Management Honor Roll member and risk manager for the State of North Dakota.

Judges will evaluate each entry based on 10 criteria (see related story). The nominee with the highest total score will be Risk Manager of the Year; the remaining individuals will be placed into one of four categories:

- Corporations with sales exceeding \$300 million.
- Corporations with sales of less than \$300 million.
- Government entities, including public entity pools.
- Tax-exempt or nonprofit entities.

The highest-scoring individual in each field not represented by the Risk Manager of the Year will be considered for the Risk Management Honor Roll.

A nominee need not handle risk management responsibilities full time, but he or she must be a full-time employee of the organization whose program he or she directs. Risk managers anywhere in the world are eligible to enter the competition.

To obtain a nomination form for the 2004 award competition, or for more information, please contact Paul Winston, editor of *Business Insurance*, at pwinston@crain.com.

Risk management award criteria

Ten criteria are used to score the nominations for the annual Risk Manager of the Year Award and Risk Management Honor Roll.

The panel of 10 independent judges will score each nominated candidate on a scale of one to 10, according to how well he or she:

- Established and implemented an effective risk management program within the organization.
- Tackled and solved one or more major problems for his or her organization.
- Innovatively applies the diverse tools of risk management and insurance.
- Creatively and effectively uses the insurance markets to structure an insurance program that serves the needs of the organization (specifically addressing the types of policies purchased and manuscripted policies, if any).
- Established a workable intelligence system inside and outside the organization, culminating in a flow of information about events and activities that affect the organization's risk management and insurance (how the risk manager secures information from other departments and the use of risk management information systems are addressed in this criterion).
- Skillfully performs the functions of management in the overall organization and within the risk management/insurance department. The functions include planning, organizing, directing and controlling.
- Achieves the most effective program at the optimum cost over the long term.
- Developed technical expertise in any or all of the broad categories included within risk management, leading to a better managerial grasp of the operational aspects of the job.
- Exhibits an attitude and performs activities fostering the advancement of the risk management profession (such as professional activities, speaking engagements, teaching and related activities).
- Develops in his or her career (as exhibited by job history, including current job description, education, honors and memberships).

Paul Winston

Readers weigh in on glut of lawyers

A month ago, I postulated that one reason for the U.S. litigation crisis was a glut of lawyers chasing business.

More than any recent column, that one has generated considerable reader feedback, some of which I'd like to share to continue the discussion.

That column led with a famous quote from Shakespeare's "King Henry VI": "The first thing we do, let's kill all the lawyers." That alone generated plenty of comments, including one lawyer's observation that it was used out of context.

"I am not particularly sensitive about lawyer jokes, but I was a student of Shakespeare long before I was a student of the law. Quite the contrary to the impression given by your articles and practically every other reference to this comment in the play by the character Dick the Butcher, it is not a slight against lawyers but a compliment. While conspiring with other rebels about how to establish an evil, totalitarian government, Dick the Butcher intimates that such perfidy could not be accomplished without getting rid of all the lawyers, because lawyers, with their dedication to justice and the rule of law, were perceived as a safeguard against anarchy."

I stand corrected and will never make that mistake again. But while I suggested using litigation against lawyers as a means to curb excessive litigation, some readers were more extreme.

One risk manager wrote: "I long ago arrived at the same conclusion: too many lawyers. My solution is much more direct and would produce an immediate reduction in litigation. Eliminate the laws that ban dueling. Before some shyster files a complaint accusing someone of all manner of terrible acts, he/she (we mustn't have gender discrimination here) would have to consider the chance of the defendant deciding to litigate the issue at sunrise on the field of honor. The lawyers I know have a hard time getting up at 7 a.m. for Starbucks and a scone, let alone a trip out to a damp and empty field to look down the muzzle of a fine piece."

Several readers concurred that there are too many lawyers and suggested that law schools might be partly to blame.

"In 1985, I was invited to address a gathering of risk managers and defense counsel on the reasons for the then-hard market. One of my comments was that I believed that a partial cause for the deplorable market was an overabundance of lawyers. I suggested that a moratorium be placed in effect, which

would result in temporarily closing all law schools in the U.S. for a period of 10 years so that natural attrition would result in a thinning of the ranks of litigators. My comment was met with hoots of derision!" one public entity risk manager wrote.

An attorney wrote: "Part of the problem is that the law schools have no incentive to stop pouring out more lawyers when there's an overabundance already. Another related issue, however, is that the insurance industry has taken advantage of the glut of lawyers, and now their bottom line is billable rates, not quality of legal services, and the insured suffers."

A risk manager with a law degree commented: "You are quite correct in your analysis. Too many lawyers breeds manufactured litigation. There is an old joke that only one lawyer in town will starve to death until the second one arrives...."

"Based on my own experience, both in law school and taking the bar exam in two states, my opinion is that there should be a tougher standard for students to get out of law

school....The bar exam itself also needs to provide a more significant gateway to licensure. Generally, 70% of law school graduates pass the bar on the first try. If it were more difficult to pass or if there was a prelicense work-experience requirement, the rolls would be reduced....Finally, I am a proponent of greater accountability for suits filed. There should be a surcharge/poundage/tax for every suit that is dismissed pursuant to motion either for failure to state a cause of action for which relief can be granted or summary judgment. In either event, the court has ruled that the proof is so lacking that the plaintiff cannot win, even if all facts alleged are true."

Finally, one reinsurance executive said suing plaintiffs lawyers (a situation he says is already widespread) is not the answer but also called for making plaintiffs accountable for the cost of failed lawsuits: "What you suggest would merely deprive plaintiffs with valid claims from having access to the courts. I would rather see mandatory professional liability insurance for lawyers and allow winning defendants to collect their costs of defense from plaintiffs' lawyers."

Interestingly, not one reader said that there were not too many lawyers (though, as noted in a subsequent column, one felt there were too many editors); they just differed in their view of how to deal with the situation.

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



Paul Winston

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Editorial

Give RRGs a fair review

SHOULD THE FEDERAL law that authorizes risk retention groups be amended to allow the groups to fund property risks?

That is an issue a panel of state insurance regulators likely will take up in the coming weeks. We hope the National Assn. of Insurance Commissioners' panel now evaluating the issue does so with an open mind.

If it does, then it surely will discard a draft resolution opposing an expansion of the Risk Retention Act, a proposal that we believe is illogical and based—at least in part—on misleading and even false conclusions about the groups and the state of the commercial market.

For example, the draft resolution cites the recent insolvency of a major RRG and the "considerable problems for regulators and policyholders" resulting from that failure. The RRG in question, National Warranty Insurance Risk Retention Group, had operations in Nebraska and sold automobile warranties.

While the failure of that RRG was unfortunate, it hardly is justification for not expanding the Risk Retention Act. Applying that kind of logic could lead one to conclude, for example, that the 2001 failure of Reliance Insurance Co., a massive commercial insurer, would be grounds for opposing state regulation of the insurance

industry. Surely the NAIC would not favor that.

Similarly, the draft proposal states that there is no "availability problem for property insurance coverage that has not been addressed by state-based solutions that are mindful of insurer solvency and protection of consumers."

While we are not sure what state-based solutions the draft proposal is referring to, we do know, based on our own reporting, that large employers in many parts of the country for more than a year have faced significant problems obtaining the amount of property coverage they want at reasonable rates.

The NAIC has every right to stake out its position on regulatory issues, including the Risk Retention Act. But rather than a blanket—and unsupported—opposition to an expansion of the law, the wiser and more appropriate approach would be to identify any problems with the law that have truly interfered with commissioners' ability to properly regulate the groups.

That approach would be welcomed by buyers, and we are hopeful, based on the commitment of Texas Insurance Commissioner Jose Montemayor to talk to risk retention group expansion advocates before any resolution is adopted, that is the path the NAIC will pursue.

Helping hand is welcome

ANYONE WHO'S TOILED in a state capitol knows that enacting medical malpractice reform legislation is never easy.

That's even truer at the federal level. Despite passage by the House of Representatives of a reasonable bill earlier this year, the effort in the Senate has stalled. Proponents could not even muster the votes to cut off debate and bring the Senate version of medical malpractice reform to a vote.

Clearly, they could use a little help. Fortunately, an offer of help has come from an unlikely source—the chairman of the House Government Reform Committee's Subcommittee on Human Rights and Wellness.

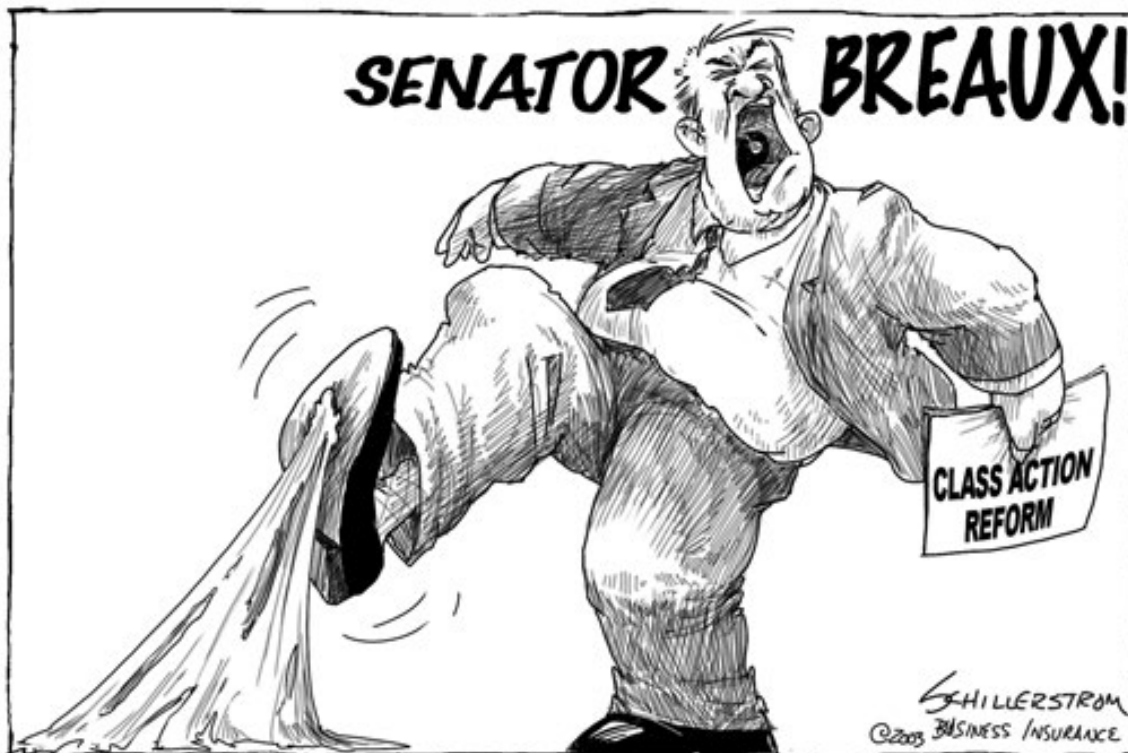
After the panel heard testimony last week about how the current medical malpractice liability system is driving doctors out of business as malpractice insurance premiums skyrocket, the subcommittee's chairman—

Rep. Dan Burton, R-Ind.—asked witnesses to send him state-by-state examples of the crisis' impact on health care. "I'd like to help you," he said.

The help Rep. Burton is offering is to cite those examples in a "Dear Colleague" letter to his Senate counterparts or through some other direct contact with the folks on the other side of Capitol Hill. Relations between the two houses aren't always cordial, and there's no guarantee that Rep. Burton's letter will sway many senators.

Still, it's an effort worth making. As Rep. Burton told the witnesses, there's not much, if anything, more to be done in the House. Medical malpractice liability reform advocates need all the help they can get in making their case to the Senate. Adding a House voice to the chorus can't make the situation any more difficult and might even make it better.

Schillerstrom



Letters to the Editor

Tougher guidelines needed to end Oxycontin abuse

To the editor: Labor Day 2003 has come and gone. In light of this special holiday, we are compelled to ask a serious question: Do workers in all industries and businesses also have the right to be protected in the workplace every day of the year? The answer is yes.

Yet let's look at the facts. Last year in the state of Florida under the workers compensation system, more individuals died from prescription drug overdoses than from illegal drugs like cocaine or heroin.

Oxycontin, a pain killer prescribed by physicians to reduce the intense suffering of those in acute pain, is the second most prescribed medication in terms of dollars spent in the workers compensation system. In some states, including California and Oregon, Oxycontin is the most prescribed drug and represents about 10% of the workers compensation prescription costs. However, abuse—not costs—is the primary concern.

