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spurs mixed reactions/ 2**

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\$4

Terror cover deal reached

Backstop legislation could reach president's desk as soon as this week

By MARK A. HOFMANN
and JERRY GEISEL

WASHINGTON—A last-minute deal on federal terrorism insurance legislation should send a bill to the White House for President Bush's signature later this week or soon after the November congressional elections.

The deal, broadly welcomed by

the commercial insurance industry, came after the Bush administration backed off from its demand that sweeping tort reforms be included in the legislative package. Congressional Democrats also made concessions, under which multiple lawsuits for property loss, personal injury or death from terrorists would be consolidated in a federal district court. Such suits would have no

monetary limits on punitive damages, though.

Backers of the legislation hope that Congress will vote on the so-called conference report this week, though the timetable for passage could be delayed until after the Nov. 5 elections.

"It's not done until it is done, so we will continue to press for enactment, hopefully this week," said

Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

"We are very confident of an agreement," said Julie Rochman, senior vp with the American Insurance Assn. in Washington.

Still, there are some obstacles to overcome. Business lobbyists say that some House Republicans angri-

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Late News

**DOL releases
401(k) blackout rules**

Employers must give 401(k) plan participants at least 30 days' advance notice of periods, known as blackouts, during which transactions cannot be conducted, under regulations released by the Department of Labor. The rules, called for under legislation President Bush signed in July, also detail information that must be included in a blackout notification. Among other information, the notice must include the name, address and phone number of the plan administrator or other person responsible for answering questions regarding the blackout.

**CIGNA takes charge
for Unicover liability**

CIGNA Corp. will record an additional \$315 million aftertax charge to its third-quarter results.

Most of the latest charge is related to a dispute between CIGNA and the reinsurers of its portion of the Unicover Managers Inc.

workers compensation pool. An arbitration panel ruled that CIGNA was liable for a portion of the business it had ceded. The charge comes about six weeks after CIGNA announced that it would take a \$720 million aftertax charge to third-quarter results to strengthen reserves for certain life reinsurance contracts.

**USI changes terms,
market for IPO**

Broker USI Holdings Corp. has reduced the expected size of its initial public offering, originally scheduled to take place Oct. 16 on the New York Stock Exchange, to 9 million shares at between \$10 and \$11 each. Originally, USI had planned to offer 11.4 million shares at between \$13 and \$14 each.

Under the revised terms, USI no

See LATE NEWS/next page

IRS targets tax dodges in captives writing warranties

By DOUGLAS McLEOD

WASHINGTON—Car dealers and other owners of captives formed to reinsure customers' risks are facing new Internal Revenue Service scrutiny over tax breaks claimed for the captives.

The IRS announced last week that it is targeting producer-owned reinsurance companies, known as PORCs, whose parent companies claim tax benefits under section 501(c)(15) of the Internal Revenue Code and two other code sections. Section 501(c)(15), originally aimed at small farm mutuals, grants tax-exempt status to property/casualty insurers writing less than \$350,000 a year in premiums.

The IRS expressed concern that companies are improperly shifting taxable income to tax-exempt offshore captive reinsurers, and it specifically cited auto dealers, lenders and retailers that sell extended warranty contracts on their products as examples of the problem.

The agency said it intends to challenge some of these arrangements on various grounds, including that the offshore reinsurers are not valid insurance companies for tax purposes.

See IRS/page 53



PHOTO: MERRILL SALTZMAN

A 1982 photograph shows bottles of Tylenol, resting atop police reports, awaiting testing for cyanide contamination by the Chicago Board of Health.

Looking back at lessons learned in the Tylenol poisonings Tragedy spurred innovation

By SALLY ROBERTS

It has been 20 years since the infamous Tylenol poisonings, but the effects of the incident still linger in the risk management community.

Several major developments arose from the first major product-tampering case to receive global publicity: It spurred the creation of the first malicious product tampering insurance product and introduced tamper-resistant packaging in the pharmaceutical industry.

But more than that, by awakening the minds of corporate America to what before had been unthinkable, the Tylenol incident put crisis management on the map.

And Tylenol's maker, New Brunswick, N.J.-based Johnson & Johnson, became a role model by the way it responded—actions many observers say risk managers can learn from today.

In the fall of 1982, seven Chicago-area residents died after ingesting cyanide-laced Extra-

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Spotlight on

**WORKERS
COMPENSATION**

Begins on page 10

**LEADING
SAFETY
CONSULTANTS**

Ranking on page 12

**LEADING
REHABILITATION
CONSULTANTS**

Ranking on page 16

Inside

Underwriters push for more information

Although insurers and reinsurers have toughened their underwriting since last year's terrorist attacks, capacity remains available for most lines, according to one panel of industry executives. **Page 4**

Battle may be won, but struggles remain

The protracted battle over terrorism legislation shows that the insurance industry has to work harder on improving its image and on convincing the public of the need for tort reform, Editor Paul Winston writes. **Page 6**

Salutary lessons found in lobbying effort

The apparently successful effort to push for a federal backstop for terrorism insurance offers several salutary lessons on future legislative issues, this week's editorial says. **Page 8**

California regulators rate physician groups

California regulators are expanding their HMO report card to include ratings of physician groups. **Page 38**

Finland mall owner covered for bombing

The up to \$3 million in property damage caused by a bomb at a shopping mall in Finland is fully covered by insurance. **Page 49**

Airline coverage available but costly

War risk and terrorism coverage for European airlines should be available after government programs end on Oct. 31, but the coverage won't come cheap. **Page 49**

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REPORTING WEEKLY ON CORPORATE RISK, EMPLOYEE BENEFIT AND MANAGED HEALTH CARE NEWS

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longer met the NYSE's qualifications for an IPO. USI now plans to list its common stock on the Nasdaq exchange.

Massachusetts lowers health care surcharge

Massachusetts health care regulators have lowered a surcharge on payments made to hospitals and ambulatory centers in the state. The new surcharge is 1.85%, down from 2.15%. The surcharge is imposed on third-party claims administrators, insurers, health maintenance organizations, preferred provider organizations and employers nationwide that administer their own health plans. The surcharge funds a \$100 million pool to reimburse hospitals for care provided to the uninsured.

Aon, Giuliani Group team for crisis services

Aon Corp. will offer crisis management services through a strategic alliance with

Giuliani Group L.L.C., the company founded by former New York Mayor Rudolph Giuliani. Through the joint venture,

the companies will assist organizations with risk identification, crisis planning and disaster recovery efforts. The alliance will "assist and help businesses and organizations who are dealing with some of the risks and dangers that we know exist," Mr. Giuliani said.



Mr. Giuliani

PHOTO: GETTY

Late News

Medicare cost-sharing requirements to rise

Employers and employees will pay higher Social Security taxes next year, while Medicare cost-sharing requirements also will increase. Effective Jan. 1, 2003, the amount of an employee's wages subject to Federal Insurance Contributions Act taxes will increase to \$87,000 from \$84,900. Employers and employees each pay a 7.65% FICA tax. In addition, the Medicare Part B premium, which covers physician services, will increase to \$58.70 per month, up from \$54 in 2002.

House delays action on 401(k) deferral changes

House Republican leaders have decided to postpone action on legislation to accelerate scheduled increases in maximum 401(k) salary deferral and catch-up contribution limits. Action on the measure will not resume until the House reconvenes after the November elections, if at all. The delay came amid uncertainty about whether there was sufficient support to pass the measure.



PHOTO: GETTY

Hurricane Lili caused insured damages of \$335 million, PCS estimates.

Lili insured damages at \$335 million: PCS
Hurricane Lili caused an estimated \$335 million in insured property damage to parts of Louisiana and Mississippi, according to the Property Claim Services unit of the Insurance Services Office Inc. Jersey City, N.J.-based PCS estimates that the majority of the approximately 116,000 expected claims will come from policyholders in Louisiana, which was hit hardest by the Oct. 3 storm. Louisiana's 112,700 estimated claims will account for \$320 million of the total damage figure, PCS said.

Check out Businessinsurance.com

To get breaking news as it occurs, visit *Business Insurance's* free online Daily News, at www.businessinsurance.com. Sign up for your daily e-mail of breaking news. All the material in the Late News column, as well as other content in this week's issue, is generated from daily news postings that appeared on the *BI* Web site in the previous week.

Online this week:

- New **searchable directories** of safety consultants and rehabilitation service providers.

- New **Commentary** from Paul Winston joins other regular columnists.

- Check the **Datebook** calendar for upcoming industry meetings and events or add your own.

- **Online forum** allows readers to exchange ideas, opinions and information.

Medical error reporting spurs concerns

Risk managers support goal of improving safety, but wary of potential liabilities under legislation

By **ROBERTO CENICEROS**

CHICAGO—Four patient safety bills now before Congress have significant liability and insurance implications for the nation's hospitals, say risk managers who support efforts to influence the legislation's outcome.

The bills address the reporting of medical errors by hospitals as a way to improve patient safety. Such legislation could help hospitals cultivate a "culture of safety," reduce mistakes and improve their risk profile, say risk managers.

Or, they say, the bills could discourage the reporting of medical errors and increase potential hospital liability, depending on the legislation's final wording and outcome.

Exactly which organization the hospitals would report errors to and whether such reporting would be voluntary or mandatory are among

factors that will determine whether the final legislation is helpful or harmful, risk managers add. Whether plaintiff attorneys and regulators will have access to hospitals' error reporting data is another concern.

The number of current bills addressing medical error reporting and patient safety attests to the degree of political interest in the issue, said Monica Berry, vp of risk management and loss control for Rockford Health Systems in Rockford, Ill. It also makes it likely that Congress will adopt legislation addressing patient safety and error reporting, although it may not happen this session, said Ms. Berry, who is president of the Chicago-based American Society for Healthcare Risk Management.

Observers say patient safety gained prominence in 1999, when the Institute of Medicine of the Na-

tional Academies called for changes to the nation's health care system because of reports that hospital errors kill 44,000 to 98,000 annually. The National Academies were created by Congress to advise the government on scientific and technical matters.

Some well-publicized errors in recent years also helped make patient safety a priority among lawmakers and hospital regulators.

Improving patient safety through the reporting of medical errors could benefit hospitals by making nationwide data available about errors and their causes, explained Jeff Driver, chief risk officer for Beth Israel Deaconess Medical Center in Boston.

Hospitals currently might review data only about errors in their own facilities, but that is too narrow a view, Mr. Driver said. Broader information and statistical data could

Travelers' nine-month revenues nearly flat

Travelers Property Casualty Corp. posted net income of \$766.4 million for the nine-month period to Sept. 30, a 0.6% increase over the comparable period in 2001. Net premiums written for commercial lines increased 35.5%, to \$1.84 billion. The insurer posted a 98.1% combined ratio for its commercial lines business, compared with 148.4% for the year-earlier period. The 2001 ratio reflects losses from the Sept. 11, 2001, terrorist attacks.

Briefly noted

Insurance Australia Group Ltd. has agreed to buy the Australia and New Zealand nonlife operations of London-based Aviva P.L.C. for 1.85 billion Australian (\$1.02 billion). Sydney, Australia-based IAG said that an acquisition would be "a logical step in IAG's strategy to diversify by product, distribution channel and geography."... **Chubb Corp.** said it will delay the release of its third-quarter earnings because it needs more time to review the impact of **asbestos claims**. Chubb's third-quarter report, initially scheduled for Oct. 25, will now be released Oct. 30.... **A.M. Best Co.** has downgraded **Gerling-Konzern Globale Ruckversicherung A.G.** to B++ from A-. The move reflects Best's belief that the reinsurer, which is up for sale, will cease writing non-life reinsurance.... Best downgraded the principal operating units of **Trenwick Group Ltd.** to B+ from A-. The downgrade reflects concerns about Trenwick's "increased operating leverage," Best said.... **Blue Cross & Blue Shield of Michigan** will expand its **generic drug pilot program** in 2003, after realizing almost \$200,000 in savings in 2002. The plan sent coupons to 7,000 members waiving the co-pay for first-time buyers of many generics.

See **ERRORS**/page 55

Citigroup, WTC leaseholder in legal battle over 9/11 losses

By DOUGLAS McLEOD

NEW YORK—While the coverage battle over the World Trade Center's Twin Towers has drawn widespread attention, another legal fight is developing between an insurer of WTC leaseholder Silverstein Properties Inc. and a major tenant of 7 World Trade Center, a nearby building that collapsed after the Sept. 11, 2001, terrorist attacks.

Citigroup Inc. and its Salomon Smith Barney Holdings Inc. unit are suing Silverstein insurer Industrial Risk Insurers for more than \$280 million in office improvements destroyed when 7 World Trade Center caught fire and collapsed several hours after the Twin Towers fell.

Silverstein has refused to compensate Citigroup for its damages, and IRI is refusing to acknowledge an endorsement naming Citigroup as a loss payee under the \$860 million property program that covered 7 World Trade Center, according to a lawsuit the bank filed in U.S. District Court in New York.

According to court filings, IRI contends that Willis Group Hold-



PHOTO: GETTY IMAGES

The destruction of 7 World Trade Center has prompted a legal battle between tenant Citigroup Inc. and the WTC's leaseholder.

ings Ltd., Silverstein's broker, issued the loss payee endorsement after IRI officials specifically told the broker not to do so.

A spokesman for Hartford, Conn.-based IRI, a unit of General

Electric Co.'s Employers Reinsurance Corp., confirmed the insurer's position that its policy on 7 World Trade Center did not cover tenants. He declined to comment further.

Spokesmen for Silverstein and

Willis declined to comment.

The 47-story 7 World Trade Center, built in 1983, was showered with flaming debris during the attack on the adjacent Twin Towers. Fires that weakened the building's steel structure may have been fed by diesel fuel tanks placed inside the tower to run generators for the New York City mayor's emergency command center, which was a tenant, some experts have concluded.

Consolidated Edison Co. and its property insurers filed a \$314.5 million lawsuit last month against the Port Authority of New York and New Jersey, the building's owner, for the destruction of an electrical substation underneath 7 World Trade Center. New York-based Con Ed charges the Port Authority was negligent in allowing the diesel tanks to be installed on the property.

New York-based Silverstein, which leased the building from the Port Authority, placed the \$860 million property program led by IRI through broker Willis.

IRI and Silverstein are currently

See WTC/page 54

16th International Reinsurance Congress

Bermuda could see further startups: Panel

By MICHAEL BRADFORD

HAMILTON, Bermuda—The well of capital that has nourished a new crop of Bermuda insurers and reinsurers may not yet be dry.

While the pace of new formations has slowed, it may not be over, according to a panel of experts who discussed the startups that have established in Bermuda over the past year and the prospect that more may be on the way.

The topic was part of the 16th International Reinsurance Congress sponsored by London-based Hawksmere P.L.C., held Oct. 9-11 in Hamilton, Bermuda.

'Will some of (the companies formed after the Sept. 11, 2001, terrorist attacks) fail? Any company can fail, but I'm very bullish on the future.'

*Charles Collis
Conyers Dill & Pearman*

"Will it continue? I think the answer is 'yes,'" said Charles Collis, a partner at the Hamilton law firm Conyers Dill & Pearman. More companies are in the formation pipeline, he said, some with well-known backers.

Mr. Collis noted that insurers and reinsurers continued to incorporate in Bermuda, albeit at a slower pace, after the last surge of formations in 1993.

The Sept. 11, 2001, terrorist attacks that tightened an already firming marketplace led to the creation of six insurers and reinsurers before the end of last year, and other startups followed in 2002. By the end of last year, the new companies and others that increased their capital to take advantage of rising rates had poured more than \$9 billion into Bermuda.

Mr. Collis said the Bermuda market might begin to resemble the post-1993 marketplace, during which other companies acquired some of the startups. Others could fold their tents, he said. "Will some fail? Any company can fail," he said, "but I'm very bullish on the future."

"I think most of them want to be here for the long haul," said Robert J. Cooney, president and chief executive officer of Max Re Ltd. in Hamilton. But "some of them may

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2002 Insurance Leadership Forum

CIAB focused on rates, insurer solvency

By PAUL D. WINSTON

WHITE SULPHUR SPRINGS, W.Va.—Helping customers cope with hardening insurance rates and keeping an eye on the solvency of insurers remain key concerns of the Council of Insurance Agents & Brokers.

In the past year, those efforts have been joined by intense lobbying on terrorism insurance relief and regulatory reform, according to the outgoing chairman of the Washington-based CIAB.

Looking at the market, John L. Van Osdall, chairman of the CIAB and senior vp of USI Insurance Services Corp. of San Francisco, said that the main concerns of brokers today are the hard market, the financial solvency of carriers and the consequences of continued deterioration in equity and bond markets.

"Understanding the quality of the insurers and reinsurers we do business with is the biggest challenge," he said in an interview during the Insurance Leadership Forum, the annual joint meeting of the CIAB and the Council of Insurance Company Executives at the Greenbrier resort in White Sulphur

Springs, W.Va., earlier this month.

"As brokers, we closely watch reserving practices," Mr. Van Osdall said. "And with a market that is as underreserved as this one, any softness in pricing will not return until this is worked out."