Oxycontin is highly addictive, and workers can unwittingly become addicted if the drug is overprescribed and not monitored properly. The drug creates a societal problem because, when ground up and inhaled, it produces a heroin-like high. It can be sold as a handy, convenient substitute for those individuals already addicted to opiates or barbiturates.

The Workers' Compensation Committee of the National Assn. of Independent Insurers, whose members write nearly one-fifth of the nation's workers compensation insurance, urge state legislatures around the country to consider tougher laws to protect workers by establishing clearer guidelines for Oxycontin prescriptions and better monitoring of patients that use the drug. Better education on the dangers of this drug is a high priority too—not just for workers but for the public and policymakers as well.

America's labor force deserves to be protected from the dangerous abuses of Oxycontin. Tougher laws are one way to reach that goal.

Wayne McGowen
 Senior Vp
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 Chairman
 Workers Compensation Committee
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Weekly Opinion Poll

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Spotlight

Transportation Risks

Spotlight editors: Dave Lenckus

Contracting for busing does not drive all risks from schools

By **RODD ZOLKOS**

Contracting with private bus companies to provide student transportation can provide financial advantages for school districts, reduce administrative burdens and, if done properly, reduce or remove some liability risks the districts face.

But the arrangements can bring a number of risks of their own, and school districts must carefully scrutinize the service providers and the contract documents to control those exposures.

For a school district, contracting out transportation "certainly improves both their operational and

'There's some benefits...of not having the headaches of maintaining the fleet and finding drivers and just hiring drivers.'

Daniel J. Pliszka
Marsh Inc.

their financial flexibility," said Anne Mulholland, senior vp at Aon Risk Services in Cincinnati.

"The big reason, ob-

viously, is to get a little distance between you and anything that can happen," Ms. Mulholland said. "If they do the contract appropriately, they should push that responsibility onto the contractor."

Daniel J. Pliszka, a vp with Marsh Inc. in Charlotte, N.C., and former risk manager for the city of Charlotte and Mecklenburg County, N.C., and for the Charlotte-Mecklenburg School District, noted that, "obviously, there's some benefits too of not having the headaches of maintaining the fleet and finding drivers and just hiring drivers."

But contracting out transportation "is not a panacea," Ms. Mulholland cautioned.

"Obviously, from a risk management standpoint, there's some loss of control," noted Shawn Christiansen, director of underwriting

See **BUSING**/page 26



Airline renewals may see 'a gentle erosion of rates'

By **DAVE LENCKUS**

A softer hull and liability insurance market for commercial airlines during the first nine months of 2003, significant market overcapacity and relatively few losses this year do not guarantee that underwriters will remain quite as competitive during fourth-quarter renewals, according to market experts.

Indeed, early indications showed that underwriters were unwilling to cut rates as significantly for risks renewing their coverage between Oct. 1 and year's end, some insurers and brokers said.

But although underwriters and brokers said they could not predict exactly how rates would move over

the next three months, they do not anticipate that the market will harden drastically. Instead, they suggested that the cost of coverage still may fall, but more moderately.

One broker noted, however, that some underwriters have asserted they cannot take a piece of any risk that is getting a price break. "But, brokers don't believe that," the broker added.

Airlines that generate around 80% of the market's total annual premium and account for as much as 85% of the market's exposure renew their coverage during the fourth quarter.

The renewal season peaks in November and December, but the season's tone will be set by the Oct.

1 renewals of United Airlines and US Airways, predicted Harold J. Clark, chairman and chief executive officer of U.S. Aviation Underwriters Inc. of New York.

"Others will look at them and say, 'Are we going to do much better?'" Mr. Clark said. Underwriters would create problems for themselves if they treated airline risks that renew later substantially different from those two bellwether accounts, he said.

Brokerage executive Nigel Weyman said that, taken together, several market factors "allow for a gentle erosion of rates."

"It looks like underwriters are looking at easing rates on a case-by-

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Short-haul truck firms press case for better comp prices

By **MICHAEL BRADFORD**

Short-haul trucking companies are having a tough time finding insurers that will deliver affordable workers compensation coverage.

In many cases, short-haul—or "less-than-truckload" carriers, as they are called—are marked by the stigma of an industry that historically has made underwriters wince. Widely viewed as high-risk enterprises, transportation risks are among the first to feel the pinch of rising coverage prices when the insurance market tightens.

"There's something about the perception of short-haul drivers that causes insur-

ance companies to hesitate, to blink before underwriting the risk," said Bill Prester, president and managing director of Aon Corp. unit Aon Truck Group in Schaumburg, Ill.

And to make matters worse, "for the short-haul guys, the number of insurance companies willing to participate in that risk has shrunk dramatically," Mr. Prester said.

Some insurers are hesitant to consider writing workers comp coverage for short-haul truckers because they have a perception that all such drivers "fingerprint," or load and unload freight as the truck makes its delivery runs, creating frequent opportunities for injuries, Mr. Prester noted. Long-haul drivers, by contrast, typically are seen as those who take loads from one terminal to another, where workers at those facilities break down the cargo and reload the trucks.

While it's true that long-haul op-

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'The number of insurance companies willing to participate in that risk has shrunk dramatically.'

Bill Prester
Aon Truck Group

Driver recognition program honors safety commitment page 18

Market putting the brakes on trucker liability price hikes page 22

Airlines: Signs of softer renewal season are misleading

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case basis," cutting rates enough to trim premium 10% to 15%, said Mr. Weyman, managing director of the aerospace division at Heath Lambert Group, the retail brokerage division of HLF Insurance Holdings Ltd. of London.

Underwriters established that benchmark with United's renewal, according to market sources.

While the airline's premium at renewal dropped about 29.6% to \$95 million, underwriters had to account for around a 9% decrease in United's insured fleet value and at least a 12% reduction in the airline's revenue per passenger mile, sources said. Fleet values and revenues are two elements that underwriters use in determining premium based on quoted rates.

In addition, underwriters last year reimbursed United for part of a surcharge it paid for terrorism coverage, which the federal government started offering airlines.

So, effectively, United negotiated a 10% to 12% rate decrease at renewal, sources said.

Market executives' expectations for the upcoming renewal season do not track neatly with the market picture so far this year.

For the first nine months of this year, airlines had negotiated rate reductions of about 16% to 17.5% on

average, which translates into premium reductions of 19% to 25%, according to market sources. Premium reductions exceed rate cuts when airlines report reductions in fleet values, revenues and takeoffs.

Meanwhile, the market remains heavily overcapitalized. Excess capital estimates by insurer and broker executives vary, but clearly, most airline risk managers can find at least 150% of the capacity they need. Some executives estimate the market is capitalized at as much as 170%.

For North American airlines with wide-body fleets, capacity levels may be smaller—120% to 150%, one broker said.

The excess capacity is allowing the market to begin offering some accounts \$2 billion of liability limits, which represents a 33% increase, Mr. Weyman noted. Some airlines previously purchased \$2 billion of limits, but they had to obtain the top \$500 million layer from more expensive specialty markets, he explained.

Another factor that in past years would have suggested a softer renewal season is that losses have been relatively low in 2003. Through July, 2003 ranked as the second-best loss year over the past five years, with losses totaling around \$300 million, according to

brokers.

But, collectively, the signs pointing to a softer renewal season this year are misleading, according to market executives.

Excess market capacity and underwriters' good loss experience do not—as they would have in the past—add up to an increasingly competitive market environment.

By taking a harder stance with the more than 100 large airlines from around the world that renew their coverage during the fourth quarter, underwriters would not be favoring the 80 to 85 large airline risks that renewed during the first nine months of the year, market experts said. Instead, underwriters earlier this year allowed airlines to catch up with some of the more-favorable treatment given risks that renewed during the fourth quarter last year, market experts explained.

For example, during the first nine months last year, airlines paid a separate terrorism coverage surcharge, which underwriters instituted shortly after the Sept. 11, 2001, terrorist attacks. But in rolling that sur-

charge into rates during last year's fourth quarter, underwriters effectively pared the surcharge significantly, insurers and brokers explained. The rate cuts so far this year brought all airlines' terrorism surcharge in line, market executives said.

Meanwhile, excess market capacity and underwriters' good loss experience do not—as they would have in the past—add up to an increasingly competitive market environment.

Notably, in August, Brit Insurance Holdings P.L.C. announced its plans to stop writing direct aviation business, and Hardy Underwriting Group P.L.C. announced that it would reduce its aviation exposure. Both Lloyd's insurers blamed inadequate market rates for their moves.

In early September, Tryg Vesta Group announced its plans to run off subsidiary Tryg-Baltica International (U.K.) Ltd. and focus on Nordic insurance and international reinsurance written by a Danish unit. Tryg Vesta said its London unit's business, including aviation, was not within Tryg Vesta's strategic focus.

Several other underwriters withdrew from the market last year.

Those moves still leave the market significantly overcapitalized, market experts said.

But, more importantly, those moves "are an indication of the trend of people questioning whether aviation is a good place to put their capital," a broker observed.

Capital providers are determined to earn an adequate return on their investment in the market, market sources noted. With far smaller returns available in equities markets today than during the 1990s, capital providers are insisting on adequate rates to generate an underwriting profit, sources said.

Underwriters last year generated more than \$2 billion more in premium than they paid out in losses, brokers noted. And premium volume this year through July had slightly exceeded losses.

Those profits "put a natural pressure" on underwriters to adjust rates, Heath's Mr. Weyman noted.

"So, they got a profit, but is it enough compared to what they could get elsewhere? You expect the reward to be high, because the risk is high," another broker said.

Mr. Weyman agreed, noting that capital providers are asking underwriters to justify their rates and pressuring them not to stray from their own rationale.

Plus, capital providers know that good loss experience in the com-

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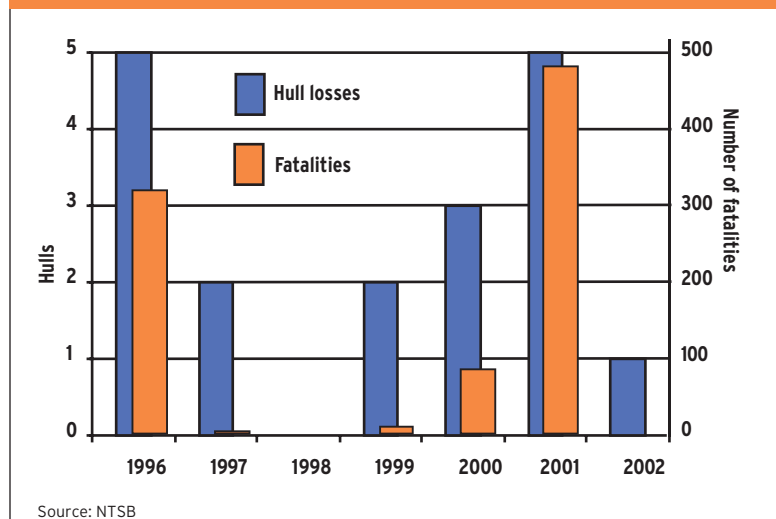
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Airlines: Good loss experience can turn around quickly

Continued from previous page
 commercial aviation market can turn around quickly, market experts noted. Market losses exceeded premium volume in each of the five years from 1997 through 2001, according to market sources.

Such a turnaround in profitability would hit capital providers harder today than in previous years, because a hardened reinsurance market has dramatically increased underwriters' retention levels, noted USAU's Mr. Clark.

Mr. Clark said that underwriters in the past could buy excess-of-loss reinsurance that attached as low as \$50 million. Nowadays, however, attachment points are much higher, which affects the market far more than does excess capacity, he said.

"Some people are retaining even more than \$300 million per loss," he noted. "There's only a few losses above \$300 million."

Meanwhile, even though underwriters have abandoned cash-flow

underwriting since 2001, the market's premium volume is falling, according to market sources. For a 12-month period after the 2001 terrorist attacks, underwriters generated close to \$4 billion of premium, sources said. The following year, underwriters anticipated generating \$3.4 billion of premium, but that figure could be as much as \$600 million to \$700 million lower because of the downturn in airline business due to the SARS virus outbreak, the war in Iraq and weaker economic conditions, one broker explained.

For the next year, \$2.3 billion of premium volume is anticipated, the broker said.

Underwriters in the past could buy excess-of-loss reinsurance that attached as low as \$50 million. Nowadays, however, attachment points are much higher, which affects the market more than does excess capacity.