"If reserves are as poor as estimates say, then another year of price increases is likely," he said, citing a recent estimate by Morgan Stanley & Co. analyst Alice Schroeder that industry reserves may be deficient by as much as \$120 billion.

The longer the market remains hard, though, the more challenging it is for brokers to manage client expectations, Mr. Van Osdall said.

It is "a concern, from producers' and carriers' perspective, (that) you can only sell clients significant rate increases for so long," he said. "They will accept this for one or two years, knowing you are working to get the best terms available, but, as it continues, the client starts to wonder if they can get a better deal elsewhere." Clients will look more to alternatives such as captives and increase their self-insured retentions, Mr. Van Osdall said.

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PHOTO: THE GREENBRIER

The Insurance Leadership Forum was held at the Greenbrier resort in White Sulphur Springs, W.Va.

2002 National Assn. of Professional Surplus Lines Offices Annual Convention

Hardened market expected to continue

By MICHAEL PRINCE

BOSTON—The hard market will continue until insurance companies return to financial health, three surplus lines executives predicted this month.

Under current conditions, a turn in the market might not occur until 2004, said R. Max Williamson, the president and chief operating officer at Scottsdale Insurance Co. in

Scottsdale, Ariz.

Last year, the property/casualty industry lost \$8 billion and had a combined ratio of 116%, Mr. Williamson told attendees at the 2002 National Assn. of Professional Surplus Lines Offices annual convention in Boston. The forecast for this year is 108%, despite sharply rising rates. The last year the industry had a combined ratio under 100% was 1978, he said.

Mr. Williamson noted that the reinsurance industry also had a terrible year in 2001. Its combined ratio of about 140% was the highest in over a decade. None of the 10 largest reinsurers had a combined ratio under 100%. "So, as you can see, we don't have stellar performance yet in the industry," he said.

The poor results have lowered insurers' return on equity, Mr. Williamson said. In 2001, total in-

surers' return on equity stood at a negative 8.1%, he said, compared with a 23.3% return on equity in 1997.

So while rates are up, they still are not sufficient to get combined ratios down to between 90% and 95%, the range needed to push return on equity to an acceptable level of 10% to 12%, Mr. Williamson said. "We're in a significant hole

See NAPSLO/page 32

But executive panel sees no capacity shortage

Attacks prompt more scrutiny of risk aggregations

By RODD ZOLKOS

CHICAGO—The impact of the terrorist attacks of Sept. 11, 2001, and the desire to toughen underwriting discipline have prompted insurers and reinsurers to look for potential aggregations of risk as never before and to demand more information on the risks they write.

But despite the massive losses the industry sustained last year, capacity remains available for most lines of insurance and reinsurance, according to one panel of industry ex-

ecutives.

The panelists addressed changes in the property/casualty industry since last Sept. 11 during the 12th Annual Insurance Executive Forum, which was held in Chicago last week and sponsored by the Katie School of Insurance and Financial Services at Illinois State University.

Since Sept. 11, "we're seeing unprecedented analysis of aggregation information—the whole change of people's philosophy to aggregation in different lines of business beyond property," said Rodman R. Fox,

chief executive officer of Benfield Blanch Inc. in Westport, Conn.

Whereas catastrophe modeling once was "very line-of-business focused," those tools now are being used to look across "all the lines of business that can be affected by a given event," said Gary Prestia, senior vp and chief underwriting officer at Converium Reinsurance (North America) Inc. in New York.

Thomas R. Tizzio, senior vice chairman of American International Group Inc. in New York, said that his company has imposed under-

writing criteria intended to look at aggregation of risk in workers compensation in a way it never has before, adding, "I think it will continue for quite a while."

Panelists made the point that the insurance and reinsurance markets were hardening prior to the Sept. 11 attacks, as companies looked to return to profitable pricing levels.

"The only way the insurance industry can get its returns back to an acceptable level is by higher prices," said Alice Cornish, a vp and senior equity research analyst at Pruden-

tial Securities Inc. in Boston. The question, though, is "will they be able to raise prices long enough and high enough to make them an investable industry?" she said.

Following years of soft-market pricing and the impact of Sept. 11 losses, "we're at a point now where the industry is trying to make back what it lost," Mr. Tizzio said. "I don't think it's been made back in one year."

"I think one of the keys is product design and form design," Converium's Mr. Prestia said. "I think we, as an industry, need to get back to selling only what we know we are selling."

Going forward, buyers can expect to see that the basic cost of risk has to go up, and insurers will differentiate between risks of various quality, said Shivan S. Subramaniam, president and CEO of Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global.

'We're seeing unprecedented analysis of aggregation information.'

*Rodman R. Fox
Benfield Blanch Inc.*

Differentiation between risks is "one of the areas where we're going to see a lot of fundamental change going forward," Mr. Subramaniam predicted, with risk managers with good programs getting better insurance prices.

But David Mair, former director of risk management and purchasing for the U.S. Olympic Committee in Colorado Springs, Colo., and former president of the Risk & Insurance Management Society Inc., is skeptical about the new underwriting discipline that insurers claim to be demonstrating.

"As a risk manager and talking to my risk management colleagues, we're willing to pay the right rate for the right risk," Mr. Mair said. But, he noted, risk managers would like to see consistent discipline in underwriting that would produce more stability in pricing.

"I would argue right now there is no discipline in underwriting," he said. "Far too many of my colleagues are being told, 'Take it or leave it, here's the price.'"

Though prices are likely to continue increasing in some lines, capacity is generally available in almost every line, according to sever-

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Errors & Omissions

● A story in the Oct. 14 issue, "Programs Available to Pros," listed an incorrect Web site address for the American Institute for CPCU and the Insurance Institutes of America. The correct Web site address is www.aicpcu.org.



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What can we do to help you?

Forum: Risk aggregations eyed

Continued from page 4
al panelists.

"I think there always seems to be a price," said Benfield's Mr. Fox. "Initially, terrorism seemed to be a class that was very difficult." More recently, surety capacity could be difficult to come by, but, generally, everything seems available for a price, he said.

"We don't see a restriction of capacity," said AIG's Mr. Tizzio. He agreed that "surety is a question mark, but beyond that, we don't see a capacity shortage."

While he said there has been more selective underwriting, Con-

verium's Mr. Prestia said that "from a reinsurer's perspective, we haven't withdrawn from any class as a whole."

'Surety is a question mark, but beyond that, we don't see a capacity shortage.'

Thomas R. Tizzio
American International Group Inc.

And looking toward Jan. 1 renewals, FM Global's Mr. Subrama-

niam said, "From a property perspective, we fully expect capacity to be where it is now," though terms and conditions will likely be tightened.

Offering a risk manager's view, though, Mr. Mair questioned whether a lack of affordability might make the availability of coverage moot in some cases. "It's not so much 'not available at any price,' but 'available at a price that's not affordable for many risks,' " he said.

Paul D. Winston, editor of *Business Insurance*, moderated the forum.



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Paul Winston

A battle looks won, but others remain

OK, I'll admit it: As of last week, I thought the terrorism insurance legislation had the proverbial snowball's chance in hell of clearing Congress this year—if ever.

So, was I surprised to hear Thursday that a deal was near.

On the one hand, I was quite pleased by the news. After more than a year of haranguing Congress in editorials and commentaries for ignoring the needs of insurers and the businesses they insure, I was relieved to see an overdue remedy was in sight. And I know how essential this legislation is to helping insurers meet their customers' need for affordable coverage.

On the other hand, the deal meant ripping up an entire commentary I had written Wednesday evening, while betting the bill would fail. That commentary blamed pretty much everyone for dropping the ball, including insurers, risk managers, lawmakers, the president and the American public.

I'm glad to see all sides are willing to yield a bit to allow this important federal mechanism to proceed.

It is a huge relief to the wide coalition of insurers, brokers and buyers that have lobbied long and hard for its passage.

But if this contentious process has shown us anything, it's that those same proponents of this legislation still have a couple of critical issues to address. They are:

- The insurance industry has a really bad PR problem.

- Most American people don't understand that, ultimately, we all foot the bill for the freedom to litigate as much as we want.

I was reminded of these problems last week as I listened to a panel of industry executives discuss the reasons why passage of such crucial legislation had been so difficult and, until last week, so much in doubt.

Congress, after all, had rushed to help the airline industry with a multibillion-dollar bailout in the wake of the Sept. 11 attacks. It is ironic that lawmakers justified their action by deeming airlines crucial to the economy but failed to realize that those planes could not fly without insurance. In fact, a lack of terrorism insurance threatened to ground airlines, despite the cash bailout, until the government stepped in to provide the coverage.

On numerous occasions in the past century, the federal government has either provided insurance coverage or provided support to private insurers in times of crisis.

During World War I and World War II, federal insurance and

reinsurance entities were established to cover U.S. ships at risk of attack from German U-boats. There are federal insurance programs to protect the deposits of citizens from bank failures. There are FAIR plans, flood plans, windstorm plans, crime plans and nuclear plans, all with varying degrees of government involvement. In addition, there are government-backed political risk insurers that protect U.S. commercial interests from a variety of hazards in overseas markets, including war and insurrection.

And still lawmakers were slow to embrace such a mechanism today to allow the insurance industry to provide affordable coverage against

such risks domestically. The reason, I believe, is that lawmakers don't have any understanding of or respect for the role that insurers play in the economy.

This bias is evident in that one of the first things that government officials asked industry executives in the wake of Sept. 11 was whether they were going to

invoke exclusions and deny coverage.

Unless lawmakers are given a better understanding of how insurance works and of its role in protecting the assets and operations of business, it is unlikely the industry will ever have a champion in Congress. And that kind of support is needed on other issues, from asbestos liability reform to class action reform.

That leads to the second issue the industry needs to address—doing a better job of arguing for tort reform. The insurance industry has not done enough to mount an effective challenge to the trial bar on this issue or to educate the public on the true costs of excessive and frivolous litigation.

People ought to be outraged when a Los Angeles jury awards \$28 billion in punitive damages to a woman who smoked cigarettes for decades. But the outrage isn't there, and that has to be changed if the true drivers of the high cost of insurance are ever to be controlled. Without this blind fervor for litigation, the terror bill likely would have been enacted a year ago.

The campaigns will be expensive, but they are fights worth fighting. For the insurance industry, these problems drive up the cost of its products and erode its profitability. For the public, they drive up the cost of living in America.

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



Paul Winston

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Editorial

Salutary efforts to pay off

ABSENT AN 11TH-HOUR GLITCH, a political miracle of the first order will occur this week or right after the elections.

That's when the House and Senate should approve a federal terrorism insurance bill that congressional and administration negotiators hammered out late last week, just as the issue seemed dead for this Congress.

While we don't know all the details of the bill—and we realize that the devil can indeed reside in the details—there's reason to believe the negotiators have produced a workable federal guarantee of coverage for future catastrophic terrorism losses.

Now that the terrorism insurance legislation story is rapidly reaching its conclusion, risk managers and insurers should ponder some of its lessons.

The most visible salutary lesson is that the often-squabbling segments of the property/casualty insurance industry managed to put aside their differences early in the debate and rally behind a single proposal.

The industry maintained its unity to the end of the current debate, adapting wisely to changed circumstances as the House and Senate pursued widely divergent approaches to the issue. Despite the changes, the industry never lost sight of its common goal. Anyone who remembers the bitter intra-industry battles over

Superfund reform less than a decade ago has to stand in awe of this development.

Another salutary lesson is that risk managers can and did play a high-profile role in explaining the need for a federal terrorism insurance backstop to Capitol Hill. The Risk & Insurance Management Society Inc. emerged as a crucial player in the debate, and we hope that both the society and individual risk managers play a similar role in future matters of national interest.

Yet another salutary lesson is that mild tort reforms need not doom every worthy legislative effort. The case for a federal terrorism insurance backstop rested on economics, pure and simple. However, the fact that the issue wasn't resolved until the absolute last minute underscores yet again that the trial bar remains one of the most formidable forces on Capitol Hill.

We hope that risk managers, the insurance industry and business as a whole will be able to maintain their impressive unity the next time they go toe to toe with the plaintiffs' bar over legislation, whether class action reform or asbestos compensation reform.

And we just as earnestly hope that the outcome of that future battle—whatever it's over—will be just the same. We only hope that we don't have to wait until the 11th hour to achieve it.

Perception doesn't equal reality

DOES A MAJORITY of the premium paid by employers and enrollees to health insurance companies go toward covering overhead and fattening the profits of insurers?

Regrettably, that is the perception held by many health plan enrollees, a recent survey has shown.

The survey, conducted for Excellus Inc., the parent of several Blue Cross & Blue Shield plans in upstate New York, polled enrollees in the Blues plans' HMOs. It found that, on average, respondents believed that more than a quarter of every premium dollar went to cover plan business expenses and just under 25% represented profits. Slightly less than half went toward paying for medical care, they believed.

The reality is, of course, much different.

For example, the Excellus plans report that 7.5% of

premium dollars goes for business expenses and just 2.5% is net income. The vast majority—90.6%—of premiums goes toward medical care, i.e., paying doctors and hospitals for their services as well as purchasing prescription drugs.

The results of the opinion survey are very disturbing. How are health plan enrollees ever to be allies in the battle to control costs if they are so out of touch with the true causes of rising health care costs?

Costs are increasing because providers are demanding more for their services and because plan enrollees are seeking more services than ever. That is the plain and simple truth.

Until consumers recognize that and become wiser purchasers of health care services, costs never will be controlled.

Schillerstrom



Letters to the Editor

35 Rising Stars failed to show industry diversity

To the editor: Your presentation of 35 Rising Stars in the Oct. 7 issue is, I believe, the first time *Business Insurance* magazine has published such a tribute, with the exception of Risk Manager of the Year. I hope it is the last time you publish a Rising Stars section.

The selection process used by the editors of *Business Insurance* was vague at best. Paul Winston wrote that the industry was invited to give nominations, yet he also noted that the editors selected this "unique list."

Since insurance companies, insurance brokers and related vendors are dependent upon clients in order to achieve success, why not survey all the risk managers of the world? We are the ones who can recognize a rising star. In my humble 34 years in the "industry"—yes, "industry" includes risk managers—my peers and I have seen many so-called "rising stars" fall flat on their faces.

Your editorial and Mr. Winston's column attempt to justify the method and criteria for selecting the 35 Rising Stars. Why did you establish criteria that made individuals over the age of 50 ineligible for consideration? By selecting people under the age of 50, are you suggesting that only members of that group are successful, enthusiastic achievers? What about a 55- or 60-year-old individual who changes careers and is just as bright and innovative as a younger person? Is a person over 50 too old to be innovative—to be a rising star? Every day we meet or read of someone who has returned to the workforce after retirement from a previous career. Is *Business Insurance* implying that retired people are not innovative?

Your selection comprised six women and 29 men. From the photographs, there appear to be 34 Caucasians and one African-American.

In the Seattle-Tacoma area, I can name many insurance broker employees who are women, nonwhite and over 50 who take the time to understand their clients' businesses better in order to recommend the best risk financing plans. According to your selection criteria, these individuals would never qualify for "rising star" status.

Have you walked through an insurance company or broker office lately and observed the number of women and nonwhite employees? My experience is that women and nonwhite employees outnumber white male employees. And if *Business Insurance* paid attention to demographic projections, you would discover that us old folks—those of us over the age of 50—are rapidly outnumbering younger people in professional positions. In fact, there are any number of news articles about employers offering incentives to keep retirement-age people working, including paying for new technological skills training.

See **LETTERS**/page 48

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Spotlight Workers Compensation

Spotlight Editor: Roberto Cenicerros

Options limited in hard market

By JOANNE WOJCIK

As conditions in the workers compensation market continue to constrict, most employers are finding themselves caught between a rock and a hard place.

In most cases, employers are raising their deductibles to keep their premium increases in check, while those considering self-insurance are discovering that their options are increasingly limited.

This is because many excess insurers are no longer providing statutory benefit limits, making self-insured programs less attractive than guaranteed-cost or large-deductible programs in which insurers must provide full coverage under state law.

Furthermore, some employers that operate in several states are ruling out self-insurance because of the amount of paperwork required to make filings in each of those states. And, given the weakened economy, many companies don't feel comfortable tying up too much cash in trust accounts, which states generally require self-insurers to maintain.

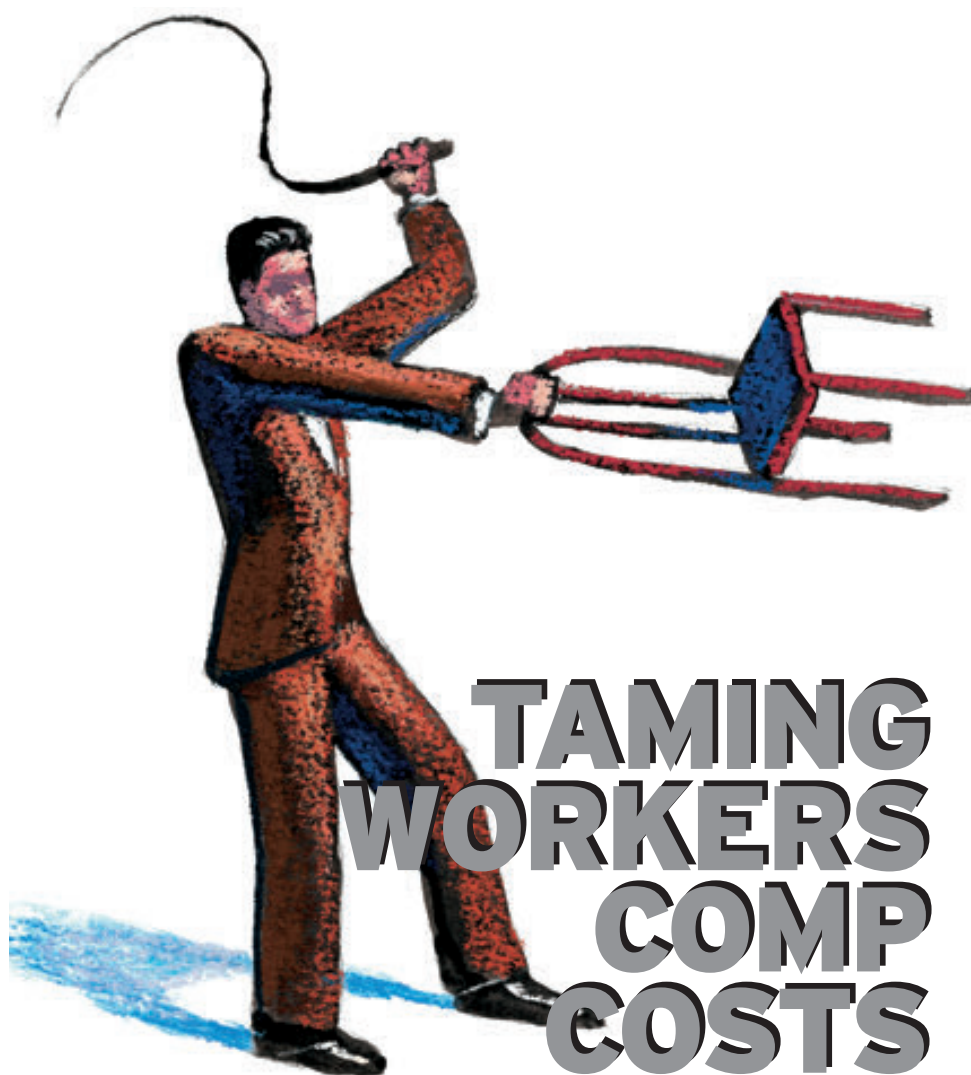
The role of captives in workers comp is changing as well. Rather than using captives to reinsure fronted programs, many employers are using them to fund the deductibles on their large-deductible programs.

"I think what Sept. 11 truly did to this industry is create a new reality of risk. That has caused the alternative market to be a little bit different this time than in other market cycles," said Don Pickens, chief underwriting officer in Liberty Mutual Insurance Co.'s national markets division in Boston.

"What I've seen is, there's been a new value placed on risk transfer to an insurance company. So, in other market cycles, when the market was turning hard, customers would look for alternatives, because it was a price-sensitivity issue. And they would take on risk because risk, from their perspective, could be controlled and managed.

"But what Sept. 11 did is highlight the fact that really bad events can occur, and self-insurance may not be truly as attractive as one might think," he said. "No one insurance company and no one buyer has the capacity to absorb a catastrophe, and that's an important concern of the insurance industry and the buying community."

Many employers are finding it more attractive to assume larger deductibles rather than

See **SELF-INSURED**/page 14

Comp drug costs tough to manage

By MICHAEL PRINCE

As rising prescription drug costs continue to hit workers compensation programs, employers and insurers are searching for ways to keep these expenses under control.

Drugs are "the fastest rising component of workers comp medical expenses," said Joseph Paduda, principal of Health Strategy Associates, a Madison, Conn.-based workers comp managed care consulting firm.

"The rate of increases is so great that it's now on the radar screen of risk managers," said Jeff Aycock, senior vp of risk management services at GAB Robins in Parsippany, N.J. The third-party administrator performs utilization review and case management services for workers comp programs.

Efforts to rein in costs have been frustrated, though, as employers, because of workers comp law, cannot turn to cost-sharing tools, such as increased co-payments and tiered formularies, that have helped them stem drug expenditures in their group health plans. As a result, employers and insurers are looking to

prescription benefit managers to lower costs through provider and patient education, among other steps.

Prescription drug costs related to workers comp claims rose about 16% in 2001 and are expected to rise by about the same amount this year, said experts said Dr. David Deitz, vp and national medical director at Liberty Mutual Insurance Co. in Boston. "We don't see a lot of slowing down in this area," he said.

Because of the increases, drug costs now account for about 5% to 8% of overall medical spending for workers comp, and that percentage is still growing, said Dr. Deitz.

Drug cost inflation "appears to be pretty much uncontrolled," Mr. Paduda said.

The rising costs stem primarily from greater use of prescription drugs, experts say.

Rising drug costs are driven by "a volume change and not a price change," said Ken Martino, senior vp at Specialty Risk Services Inc., a Hartford, Conn.-based workers comp third-party administration unit of Hartford Financial Services Group Inc. "It's not necessar-

See **DRUGS**/page 18

More Sept. 11 stress claims expected

By MEG FLETCHER

More than a year after the Sept. 11 terrorist attacks, the impact of stress claims on workers compensation systems is still one of the most complex and unresolved insurance-related aspects of the tragedy.

Millions of people were at or on their way to work when they witnessed the horrific images of planes crashing into buildings, fireballs erupting and people running from roiling clouds of ash and smoke. Tens of millions more repeatedly viewed the carnage later on television.

There was "a rash of stress claims initially, but we think there will be substantially more as time goes by," said Donald T. DeCarlo, a workers comp expert and author and a partner with the law firm of Lord Bissell & Brook in New York.

Some of the earliest claims may be considered acute stress disorder, which tends to surface within a month after a traumatic event. Symptoms include numbness, terror, pervasive anxiety or depression for a few weeks, according to a recent report from the American Society of Workers Comp Professionals.

According to the 31-page AMCOMP report, of greatest concern now to employers and insurers are the potentially more-serious claims for "post-traumatic stress disorder," which usually takes six to 18 months or more to develop and can last for years.

PTSD victims typically respond to a life-threatening event with persistent symptoms of "physiological hyperarousal," including excessive alertness, irritability and difficulty in falling asleep. They often have nightmares and flashbacks that lead them to avoid situations that remind them of the triggering event, according to the report.

The anticipated increase in stress cases creates several challenges for employers and insurers.

Most notably, as much as they might want to aid ailing workers, employers and insurers have a fiduciary responsibility to weed out fraudulent claims and accept only those stress claims that are compensable under the rele-

See **STRESS**/page 22

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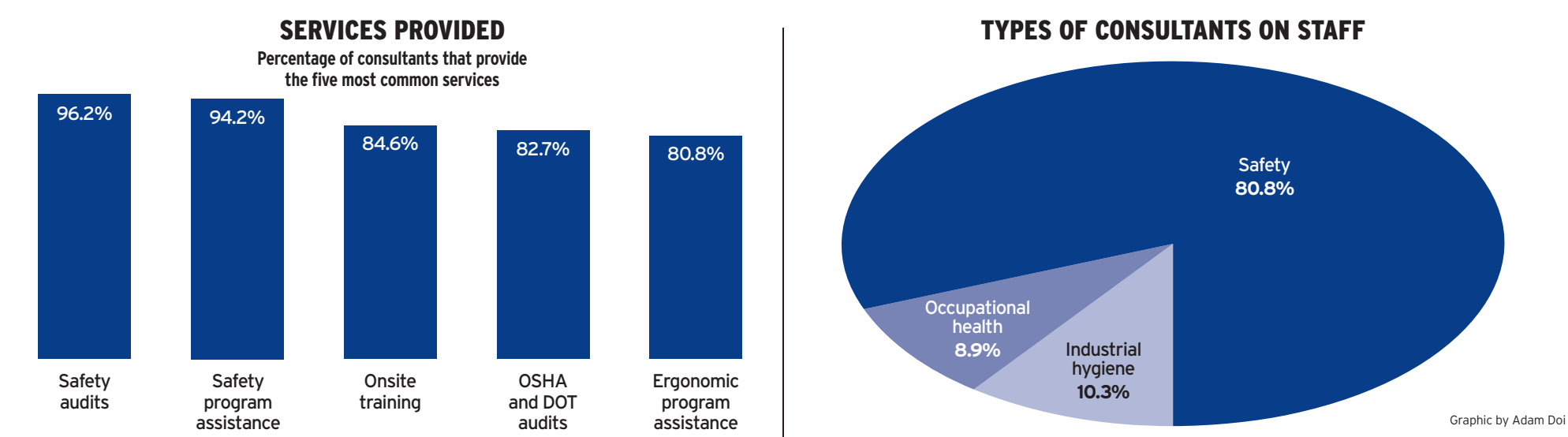
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Source: BI survey

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Self-insured: Programs becoming less attractive

Continued from page 10

self-insure or form captives.

Remedy Intelligent Staffing, for example, decided to double its deductible to \$500,000 on its large-deductible workers comp program underwritten by ACE Ltd. instead of self-insuring. "The return on investment is so poor now, it doesn't make sense to send money offshore," said Diana Rich, director of risk management for the Aliso Viejo, Calif.-based temporary staffing services company.

Remedy has a captive in Bermuda, but that facility is dormant, she said. The company has never used its captive for workers compensation coverage.

By doubling its deductible, Remedy prevented a near doubling of its premium, according to Ms. Rich.

Graphic Packaging Corp. of Golden, Colo., raised its deductible to \$250,000 from \$100,000 because "the premium savings (by raising the deductible) more than made up for the difference in the deductible," said Patricia Frahm, director of risk management. "Our losses are low. We had only one that pierced the \$100,000 deductible."

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Patricia Frahm
Graphic Packaging Corp.

The company decided against forming a captive because "we're cash poor right now," she noted.

Large-deductible programs have become popular in recent years because they provide the same cash-flow benefits as self-insurance, but are still regarded as insurance by state regulators, explained Alex Levine, senior vp in the casualty practice of Marsh Inc. in New York. As a result, the employer doesn't have to meet state requirements for self-insurers, such as posting bonds or establishing trust accounts. Instead, they can pay losses on a pay-as-you-go basis.

Under a typical large-deductible plan, the insurer calculates the employer's standard premium and applies a credit for a higher per-claim deductible. The insurer pays all losses—even those falling within the deductible—and then seeks reimbursement from the policyholder, on a monthly or quarterly basis, for loss amounts within the deductible. Such plans are permitted in most states.

Large-deductible programs also don't attract premium taxes, unlike paid-loss retro programs, which operate similarly, according to Mr. Levine.

"With deductibles, the losses don't flow through the (insurance) companies' financial statements as premium, so they don't attract premium taxes," he explained.

Some employers that already are self-insured are questioning whether they should stay that course, because they are finding it harder to find adequate excess coverage.

For example, one worried risk manager posted a message about such concerns on the Risk & Insurance Management Society Inc.'s Risk Professionals E-Group, which is an online forum.

"During our most recent renewal, our statutory benefit limit was replaced with a limit of \$50 million. The reasons cited by the insurer were somewhat expected, and not uncommon: high concentration of employees in high-rise structure. I'm wondering how other risk managers are dealing with the loss of statutory limits," the risk manager wrote.

"It's becoming more difficult to buy statutory work comp coverage," acknowledged Mr. Levine of Marsh. "That's an advantage of an insured program today. When you buy an insured work comp pro-

gram—even when there's a deductible or a retro—the excess risk transfer is provided on an unlimited basis, which we refer to as statutory. Whereas, if you go self-insured, you're probably only going to get a finite limit."

Yet, self-insurance may still be viable for some employers, especially if they operate in only one state and can pool their risks with other employers in similar industries, according to Rick O'Brien, vp-marketing at Managed Comp.

Managed Comp has set up and operates several self-insured groups, or SIGs, in Massachusetts, which are

licensed as pools and act like mutual insurance companies.

"A group of employers in a similar industry pool their resources and insure one another's workers comp risk," he explained. "The members of the pool retain 100% of the underwriting profit and 100% of the investment income from the premiums they pay."

"The way it works is, you take the \$1 in premium that they pay in, subtract all the expenses, the reinsurance costs, and you've got the loss pool. If you don't spend everything in the loss pool, it goes back

Continued on next page

Continued from previous page

to the members in the form of dividends. They're the owners of the corporation. They participate in all of the profits of the corporation," Mr. O'Brien said.

Last year, such arrangements were very profitable for the employers participating in Managed Comp's SIGs: "In the last few weeks, we gave back \$5.5 million," he said.

And so far, the SIGs have had no trouble finding adequate excess coverage, because none of the employers has a large concentration of employees in any one location, Mr. O'Brien said.

But while SIGs might work for smaller employers in a single state, they may not be the best option for large employers with multistate op-

erations, according to Scott Barry, president of captive services at Liberty Mutual in Bala Cynwyd, Pa.

"With self-insurance, employers usually must post bonds and meet numerous regulatory requirements. This process can be cumbersome, especially for employers that have multistate operations," he said. In addition, the SIG structure is not legal in all states.

By contrast, "if you look at captives, captives are very flexible. That's one of the most attractive things about them," Mr. Barry said.

These days, however, employers are shifting their captive strategy. Rather than taking the traditional approach—using the vehicles to reinsure a work comp program fronted by an admitted insurer—

more employers are using them to

'With self-insurance, employers usually must post bonds and meet numerous regulatory requirements. This process can be cumbersome, especially for customers that have multistate operations.'

Scott Barry
Liberty Mutual Insurance Co.

insure the deductibles on large-deductible programs, Mr. Barry said.

Many employers are deciding against using captives to reinsure a fronted workers compensation program because they want to avoid premium taxes, explained Mr. Levine of Marsh.

"The losses paid by captives established as reinsurers would be booked as premium by the ceding company, so they would attract taxes," he explained.

Instead of using captives as reinsurers, "what a lot of companies are doing is they're buying high-deductible policies and then they're writing general liability policies directly from the captive to the parent, indemnifying it for the losses paid within the deductible. That way the losses don't flow through the insurance company as premi-

um," Mr. Levine described.

The only drawback is that the transactions still may be subject to so-called direct-procurement or direct-placement taxes, he said. Such taxes are levied on buyers who independently obtain insurance policies outside the admitted and approved non-admitted markets.

And in some cases, rather than forming their own captives, employers are using rent-a-captives, according to Mr. Barry.

"If a client is looking at going the captive route, the larger accounts tend to look at a wholly owned captive, and then as you get to the more middle-market accounts, they tend to look at a rent-a-captive" that is owned either by an insurer, broker or even a reinsurer, he said.