Plus, a federal court judge in New York recently dealt the market another potentially huge blow when he ruled last month that victims of the Sept. 11 terrorist attacks could sue airlines as well as other defendants for damages if they opt out of the federal Sept. 11 Victim Compensation Fund (*BI*, Sept. 15). The victims have until Dec. 22—when most renewals should be completed—to decide whether to sue the airlines and the other defendants.

Some airline account activity through September suggests that underwriters are attempting to meet their capital providers' objectives. Several brokers noted that four airline accounts that renew later in the fourth quarter shopped around their submissions extremely early in an effort to place their coverage when underwriters were cutting rates more liberally. While brokers for those accounts were pressing for significantly better pricing, none of them had renewed by late September, sources said.

"If someone were to go early and get a significant reduction, that would be held up as the benchmark" for the upcoming renewal season, a broker said.

Moreover, while airlines with Oct. 1 renewals now have their new coverage in place, none of them had completed its negotiations with underwriters as late as Sept. 18, according to Mr. Clark.

All of the last-minute bargaining "suggests that insurers aren't rolling over and giving them what they want," Mr. Clark said.

"I can tell you," one broker said, "underwriters will fight hard, and brokers will fight just as hard to get clients price reductions."

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Workers comp: Short-haul firms seeking lower insurance rates

Continued from page 10
 erations involve less loading and unloading and many short-haul drivers do handle freight, sources point out that not all short-haulers do the heavy lifting.

Short-haul carriers often are niche carriers, hauling freight to dedicated accounts on jobs that "do not require drivers to assist in the unload," said Fred Bartuch Jr., president of short-haul trucker Fab Express in Lamont, Ill. Drivers for his company are among those who

are not required to load and unload.

But, says Thomas R. Tray, Atlanta-based senior vp with Marsh Inc.'s transportation practice, when drivers do load and unload, it means they are in and out of their vehicles several times a day, perhaps hauling furniture or other cargo up stairs or encountering other situations that could lead to injuries.

Less-than-truckload companies also have busy terminals where

freight is moved from truck to truck. "The more frequently it is touched, the more likelihood of an injury," said Mr. Tray.

Workers compensation insurance costs will depend on how safe an operation the trucking company runs, he said. "Coverage, in many instances, is going to be loss-driven and loss-history driven."

Add to that the insurer perception that short-haulers are always loading and unloading, and rates can be set too high, Mr. Prester noted. He said brokers are responsible for working with insurers to make sure they know whether an operation fingerprints its freight and if clients' accounts are properly priced.

Mr. Bartuch said he "feels strongly" that, overall, "the risk for short-haul is much less than for long-haul."

Short-haul truckers carrying loads locally are less likely to have accidents as serious as those experienced by long-haul truckers, who spend long stretches behind the wheel on busy interstate highways,

It's not enough for a policyholder to have a written plan for controlling losses. 'Show me evidence that you are actually doing it.'

*Dave Melton
 Liberty Mutual Insurance Co.*

he said.

Whether short-haul trucking is riskier than long-haul trucking, less-than-truckload operations are finding their workers comp coverage is more expensive in many cases.

Mr. Prester pointed out that workers comp rates filed by the National Council on Compensation Insurance have gone up 24.7%, to \$17.21 per \$100 of payroll from \$13.80 in 2000, for short-haul truckers in Illinois. The state's long-haulers, on the other hand, have seen rates rise only 9.1%, to \$15.05 per \$100 of payroll from \$13.80 during the same period.

Thin margins make the increase difficult to make up, Mr. Bartuch said. "It's very difficult to recover those workers comp costs."

"We're anticipating another hit," Mr. Prester said of rate hikes expected at October renewals. "Maybe not as significant as last year, but we are anticipating another bump."

Dave Melton, director of transportation resources at Liberty Mutual Insurance Co.'s Research Institute for Safety in Hopkinton, Mass., emphasized that insurers that write the business are looking for good trucking company risks.

"An attractive transportation risk, whether it is long-haul or short-haul, will be one that has certain elements of a safety program," he said. Those elements will have to address the three most common

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Workers comp: Short-haul firms seeking lower rates

Continued from page 14

types of trucking company injuries: slips and falls, inappropriate handling of freight and accidents caused by falling material.

Underwriters want to know that trucking companies are doing more than simply complying with basic standards set by the Occupational Safety and Health Administration and the Department of Transportation, Mr. Melton said. "Insurers are looking for customers who are doing far more than complying with the law," he said.

It's not enough for a policyholder to have a written plan for control-

ling losses, Mr. Melton said. "Show me evidence that you are actually doing it," he said.

Liberty Mutual's underwriters dispatch loss control representatives to make sure potential trucking risks have the proper safety programs in place, Mr. Melton noted. "The old adage that loss prevention is the eyes and ears of underwriting is probably more true in this marketplace than any other. We want to make darn sure that we are writing the best piece of business we can," he said.

Controlling injuries in the terminal is not a complex science, Mr.

Melton emphasized; it requires common sense techniques that will keep workers safer. It involves, among other things, clearing aisles and making sure they are properly marked, providing proper equipment for employees, ensuring lighting is appropriate and showing "an intolerance for poor housekeeping," he said.

Loss control begins with making sure employees are educated about their jobs, according to Mr. Tray.

Training is the first component of a loss control program that comes into play after a driver is hired, he said. Part of that process is

to make clear that the employer does not expect the driver to do something that would lead to an injury. Often, he said, there is pressure on drivers to be on the road even when they think conditions might not be entirely safe.

When a loss does occur, "a lot can be done to mitigate the claim," Mr. Tray said. "It's a matter of getting the driver back to work in some meaningful way, even if he can't drive the truck."

Mr. Bartuch said short-haulers are in a better position to find work for injured drivers. When a long-haul driver is injured, "it is very difficult

for an employer to get (the driver) into light duty," he noted, because in many cases those drivers live somewhere along their routes, which may not be near an office where light-duty work would be available. His drivers, though, have homes near his company's terminal.

"It's not about what you can have them do," he said of drivers on light duty. "It's about getting them to the location. It's better than having them sit home and watch TV."

Employee turnover is another component in the high workers comp rates that truckers pay.

"It's fair to say that it's a serious problem in the workers comp area," said Mr. Melton. When workers are injured, others have to be hired and trained.

Mr. Tray said long-haul operators generally have a worse turnover problem than short-haul companies.

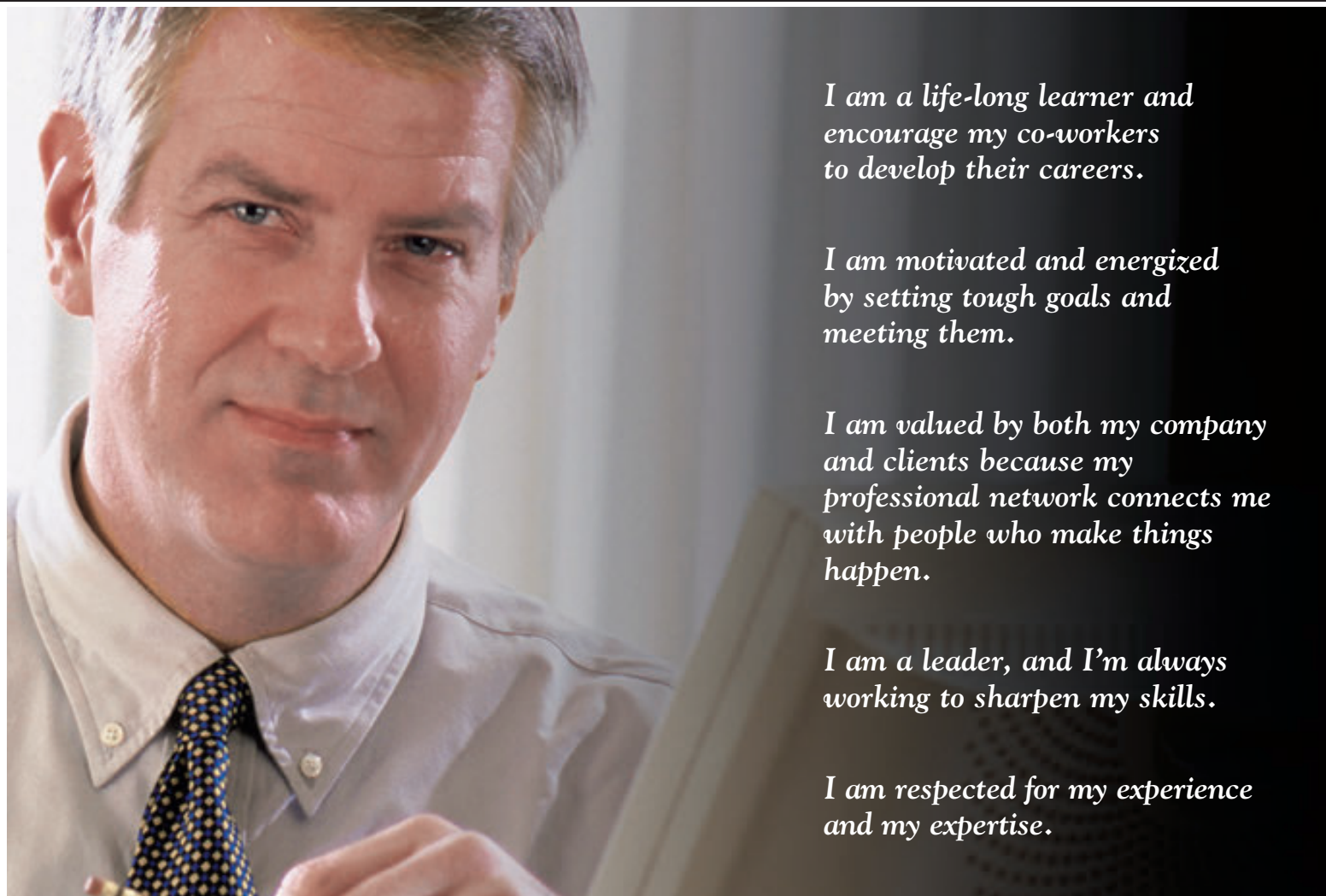
He said that because long-haul drivers are away longer, they "don't feel that closeness with the company" that short-haul operators can experience. The long-haulers, therefore, are more likely to quit driving long routes, at least for a time. "Very interestingly, they often move to another long-haul carrier," he said of drivers who leave.

A short-haul driver "has regular routes and knows he will be home at night," Mr. Tray noted. That stable routine tends to lead to lower employee turnover, he said.

"When drivers know where they are going, they perform better," Mr. Bartuch agreed.

The higher the turnover, the greater the frequency of losses, in both the workers comp and automobile liability area, Mr. Tray said. Even if a new driver is experienced, he or she may be driving an unfamiliar truck over new routes and dealing with a new system, all factors that could lead to accidents.

Trucking companies, for the most part, are doing well in keeping their operations safe, coming to grips with the challenges of high workers comp costs, according to Mr. Melton. "Most of the guys today are pretty much on the ball. They realize that if they are operating unsafely...they can't stay in business."



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Trucking firm driven by risk management

Driver recognition program honors safety commitment

By MEG FLETCHER

"Aim for the Hall of Fame" could be the motto of the professional truck drivers who work for D.M. Bowman Inc., a short-haul and regional trucking company that uses a multistep approach of screening, training and performance reviews to encourage drivers to operate safely and efficiently.

The recognition program, which the company has used since about 1995, includes placing a driver's 8-

by-10-inch framed photograph in a special corridor of the firm's Williamsport, Md., headquarters, said Jim Ward, president and chief executive officer.

To earn that designation, a driver must have a 10-year record of safe driving and working, including no workers compensation claims. A driver reaching that milestone also receives other awards, he said. These include a special certificate, a \$1,000 cash bonus and a jacket proclaiming a

"million mile" driver—the typical distance a driver would cover during a decade.

The seriousness with which drivers seek that top designation is "pretty incredible," Mr. Ward said. Currently, 36 of the company's approximately 400 professional drivers have reached that level of accomplishment.

"Risk management is not something that we talk about—it's a way of life at the company," he said. The trucking firm earned more than

\$63 million in annual gross revenues last year, which placed it among the top 200 motor carriers nationally, according to a major trade publication, he said.

The effectiveness of Bowman's safety program is reflected in its recordable accident rate of 0.54 accidents per million miles driven thus far in 2003, Mr. Ward said. That is better than the industry's mean rate of 0.69, which was reported in March 2002, the most recent period readily available.