Life is stressful

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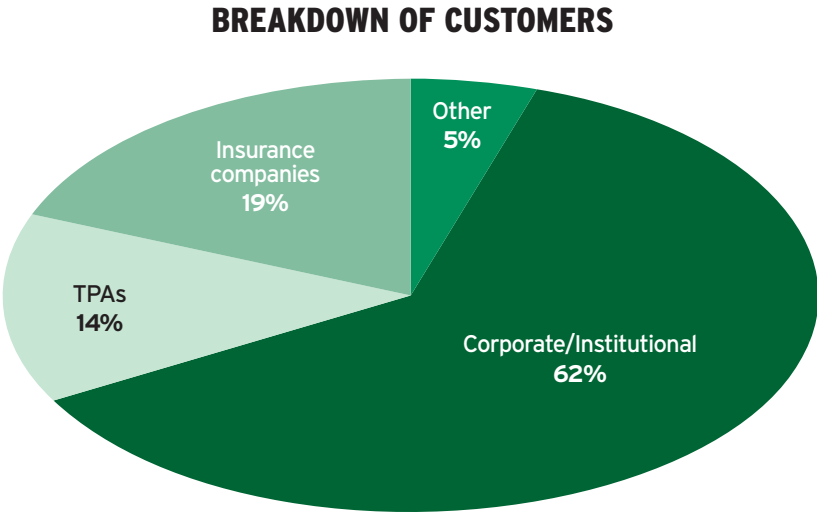
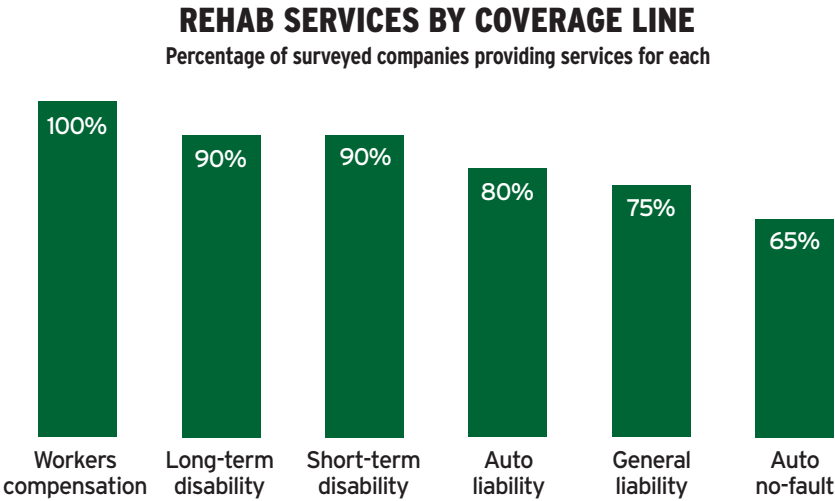
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Graphic by Adam Doi

Largest rehabilitation service providers

Ranked by revenues from rehabilitation services in 2001

Rank	Company/address	Phone/fax/Web site	Revenues from rehabilitation services in 2001	Professional staff	Total customers	Cases closed in 2001	Independent medical exam cases	Expert opinion cases	Principal officer
1	Intracorp 1601 Chestnut St., Philadelphia, Pa. 19192	215-761-7100 215-761-5538 <i>www.intracorp.com</i>	\$152,600,000	1,223	1,261	256,843	5,843	537	Kirk Rothrock, president
2	CorVel Corp. 2010 Main St., Suite 600, Irvine, Calif. 92614	949-851-1473 949-851-1469 <i>www.corvel.com</i>	\$120,000,000	1,250	1,100	50,000	40,000	5,000	Gordon Clemons, CEO
3	Concentra Integrated Services Inc. 130 Second Ave., Waltham, Mass. 02451	781-290-5350 781-890-1535 <i>www.concentra.com</i>	\$85,000,000	2,230	3,000	113,064	200,000	500	Dan Thomas, CEO
4	RSKCo Case Management Services Inc. 3500 Lacey Road, Downers Grove, Ill. 60515	877-222-2165 630-810-4526 <i>www.rskco.com</i>	\$74,000,000	625	850	NA	NA	NA	Dana Leckie, assistant vp- case management
5	Crawford & Co. 5620 Glenrdige Drive N.E., Atlanta, Ga. 30342	404-256-0830 404-847-4025 <i>www.crawfordandcompany.com</i>	\$69,000,000	500	1,221	70,000	9,900	1,800	Grover Davis, president/CEO
6	GENEX Services Inc. 440 E. Swedesford Road, Suite 1000, Wayne, Pa. 19087	610-964-5100 610-964-1919 <i>www.genexservices.com</i>	\$58,800,000	1,188	1,300	67,000	NA	NA	Peter C. Madeja, president/CEO
7	Cascade Disability Management Inc. 4601 N.E. 77th Ave., Suite 250, Vancouver, Wash. 98662	360-492-8855 360-492-4892 <i>www.cascadedisability.com</i>	\$22,772,000	144	366	15,669	1,064	837	David Buonviri, president
8	MedInsights Inc. 4360 Chamblee Dunwoody Road, Suite 500, Atlanta, Ga. 30341	770-457-2400 770-457-1500 <i>www.medinsights.com</i>	\$19,400,000	102	214	5,802	550	233	Jeff Aycock, senior vp
9	GatesMcDonald 3455 Mill Run Drive, Hilliard, Ohio 43026	800-336-4733 614-777-3142 <i>www.gatesmcdonald.com;</i> <i>www.gmcdhealthplus.com</i>	\$15,000,000	192	6,300	15,000	8,000	4,000	Danny Fullerton, COO
10	Continuum Healthcare dba Continuum/CareSys 15 River Road, Suite 100, Wilton, Conn. 06897	800-992-5531 203-761-7311 <i>www.continuumhc.com</i>	\$6,500,000	36	11	19,500	150	NA	Peter Hotz, president/CEO

Source: *BI* survey

The entire Directory of Rehabilitation Service Providers is available online in the directory area of *www.businessinsurance.com*. The searchable directory allows users to locate rehabilitation service providers by company name, revenues and services provided, among other information. Access to the online database is free to subscribers of *Business Insurance*. PDF copies of the directory can be purchased online.

Drugs: Cost-containment tools limited in comp

Continued from page 10
ily the cost of drugs per se."

Indeed, "a lot of (the cost increase) is increased utilization," Dr. Deitz said.

In addition, direct-to-consumer advertising has fueled demand by patients for newer, high-cost drugs, such as the anti-inflammatory drugs Vioxx and Celebrex, Dr. Deitz

said. Patients specifically request these drugs and doctors prescribe them, even though lower-cost alternatives may be available, he said.

For example, Neurontin, a medication designed to control seizures, is often prescribed for chronic pain even though there is no evidence that it is a more effective pain medication than other drugs, Dr. Deitz

said.

The most effective way to control drug costs is to shift usage away from brand-name medicines to generic equivalents, which cost significantly less, experts say. For example, a generic equivalent of the anti-depressant drug Prozac became available last year, and its cost was about 25% less than the brand-

name version. And when other drugmakers began marketing their own generic forms, the price dropped to about one-half the cost of Prozac, said A. Phillip Walls, vp of pharmacy services at PMSI, a workers comp prescription benefit manager in Tampa, Fla.

Prozac is commonly used in workers comp cases, as many in-

jured workers become depressed after they have been off the job for a while, Mr. Walls said.

But encouraging the use of generics and isn't as easy in workers compensation programs as it is in traditional group health plans.

Unlike individuals making claims under most employer-provided health plans, injured workers are not subject to co-payments for prescriptions.

As a result, employers cannot shift costs to employees through co-pay increases, and workers comp claimants have no financial incentive to buy lower-cost drugs.

"Without that financial incentive for the member, they can decline the generic," said Kevin DeStefino, national pharmacy practice leader for Watson Wyatt Worldwide in Phoenix.

In workers compensation-related prescription drug claims, 'we basically cover everything for everything, even if it's not the most appropriate medication.'

*Dr. David Deitz
Liberty Mutual Insurance Co.*

In addition, there are no multi-tiered drug plans in workers comp programs. Such plan-design tools, which require participants to pay a greater share of more expensive prescriptions, have helped hold down prescription costs in group health plans.

"We basically cover everything for everything, even if it's not the most appropriate medication," Dr. Deitz said.

In addition, workers comp claimants don't have to use pharmacy networks with which their employer or insurer has contracted to provide discounts. And workers comp insurers get only limited price discounts compared with health care drug plans, because the workers comp market is much smaller and comp insurers lack the buying power needed to negotiate good prices, Dr. Deitz said.

"Our ability to get these discounts is limited," he said.

Because of these factors, more employers and workers comp insurers have turned to prescription benefit managers with a focus in workers comp, to control drug costs.

"There is no reason for a workers comp insurer to not have a PBM in place right now and no reason for an employer to not have a PBM in place for its workers comp program," said Mr. Paduda, the consultant.

By using PMSI, AIG Claim Services has seen its clients' overall claim costs decrease by 27% to 30%, said Donald Hurter, vp of medical management services in Orlando, Fla., for the workers comp TPA unit of American International Group Inc. PMSI conducts drug utilization review for AIGCS clients, and it provides access to a discount-

See DRUGS/page 20

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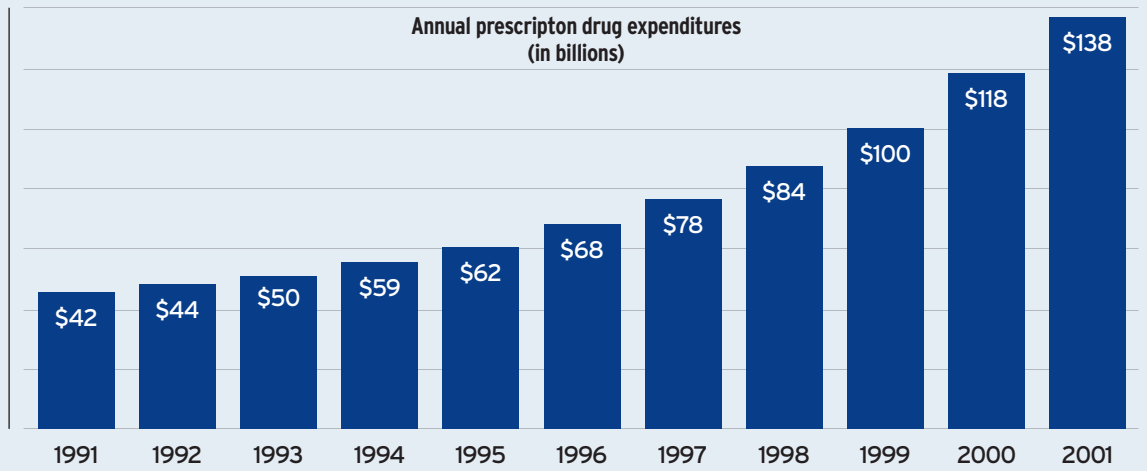
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PRESCRIPTION DRUG UTILIZATION

Annual prescription drug expenditures
(in billions)



Source: Medco Health, Drug Trend Report Sept. 2002

GRAPHIC BY ADAM DOI

Drugs: Strategies to contain costs

Continued from page 18
ed pharmacy network.

"We would be paying out those costs if it wasn't in place," he said.

The first step in addressing drug costs is gathering and analyzing claims data. This includes the types of injuries recorded, the drugs that are most commonly prescribed and the cost of those drugs, said Mr. Martino of Specialty Risk Services.

Armed with this information, employers and insurers can educate patients and doctors about the

drugs and the most cost-effective treatments. The goal is to "make sure that people are educated about what's going on," he said.

PBMs also review prescribed drugs to make sure they are appropriate for the condition. In addition, some use physicians and pharmacists to review a patient's entire course of treatment—including any prescription drugs—to ensure its appropriateness.

As part of its review program, PMSI will call a treating physician to notify him or her when a generic is available for a brand-name drug that has been prescribed, Mr. Walls said. Such efforts aim to change the doctors' prescribing habits. "We have found that the phone calls are the most effective" way to communicate with doctors, he said.

Duplication of drugs is another problem with workers comp programs. An injured worker may see multiple doctors and get multiple prescriptions, as care often is not coordinated. A peer review by a PBM can help eliminate duplication or overlap of prescriptions, saving money in the long run, Dr. Deitz said.

PBMs also offer access to discount pharmacy networks. Although insurers and physicians can't require workers comp claimants to use a particular pharmacy, PBMs can encourage claimants to use the networks, which generally are very extensive, through education efforts.



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Stress: More terrorist attack-related claims likely

Continued from page 10
vant workers comp laws.

States determine whether stress-related claims are compensable in a variety of ways. Elements that some states require for compensability include a physical injury, an occupational disease, stressful working conditions or a situation that involves extraordinary and unusual stress or events.

Other key factors in determining whether a worker's stress claim is compensable include the extent to which the claim can be considered work-related and the conclusiveness of all the medical evidence

that would help substantiate that claim.

Employers and insurers also are challenged by the fact that the laws of some states—such as New York—are being more liberally interpreted for “mental-mental” claims since the Sept. 11 attacks, Mr. DeCarlo said.

A “mental-mental” claim is one in which a mental ailment is claimed to have a mental cause. In contrast, a “physical-mental” claim is one in which a mental ailment is claimed to have been caused by a physical injury.

In New York, the definition of

“workplace” has been enlarged geographically to allow for greater compensability of these “mental-mental” claims, Mr. DeCarlo said. Previously, a worker had to be at his or her desk or in the immediate vicinity at the time of the injury for the claim to be valid, he noted. Now, the worker may have a valid claim even if he or she was only near but not at the worksite when the tragedy occurred.

Pennsylvania, though, has not changed its approach to determining the compensability of stress claims since the terrorists' attacks, according to a spokesman for that

state's Workers' Compensation Bureau.

About one-third of the 6,818 workers comp claims filed in New York in connection with the WTC attacks involved “some component of stress,” according to a spokesman for the New York Workers' Compensation Board.

Slightly less—about 27%—of the 1,297 claims filed by federal civilian employees working in New York offices and at the Pentagon contained a stress-related component. Those claimants allege predominantly mental, emotional or nervous ailments, according to Shelby Hall-

mark, the director of the federal Office of Workers' Compensation Programs.

Several New York workers comp experts and insurer spokesmen say that employers, insurers and workers comp system administrators realize the unusual nature of the claims stemming from the tragedy and are being more liberal than is required by law to ensure that workers get the help they need.

AMCOMP reported on the compensation board's study of 3,438 New York claims, in which 1,594 alleged some element of stress. It found that insurers rejected only about 25% of these cases for one reason or another.

For example, one insurer is contesting a claim from a woman who normally worked on the 86th floor of Tower Two but who was vacationing on Sept. 11. She watched television coverage of the towers' collapse.

The woman said she lost many friends in the disaster and complained of being nervous, scared and crying often. She returned to work, though, and did not seek medical treatment.

Insurers' rejection rate of “mental-mental claims” would have been about 90% prior to the Sept. 11 attacks because of the previously restrictive definition of the workplace, said Mr. DeCarlo, who helped found the AMCOMP organization, which is currently moving to New York from Mt. Vernon, N.Y.

Overall, Mr. DeCarlo advises employers and insurers that “it would be a losing proposition for a carrier or employer to contest a 9/11 mental-mental claim, unless there is no medical proof or the worker's proximity to the worksite was remote.”

But a spokesman for the New York AFL-CIO charges that insurers “checked their patriotism at the hearing room door, because they don't treat these cases any differently than any other claims before the board.” The spokesman said that insurers are disapproving about 95% of claims, which is the same denial rate that existed prior to the Sept. 11 attacks.

Complicating the situation for employers and insurers is the knowledge that if they fail to accept a workers' catastrophe-related mental stress case under workers comp laws and the worker subsequently files a civil lawsuit to obtain benefits, they may ultimately pay more. They may face higher jury-mandated damages that could include specific awards for pain and suffering, which are not allowed under worker compensation laws, according to Mr. DeCarlo.

That viewpoint is echoed in the AMCOMP report. “This latter fact is a reality check and should help maintain some balance of fairness in the system for those who would otherwise not act responsibly,” the report says.

A free copy of the AMCOMP report is available by faxing a request to the attention of Donald T. DeCarlo at 212-947-1202.

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PHOTO: AP/WIDEWORLD



Marriott International employees who worked in the World Trade Center and in the Marriott Financial Center (second building from right) have filed 148 stress-related claims since the Sept. 11, 2001, terrorist attacks.

Stress claims yield insights

By MEG FLETCHER

NEW YORK—Surviving the maelstrom of destruction following the Sept. 11, 2001, terrorist attacks at the World Trade Center yielded some new insights in the handling of workers compensation claims for Marriott International Inc.

That day, 400 of the Bethesda, Md.-based hotel chain's employees were scheduled to work either at its

WTC hotel site—which was destroyed—or at its Financial Center hotel one block away—which sustained only moderate exterior damage.

"On the morning of Sept. 11, the WTC hotel was fully booked, with about 1,200 guests and 200 employees on the premises," said Robert B. Stegert, vp-casualty claims. "When the first plane struck Tower One, engine debris and the plane's hydraulic wheel assembly penetrated the 22nd-floor atrium health club, crashing into the swimming pool," he said.

Losses were limited because of successful evacuation procedures, which were part of an extensive contingency and disaster plan that had been emphasized since the 1993 WTC bombing and had been more thoroughly coordinated in the year before the Sept. 11 attacks, Mr. Stegert said.

Currently, 148 Marriott "associates"—as its employees are called—have presented workers comp cases, "many at company encouragement, in order to secure necessary care," he said. Marriott employed about 1,200 people at its two WTC area facilities last September.

In addition, "cases are continuing to be reported as associates recognize the need for psychological help," Mr. Stegert said.

The claims, which are currently reserved at \$6 million but are expected to ultimately grow to more than \$10 million, include two fatalities. Every claim has a post-traumatic stress dimension and 110 are "physical-mental" while 38 are purely "mental-mental."

In addition, associates who were not working on Sept. 11 had filed 12 "mental-mental" claims. Ten of those were either withdrawn by the associate or closed without awards by the state workers compensation board through an administrative decision or hearings. Two other cases are still pending.

Marriott worked to resolve claims promptly, and 33 claims representing 22% of the cases were closed before the one-year anniversary of the attacks, he said.

In the wake of the attacks, Mr. Stegert recommends that "dispute and litigation avoidance should be a key priority; however, fiduciary responsibilities, as well as collective bargaining issues, may require defending certain cases—or issues—on their merits."

He also emphasized the need for employers to proactively find the best medical care possible for employees as soon as practical.

"After particularly traumatic events, pain and fear can linger for a long time," and many people are unable to advocate for their own needs and become "paralyzed," he said.

"Therefore, it is critically important the survivors—and those supporting them—are alert to their condition and secure timely and appropriate medical interventions."



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Tougher underwriting, loss of capacity driving shift to involuntary market

Residual market seeing rapid growth

By **RODD ZOLKOS**

With employers facing a hard workers compensation market and more selective underwriting by insurers, the residual workers comp market is experiencing dramatic growth.

From January 2001 through July of that year, the National Council on Compensation Insurance processed approximately 30,500 applications from employers seeking coverage from the residual market, representing about \$164 million in premiums.

For the same period in 2002, the NCCI processed approximately 43,000 applications representing almost \$284 million in premiums, a 41% increase in applications and a 73% increase in premiums.

"That's an indication to us that, obviously, there's a tightening market, there's much more attention being paid to underwriting and that insurers are being much more selective," said Peter M. Burton, senior division executive for state relations at the Boca Raton, Fla.-based NCCI.

'In the last three years or so, there were a number of carriers who simply left the market, became insolvent or went under regulatory supervision.'

*Spokesman
State Compensation
Insurance Fund of California*

"We're seeing all kinds of growth," said Dick Colvin, vp technical services at the Wisconsin Compensation Rating Bureau in Waukesha.

Wisconsin's residual market workers comp insurer did \$26 million in new business for the first nine months of 2002, compared with \$20 million for the same period last year. "And the risk count is up 600-plus," Mr. Colvin said. "Of course, that's due to the hardening of the market," he said. "And it's across the board. It's anything and everything."

"I think maybe we'll be pushing \$70 million in existing and new business for the year," which is a dramatically higher premium level than the \$12 million the bureau posted annually in the late 1990s, Mr. Colvin said.

"What happened in the last three years or so, there were a number of carriers who simply left the market, became insolvent or went under regulatory supervision," said a spokesman for the San Francisco-based State Compensation Insurance Fund of California.

"We did during the latest capacity crisis what we are designed to do, which is make sure that employers always have an available market," the spokesman said. "I think we really averted a severe crisis of availability to California employers."

The current situation is similar to the last hard workers compensation

market in the early 1990s, according to Tom Driscoll, senior vp and general manager of involuntary market services at Liberty Mutual Insurance Co. in Boston. At that time, carriers tightened underwriting standards, resulting in business going into the involuntary market.

"By 1992, the involuntary market had grown to just under \$5 billion countrywide and it represented 24% of total workers comp premiums," Mr. Driscoll said.

In 1992 and 1993, several states

went through workers compensation reform, and employers also took a much more active role in workers compensation, increasing their focus on such activities as loss control and return-to-work programs, as a result of higher prices, Mr. Driscoll said. "As a result, claims costs started to come down."

Around that same time, the effort to enact national health care had an impact on medical costs and, consequently, on workers compensation costs.

"What you saw after 1993 was a fairly significant reduction in workers comp costs," Mr. Driscoll said. As the market softened, carriers began to write more workers comp policies and the residual market began to shrink, down to about \$300 million in 1999, about 3% of the market. "So there was a sea change in terms of the volume of business that was in the market," Mr. Driscoll said.

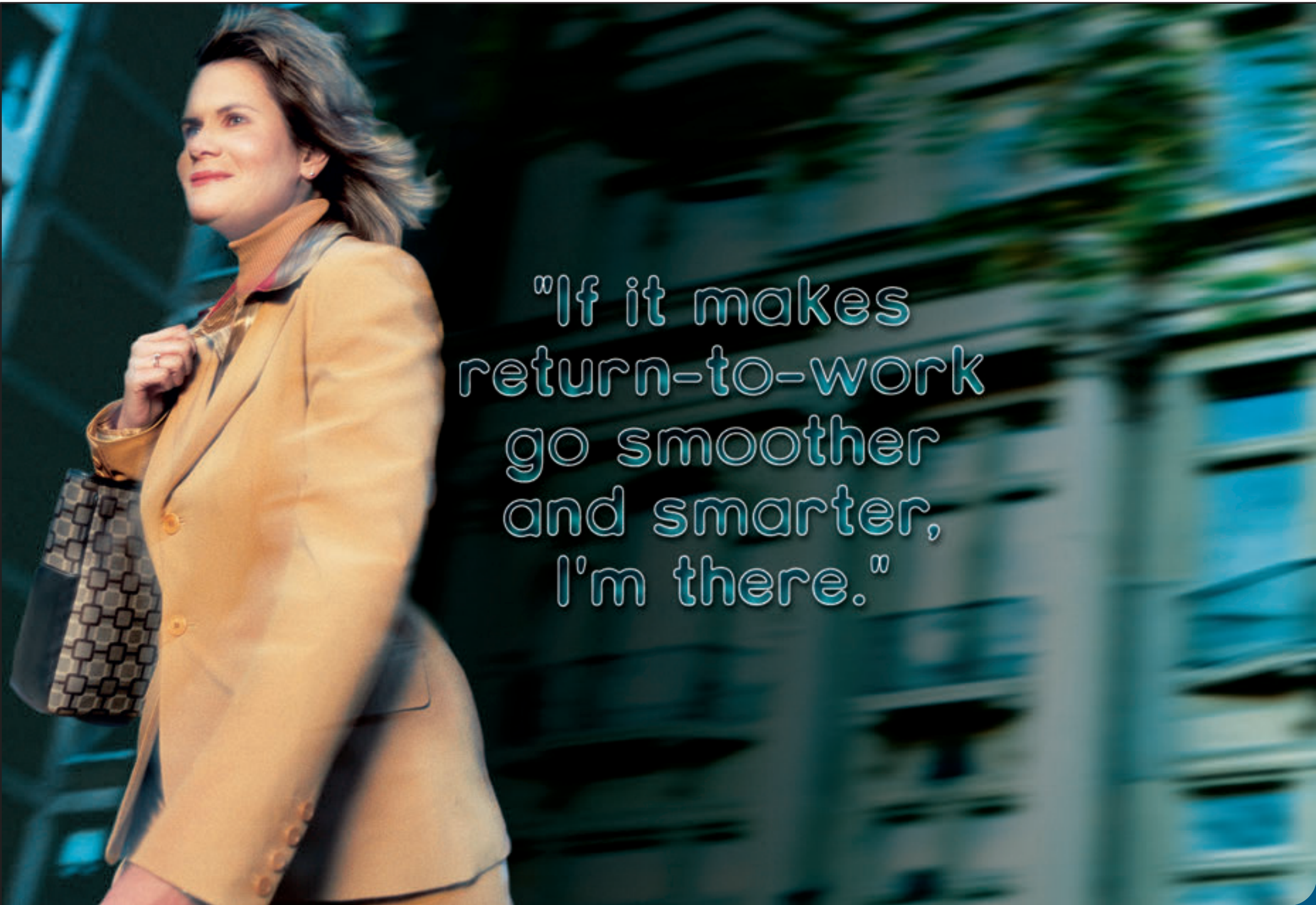
But since 2000, the market has hardened, driven by increasing

medical costs and increasing claims costs, with the hardening enhanced by the events of last Sept. 11. Today, the residual market is about \$800 million to \$900 million and about 8% of the total market.

The NCCI's data also show that more large risks are turning to the residual market for coverage.

"What we're seeing is a lot of larger risks are now securing coverage from the assigned risk plans," the NCCI's Mr. Burton said.

See **RESIDUAL**/next page



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Residual: Market sees rapid growth

Continued from previous page

For example, the organization's figures show only a 2% increase in employers with less than \$1,000 in annual workers comp premiums, but a 76% increase in applications from employers paying more than \$100,000 a year for their comp coverage.

Unfortunately, the information provided by employers on the applications does not show why so many large employers are going to the residual market for coverage, ac-

cording to Mr. Burton. "You can't really peel back the onion and see what the explanation is," he said.

However, "anecdotally, one would suggest the companies are much more concerned about location of risks and the total number of employees at one location," Mr. Burton said.

As more employers turn to the residual market for workers comp coverage, a concern in some quarters is whether they will continue to receive the same level of service they were accustomed to in a soft market.

"We have seven servicing carriers, so we spread that wealth around," Wisconsin's Mr. Colvin said. "My biggest concern is, are the carriers still able to provide the same kind of service to these accounts as they could when the market was soft?"

'What we're seeing is a lot of larger risks are now securing coverage from the assigned risk plans.'

*Peter M. Burton
National Council on
Compensation Insurance*

"I have been assured by them all that they will," he said. "We hold their feet to the fire. We have servicing standards they have to comply with."

Liberty Mutual's Mr. Driscoll noted that, in a number of states, servicing carriers for the residual market are selected through a competitive bid process, and that their performance is audited regularly, so the process of monitoring the service is more intense than the last time there was growth in the residual market.

He noted in the last hard workers comp market, "service varied from carrier to carrier and state to state," and the increased demand in the involuntary market had "shown a harsh spotlight" on service issues, prompting states to impose servicing standards like those referred to by Mr. Colvin.

Other changes since the last hard market should keep the residual market from reaching the market share it held in the early 1990s, Mr. Driscoll said.

"There are some structural differences in the market today that should make it harder to get to that crisis point," he said, noting that workers comp insurers face fewer restrictions than they did a decade ago and have more flexibility in pricing.

"There also are pricing programs in the residual market designed to make it not as attractive as the voluntary market," Mr. Driscoll said. "The intention of most of these things that have been put in place over time has been to make this a market of last resort for those who legitimately can't find a voluntary market quote."

Joanne Wojcik contributed to this report.

Cost-planning efforts face obstacles

By MICHAEL BRADFORD

Employers know that as long as there are state fee schedules, there will never be a way to completely smooth workers compensation medical costs across all jurisdictions in the United States.

Smoothing, therefore, means controlling those costs and lowering them as far as possible.

Apart from fee schedules, there are other, less concrete obstacles in the way of leveling medical costs. Utilization patterns and provider practices vary across the country,

and other jurisdictional factors can affect costs. Even a community's philosophy of how illnesses should be treated can make care more or less expensive than it would be in another region, experts say.

"Not only are there variations in the use of different treatments, but there are variations in the cost of the same treatments" across jurisdictions, said Dr. David Deitz, vp and national medical director with Liberty Mutual Insurance Co. in Boston.

"The bottom line is, workers comp has 50 different variations

throughout the U.S.," said Jeff Aycock, senior vp of risk management services at GAB Robins in Parsippany, N.J. "Forty-two states have their own fee schedules and each one is uniquely different....The best way to smooth (costs) out is to use a firm with the ability to adjust them to the approved state fee schedules."

Apart from that tactic, there are ways to bring some predictability to costs, experts say, by standardizing claims handling and other processes. While that won't entirely level costs across jurisdictions, standard-

izing those procedures is a way for employers to gain some expectation of what medical expenses are likely to be at various locations.

"Our customers have told us that their number one problem is the escalating cost of medical," said Frederick E. Scardellette, vp of product development and marketing at Intracorp in Philadelphia. "Finding a solution to that problem is certainly a key priority for risk managers."

"We've been wrestling with it," said Robin L. Walsh, manager, risk management at Monsanto Co. in St. Louis. The company has at-

tacked the unpredictability of workers comp medical costs partly through a relationship established last year with a claims management company.

"They have a program that standardizes how we manage claims," Ms. Walsh said of Sedgwick Claims Management Services Inc. in Memphis, Tenn. For example, certain claims are flagged for medical case management by various triggers, and the procedures for managing those cases are uniform across jurisdictions.

A growing Hawaiian presence for Monsanto has brought the problem into focus for the company. In parts of that state, "medical care is less well-developed," said Ms. Walsh. The TPA's case management services, "we feel, will have a definite impact in helping control costs in that particular jurisdiction."

'Our customers have told us that their number one problems is the escalating cost of medical. Finding a solution to that problem is certainly a key priority for risk managers.'

*Frederick E. Scardellette
Intracorp*

The reason for using Sedgwick is to "standardize how we are using managed care and bring the right resources to bear in the medical process," she said. But, she noted, it is too soon to tell how well such efforts are working. "We don't have a wealth of data to say we are making an impact, but we are certainly headed in the right direction."

Kimberly George, assistant vp-national medical programs with Sedgwick, said that fee schedules "make it impossible to control what the state makes us pay," but treatment protocols in place across jurisdictions do make the payouts more predictable.

The TPA works with providers who use an evidence-based approach to treat injured workers, meaning they use techniques that have been proven to provide appropriate care and return workers to the job as soon as it is safe to do so. "If you put in an evidence-based program and standardize protocols across the board, the employee gets a fair evaluation, you are able to stabilize costs and return the injured worker" to the job, Ms. George said.

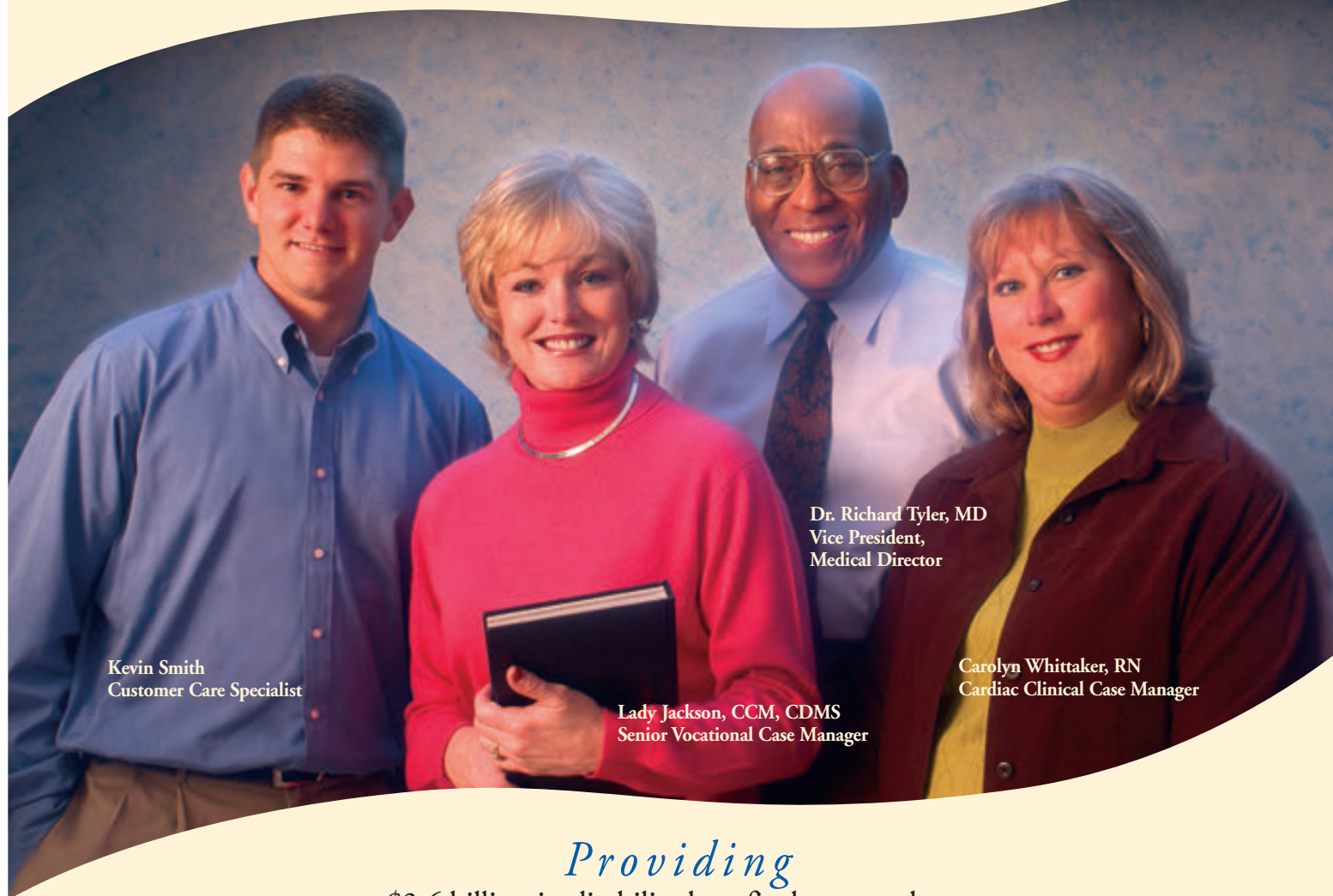
Evidence-based medicine is a sensible way to approach treatment and determine what is payable in a standardized form, agreed Dr. Robert C. Porter, president and CEO of Network Medical Review Co. in Rockford, Ill. In the past, doctors generally based their treatments on opinions they had formed through education and experience. But, in recent years, the evidence-based approach has gained acceptance.

"For centuries, medicine worked pretty well in an opinion-based sys-

See **COSTS**/page 30



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NS02-0067

INSURER TOPICS

A MONTHLY EDITORIAL SECTION SENT EXCLUSIVELY TO INSURERS AND REINSURERS

Reinsurance Strategies

Cedents take close look at buying habits

By RODD ZOLKOS

The hard reinsurance market and other financial pressures are forcing insurers to think harder and more analytically about how—and whether—to buy reinsurance.

In a change from the turmoil that characterized the reinsurance market following the Sept. 11, 2001, terrorist attacks, the market is now functioning in a much more orderly fashion. Ceding insurers, however, are still facing dramatically higher prices and a shrinking number of reinsurers willing to assume their business.

When coupled with other pressures, including ongoing weak investment returns, these conditions are leading insurers to spend more time making reinsurance decisions, often involving executives at the highest level of the company and using sophisticated analytical tools and approaches.