The pride that employees take in Bowman's safety culture was demonstrated when Mr. Ward at-



Mr. Ward

tended the wake of a driver who died recently. Displayed among the important mementos of his life were his "million mile" jacket on an easel and his framed safety certificate.

"It gave me goosebumps," said Mr. Ward, to know that the driver's widow and sons understood how important safety was to the driver.

Creating such a strong company-wide safety culture takes many steps.

Bowman's employees take pride in its safety culture. 'Risk management is not something that we talk about—it's a way of life at the company.'

*Jim Ward
D.M. Bowman Inc.*

Bowman starts with a detailed, four-page application form.

"Hiring criteria exceed regulatory requirements for drivers," Mr. Ward said. For example, Bowman has been performing criminal background checks on applicants for years, though such screening has only recently become a federal requirement, Mr. Ward said.

Applicants also participate in a three-day orientation process that includes a separate safety-focused interview. That provides the company with an opportunity to emphasize its safety culture, including its zero-tolerance policy on drug use, which is enforced through random testing.

The safety interview also gives a prospective driver an opportunity to explain any prior mishaps reported on the application form. A prior accident does not automatically exclude an applicant, although Bowman considers it important that drivers take responsibility for situations that were within their control, Mr. Ward said.

Applicants also must pass an open-book test on U.S. Department of Transportation regulations as well as a carefully routed road test to assess their driving skills in a variety of situations.

Bowman is so serious about recruiting good drivers that it encourages current employees to recommend an applicant, and rewards them with a \$600 bonus if the driver stays at least three months.

The firm believes that other strong candidates "are working for

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PHOTO COURTESY D.M. BOWMAN INC.

Safety: Risk management drives trucking firm's culture

Continued from page 18
someone else and are attracted to us by our professional driving employees," Mr. Ward said.

Once hired, all new drivers go through intensive training, including a nine-module course on specific issues such as fatigue management and negotiating intersections. They also participate in a defensive driving course.

Bowman's drivers then advance through a well-defined hierarchy of five skill levels, beginning with "ex-

perienced driver" and ending with being a "road team" member.

Each driver's performance is reviewed at frequent intervals based on several criteria, including wearing the company's uniform, customer satisfaction, safety record and vehicle efficiency.

Company managers assess a driver's vehicle efficiency in several ways, including reviewing data that is sent back to headquarters from software linked to a truck's global positioning system equipment.

Managers can learn many things from those reports, including whether a driver is exceeding the company's prescribed average maximum speed of 63 mph.

It also shows if a driver is avoiding "hard braking"—decelerating at a speed in excess of seven miles per hour—which may indicate the truck is following another vehicle too closely.

In addition, motorists sometimes provide feedback on a driver's behavior. Each truck also carries its own safety reminder on the back: "We carry through"—the company's motto—"for safety too!" Listed under that is a toll-free number for motorists to call as well as an e-mail address.

Regional and short-haul trucking company D.M. Bowman Inc. puts a high priority on safe driving practices.

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Cathy Wilson Pec is director, corporate insurance for Yellow Corporation, a leading provider of regional, national and international transportation and related services, in Overland Park, Kan. She stands on Company Street, an atrium within Yellow's home office.

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Motorists sometimes provide feedback on a driver's behavior. Each truck also carries its own safety reminder on the back: 'We carry through'—Bowman's motto—'for safety too!'

"The majority of calls are very positive," Mr. Ward said. All comments are tracked and sometimes reported in the company's newsletter.

Bowman managers assess a driver's performance at frequent intervals. Good performance is rewarded with promotions and pay raises. Other incentives include clothing, such as vests and extra shirts, as well as cash bonuses. Last year, Bowman paid about \$465,000 in cash awards to about 400 drivers, he said.

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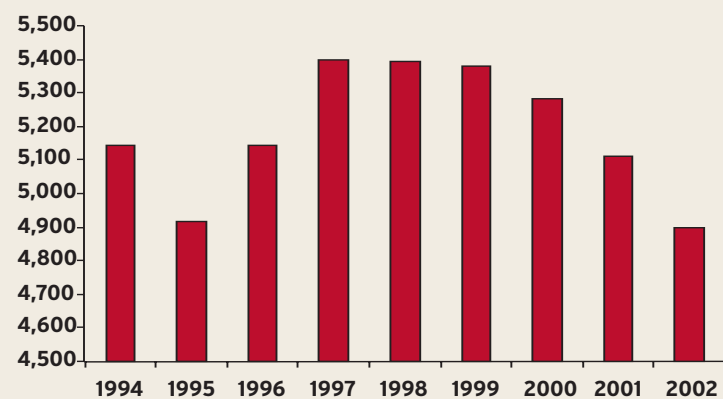
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LARGE TRUCK FATALITIES DECREASE

The number of persons killed in crashes involving large trucks continues to decline



Source: Fatality Analysis Reporting System

Market putting the brakes on trucker liability price hikes

By SALLY ROBERTS

After a few tumultuous years of premium increases and capacity shortages, the truckers' auto liability marketplace is showing signs of stabilizing.

A combination of adequate rate increases over the last few years coupled with better loss control resulting in fewer accidents, has eased the fears of some underwriters, which are more willing to come down on

price these days in order to keep the business, observers say.

This is a sharp contrast from a few years ago, when severe loss development in the truckers' liability market caught up with years of underpricing, forcing underwriters to withdraw or raise rates substantially.

But while frequency of trucking losses may be down, severity continues to escalate, observers say. As a result, they say rate increases are still needed. Depending on a risk's

location and loss history, however, those rate hikes are not as high as they have been over the last few years, observers say. And instead of across-the-board increases, risks with good loss histories and loss control programs are more likely to see flat to decreasing renewals, they say.

While acknowledging that the market is showing signs of improvement, truckers note it is still a very challenging marketplace.

"The insurance industry is trying to get well, not necessarily on the backs of truckers, but they've been bearing the brunt of it," said Richard Curtis, executive director of the American Trucking Assns.' national accounting and finance counsel, based in Arlington, Va.

In some cases, truckers that were used to paying \$1,000 per unit, or 18-wheel truck, were hit with premium increases four to five times that, Mr. Curtis said. And many truckers "couldn't afford that, particularly with rising fuel prices," he said. While some truckers were forced out of business as a result, others with the financial wherewithal have opted for alternatives to risk transfer, including high self-insured retentions and captives, he said.

Mr. Curtis noted that he has heard from members that rate increases on some renewals were not "as substantial" as they've been in the past. "The picture—just like the economy—is getting better," he acknowledged. "There is still cause for concern, though."

"As a general rule of thumb, I've seen long-haul trucking prices go up from a couple of thousand to five, six, seven thousand a truck," said Kenneth Schneider, vp-director of product development for Burns & Wilcox Ltd. in Farmington Hills, Mich. "That depends on the loss history and the state in which they are located," he said. "Suffice it to say, rates have doubled and tripled."

Although long-haul trucking may be a riskier class of business due to the size of the trucks and the length of the haul, local and medium-haul truckers also have not been spared from the hard market, observers say.

In general, though, the truckers' auto liability market is showing signs of stabilizing, insurers and brokers say.

"Over the last two years, markets generally found themselves losing renewals as they pushed to meet the pricing increases they believed the hardening market would bear," said Douglas Hathaway, vp-national transportation for Swett & Crawford Group in Minneapolis, which specializes in truckers with 50 or fewer units.

"Then, late last year, we began seeing several markets—especially the larger direct writers—become more aggressive," he said. "Perhaps they felt, 'We've come through the crisis and our rates are well-posi-

See **LIABILITY**/page 24

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Liability: Putting the brakes on trucker price hikes

Continued from page 22

tioned, so if it's a renewal we're going to lose, let's not hold the line like we did last year. Let's go down and be a little more competitive."

Today, "there are more of the coveted renewals out there that are renewing at near expiring or renewing at decreases than there are renewing at an increase, which was not the case the last three years," Mr. Hathaway said.

"I think we're sitting on a plateau now," said Joe Hutelmyer, president of Seaboard Underwriters Inc., a trucking managing general agency based in Burlington, N.C. "I think we're not seeing movement down because we're not seeing new entrants in the marketplace. It's almost like everyone is trying to figure out where they are and whether rates are where they should be," he said.

"I still believe within the next year we will...see some decreases on the really good renewals, but I think for the most part it's going to be flat and anything with any exposure or any poor results" is "probably looking at another 7% increase," Mr. Hutelmyer predicted.

"I think we're in a holding pattern for the moment," said David McDermid, vp-transportation for Scottsdale Insurance Co., which specializes in local to medium-haul truckers. Trucking is "a line that when mar-

kets turn, because of the short tail, property tends to go first," Mr. McDermid said, noting that the auto physical damage market for truckers is beginning to "flatten."

"We're not seeing increases like we were seeing a couple of years ago. It seems to be in a holding pattern," agreed Jay Cobb, vp-sales and underwriting for VSF Insurance Group, a commercial auto liability wholesaler for Volvo A.B. and Mack Truck Inc. dealerships.

'I think we're not seeing movement down because we're not seeing new entrants in the marketplace. It's almost like everyone is trying to figure out where they are and whether rates are where they should be.'

*Joe Hutelmyer
Seaboard Underwriters Inc.*

This stabilization also is occurring in the excess liability arena.

"I see a marketplace that is still getting rate increases, although they may not be as strong as they were a year ago," said Shaun Kelly, executive vp of Boston-based Lex-

ington Insurance Co.

"More carriers are participating in the excess transportation market, but the trucking carriers still do need rate" increases, he said. "The loss development in the late '90s into the year 2000 warranted the rate increases. It had to happen," he said.

The frequency of the losses, however, is decreasing.

According to figures from the National Highway Traffic Safety Administration, the trucking industry recorded its best highway safety improvement in nearly a decade as the number of truck-involved crash fatalities dropped below 5,000 for the first time since 1995. The 2002 toll of 4,897 fatalities is a 4.2% decline over 2001, the NHTSA said.

The decline in frequency rates can be attributed to better loss control efforts by truckers, observers say. For the most part, truckers are attempting to hire better drivers through more-rigorous screening processes, including background checks, though not every trucker is as proactive, they note.

But while loss control may be resulting in fewer accidents, frequency is not what has underwriters concerned, observers say.

"I think frequency being down is helping, but the severity is up dramatically," Mr. Hutelmyer said. "We think trucking is a better risk,"



but because of the litigious climate, joint and several liability and excessive jury awards in certain states, the severity of a loss has increased. Whereas a loss might have been \$150,000 to \$300,000 in the past, losses today are either \$100,000 and below or \$500,000 and up, he said.

Despite working hard to improve its loss experience, Gainey Corp. still had a challenging spring renewal on its auto liability risk, said John Liberatore, risk management consultant to the Grand Rapids, Mich.-based trucking company.

"It was tense," he said. "Even though our experience improved, it didn't do anything for us...at re-

newal, so we had no choice but to remain with a significant retention," he said, declining to give specifics.

"Not only are we trying to reduce our frequency and severity, but on those cases that we do have, we want a realistic reserve and a very aggressive investigation and defense," he said, noting that insurers tend to reserve for worst-case scenarios. "That is central to what I am doing because in the last three to five years, we have reserves that are posted, but there is virtually no liability and I have to work around those numbers, and it's difficult," he said.

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BI News flash

Busing: Schools still face risks

Continued from page 10

programs at Arthur J. Gallagher & Co. in Hammonton, N.J. "Contracting out those services might impair the district's ability to employ tort immunity or tort caps."

Mr. Pliszka agreed that the immunity question is one that school districts have to consider. "What does it do to any government immunities that are in place for a school district? Could it blow that?" he asked. "It's probably a state-by-state proposition."

In most cases, though, "the state tort claim act is probably still going to come into play" and shield the school district, Mr. Pliszka suggested.

There are several other factors school districts must consider in contracting out bus service.

"First and foremost, the most important thing is the contract with the school bus operator," said Paul J. Miola, senior vp, risk management at Gallagher in Hammonton. The contract needs to spell out the district's insurance, hold-harmless and indemnification requirements very clearly, he said.

"The other thing they need to build into the contract is that the contractor is going to comply with all local, state and federal requirements concerning the transportation of students," Mr. Miola said.

"Especially concerning transportation of special ed students, there could be special requirements."

School districts also should build requirements for driver screening into the contract, as well as requirements that the buses be inspected every night. "Silly as it seems, we've had claims over the years where children have been left on the bus overnight," Mr. Miola said.

"You also have to look at your

'I know our school bus company spends a lot of time doing background checks (on drivers). ... These are things the school district would have to do themselves if they didn't contract.'