"The whole process has slowed down," said Andrew J. Barile, president and chief executive officer of Andrew Barile Consulting Corp. Inc. in Rancho Santa Fe, Calif. "It's affecting the bottom line to such an extent that the insurance company president has to be much more sophisticated in buying than in the soft market."

"The cost of reinsurance now could be the factor that makes them a winner or a loser," the reinsurance consultant said.

The ability to obtain coverage can become a competitive issue, he said. "I've seen situations now where I go in and talk about a program and the company says, 'We can't put the program together because we can't buy the reinsurance,'" Mr. Barile said.

As a result, "I see just about every type of analysis being done now," as ceding insurers decide how to handle reinsurance placements. "The ceding company is trying to use every single process they can to make the best case in negotiation."

"I think the situation is one where there continues to be a kind of agonizing reappraisal of whether to buy reinsurance or not," said Paul Walther, chief executive officer and principal consultant at Reinsurance Directions Inc. in Heathrow, Fla.

A company that decides not to purchase reinsurance, he added, must then decide whether it will keep more net risk or reduce its exposure by—for example—cutting back the limits it offers policyholders.

If the price is right, reinsurance generally seems to be available, he noted, explaining that "what happens is you have the following market perhaps jumping on the bandwagon, once the pricing has been established," he said.

In many cases, coverage is even available at the right price for risks that a year ago were said to be uninsurable.

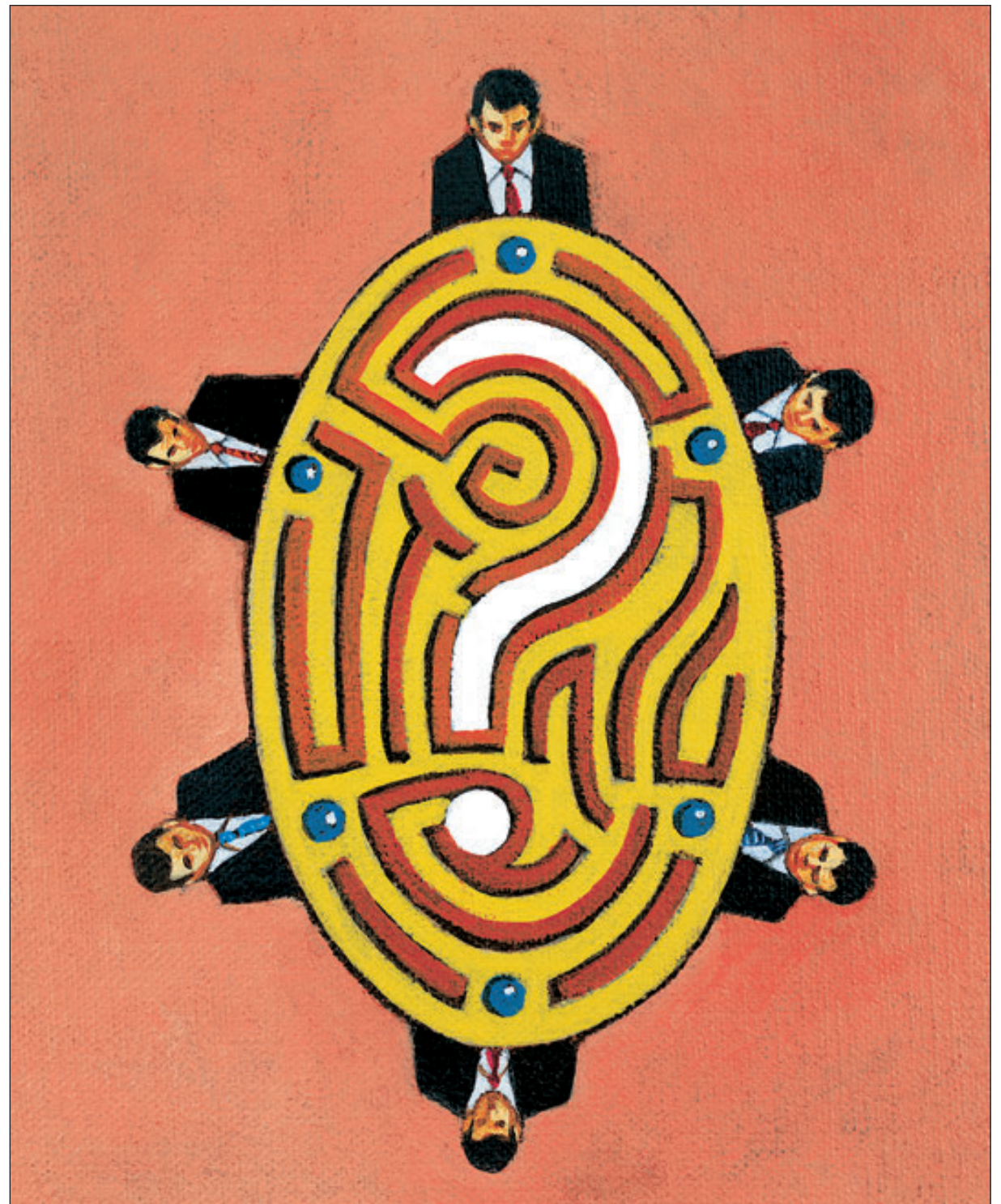
"It's fairly interesting that there are markets popping up here and there willing to write terrorism coverage on a stand-alone basis," Mr. Walther said.

Given the tightened reinsurance market conditions, "it's kind of intriguing that there hasn't been the rush to do the more esoteric kind of capital markets transactions," Mr. Walther added. "The market continues to be a very traditional market," he said, though there are some instances of multiyear or sliding-rate programs implemented "to smooth financial results."

Nevertheless, with reinsurance market conditions likely to remain hard for some time, "I think it's one of those situations where companies are having to look at keeping more (risk) net."

Meanwhile, ceding insurers are taking a more sophisticated approach to the reinsurance they do buy, Mr. Walther said.

Insurers are "able to analyze exposures both at an insurance and a



reinsurance level to understand the core business and to make reinsurance decisions," he said, citing actuarial analysis and dynamic financial analysis as tools available to ceding companies.

In making their decisions in this hard market, insurers need to use the same catastrophe modeling and financial analysis tools used by reinsurers in order to measure their own exposures and determine what level of reinsurance would be appropriate, Mr. Walther said.

"I do think there is a greater emphasis on better data," the reinsurance consultant said, with insurers tending "to be more willing and able to use the new tools that may be available to them."

Mr. Barile said he sees insurers engaging in "a lot of pro forma analysis—if it's going to cost us this much we'll take this route; if it's going to cost us this much, well, we're going to take a different route."

In this environment, techniques like dynamic financial analysis "really allow you to get things right," said Markus Rohrbasser, president of DFA Capital

Management Inc., a Purchase, N.Y.-based insurance company advisor that focuses on analytic decision-making.

In a reinsurance buying context, an insurer could use dynamic financial analysis to study the distribution of possible outcomes with and without the reinsurance coverage, examining them in the context of the company's cost of capital and the impact of the reinsurance coverage on the amount of capital the insurer requires.

The idea is to determine the actual cost of the reinsurance to the company and whether the price is appropriate. It can also help the buyer determine whether a reinsurance program might be modified to better fit its risk transfer needs.

"Dynamic financial analysis is all about optimizing your enterprise with respect to the financial relationship between liabilities and value," Mr. Rohrbasser said.

Omaha, Neb.-based Empire Fire & Marine Insurance

See **CEDENTS**/page 12B

INSURER TOPICS

Cedents: Buying practices re-examined

Continued from page 28A

Co. recently served as the beta test for an analytical software program that DFA Capital Management developed, using it both in structuring insurance programs it offered buyers, and in considering a reinsurance purchase.

"Ultimately, in this case it led us to decide not to purchase the reinsurance," said Steve Rand, Empire Fire & Marine's CEO.

There are other ways insurers are taking a more sophisticated approach to reinsurance purchasing as well.

Many ceding companies

accustomed to dealing with direct writing reinsurers, for example, are considering going also to the broker market, Mr. Barile said.

And when they go to the broker market, buyers are making "a more clever use of it" to gain any possible advantage, he said. Some buyers, for example, are asking whether their intermediary also places the reinsurer's retrocessional coverage, and whether that relationship can be used to bring down the cost of the ceding company's coverage.

"That's how strategic the buyers are getting about it," Mr. Barile said.

Some ceding companies with global exposures are using different

'So much depends on capacity. . . . It's a little bit scary that the runoff community continues to grow by leaps and bounds.'

*Paul Walther
Reinsurance Directions Inc.*

brokers in different parts of the world to try to gain an advantage

in the market, he added.

The continuing reduction in the number of players in the reinsurance market also drives ceding companies' approach.

"So much depends on capacity," Mr. Walther said. "It's a little bit scary that the runoff community continues to grow by leaps and bounds."

Mr. Barile agreed, noting an important consideration in the reinsurance market is always, "How many options and players are there that want to participate in your reinsurance program?"

In some cases, Mr. Barile said he

has seen ceding insurers shop programs to both the U.S. and European branches of the same reinsurer in hopes of getting a better deal, Mr. Barile said.

A final strategy, of course, is for insurers to pass on their higher reinsurance costs to policyholders through higher premiums.

"To the degree that the reinsurance charges can be passed through to the policyholder, clearly that's going to happen as well," Mr. Walther said. But, the consultant said, that can probably only go so far.

"There probably is a 'crunch' threshold out there where the policyholder and the insurers as well will say, 'enough is enough,' " he said.

Contractor coverage creates additional exposures

By RODD ZOLKOS

Insurance companies that choose to provide liability coverage to contractors will inevitably end up paying claims for someone other than the named insured, according to one underwriting manager.

Jeff Chernick, regional underwriting manager for Liberty Mutual Insurance Co. in Woodfield Lakes, Ill., estimated that 25% of the claims his company faces on its book of contractor business involves additional insureds.

Mr. Chernick was part of a panel on the subject of underwriting contractors last month at the Alliance of American Insurers/American Assn. of Insurance Services 2002 Underwriting Conference in Chicago.

"Contractors are all over the place," Mr. Chernick said of the exposures the business presents. "And there are probably more that are bad than are good."

And, "when you write policies for contractors, there are going to be indemnification agreements that you are going to be involved with, there are going to be additional insureds that you are going to be involved with," said another panelist, Michael Colavechhio, a partner with the Lewis Johs Avallone Aviles & Kaufman L.L.P. law firm in Melville, N.Y. For example, in many cases, a general contractor might require subcontractors name it an additional insured on the subcontractor's policy.

Because of the complexity of the issue, it's important that insurance professionals learn as much as they

See **CONTRACTORS**/page 12D



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INSURER TOPICS

Contractors: Coverage involves additional insureds

Continued from page 12B
can about exposures associated with covering contractors, Mr. Chernick said. Other underwriters and sources such as the Dallas-based research and publishing organization International Risk Management Institute Inc. can be valuable resources, he said.
And, it's important for insurers to look closely at the contractors that they are covering and the work they're involved with, Mr. Chernick said. "You will be only as good as the quality of contractors that you write," he said. "You have to make sure that your contractor has been around for a

while and that they've got solid financials."
"The most difficult part of an underwriters job is understanding your exposure and then pricing for your exposure," Mr. Chernick said. Underwriters need to consider exposures raised by additional insureds as part of that process, he said.
"When you write contractors, you really are putting a lot of your company's capital at risk," Mr. Chernick said. While the current hard market offers opportunities to price that business appropriately, he added, underwriters have to pick the right opportunities and approach them properly.

For example, underwriters should expect a contractor to take some responsibility for job-site safety, Mr. Chernick said. Contractors should also be actively involved in negotiating their contracts, because that active role will make them more aware of those contracts' details and possibly reduce some potential liability exposure, he said.
And general contractors have to be "administratively tight" in overseeing their dealings with subcontractors, Mr. Chernick added. Many general contractors, he said, have become more sophisticated about insurance matters and indemnification, and

have transferred some risks back to subcontractors.
Problems are most likely to occur when contractors get involved in projects or work with which they're unfamiliar, the Liberty Mutual underwriting manager said.
While there are many details to consider in insuring contractors, underwriters don't necessarily need to read the indemnification agreements insured contractors are entering, said Donald S. Malecki, chairman and chief executive officer of Donald S. Malecki & Associates, a Cincinnati-based insurance and risk management consulting firm.

Underwriters have a variety of tools available to limit coverage in cases involving such agreements, he said, such as contractual liability limitation endorsements and various standard policy exclusions.
Contractors and subcontractors are increasingly seeking to name each other as additional insureds under their policies, and many underwriters are willing to accommodate them for a price, Mr. Malecki said.
"It's perfectly OK for an underwriter to charge for additional insured status," he said. "People are willing to pay and why not provide it?"

IT briefs

NAMIC's Forrester plans '04 retirement

SAN DIEGO—Larry Forrester, president and chief executive officer of the National Assn. of Mutual Insurance Cos., plans to retire from his post by September 2004.
Mr. Forrester made his announcement during NAMIC's annual meeting in San Diego last month. He has been the Indianapolis-based trade group's president and CEO since 1988.

The association, which has 1,300 member companies, has appointed a search committee and will conduct a national search for a successor.
NAMIC Chairman-elect F. Timothy Hegarty Jr., president of The Norfolk & Dedham Group in Dedham, Mass., will chair the search committee. The committee's members represent a cross section of NAMIC's North American membership.
Candidates for the position may apply to NAMIC's human resources director at resumes@namic.org.
Also at NAMIC's annual convention, the organization announced presented its 2002 NAMIC Service Awards, as well as

the 2001 awards which had not been presented due to the cancellation of last year's convention after Sept. 11.
The service awards are earned for significant contributions to the recipient's company and the national and state insurance industries.
Award winners for 2001 are: Mark E. Bishoff, former president of Farmers Union Co-Operative Insurance Co. of Nebraska, Omaha, Neb.; Julie Buchmeier, secretary/treasurer/manager of German Mutual Insurance Assn., Auburn, Neb.; Glen Johnson, president of the Ontario Mutual Insurance Assn., Cambridge, Ontario; and L. Wayne Johnson, secretary/manager, Clay County

Mutual Insurance Co., Clay Center, Neb.
This year's award recipients are: Robert L. Harrison, chairman, Indiana Lumbermens Insurance Co., Indianapolis, and retired chairman of the Insurance Education Foundation; Bruce N. Heaton, president, Frontier Mutual Insurance Co., Lincoln, Ill.; Duane D. Smith, secretary/manager, Farmers Mutual Insurance Co. of Johnson and Shelby Counties, Franklin, Ind.; and Daniel E. Stone, president and CEO of Indiana Farmers Mutual Insurance Co.
In addition, NAMIC's Farm Mutual Conference selected Bernita Shamel, secretary/treasurer/manager of the Mutual Insurance Association of LaCled County, Lebanon, Mo., as the first professional farm mutual manager of the year.
More than 1,700 attended this year's NAMIC convention.

also communicate the New York-based company's core values of trust and stability for past, present and future generations of customers. New York Life has retained its tagline, "The Company You Keep."
The campaign juxtaposes images from the past, present and future against a backdrop of the landmark New York Life building. The Heritage campaign will air nationally with a focus on nine key markets: Boston, Cleveland, Dallas, Denver, Los Angeles, New York, Sacramento, San Francisco and Washington, D.C. This latest round of ads builds upon New York Life's prior "Cityscape" television campaign, which premiered during the 2000 Academy Awards.
Print advertisements will educate consumers on one of the organization's key strategies to remain a mutual insurance company and began appearing in October. New York Life is returning to a strategy that includes print advertisements after a five-year hiatus from this medium.

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New York Life launches ad campaign

NEW YORK—New York Life Insurance Co. has launched a new \$43 million national television and print advertising campaign titled "Heritage."

The company began airing its new television commercials in September, and plans to run television and print advertisements for the next 15 months.

According to the company, the "Heritage" campaign reflects New York Life's well-established brand and conveys the company's core values of financial strength, integrity and humanity. The spots

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GMAC	28C
ING Re	28B

Chubb receives award for preservation work

NEW YORK—Chubb Corp. has been honored by the Preservation League of New York State for its commitment to historic preservation.

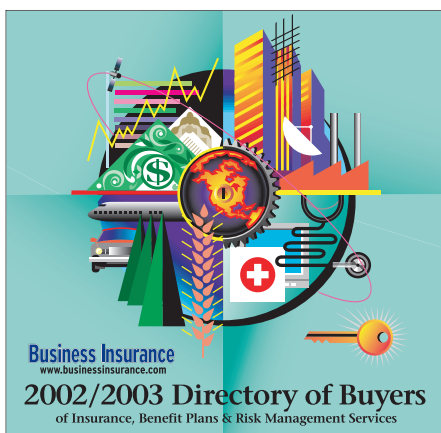
Chubb received the Pillar of New York Business Achievement Award, which is the league's recognition of an organization that has made outstanding contributions to historic preservation in New York. Warren, N.J.-based Chubb is only the third organization to receive the award.

Chubb offers an insurance program specifically designed for historic homes and insures many cultural institutions housed in historic structures as well as landmark buildings.

The Preservation League of New York State is dedicated to the protection of New York's diverse and rich heritage of historic buildings, districts and landscapes. It actively encourages historic preservation by public and private organizations, agencies and individuals in local communities throughout New York State.

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Costs: Comp expense planning faces obstacles

Continued from page 28

tem," said Dr. Porter. "Now, there are too many opinions. Where one doctor may consider using medication, another may have a three-month therapy program," he said.

Using an evidence-based approach, "it doesn't matter if you're in Tennessee or California," said Dr. Porter. Practice guidelines that lead to proven results will produce successful outcomes "no matter where you are."

Industry sources routinely refer to Texas and California as states where employers have difficulties controlling their workers comp

medical costs.

In Texas, "the No. 1 cost driver is chiropractic care when comparing Texas to other states for the same service," said Mr. Scardellette of Intracorp. And even within the state, there are wide variations in chiropractic treatment costs, he said. "The same treatment may cost two times in Houston what it costs in Austin."

Texas, like several other states, allows chiropractic care to be used as primary care, Mr. Scardellette said, as back injuries are a common disability diagnosis and a big problem for workers and employers.

As a way of avoiding the high cost of chiropractic care, Intracorp has physician networks in place throughout Texas to treat employees with back injuries. "We line up the best network solution available, then work with (employees) as injuries occur to get them to see in-network providers as soon as possible. We also provide the medical management services as needed to help ensure that the best return-to-work outcomes are reached," said Mr. Scardellette.

Intracorp works with treating physicians to return the injured employee to the job as soon as the

worker is physically able to go back to work. If the employee's capacity is limited by the injury, Intracorp helps employers come up with job-site accommodations and transitional assignments.

Dr. Deitz of Liberty Mutual called Texas "disproportionally expensive" for physical therapy and said part of the reason for the high costs is the existence of "geographic distinctions" in the way physicians in the state treat their patients.

California regulations, such as one that requires workers comp insurers to pay for treatment of a non-occupational injury if the treatment

is necessary for also treating the work-related injury, help drive up costs in that state, industry sources point out.

Some California employers are looking more closely at workers comp managed care plans as a way to control medical costs, according to Mr. Scardellette. Legislation there allows employers to use managed care programs to treat workers comp injuries, he said.

Mary O'Donoghue, Boston-based vp of managed care services for Liberty Mutual, said that directing care into networks helps bring costs down. "Anytime that you can, the cost of care is typically lower," she said. "Many of our employers have provider databases at their locations," which help steer injured workers to qualified physicians.

And, "we spend a lot of time at the employer's site to help make sure it is safe," Ms. O'Donoghue noted. "We show them their data based on various jurisdictions and make sure they understand what they can do" to prevent or manage the high-cost claims, she explained.

Risk management remains the best way to keep costs down, Mr. Aycock of GAB Robins pointed out. "With any injury you prevent," he said, "you have no cost."

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Directory listing deadlines extended

Business Insurance's online Directory of Risk Management Information Systems will be published in conjunction with the Dec. 2 issue. To be listed in the directory, a company must produce or supply risk management software products to risk management personnel on a stand-alone basis.

The updated online Directory of Benefit Communication Systems will be published in conjunction with the Dec. 9 issue. To be included in the directory, a company must produce or supply proprietary interactive benefit communication software directly to corporations for the purpose of managing their own employee benefit plans. Companies that deal only in hardware or support services are not eligible.

There is no charge to be included in the directories. Companies must submit a questionnaire by the extended deadline of Nov. 8. For more information, contact Directory Editor Kevin Edison at 312-649-5279 or kedison@crain.com.

BI's online directories are available to subscribers on www.businessinsurance.com and will be published in the 2002/2003 Market Source Book, a printed compilation of all of *BI's* directories and rankings to be published Dec. 23.

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NAPSLO: Hard market likely to continue

Continued from page 3
and don't see that improving," he said.
Rates will continue to rise until combined ratios drop significantly, Mr. Williamson said. "We have to return to profitability," he said.
Part of the problem is the rising wave of claims hitting insurers, said Patricia Roberts, the president and chief executive officer of General Star Management Co. in Stamford, Conn. "Understanding the wave is absolutely critical to survival," Ms. Roberts said.
The number of mass torts and their size continue to climb. In ad-

dition, claim trends continue to increase, she said.
Asbestos claims and costs are up, and more claims continue to pour in, Ms. Roberts said, noting that 90,000 new claims were filed against the Manville Personal Injury Settlement Trust last year. That trust was set up in 1987 to handle claims against bankrupt Denver-based asbestos producer Johns-Manville Corp. as part of its Chapter 11 reorganization.
She said that the list of targets in asbestos suits has also expanded as plaintiffs look for companies with deep pockets to sue.

Jury awards also continue to rise, as does the cost of litigation. For example, the number of million-dollar awards is growing, particularly in New York and Pennsylvania, where 20% of the awards are for over \$1 million. In Mississippi, the figure stands at 24% for 2001, Ms. Roberts said, citing figures compiled by Jury Verdict Research of Horsham, Pa.
Product liability and medical malpractice are the hardest-hit areas. According to Jury Verdict Research, the percent of product liability awards over \$1 million rose from 40% in the years 1994

through 1996 to 63% in 1999 through 2000. Medical malpractice awards over \$1 million grew from 34% to 52% when comparing those periods.
"The frequency and severity is up, and that's a deadly combination if you're trying to make an underwriting profit," Ms. Roberts said.
The medical malpractice market has contracted greatly and there are now a limited number of players, she said. "Many doctors are now in the non-admitted market," she said.
Construction defect claims are also a growing concern, Ms. Roberts said. "The problem is spreading and

is far beyond the Western states," she said.
Because of these skyrocketing costs, it will be very difficult to realize profits this year, even with the higher rates, Ms. Roberts said. She predicted current trends won't moderate until 2004. "The claim trends, without tort reform, will continue unabated," she said.
High claims costs, combined with low investment returns, mean that underwriting profits are more important than ever, Ms. Roberts said. A disciplined underwriting approach "will be the only way to survive," she said.
One area where profits are strong is in property insurance, said E.G. Lassiter, the president and CEO of Royal Specialty Underwriting Inc. in Atlanta. "If you're not having a profitable property year in 2001, you're doing something wrong," Mr. Lassiter said.
In 1998-99, property coverage was underpriced, pushing combined ratios to over 110%, Mr. Lassiter noted. Rates began to climb in late 1999 to lower these ratios and deliver returns on equity in the range of 12% to 15% range, he said.
Rates are up between 30% and 100% in 2002, with a greater emphasis on underwriting. In addition, a relative lack of catastrophes this year has helped to push up profits. But rates won't moderate any time soon, Mr. Lassiter warned, because property lines need to contribute profits to offset losses in other areas.
He also noted that reinsurance rates have risen dramatically, forcing direct insurers to raise rates. "Clearly, these costs are being passed along," he said.
As a result of high rates, reinsurance purchasing is down, Mr. Lassiter said. "People are buying less coverage as it costs so much," he said.
Mr. Williamson said that reinsurance premiums have dropped by 3.1% in the first six months of 2002, compared with the same period in 2001. "This has gone beyond a hard market to a very tight market," he said.

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2002 National Assn. of Professional Surplus Lines Offices Annual Convention

Reinsurer's woes continue in 2002: Brokerage exec

By MICHAEL PRINCE

BOSTON—Although rates are rising sharply in the primary insurance market, the same cannot be said about the reinsurance side, one reinsurance brokerage executive says.

Reinsurance rates are indeed rising, but they are not going up as fast as those in the primary market, and reinsurers are not enjoying the kind of financial success currently seen among primary insurers, said Sean Mooney, chief economist for Guy Carpenter & Co. Inc. in New

York.

Insurers are doing better in the current hard market, "but on the reinsurance side, you're seeing a bunch of negatives," Mr. Mooney told attendees at the 2002 National Assn. of Professional Surplus Lines Offices Annual Convention, held in Boston earlier this month.

Pricing for primary insurers "is at record levels," he said. But prices are not rising as swiftly for reinsurers, he said. Mr. Mooney said he expects reinsurance combined ratios for 2002 to continue to be high, while primary insurers likely will

The key factor driving the current hard insurance market 'is the need to fill in the holes with reserve adequacies.'

Matthew Mosher
A.M. Best Co.

post better ratios this year than last. The hardening market has

brought in some new capacity, in particular from Bermuda-based companies, he said, and this new capacity has helped moderate some reinsurance price increases so far this year. "The new capacity coming to the marketplace did play a big factor with Jan. 1 renewals," he said; it "acted as a restraint on the pricing in the marketplace."

Mr. Mooney said that in the surplus lines area, contrary to expectations, reinsurance capacity is diminishing. The reason, he explained, is that the hard market throughout the insurance industry is permitting

reinsurers to shift their capital to other areas that they feel will be more profitable. "There are better areas for companies to put their money in the standard markets," he said.

Mr. Mooney said he expects reinsurance rates to soften in January for property renewals and sometime in 2004 for casualty renewals.

The hard market for surplus lines insurers, though, may continue beyond that, said Matthew Mosher, group vp at A.M. Best Co. in Oldwick, N.J. The key factor driving the current hard market "is the need to fill in the holes with reserve adequacies," Mr. Mosher said.

Premium growth for U.S. surplus lines grew by 34.6% in 2001, outpacing increases in the standard market, he said, noting that this increase mostly resulted from rate hikes. Despite the sizable increases, though, combined ratios have still not dropped below 100% for the industry as a whole in 2002, Mr. Mosher said.

This trend, he said, will continue as losses continue to rise and reinsurance costs escalate.

As a result, Mr. Mosher said, he anticipates that rate increases will continue through 2004, because insurers "have too many problems on their balance sheets."

Andrew Frazier, president and chief executive officer at Western World Insurance Group in Franklin Lakes, N.J., moderated the discussion.

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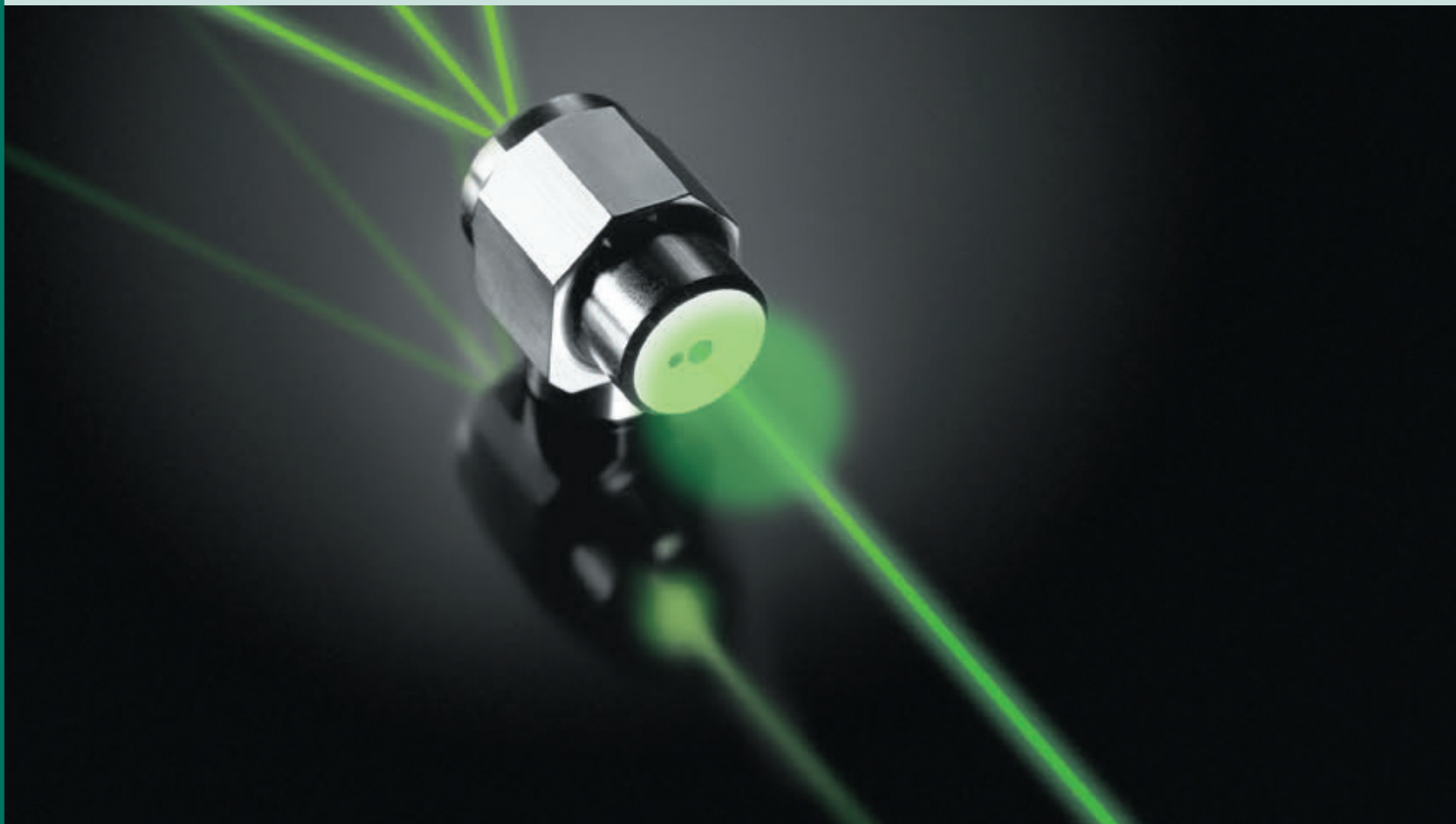
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California to rate physician groups

By LAURA B. BENKO

In the latest effort to drive improvements in health care quality, California regulators have added a new feature to the state's HMO report card: a detailed performance rating of leading physician groups, which are often as important as HMOs in determining the quality of care that patients receive.

California's second annual report card, released Oct. 1, rates the state's top 10 HMOs using a scale running from poor to excellent in five categories: overall customer service; doc-

tor service; and how well the plans help members stay healthy, get better and live with illness. The plans cover 95% of the state's HMO enrollees.

The report card also rates 80 medical groups, providing care to about 72% of the state's HMO members, in four categories:

overall score, getting treatment and specialty care, communicating with

patients and timely care and service. This new feature, believed to be the nation's first state-assembled rating of doctor groups, comes at a time when the usefulness of report cards increasingly is being called into question.

Martin Gallegos, director of the state Office of the Patient Advocate, which compiled the report

card, said the medical-group component should be helpful given that half of the state's 18 million HMO members can't switch health plans because their employers offer only one coverage option. Now patients can at least find a better medical group within their network.

"Where consumers have the most choice during open enrollment is with medical groups," Mr. Gallegos said. "And since that's where the actual care is provided, choosing a doctor is often more important than choosing an HMO."

California's report card is taken

more seriously than most others because it is compiled by state regulators rather than consumer groups.

The HMO ratings are based on results of a state survey of 35,000 consumers and on statistical information that HMOs gather and report each year to receive accreditation from the not-for-profit National Committee for Quality Assurance. The physician-group ratings are based on data that HMOs collect from medical groups.

Mr. Gallegos said it's difficult to determine how much HMO quality has improved over the past year because the state has tightened many of its reporting methodologies since its 2001 report card. "Generally, we've seen improvement on a number of quality measures, but there is still a lot of room for improvement," he said.

'Where consumers have the most choice during open enrollment is with medical groups. And since that's where the actual care is provided, choose a doctor is often more important than choosing an HMO.'

*Martin Gallegos
California Office
of the Patient Advocate*

In its statewide HMO review, the report gave only one "excellent" rating—to Oakland, Calif.-based Kaiser Permanente's southern California unit for its preventive care. Universal Care of Long Beach, Calif., and Western Health Advantage of Sacramento, Calif., were the only two HMOs to receive "poor" ratings in any category. HMOs and doctor groups also are rated regionally, making it easier for consumers to compare options in their local area.

The new effort comes less than two weeks after the release of another study that casts doubt on the reliability of the nation's most comprehensive health care report card.

That study, published in the Sept. 25 issue of the *Journal of the American Medical Association*, found HMOs that received poor scores on the NCQA's annual quality report in 1997 and 1998 were three times more likely than top scorers to refuse to publicly disclose data the following year. Such declines in participation make the ratings—used to gauge the industry's overall performance—misleading or even meaningless, the authors said.

The NCQA, however, argues that these findings are outdated because the accrediting group has made several changes since the JAMA study was conducted.

"It's old news that doesn't pertain to the current reality," said an NCQA spokesman. "The number of plans (not disclosing data) has been declining each year."

Laura B. Benko is a reporter for Modern Healthcare, a sister publication of Business Insurance.



CVS Pharmacy
4 column x 10"

Bermuda: Wave of start-ups may continue

Continued from page 3

not be as successful as others" and could face decisions as to how or whether they will continue, he said.