*Anne Mulholland
Aon Risk Services*

own insurance contract to make sure there isn't a clause or endorsement that might dictate certain requirements," he added.

Mr. Pliszka said it's critical that school districts ensure that bus operators have appropriate levels of liability coverage. "I think a lot of risk managers tend to look at the auto liability and they don't even

think about the risk of general liability," he said.

Schools also need to scrutinize the sorts of background checks that bus companies do on their drivers, Mr. Pliszka said.

Aon's Ms. Mulholland has both school districts and a bus company among her clients. "I know our school bus company spends a lot of time doing background checks," she said, adding that she thinks it is important that school districts take steps in the contracts "pushing the responsibility to the operator to make sure the employees they present are suitable."

"These are things the school district would have to do themselves if they didn't contract," she said, adding that privatizing the transportation service removes some of the administrative burden from the school district.

Ms. Mulholland suggested that school districts also need to carefully examine the financial strength of the companies with which they contract.

"School bus operating is a capital-intensive business," she said. "There have been a lot of school bus operators that have gone Chapter 11."

Taking all those steps doesn't end the process for the school district, though, said Gallagher's Mr. Miola.



"For the district, you can't just set it and forget it. You've got to monitor these things," he said. He cautioned that if the district sets requirements and then doesn't ensure that they're being met, it could be exposed to even greater liability risks.

Discussing his district's approach to contracting out student transportation, Mike Fox, risk analyst at Miami-Dade County Public Schools in Florida, described an approach built around those various steps.

"The drivers' licenses are checked, they're fingerprinted, background checked, that sort of thing," Mr. Fox said.

Bus companies contracting with the school district must have automobile liability and general liability

coverage with \$1 million limits, as well as workers compensation and personal injury coverage, Mr. Fox said.

"They must agree to an indemnification also," he said. "They must name the school board as an additional insured, of course. And they have to hold us harmless, indemnify and defend us" against any loss, damage and expense.

"The buses are routinely inspected to comply with state statutes," the school district's risk analyst said. "The drivers have to pass written tests."

"Then we maintain a database to make sure the insurance is in force at all times," Mr. Fox said. "And we monitor it for the life of the contract."

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

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

TUESDAY, NOVEMBER 18, 2003

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

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

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

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

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

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

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

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

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

WEDNESDAY, NOVEMBER 19, 2003

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

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

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

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

11 AM - 12:30 PM
Tax and Legal Developments

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

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Commentary

Reform debate missing patients

One of the facts of life in Washington is that issues that command headlines and hot air for months or even years can vanish with hardly any warning at all. They vanish as quickly as a presidential wannabe who places sixth in the Iowa caucuses and discovers he's got \$3.67 on hand for the New Hampshire primary.

A case in point is the patients' bill of rights. It's like someone stamped an indelible yet invisible expiration date on the issue. Starting with Rep. Charlie Norwood's first attempts to get a patients' bill of rights enacted back in the 1990s, the matter of whether managed care plans—and, under some circumstances, the employers that sponsor them—should be subject to new regulations and expanded liability was among the hottest benefits issues in town.

Everyone in official Washington seemed to have an opinion, and no one among them was afraid to express it.

Forests of trees fell to produce white papers and press releases supporting or opposing the patients' bill of rights proposal of any given day, and heaven knows there were more than enough proposals. The amount of carbon dioxide exhaled during debate after debate after debate probably threatened the already-fragile ozone layer.

Then the issue vanished. The president hasn't said anything about it recently, which is no big surprise since he wasn't happy with any of the proposals floating around out there. What's more surprising is that none of the announced Democratic presidential candidates has had much, if anything, to say about it. Even Sen. John Edwards, the Tar Heel trial lawyer who made his name and fortune litigating medical malpractice cases and who co-sponsored one of the chief patients' bill of rights bills, has turned his attention elsewhere as he chases his party's presidential nomination.

Party control of Congress doesn't explain the demise of the patients' bill of rights. After all, the debate played out almost exclusively with the Republicans holding the majority in both houses, save for the brief period of Democratic Senate control following Vermont Sen. Jim Jeffords' defection from the GOP.

It was not necessarily a partisan issue, either, as Republicans numbered among the sponsors of all the major bills. President Bush might not have liked the proposals, but that didn't stop members of his own party from supporting them.

Of course, what happened may reflect legislative fatigue. So many proposals, so much debate and nothing to show for it can give even

passionate advocates of change pause. It's a Washington truism that it's far easier to block a bill than to pass it, and even the most ambitious lawmaker gets tired of being beaten up on offense without a chance of scoring.

But I think the disappearance of the issue may have more to do with the fact that a critical component of the debate—the patients themselves—was missing from it. There were some truly horrendous tales of treatment denied and lives ruined by poorly managed health care. But horrible as some of the stories were, they never ignited a wildfire of patient anger among the general public.

That doesn't mean that the general public enthusiastically embraced

managed care.

People still don't embrace it, and most, at least occasionally, grouse about it. But it's one thing to applaud the anti-HMOs cracks in "As Good As It Gets" and quite another to transform that applause into a political agenda.

Instead of a discussion in which patients had a voice, the debate over the patients' bill of rights

was one of opposing interest groups that didn't speak for the general public. The people in whose name this debate allegedly took place ultimately didn't seem as concerned about having the right to sue health plans as they did about having access to coverage. They worried more about the cost of care than whether they should enjoy a new right to right wrongs in the courtroom.

Without a strong patient voice in the debate, it was probably close to moot from the beginning. But it may have served to call attention to the real issue, which is extending health care coverage to as many people as possible, preferably through a private system. I stress the private system angle because some of the candidates for the Democratic presidential nomination—albeit none of the perceived top-tier candidates—have begun talking about instituting a single-payer system here.

With a still-wobbly economy, despite some signs of recovery, and continuing doubled-digit increases in the cost of health care coverage, I'm willing to bet that this issue is not one that's going to vanish overnight. The patients' bill of rights expired, in part, because outside interests overshadowed the patients' own interests. Any politician expecting the patients to relegate themselves to the sidelines on this one may find himself or herself vanishing overnight—election night—as well.

Senior Editor Mark A. Hofmann can be reached at mhofmann@crain.com.



Mark A. Hofmann

Comings & Goings

Agents/brokers:

Henry Loubet has been named senior vp-strategic planning at Keenan & Associates. Before he joined the Torrance, Calif.-based company, Mr. Loubet was vice chairman and chief operating officer for online drugstore DrugEmporium.com.



Mr. Loubet

Aon Risk Services Inc. of Rhode Island, based in Providence, has named **Peter T. Caine** as COO. Previously,

Mr. Caine was senior vp and New England sales manager for Aon. He replaces **Thomas H. Quill Jr.**, who has retired.

Charles L. Ruoff has been named executive vp and chief marketing officer of the Treiber Group L.L.C. in Garden City, N.Y. Mr. Ruoff was senior vp and chief marketing officer for Acordia Inc. before retiring in 2002.

Insurers:

Hamilton, Bermuda-based ACE Ltd. has made two senior-level appointments:

• **Pierre Samson** has been appointed president, ACE Global Financial Solutions. Previously, Mr. Samson was president and chief executive of-

ficer of ACE Financial Solutions International.

• **Richard Pryce** has been named president, ACE Global Markets and director of ACE INA UK Ltd. and ACE Underwriting Agencies Ltd. Before his promotion, Mr. Pryce was director-financial lines for ACE Global Markets and senior vp-financial lines for ACE Overseas General.

N.J. Physicians United Reciprocal Exchange, a medical malpractice insurer based in Princeton, has named

Peter Leone as COO. Before joining the nonprofit NJ PURE, Mr. Leone was vp for claims at Princeton Insurance Co.



Mr. Leone

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Business Insurance

California: New work comp law is a start to reform

Continued from page 3

mediately benefit employers that self-fund, said Jill Dulich, regional director of claims services for Marriott International Inc.'s Western region in Santa Ana, Calif.

Yet employers and insurers say more legislative changes are needed to fix California's workers comp system and reduce insurance rates.

"No one should be under the illusion that this legislation solves the workers comp problem," Allan Zarembeg, president of the Sacramento-based California Chamber of Commerce, said in a statement. "California employers will still be suffering under the highest workers compensation rates in the nation."

Workers comp costs in California have risen from \$9 billion in 1995 to \$29 billion in 2003. During the same period, rates have increased from \$2.61 per \$100 of payroll to \$5.85 per \$100.

Chief among fixes still wanted by employers and insurers are objective protocols for specific injuries when rating a permanent disability. Currently, the state relies on subjective medical opinions, which employers and insurers say drives up medical and legal costs as injured employees and their attorneys seek higher disability ratings by employing more doctors.

The permanent disability system encourages the involvement of at-

torneys, who woo clients by claiming that they can win them a high-

Workers compensation costs in California have risen from \$9 billion in 1995 to \$29 billion in 2003. During the same period, rates have increased from \$2.61 per \$100 of payroll to \$5.85 per \$100.

er disability rating than the worker could otherwise obtain without rep-

resentation, said Willie Washington, legislative director for the California Manufacturers & Technology Assn. in Sacramento.

Among other changes, employers also want legislation allowing them to assign costs to a worker's former employer in cases where an employee first suffered an injury while working at the previous job. They also want the overall standard of care to be based on a "medical necessity" standard the state applies in regulating health maintenance organizations. Currently, workers comp injuries must be treated to a standard of "cure and relieve," which adds to medical and legal costs, according to the Chamber.

Still, the existing reforms should result in greater savings for employers than the WCIRB's analysis suggests, according to Mr. Garamendi.

The analysis failed to review several areas for potential savings, a spokesman for the commissioner said. For example, the WCIRB did not review cost savings that might result from utilization review measures contained in the legislation.

Mr. Garamendi and lawmakers who supported the legislation have projected between \$5 billion and \$6 billion in savings (BI, Sept. 15). Gov. Davis, who is touring the state to fight an election recall movement, signed the legislation while in Los Angeles.

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As detailed in the Special Resolution, all Scheme Creditors to whom the notice of the Special Meetings was given will receive a Claim Form from the Scheme Administrator. Scheme Creditors with Scheme Liabilities other than Potentially Protected Liabilities have until the Bar Date, 27 January 2004, to submit details of their claims on their Claim Forms. Any such Scheme Creditors who do not return their Claim Form before the Bar Date will be deemed to have accepted as their total claim against Bryanston the amount shown on their Claim Form as sent or made available to them, which may be nil.

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 SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF DAN YORAM SCHWARZMANN AND COLIN GRAHAM BIRD, AS JOINT PROVISIONAL LIQUIDATORS OF BLACK SEA AND BALTIC GENERAL INSURANCE COMPANY LIMITED, CASE NO. 98-B-46759 (CB)

NOTICE IS HEREBY GIVEN THAT ON SEPTEMBER 17, 2003, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY JUNCTION ORDER PURSUANT TO 11 U.S.C. § 304 ORIGINALLY ENTERED IN THIS CASE ON OCTOBER 5, 1998. THE ORDER SHALL REMAIN IN EFFECT UNTIL MARCH 18, 2004. A HEARING TO CONSIDER WHETHER THE ORDER SHALL BE CONTINUED IS SCHEDULED TO BE HELD ON MARCH 17, 2004 AT 2:00 P.M. (THE "RETURN DATE") BEFORE THE HONORABLE CORNELIUS BLACKSHEAR, IN ROOM 601 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE CORNELIUS BLACKSHEAR AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW. SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

CHADBOURNE & PARKE LLP
 ATTORNEYS FOR THE PETITIONERS
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NOTICE OF SANCTION OF SOLVENT SCHEME OF ARRANGEMENT IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION COMPANIES COURT No 4853 of 2003 IN THE MATTER OF ARIG INSURANCE COMPANY LIMITED IN THE MATTER OF THE COMPANIES ACT 1985, Section 425

NOTICE IS HEREBY GIVEN that, by the Order dated 30 September 2003 made in the High Court of Justice in England and Wales in the matter of the above company, the scheme of arrangement proposed (the "Scheme") to be made between the Company and its Scheme Creditors (as defined in the Scheme) pursuant to section 425 of the Companies Act 1985, which was voted on and approved by Scheme Creditors during the meeting held on 12 September 2003, was sanctioned. The Court Order and an office copy of the Scheme were lodged with the Registrar of Companies on 30 September 2003, and the Scheme became effective on that date.

Scheme Creditors are required to submit completed Claim Forms by 30 December 2003 or will be adjudged to have a claim valued at nil. Claim Forms should be returned to the Company's run-off manager, Castlewood (EU) Limited, 1 Stoke Road, Guildford, Surrey GU1 4HW, United Kingdom (Telephone: +44 (0) 1483 452 622), marked for the attention of Mr Paul Thomas to arrive on or before 30 December 2003.

Should you have any questions regarding this Notice, please address them to Emma Pugsley at: PricewaterhouseCoopers LLP, 3 St Philips Central, Bristol, BS2 0XL, United Kingdom (Telephone: +44 (0) 117 972 4553, Facsimile: +44 (0) 117 954 2900, e-mail: emma.pugsley@uk.pwc.com)

LEGAL NOTICE

NOTICE OF SANCTION OF SOLVENT SCHEME OF ARRANGEMENT IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION COMPANIES COURT No 4853 of 2003 IN THE MATTER OF ARIG INSURANCE COMPANY LIMITED IN THE MATTER OF THE COMPANIES ACT 1985, Section 425

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October 6, 2003

International

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Finnish utilities liable for outages

By GERARD O'DWYER

HELSINKI, Finland—A new law requires Finland's power utilities and electricity grids to reimburse commercial and residential customers for lengthy power outages.

Given frequent outages in the country, including one in late September caused by windstorms, utilities are purchasing new insurance policies to cover the compensation risk. At the same time, the power industry is considering forming a pool to fund the risk.

The compensation requirement is contained in the Energy Interruption Refund Act, which was first proposed in 2002 and became law on Sept. 9. The law, which invalidates "acts of god" limitations on power companies' liability for outages, requires the companies to compensate customers if outage periods and disruptions last longer than 12 hours.

Under the act, power companies are required to settle "valid claims" automatically and without customers having to apply for reimbursement. Customers suffering power loss for between 12 and 24 hours—regardless of the cause of the outage—are entitled to receive 60 euros (\$70.13) in compensation. Legislation sets a maximum ceiling of 700 euros (\$818.15) to a single

customer in any single calendar year.

That limit does not apply, though, to damage or injury caused by power outages.

"The new law covers loss of power supply. It does not cover any losses companies might have from lost production and downtime due to outages," explained Lauri Bjorklund, director of the production and logistics division of KONE Oyj, a multinational industrial engineering company based in Helsinki. Manufacturers and other companies will continue to rely on business interruption insurance coverage for such risks, he said.

Although companies will receive compensation if power is down for longer than 12 hours, this "small amount" is less significant than the act's potential for making power companies more intent on maintaining their energy networks to a high efficiency and performance standard, said Mr. Bjorklund.

"The better reliability of supply companies enjoy, the less the risk of regular outages and loss due to disruption of production. This may prove to be the best feature of the act from the point of view of the country's business and industry," he said.



PHOTO: STEVE RAYNER/CORBIS

Residents and business owners in Helsinki, Finland, who lost power recently are entitled to compensation by power companies under a new Finnish law that requires utilities to provide reimbursements.

The legislation is expected to lead to a surge in demand by Finnish power companies for options to fund their risk for outage reimbursements.

In anticipation of the change in law, the market's biggest insurance players, Pohjola Group Insurance Co., Sampo Insurance Co. Ltd. and

Nordea Group, all have developed products to cover the compensation risk of power producers, distributors and transmission grid system operators.

Premium income for such products could reach 20 million to 30 million euros (\$23.4 million to

See **BLACKOUTS**/next page

Ruling swings in council's favor

NEWPORT, Isle of Wight—The Isle of Wight's senior risk and insurance manager hopes that a recent U.K. court ruling will give local authorities new ammunition in their battle against Britain's growing compensation culture.

London's High Court ruled Sept. 23 that the Isle of Wight Council was not liable for the broken arm sustained by a 5-year-old boy who fell from a swing during a school sports day.

Mr. Justice Gross said that events such as sports days would become uninsurable if the £4,250 (\$7,049) compensation awarded to Ryan Simonds had been allowed to stand.

"A lot of people will be taking heart from this decision," said Rod Warne, the Isle of Wight Council's senior risk and insurance manager.

"All authorities have seen a significant increase in compensation claims since the introduction of conditional fees," Mr. Warne said. Conditional fees—which are "no-win, no-fee" arrangements similar to contingency fees in the United States—replaced the government-funded legal aid system for compensation cases in the United Kingdom in 2000 (*BI*, May 1, 2000; July 23, 2001).

"This was an important case for us to win," Mr. Warne said, noting that with increasing litigation and a hard market, local authorities already face huge insurance premiums.

Ryan Simonds had been having a picnic with his mother on a playing field during a school sports day. After telling Ryan to return to his teachers, his mother left the field. Instead of returning, he went to play on some swings and broke his arm jumping off one.

Mr. Justice Gross ruled that it was not reasonable to impose a legal duty on a school to immobilize the swings and that playing fields could not be made free of all hazards.

—By Carolyn Aldred

Property risks may scout other markets

By NEIL HODGE

Commercial buyers in Europe will likely seek property insurance coverage outside of their domestic markets if hard market conditions persist, according to a survey by Aon Corp.

Although European policyholders have longstanding relationships with insurers in their domestic markets, the increase in property rates over the past three years could lead them to look at international markets in an effort to reduce their costs, according to the report.

"Until recently, most European buyers could access sufficient capacity locally," said Oliver Schofield, director of the global property practice group at Aon Ltd. in London and one of the report's authors. "Now, though, rate increases and declining domestic capacity determine that if buyers are not prepared to look beyond their borders, they will be missing out."

European risk managers could save an average of 10% if they were to look outside of their traditional markets for property coverage, according to Nick Maher, chairman-global property practice group at Aon and co-author of the report.

Aon's report is based on the responses of a total of 40 clients and underwriters based in 11 European countries.

Mr. Schofield noted that there have traditionally been strong ties between European-headquartered multinational companies and the large domestic insurers based in their home countries, which has meant that most buyers have tended to renew their business with their existing insurer.

"Many multinationals in Europe seem

to rely on the hope that premium rates will remain affordable because they have had a long-term relationship with their insurers, but the market no longer works like that," said Mr. Schofield.

Aon found that now, though, many European buyers say they will look further afield if they are unhappy with the deals offered in their domestic markets.

Mr. Schofield added that large companies could be paying far higher premiums and receiving less coverage because of their reluctance to consider insurers elsewhere in Europe, the United States or Bermuda.

The report notes that London is still widely perceived by European multinationals as the most important and influential center for European property business, followed closely by Paris; Munich, Germany; and Zurich, Switzerland.

European risk managers are also interested in placing business with U.S. insurers, but few U.S.-based insurers are able or prepared to write the business, Mr. Maher said.

Among the report's other findings, it says that property rates have flattened out, with some signs of a downward movement, while capacity is still adequate, though less plentiful than before the Sept. 11, 2001, terrorist attacks.

But the report also finds that underwriters are insisting on obtaining more detailed risk information before they provide coverage. In addition, insurers are requiring more risk retention by buyers and are reducing the coverage they are willing to write. The report adds that buyers believe

See **PROPERTY**/next page

World Updates

Singapore to lower capital requirements

Singapore plans to lower its minimum paid-up capital requirement to attract niche insurers, said Deputy Prime Minister Lee Hsien Loong. In a speech last week, he said the government will lower the threshold to \$10 million Singapore (\$5.8 million) from \$25 million Singapore (\$14.4 million) for multiline insurers and to \$5 million Singapore (\$2.9 million) for monoline insurers. Mr. Lee, chairman of the Monetary Authority of Singapore, spoke at the 10th annual conference of the Assn. of Insurance Supervisors in Singapore.

Claims processing system is unveiled

London-based Xchanging Claims Services has launched a system to speed claims processing. The system, called the Claims Office of the Future, divides claims into two types, depending on complexity. This will speed up the claims-paying process, said Clive Buesnel, managing director of Xchanging Claims Services. Lloyd's managing agency Ascot Underwriting Ltd. has become the system's first user. Lloyd's has a 50% stake in Xchanging Claims Services.

Hardy Underwriting posts higher profits

Higher rates and growth in investment income helped profits triple at London-based Hardy Underwriting Group P.L.C. in the first six months of 2003. Hardy, which manages multiline syndicate 382 at Lloyd's of London, reported a profit of £6.48 million (\$10.7 million) for the first half, up around 250% over the prior-year period.

Catlin opens trading floor

Lloyd's of London managing agency Catlin Underwriting Agencies Ltd. is opening a trading floor for brokers in its offices in the London Underwriting Centre. Starting Oct. 1, brokers will be able to place business with Catlin's multiline syndicate 2003 either on the trading floor or at Catlin's underwriting box at Lloyd's.

Briefly noted

Dallas-based wholesaler **U.S. Risk Insurance Group Inc.** has bought a stake in London-based professional indemnity broker NCG Professional Risks Ltd. Terms were not disclosed....Lloyd's of London reinsurance broker **Bradstock Group P.L.C.** has suspended trading and entered provisional liquidation because it cannot afford to renew its professional indemnity policy.

Floods: Interest in risks rising

Continued from page 1

While experts say it is too soon to predict a trend, climate-change projections do indicate that flooding is likely to become more frequent in Europe, said David Crichton, visiting professor at the Benfield Greig Hazard Research Centre based at University College London.

"There is no room for complacency. I think we will be seeing more frequent flood events throughout Europe," he said.

In the countries hardest hit by last year's flooding, insurers and risk managers continue to examine ways to improve flood risk management to minimize their exposure.

Germany

In Germany, last year's floods caused total economic losses of about 10 billion euros (\$11.7 billion), according to Swiss Reinsurance Co. About 10% to 20% of this total was insured, according to the Zurich, Switzerland-based reinsurer.

Flood insurance is available in Germany for large conglomerates and midsize companies as part of property coverages, according to Johannes Fischer, risk manager for manufacturing company Scott-Zeiss Assekuranzkontor GmbH in Mainz, Germany.

But in some cases, German insurers are reluctant to provide flood coverage for businesses in high-risk areas, according to Jens Mehlhorn, head of the flood group at Swiss Re in Zurich.

Following the 2002 floods, the German insurance association—Der Gesamtverband der deutschen Versicherungswirtschaft e.V.—created a zoning system for flood, backwater and heavy rainfall assessment.

"From that perspective, there may be some differences in the premium structure (for flood cover) in the future," said Mr. Fischer, who is also president of the German risk management association, the Bundesverband Firmenverbundener Versicherungsvermittler und Gesellschaften e.V. "But, for the time being, it is nevertheless possible to buy these coverages," he said.

However, he noted that in some cases, German companies' exposure to flood risks may be much larger than the limits that are offered by insurers. "I think there is additional capacity available from the reinsurance industry," he noted, "but that is going to cost you a lot more money."

In the wake of the 2002 floods, discussions have been taking place between the German government and the insurance industry about making some form of flood insurance cover mandatory, said Wolfgang Kron, head of hydrological risks in the GeoRisks Department of Munich Reinsurance Co. in Munich.

One solution that has been proposed is that starting in July 2004, every commercial or household fire insurance policy coming up for renewal would also include flood coverage. But Mr. Kron said that no agreement has been reached as to what natural perils would be included in any mandatory cover, or

whether the cover would be bundled with fire policies.

Czech Republic

The Czech Republic has been hit by severe flooding twice in the last six years. In addition to experiencing significant flood problems last summer, the country in 1997 suffered insured losses of 9.7 billion Czech korunas (\$281.7 million) from flooding, according to the country's insurance company association, the Ceska Asociace Pojistoven. The 2002 floods caused insured losses of 1.1 billion euros (\$1.04 billion), CAP estimates.

There is fairly high demand for flood cover from businesses that experienced losses from one of those events, said Doug Pritchard, managing director of broker Willis Group Ltd.'s Prague office.

Commercial insurance coverage for flood risk is available in the Czech Republic but is usually subject to limits of 100 million Czech korunas (\$3.6 million), he said.

But it is possible to get higher

'There's no room for complacency. I think we will be seeing more frequent flood events throughout Europe.'

*David Crichton
Benfield Greig Hazard
Research Centre*

limits or to buy additional cover, he said. A large part of the Czech economy is now foreign-owned, and many of the insurance buyers in the country are part of large multinational organizations, Mr. Pritchard explained. "If you have got an international insurance program, you can probably get the limits you want," he noted.

And while it is possible to buy additional coverage, it can be fairly expensive, he said.

But there are risk management techniques businesses can employ to reduce their risk and be viewed more favorably by potential insurers, Mr. Pritchard explained. Steps as simple as elevating equipment on racks, or placing it on a higher floor can reduce potential flood losses, he noted.

Insurers also are taking steps to reduce their exposure and improve their underwriting.

Swiss Re earlier this year launched a flood risk assessment tool principally designed for use by primary insurers in the Czech Republic. The tool, which includes a flood zoning calculation based on digital terrain models, is being used by the CAP and Swiss Re cedents in the country.

Underwriters can enter the street address of a risk into the model, which then provides information and projections on the frequency of flooding for that location, explained Mr. Mehlhorn. Underwriters can then use that information to calculate premiums.

London-based brokerage Benfield Group Ltd. launched a flood risk

model for the Czech Republic in the wake of the 2002 inundation.

That model uses data on river flows going back to the 1930s, explained Jonathon Gascoigne, a risk analyst in the ReMetrics division of Benfield Group P.L.C. The model takes into account elevation of the landscape and human intervention, among other factors, allowing users to plot estimates of potential flood events, he said.

United Kingdom

In the United Kingdom, while flood insurance is widely available for homeowners, insurers tend to treat business flood insurance on a case-by-case basis, according to Mr. Crichton from Benfield's Hazard Research Centre. This has prompted many businesses to look carefully at flood risk management, he said.

In particular, over the past two or three years, many U.K. businesses have set up their own private flood defenses, such as flood walls or temporary barriers, explained Mr. Crichton.

This approach is also taking hold in the United States and could gain in popularity in continental Europe, he added.

One problem for some U.K. risk managers is the runoff water from newly built industrial or housing estates, said David Gamble, executive director of the Assn. of Insurance & Risk Managers in London.

If those developments are not built with adequate regard to flood risk, nearby businesses can face problems from water runoff, he explained.

Continental Europe

Across Europe, the level of insurance penetration for flood risk varies greatly, as do the approaches of governments and insurers, according to Mr. Crichton.

"In the Netherlands, insurance is virtually nonexistent for flood," he noted, adding that a debate is currently taking place as to whether the Dutch government should encourage insurers to offer insurance cover for flood.

In France, for example, flood insurance is backed up by the state-funded reinsurer Caisse Centrale de Reassurance, which covers natural disasters, he noted.

And in Portugal, flood insurance and earthquake insurance are bundled together, and one cannot be bought without the other, said Mr. Crichton. Because earthquake insurance is widely bought in Portugal, there is also a high penetration of flood insurance, he explained.

In much of Switzerland, Mr. Kron noted, flood insurance is sold as part of a package with fire insurance.

Paul Taylor, vp of the Federation of European Risk Management Assns., said that while FERMA is not considering any particular initiatives related to flood risk, the issue is being looked at by risk managers. One risk manager, he noted, is lobbying the European Union for funding to create a flood risk map for all of Europe.

Med mal: Proposal

Continued from page 4

dictable payouts, she said, adding that resolving claims administratively rather than through litigation would also reduce overhead. The fact that it would encourage the injured to file claims might mean more claims, but that, in turn, would promote safety and reporting of problems, Ms. Mello said.

Because such a system would be enterprise-oriented, insurers would be able to use experience rating in determining medical malpractice liability premiums, she said.

After Ms. Mello finished her presentation, Ed Howard, the Alliance for Health Reform's executive vp, asked another speaker whether such a system of enterprise-based liability would be more palatable now than it was when a similar system was suggested during the Clinton administration.

Dr. Robert Berenson, an independent consultant who served in 2000 as acting deputy administrator of what is now called the Centers for Medicare and Medicaid Services, said that physicians objected to the earli-

er plan because they feared being swallowed up by the hospitals. The system would work well where there are well-integrated relationships between doctors and hospitals, said Dr. Berenson. But it could be difficult to implement in situations where doctors rarely deal with particular hospitals, he said.

A third speaker said preventable injuries continue to occur despite two generations of legal scrutiny.

"We want to get to a system that makes it easier for people to do the right thing," said Randy Bovbjerg, a principal research associate in the Health Policy Center of the Urban Institute in Washington. Ideally, physicians and hospitals would tell patients when problems happened and patients would receive "reasonable" compensation for avoidable injuries, he said. Health care professionals need to be more concerned about patient outcomes than legal outcomes, said Mr. Bovbjerg.

The Washington-based Alliance for Health Reform is a nonpartisan clearinghouse for information relating to health care issues.

Blackouts: Finland holds utilities liable

Continued from previous page

\$35.1 million) in 2004, according to an estimate by Finland's Ministry of Trade and Industry.

"At this stage it is difficult to estimate the value, in terms of new written business, that the law will have on insurance company revenues. It will not be very significant at first," said Kari Sundstrom, an insurance markets analyst with the investment company Loklann Advisers.

However, she added, that could change if power companies sustain large compensation losses and seek to purchase larger and more comprehensive policies.

Sener, a trade group for Finnish electricity companies, estimates that more than 90% of Finland's 418 utilities and transmission grid operators already have purchased coverage for their outage compen-

sation risk.

However, power companies are also exploring the creation of a group captive insurer to fund members' compensation claims.

"Insurance cover can be expensive, and the formation of a common cash refund pool would be a cost effective means of minimizing costs while managing risk," said Matti Kaisjoki, vp of energy utility Pohjolan Voima Oy.

Although the law has come too late for electricity users in Helsinki, who experienced a general blackout lasting between 8 and 14 hours on Aug. 22 and 23, power companies are anticipating 5,000 to 8,000 claims arising from gale-force winds that downed power lines and caused shorter outages in large areas of Finland on Sept. 22 and 23.

Property: Europeans may look elsewhere

Continued from previous page

that underwriters' information requirements are "excessive."

U.S.-based multinationals, said Mr. Schofield, have "a longer tradition of satisfying the risk management and information requirements that underwriters impose before offering cover." In addition, U.S. companies are "much more likely to look to the international market for insurance needs than focusing mainly on domestic players," he said.

Aon also does not believe that ei-

ther the United States or Bermuda will gain a significant foothold in the European property insurance market for the next few years at least. "Generally speaking, the new Bermuda capacity has been a slow entrant into the European property market, primarily due to Bermuda's low initial staffing levels and its focus on U.S. business," says the report.

The report, "On The Edge: European Property Report 2003," is available at www.aon.com.

Merger: Little overlap seen

Continued from page 1

with the combined entity. Hancock Chairman and CEO David D'Alessandro will become the company's chief operating officer and will also be named president of Manulife 12 months after the transaction closes. He will remain chairman and CEO of John Hancock Financial Services and will direct the combined companies' North American retail and group business,

which will be headquartered in Boston. The two men are not related.

Market observers describe the proposed deal as a match of equals.

"It's not a situation where you've got a company with a very weak rating being gobbled up by a very strong company. They're both good, financially sound companies with very conservative reserving practices," said Edward E. Graves, a professor at The American College in Bryn Mawr, Pa.

"What Hancock and Manulife are looking to accomplish in this deal is really leveraging each other's strengths," said Mark Puccia, managing director of Standard & Poor's Corp.'s Financial Service Group in New York.

"Manulife is looking for a strong brand name in the U.S." and to expand its presence in this country, as well as expense consolidation opportunities, said Mr. Puccia.

Although Hancock has a big presence in the United States, it has a small presence in Canada "and not much elsewhere," Mr. Puccia said. In addition to its leading role in the Canadian market, Manulife has a large presence in Asia, he noted.

Both companies operate only within select businesses within the U.S. group market.

Hancock's group long-term care business accounted for \$109.9 million in new and renewal premiums last year. In addition, for the first half of 2003, Hancock reported \$57.9 million in premiums from the federal government's LTC program, which was introduced last year. Hancock jointly underwrites the federal program with Metropolitan Life Insurance Co.

In its GIC business, Hancock reported \$906 million in revenue in 2002. Among its other guaranteed and structured financial products, group annuities accounted for an ad-

ditional \$292.5 million in revenue.

Hancock in June had announced the sale of its group life insurance business to MetLife for an undisclosed amount (*BI*, June 30).

Manulife, which ranks as the largest provider of 401(k)s to small businesses, had \$19.22 billion under management as of June 30, according to a company spokeswoman. It also had \$1.6 billion in premium and premium equivalents in group life and health business in Canada last year.

The merger is not expected to have a significant impact on employers.

"We don't envision the merger's going to affect us at all," said a spokesman for the Idaho Falls-based Idaho National Engineering & Environmental Laboratory. Hancock underwrites the laboratory's group long-term care program.

"I think it's a neutral," said Barry Barnett, a principal with HRS PricewaterhouseCoopers in New York. "I don't think we should be concerned about it."

"I don't think it'll have much effect," agreed Steven D. Schwartz, senior vp-equity research at Raymond James & Associates in Chicago. There is little overlap in those areas, and so "you're not going to neces-

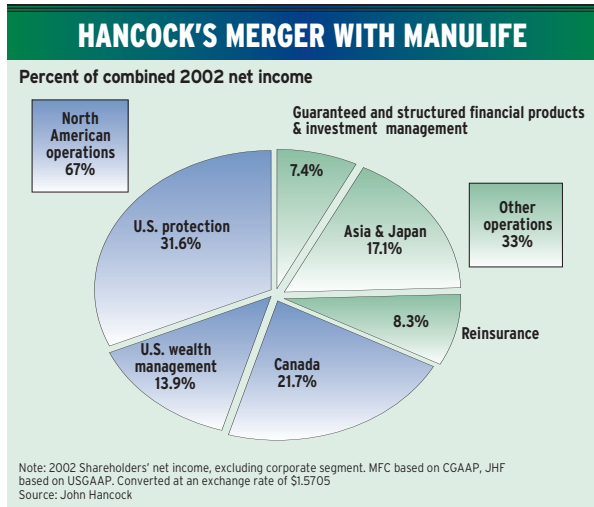
sarily get a big increase in concentration in those areas; therefore, why should something change?" he asked. The economies of scale achieved through a combined company, though, could result in improved pricing and service, added Mr. Schwartz.

Michael A. Cohen, vp at Oldwick, N.J.-based A.M. Best Co., said the deal may also encourage the new company to become even more heavily involved in the long-term care business. "They like the business," he said.

"Short term, my sense is everything's going to be fine," said John Asencio, who heads The Segal Co.'s New York corporate health practice.

Over a longer term, though, Manulife may want to take a look at Hancock's contract terms and underwriting, particularly for its group long-term care business, "where everyone's contracts differ," said Mr. Asencio.

While Manulife may decide to simply continue with how Hancock has approached this business, group LTC clients should be aware this could change, Mr. Asencio said. "To the extent clients can get a jump on that, it would be in their interest," he said.



PBGC: Solvency takes a hit

Continued from page 4

olvency of an agency already facing a deficit of more than \$5 billion.

"By forcing the PBGC to pay nearly \$100 million in unfunded severance benefits, this ruling will further weaken a pension insurance system that already is already billions of dollars in the red," said PBGC Executive Director Steve Kandarian.

But the ramifications of the ruling go far beyond the hefty additional benefits the PBGC could be liable to pay to the former Republic steel workers.

At the heart of the case is the PBGC's authority to set termination dates for pension plans it takes over and how much proof it has to provide to justify a termination date that could deprive plan participants of benefits they may have expected to receive but also protect the agency's employer-funded insurance program from losses.

In June 2002, the PBGC moved

to terminate the Republic plans after the company announced it would be selling off assets and that the buyer would not assume the plans' liabilities. The PBGC concluded that the plans would be unlikely to pay benefits and, ultimately, would be abandoned.

On June 11, 2002, a PBGC working group recommended to Mr. Kandarian that the agency initiate legal action to involuntarily terminate the plans. The group also recommended an immediate termination date—June 14, 2002—to prevent a triggering of the plans' shutdown benefit provisions.

Under those provisions, employees who met certain age and service criteria would be eligible for immediate pension benefits before the normal retirement age of 62 if the Republic steel plants where they worked were shut down. The employees would be eligible for the benefits even if the facilities were purchased by another employer in

an asset sale and the individuals began working for the buyer.

By setting a June 14 termination date, the PBGC would avoid liability for the shutdown benefits. The PBGC guarantees shutdown benefits, but only if the plant has shut down prior to plan termination. On June 14, the PBGC notified Republic participants of the termination.

On July 9, 2002, a bankruptcy court scheduled a sale of Republic assets, and the assets were sold on Aug. 16, 2002. On that same date, Republic declared that a shutdown had occurred.

The USWA, in court proceedings, said the June 14 termination date was unreasonable and could not be reconciled with the purposes of the Employee Retirement Income Security Act, which, it said, put the uninterrupted payment of participants' benefits before any consideration of PBGC's financial interests, among other things.

In his ruling, Judge Economus ac-

knowledged that the PBGC acted within its authority to terminate the plans. But, he ruled, in order to justify a June 14 termination date rather than the August shutdown date, the agency would have to prove that the earlier date was necessary to prevent an "unreasonable" increase in the liability of the PBGC's insurance program.

In examining the 3,000-page administrative record, "there is a paucity of evidence...regarding the impact of the terminations on the overall stability of the insurance fund," Judge Economus wrote.

"The lack of any consideration in the record regarding the potential impact to the shutdown benefits precludes the court from affording the PBGC" deference, he wrote.

Because the PBGC didn't demonstrate how a June 14 termination date would protect the insurance fund from an "unreasonable increase in liability," the interest of plan participants in receiving shutdown benefits would exceed that of the PBGC, Judge Economus concluded.

The heart of the decision is that the interest of plan participants out-

weighed the PBGC's interest in limiting its exposure, said David Jury, USWA assistant general counsel in Pittsburgh.

While courts historically have given the PBGC great deference on plan termination issues, the notion that participant interest can trump that of the PBGC is definitely a new concept, said Carol Connor Flowe, a partner with Arent, Fox, Kitner, Plotkin & Kahn in Washington and a former PBGC general counsel.

Pension Benefit Guaranty Corp. vs. Republic Technologies International L.L.C., U.S. District Court for the Northern District of Ohio, Eastern Division; No. 5:02 CV 01116, Sept. 30, 2003.

Medco: Client impact negligible

Continued from page 3

fied documents in order to make the plant seem more efficient at filling prescriptions. The managers took such steps because they were evaluated by how many prescriptions the mail-order pharmacy processed per hour, the suit charges.

Managers that met the company's productivity goals were rewarded with lucrative stock-option packages, the suit states. Those that failed to make targets, though, were punished and, in many cases, terminated, the complaint states.

David Snow, Medco's chairman, president and chief executive offi-

cer, said the suit was not a surprise, because the company has been co-operating with the U.S. attorney's investigation of the whistleblower suits for the past four years.

The charges are "false, overblown or reflect an isolated incident," said David Machlowitz, Medco's general counsel. In addition, he noted that the allegations are based on claims by three individuals who have not dealt with Medco for more than five years.

Mr. Machlowitz acknowledges that a senior manager at a mail-order facility in Tampa, Fla., did alter prescriptions in 1999 and 2000.

Those actions, though, were contrary to company policy and the manager was terminated when the illegal acts were discovered, he said.

Observers don't expect the federal suit to have much impact on employers' dealings with Medco.

"I don't think any client will terminate or change their relationship with Medco over something like this," said Debbie Martin, senior consultant with Mercer Human Resource Consulting in New York.

Employers probably won't leave Medco, because the suit is seen as just one of numerous investigations of the PBM industry, said Todd Gib-

son, director at Princeton Consultants in New York. Also, employers generally evaluate PBMs from their own experience and the prices they are quoted, Mr. Gibson said.

Ms. Martin said, though, that the suit could affect Medco's ability to attract new customers.

The federal suit may not be the end of Medco's legal troubles. Attorneys general from 27 states are looking at whether Medco's actions have violated state consumer protection laws, said Joseph Baker III, head of the health care bureau at the New York attorney general's office. Mr. Baker said it's not yet clear whether the states will sue the PBM.

Medco, which was spun off from Merck in August, reported PBM revenues of \$33 billion for 2002.

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Late News

Continued from page 1 Japan quake claims limited

An earthquake last week that jolted Japan's northern island of Hokkaido is not expected to cause significant insured losses. The offshore, 8.0-magnitude quake injured hundreds,



PHOTO: KYODO NEWS

An earthquake touched off fires last week at an oil refinery in northern Japan.

cut off electricity and water, and ignited two oil-tank blazes at an Idemitsu Kosan oil refinery. But because the area affected was sparsely populated, insured losses are unlikely to exceed \$30 million, according to brokers in Tokyo. Local authorities on Hokkaido said total economic losses were estimated at 9.1 billion yen (\$82.7 million).

Isabel claims to reach \$1.17 billion: ISO

Hurricane Isabel caused an estimated \$1.17 billion in insured property damage, according to a preliminary estimate by the Insurance Services Office Inc.'s

Property Claim Services unit. Virginia sustained the greatest insured losses at \$450 million, followed by Maryland—including the District of Columbia—at \$410 million and North Carolina at \$170 million.

FIFA covers World Cup risk with bond issue

The Federation Internationale de Football Assn. has issued a \$260 million bond to cover the risk of cancellation of the 2006 world soccer tournament to be played in Germany. Investors in the bond will bear the risk of the event being canceled for any reason, excluding certain risks such as world war or boycott. FIFA announced last month that it would seek alternative risk transfer for its cancellation coverage after an evaluation of the traditional insurance market, which, it said, "no longer covers FIFA's needs as required."

Financial guarantee reinsurer forming

A new financial guarantee reinsurer is being formed in Bermuda by a group of investors, including MBIA Inc. Other investors are RenaissanceRe Holdings Ltd., PartnerRe Ltd., and Koch Financial Corp. The new reinsurer will assume a portfolio of in-force business from MBIA and reinsure other MBIA business. It will have \$350 million in

capital and total claims-paying resources of \$700 million, according to an MBIA statement.

Captive benefits plan gets tentative OK

The Department of Labor has given tentative approval to International Paper Co.'s request to use its Vermont-domiciled captive to reinsure group life insurance benefits. International Paper proposed, in an August filing, to use its three-year-old captive, CircleTree Insurance Co., to reinsure life insurance policies. The Labor Department's action is the first under an expedited review process in which the department must act on an application within 45 days of receipt.

Insurer groups outline asbestos stance

Five major insurance trade groups have formally endorsed a unified position they contend must be reflected in asbestos liability reform legislation. The unified stance reaffirms several positions on individual issues that insurance associations had staked out this year during and after the Senate Judiciary Committee's debate over the Fairness in Asbestos Injury Resolution Act. The final version of the FAIR Act would require insurers to pay up to \$52 billion—and possibly more—into a new national no-fault trust fund to compensate victims of asbestos-related illness. The insurance trade groups' position is that a \$45 billion figure would mark the outer limit of any funding they

would provide.

Briefly noted

The U.S. General Accounting Office has recommended that state insurance regulators and legislators give increased priority to adopting a common set of standards so there is more uniform oversight of insurers' business dealings with consumers. In a report last week, the GAO suggests standards "should include procedures for conducting market analysis and coordinating market conduct examinations."...**Empire Blue Cross & Blue Shield** said it will appeal a state court ruling that allowed a lawsuit to proceed challenging Empire's conversion to for-profit status. The suit, filed by Consumers Union of U.S. Inc. alleges the 2002 law that permitted the conversion of New York's largest health plan from nonprofit status violates the state constitution because it helped only Empire and no other company...A federal district court in Tallahassee, Fla., has granted summary judgment in favor of the Washington-based **Council of Insurance Agents & Brokers** in its suit to have Florida's countersignature law declared unconstitutional.

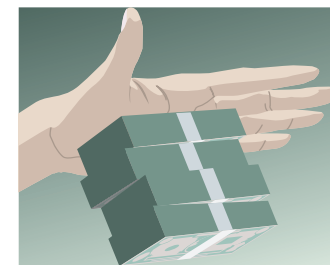
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Items in the Late News column originally appeared in *BI's Daily News* feature on www.businessinsurance.com. Visit the *BI* Web site to sign up to receive *BI's Daily News* by e-mail.

Online Poll

[9/29-10/3]

Would you support capping punitive damages at treble compensatory damages as a means of curbing abuse of the civil justice system?



Yes	48.8%
No	44.8%
Do not know/ do not care	6.4%

BI Stock Index

[9/29-10/3]

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	2021.74	↑ 4.20
Dow Jones	9572.31	↑ 2.78
S&P 500	1029.85	↑ 3.31

Largest gains

NYMagic Inc.	13.94%
Sierra Health Services	13.09%
CNA Surety	9.92%
Philadelphia Consol.	9.88%
AFLAC Inc.	9.36%

Largest losses

Acceptance Insurance	-11.11%
Gainsco Inc.	-9.09%
Navigators Group	-5.32%
ESG Re Ltd.	-3.23%
Meadowbrook Insurance	-2.64%

Weekly change by market segment

Brokers	2.94%
Insurers/Reinsurers	3.67%
Managed Care Organizations	6.99%

Source: CNET Investor (investor.cnet.com)

Pollution: PRPs may be able to tap cover

Continued from page 1

As part of a large-scale effort to clean up and collect damages for the loss of use of polluted natural resources at 4,000 sites statewide, New Jersey's Department of Environmental Protection has ordered 66 potentially responsible parties to begin assessing and restoring 18 heavily contaminated sites within the Passaic River watershed from the city of Paterson through the river's confluence with Newark Bay (*BI*, Sept. 29). Natural resources include groundwater, plant life and wildlife.

The DEP also has ordered immediate interim restoration efforts focusing on the ecological and economic benefits the river provided before it was polluted.

PRPs that do not comply could be subject to treble damages, the DEP has warned.

Among the identified PRPs are Ashland Inc., Diamond Shamrock Chemicals Co., E.I. du Pont de Nemours & Co., Eastman Kodak Co., Lucent Technologies Inc., Benjamin Moore & Co. and SmithKline Beecham Corp. Representatives of some PRPs said the companies had not seen the directives, still were evaluating them or were seeking clarification.

Unlike the tobacco liability litigation that many states joined during the 1990s, other states with pollut-

ed natural resources would have to strike out on their own to collect damages from alleged polluters, attorneys agree.

"But when other states see what happens in New Jersey, if it's successful, I can't see how they would not follow suit," said plaintiff and policyholder attorney Barry Knopf of Cohn Lifland Pearlman Hermann & Knopf L.L.P. of Saddlebrook, N.J.

Before collecting natural resource damages, though, New Jersey might have to jump legal hurdles challenging its authority to pursue such damages, said policyholder attorney Ira Gottlieb of McCarter & English L.L.P. in Newark, N.J. Some PRPs that already have remediated public sites could argue that their cleanup programs factored in compensation for the loss of use of the sites, he said.

Still, PRPs should begin assessing the general liability coverage they might have available to respond, attorneys say. Even coverage that policyholders might assume is unavailable as a result of earlier global settlements still could respond, they say.

Policyholders might be able to tap the remaining limits of that coverage if they could show that, under the reasonable expectations doctrine, they were unable to contemplate that the state's claims

would be included in the settlement, Mr. Gottlieb said.

Even if the settlement clearly covers polluted public sites, policyholders that already have remediated sites but now face additional state claims for damages covering the public's loss of use of natural resources could argue they could not have expected additional liability for a cleaned-up site, Mr. Gottlieb explained.

And, not all global settlements clearly cover such damages, which already has raised concerns with at least one insurer, he said.

"So, good advice is for everybody to go back and look" at previous global settlements, he said.

But insurer attorney Christopher E. Martin, a partner at Ohrenstein & Brown L.L.P. in Newark, N.J., said policyholders would have difficulties opening up global settlements under New Jersey case law.

The idea of relying on a reasonable expectation argument to open up a global settlement "confused" insurer attorney Laura A. Foggan, counsel for the insurer-backed Complex Insurance Claims Litigation Assn.

"When you start with these global settlements, you start with the notion that there is peace in our times," said Ms. Foggan, a partner with Wiley Rein & Fielding L.L.P. in Washington.

"For policyholders to say this wasn't really known defeats the language of the 'known or unknown claims' provision and defeats the purpose of global settlements," Ms. Foggan said.

The exception would be if insurers had specifically agreed to carve out future pollution liabilities, she said.

Alternatively, policyholders could argue that the state's efforts to recover compensation for the loss of the public's use of natural resources are not environmental claims and, therefore, are not contemplated by earlier global settlements, Mr. Martin said. Insurers then would likely argue that such claims are not third-party bodily injury or property damage losses covered by general liability policies, he said.

But whether policyholders would argue that natural resource damage claims are not environmental claims is questionable. Policyholder attorneys and even insurer attorneys acknowledge that some of the limited number of courts that have ruled on the issue have found that general liability policies cover natural resource damages.

Ms. Foggan noted, though, that some of those cases were fact-specific, so the rulings do not suggest that general liability policies routinely cover natural resource damage.