When insurance and reinsurance prices begin to soften, some of the new companies may have to merge or look for a buyer, Mr. Cooney said.

Bermuda regulators have said that of the start-ups, only one, which they did not identify, has indicated that it will review its business plan after five years and determine whether to remain in the market.

"I think they are providing valuable capacity in a market where supply and demand are unbalanced," Mr. Cooney said of the start-ups. If that capacity had not arrived in Bermuda, "it would have had to be found somewhere," he said.

As a marketplace, Bermuda faces some challenges related to its geography, the panelists pointed out. The island's ability to admit new companies and workers is finite, for example, and housing costs and other living expenses for expatriates have soared.

Local attorneys had full work-

loads at the end of 2001 as they worked to incorporate companies in time for January renewals and make sure work permits were in place for new hires who arrived from other countries, Mr. Collis recalled. Such hurdles, though, are ones that can be handled, he claimed.

"In less than three months, the whole process had allowed a company to go from an idea to writing business," he said of last year's flurry of incorporations.

In some cases, the new companies have solved problems of staff relocations or recruiting Bermuda

residents by luring personnel from competitors.

"This whole business of raiding each other's staff...in a way, shows the maturity," of the marketplace, said Sheila Nicoll, president of Olympus Reinsurance Ltd., one of the Bermuda companies that were formed in December of last year. "The London people have dealt with that for years where whole teams have moved between companies."

The discussion was moderated by Raymond Medeiros, a partner with PricewaterhouseCoopers in Bermuda.

16th International Reinsurance Congress

Financial ratings fall as losses mount

By MICHAEL BRADFORD

HAMILTON, Bermuda—Many reinsurers are watching their financial ratings fall as losses climb.

And the immediate future looks to be tough sledding for reinsurers, according to Robert Partridge, managing director of financial service ratings for Standard & Poor's Corp. in New York. "Our outlook on this industry is negative," he said.

But even as losses have climbed, many reinsurers have remained strong and are plowing through a number of challenges, Mr. Partridge said.

S&P has downgraded 16 major reinsurance groups and called into question many others' AAA ratings, Mr. Partridge pointed out. "The industry is under very substantial pressure."

Even as losses have climbed, many reinsurers have remained strong and are plowing through a number of challenges.

Robert Partridge
Standard & Poor's Corp.

Speaking at the 16th International Reinsurance Congress held earlier this month in Hamilton, Bermuda, Mr. Partridge said the reinsurer downgrades were largely prompted by huge recent losses. "This year, the industry has experienced its worst underwriting results since S&P started recording reinsurance results," he said.

The reinsurance industry last year chalked up a combined ratio of around 129%, much of it attributable to the Sept. 11 terrorist attacks, according to Mr. Partridge. "Capital adequacy has come under severe pressure," he said, to cover losses and write new business.

Insurers have been hurt both by a 10-year soft market and recent poor investment returns, Mr. Partridge pointed out.

The outlook, however, is not completely dark. Mr. Partridge said the reinsurance industry has "demonstrated impressive resilience," noting that there are very few industries that "could have come out of a year like 2001 with such strength."

He emphasized that the reinsurance industry, despite the downgrades, is still one of the strongest rated by S&P.

See **LOSSES**/page 42

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Losses: Reinsurers' ratings fall

Continued from page 40

Although many observers believed that reinsurers were overcapitalized before the terrorist attacks, that capital may have allowed most reinsurers to remain strong after 2001, Mr. Partridge said. "It may not be that the industry was overcapitalized in the past," he said, but that "the earnings may not have been supportive of that level of capital."

Reinsurers are collecting some "eye-popping increases in rates" this year, and S&P expects the hard market to continue into 2004, Mr. Partridge noted. "After that, we'll

wait and see."

Rates are "approaching adequacy," he said, which means future increases probably won't be as large. "There are many lines of business, we feel, where the rates are beginning to be justified...in terms of the risk that's involved."

Because of the increases that have been imposed, reinsurers are expected to record a combined ratio of around 107% this year, according to Mr. Partridge.

And the reinsurance industry must remain disciplined about underwriting, he said. Reinsurers "will have to earn an underwriting prof-

it" at a time when investment income is hard to earn, Mr. Partridge said. "You can't rely on investment income to pull you out, especially if your capital base has been diminished."

Some companies are reconsidering their participation in the reinsurance market, which could lead to changes, Mr. Partridge said.

"A lot of the larger, multiline companies are looking at their reinsurance operations," and, in light of the volatility associated with that business, are asking themselves whether they want to stay in, he said.

16th International Reinsurance Congress

Insolvency system overhaul proposed

By MICHAEL BRADFORD

HAMILTON, Bermuda—A major overhaul is needed in the way insurer insolvencies are managed in the United States, a nearly completed report concludes.

"Effective reform is going to require major structural changes, not fine-tuning or tweaking," said Robert Klein, professor of risk and insurance at Georgia State University

in Atlanta. There are some "major incentive conflicts" among those involved in managing insolvencies, he said.

Mr. Klein said a two-year study that is almost finished outlines some of the problems in the system for managing insolvencies. Georgia State was commissioned by PricewaterhouseCoopers L.L.P. to look into the way insolvencies are handled. Conclusions reached so far were presented by Mr. Klein at the 16th International Reinsurance Congress in Hamilton, Bermuda.

"Essentially, the problem in the United States is that the receivers are motivated to prolong receiverships and inflate costs," said Mr. Klein. "It can be a very lucrative job," he explained. "The longer the receivership, the longer the state can extract income and various other forms of compensation from the whole effort."

'Essentially, the problem in the United States is that the receivers are motivated to prolong receiverships and inflate costs. It can be a very lucrative job.'

Robert Klein
Georgia State University

"Consequently, rather than having incentive to do these things efficiently and wrap them up quickly, they have an incentive to prolong them," he said. The problem is compounded because courts and regulators who oversee receiverships often fail to exercise adequate oversight and encourage speedy management, according to Mr. Klein.

And, the regulators themselves often have little incentive to oversee the receiverships because some of their problems eventually will be taken care of by guaranty funds, he noted.

When the cost of an insolvency is spread among several state guaranty funds, the regulator overseeing the receivership has little incentive to show concern for costs borne outside his or her own borders, Mr. Klein pointed out.

Also, "the regulator knows that, at least certain claims...will be covered by the guaranty fund no matter how badly or how well he runs the receivership. In fact, the faster he moves to liquidation, the quicker he will trigger the guaranty fund to pay off the claims, and that essentially addresses his main political problem, at least at that time. And consequently...looking for efficient resolution is not something that would be high among his priorities, because, politically, there is no reason for him to be concerned about it."

Mr. Klein said the report con-
See INSOLVENCIES/page 44

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Insolvencies: Complete overhaul of system proposed

Continued from page 42

cludes that receiverships will work best when they are open to competitive bidding. A process for selecting a manager should be based on competence and the ability to handle the job in a cost-effective manner, he noted.

Jim Schacht, a director at PwC in Chicago, spoke about the report and the issue of insolvencies prior to Mr. Klein's presentation and during a subsequent panel discussion. He acknowledged that one of the reasons the firm commissioned the study was that "we would like to be a major player in the insolvency system" in the United States through the management of receiverships. "We want to see the system improved and changed dramatically," he said. "We also want to be a player in bringing about those changes."

Mr. Klein suggested that some form of professional certification, such as that required for managing insolvencies in the United Kingdom, could be helpful in ensuring that competent managers are select-

ed.

Jon Yorke, an attorney with the London law firm Richards Butler, spoke during the panel discussion. He said the U.K. system of licensing managers means cases are resolved

'We want to see the system improved and changed dramatically. We also want to be a player in bringing about those changes.'

*Jim Schacht
PricewaterhouseCoopers*

in a more expeditious manner than in the United States. There is the "threat that they can lose their license," which provides an incentive to do a good job, he said of U.K. managers.

An important feature of the English system is that the managers are appointed as officers of the court, Mr. Yorke pointed out. That

means they are under the court's supervision and also are "beneficiaries of the protection of the court," so that as long as they act in accordance with the order governing the insolvency, "it is difficult for them to be criticized," he noted.

Mr. Klein suggested that among the ways to restructure the system of managing insolvencies would be to "concentrate insolvencies in courts that maintain a significant amount of expertise in this area," much the way bankruptcies are handled for companies outside of the financial services industry.

"We need to hold the regulator accountable for solvency management," Mr. Klein said. "In other words, if the insolvency manager does a bad job, then the regulator's butt needs to be on the line."

To hold people accountable, "you need to understand what people are doing and how well they are doing it," Mr. Klein said. "And that's going to require full, standardized reporting, to the courts, all stakeholders and the public." All "detailed and rigorous data" as well

as court documents and other findings related to the insolvency should be made available, because "it enables all stakeholders to see how their interests are being affected and at least press those interests to the court and the regulator," he said.

Debra Hall, general counsel with the Washington-based Reinsurance Assn. of America and a panelist during the discussion, said a uniform law governing receiverships is needed in the United States. She conceded, however, that federal minimum standards may be the only politically achievable answer.

"I think we should either have a federal law that the states adminis-

ter or we should have very tight federal minimum standards," she argued.

Ms. Hall said the RAA has pushed for changes in the way receiverships are handled, and the association finds itself alone in those efforts most of the time. Other insurance trade associations have not been as vocal about the problems related to the way receiverships are handled, and regulators aren't too concerned with making changes, she said. "Regulators don't understand receiverships, and they don't want to, because they have their plates full with other things."

Mr. Schacht moderated the panel discussion.

16th International Reinsurance Congress

About 150 attend annual meeting

HAMILTON, Bermuda—Clear skies and balmy fall temperatures greeted attendees to the 16th International Reinsurance Congress in Bermuda.

Held at the Fairmont Hamilton Princess, the conference drew around 150 attendees to hear speakers discuss global insurance and reinsurance issues, regulatory concerns, the state of the Bermuda marketplace and other topics. The annual conference is sponsored by London-based Hawksmere P.L.C.

When the speeches had ended, conference-goers mingled with tourists from cruise ships docked along Front Street to shop, dine and enjoy the evening weather. There were rumors of some attendees slipping away early from meetings to contemplate global insurance issues on the island's golf courses.

Organizers hope for similar weather during next year's conference scheduled for Oct. 8-10. More information is available at www.hawksmere.com/bermuda.

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CIAB: Rates, insurer solvency remain key concerns

Continued from page 3

In the current market, producers see their clients wanting to be more involved in the process, requiring brokers to devote more time to working with clients, he said.

"They don't always appreciate all the work the agent or broker is doing on their behalf, so we need to do a better job of selling the value of the services we provide," he said.

Against the backdrop of a hard market, the CIAB continues to work on regulatory reform.

"When looking at the issue of how, as agents and brokers, we can maintain our position in a global



'When looking at the issue of how, as agents and brokers, we can maintain our position in a global marketplace, a big challenge is our regulatory system.'

*John L. Van Osdall
Council of Insurance Agents & Brokers*

marketplace, a big challenge is coping with our regulatory system. We are at a competitive disadvantage with companies based elsewhere when competing globally," Mr. Van Osdall said.

"The costs of our regulatory system put us at a disadvantage with other global financial services players. But the states are unlikely to give up insurance regulation," because they derive significant revenue from premium taxes and regulatory fees, he said.

As a result, reform efforts are focused on making the state system more efficient and less costly.

In an address at the opening general session of the Insurance Leadership Forum, Mr. Van Osdall outlined the CIAB's regulatory goals and the reasons behind them.

"Twice this year, I was honored to testify before Congress on the continuing need for real and complete regulatory reform. In the end, this single issue will define how competitive our industry is in the emerging global market," he said.

Mr. Van Osdall pointed to the efforts of the CIAB to achieve producer licensing reform, in the form of the National Assn. of Registered Agents & Brokers provisions of the Gramm-Leach-Bliley law. Although the minimum number of states passed legislation regarding the provisions, several large states have not yet done so.

"While we have seen some long overdue improvements in the agent/broker licensing arena, the simple fact is this: The pace of reform of state licensing laws in the past three years has far outstripped

See CIAB/next page

Wilkerson to chair CIAB

More than 781 attend annual conference in West Virginia

WHITE SULPHUR SPRINGS, W.Va.—The Council of Insurance Agents & Brokers named William R. Wilkerson III, chairman and chief executive officer of Haas & Wilkerson Insurance Inc. of Shawnee Mission, Kan., as its 2003 chairman.

Mr. Wilkerson's appointment was announced during the Insurance Leadership Forum, the CIAB's annual joint meeting with the Council of Insurance Company Executives.

The meeting, which was canceled in 2001 due to the turmoil caused by the Sept. 11, 2001, terrorist attacks, returned to the Greenbrier resort in White Sulphur Springs, W.Va., Oct. 5-9. This year's meeting attracted 781 attendees.

Mr. Wilkerson, who assumed office at the conclusion of the conference, succeeds John L. Van Osdall, senior vp of USI Insurance Services Group Inc. of San Francisco.

As 2003 chairman, Mr. Wilkerson heads a group of officers who include: Vice Chairman Frederick J. de Grosz, president and CEO of ABD Insurance & Financial Services Inc. of Redwood

City, Calif.; Treasurer J. Hyatt Brown, chairman, president and CEO of Brown & Brown Inc. of Daytona Beach, Fla.; and Secretary Charles R. Daniels III, president of the Daniels Agency of NY Inc. of Pawling, N.Y.

The 2003 Insurance Leadership Forum will be held at the Greenbrier Oct. 11-15. For more information, contact the Council of Insurance Agents & Brokers, 701 Pennsylvania Ave. N.W., Suite 750, Washington, D.C. 20004-2608; 202-783-4400; fax: 202-783-4410; or by e-mail at www.ciab.com.

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CIAB: Rates, solvency still key concerns

Continued from previous page

the previous 75 years of efforts by state insurance regulators," Mr. Van Osdall said.

"Congress must take further, much more aggressive steps to create a regulatory system that is streamlined, efficient and effective. Carriers represented here should know that we endorse the call for a truly optional federal insurance charter," he said.

"Our position is clear. We must fix a fragmented system that costs you and consumers too much money," he said.

In an interview, Mr. Van Osdall noted that the House Financial Services Committee's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises plans to examine insurance regulation and to look at proposals for an optional federal charter.

"The good work that we have accomplished with NARAB has led the House panel to give the council a voice in these discussions," he said.

"If an optional federal charter were to come about, we would see a self-regulatory body, such as the Securities and Exchange Commission, as the preferred approach to a federal

regulator," he said.

"It's gratifying to see the House's interest in council staff's perspective. Their input also has been sought on terrorism insurance proposals, which was an issue where we worked very closely with the carriers," Mr. Van Osdall said.

"On Sept. 10, 2001, who could have forecast that the groundwork the council had laid through decades of effective federal advocacy would be so necessary for one issue of profound national importance?" the CIAB chairman asked during the general session.

"Who would have imagined that legislation primarily aimed at the commercial property/casualty insurance market would be so critical to our national economy, or that our industry would be the focus of the president's No. 1 economic issue now before the Congress? This is unprecedented," Mr. Van Osdall said.

"Throughout the federal terrorism insurance debate, so protracted and difficult, the council has worked with its industry colleagues to develop an appropriate and achievable role for the federal government in the new age of global terrorist risks," he said.



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Letters to the Editor

Continued from page 8

Among the ineligible "rising stars" are those who experienced the hard markets of the early '70s and mid-'80s. These are the insurance and broker employees who are now being looked to by risk managers for advice on how to keep risk financing costs under control while protecting their employers' assets.

Furthermore, women, individuals over 50 and nonwhites can give risk managers invaluable advice regarding employment practices liability and what happens in the real world regarding discrimination and harassment.

These are the people that counsel risk managers about how to establish training programs in order to avoid employee liability claims and how to provide employers with risk financing protection for the claims that do occur.

You may think from the tone of my letter that I am nonwhite, female and over 50. I am, however, a white male, though I am over 50 years of age. Regardless of who I am, I am very disappointed in your admittedly subjective selection, which fails to celebrate diversity in our industry.

While the people you selected may be seen as top performers by their employers, your article does a huge disservice to all the excellent insurance industry employees who are just as innovative or more so, work their fannies off for their clients, don't have executive titles, work in cubicles and may not be flashy. If you think the "rising stars" did it on their own, think again. Executives are only as good as the employees who work for them.

While it is not a big deal to *Business Insurance*, I will not be renewing my subscription after having been a subscriber since 1980.

Robert C. Guile

Director-Risk Management
Tacoma Public School District
Tacoma, Wash.

Editor's note: As the saying goes, you can't be all things to all people all of the time. The 35 Rising Stars feature never purported to be anything other than what it was—BI editors' selection of 35 individuals that we felt were noteworthy in the commercial insurance industry. We chose to recognize people in their 30s and 40s because the fact is, in this industry, the top spots are most often held by people in their 50s and 60s, making achievement at a younger age more notable.

We acknowledge Mr. Guile's wish that we had provided a more diverse view of the industry and had recognized hardworking people out of the public eye, but to criticize this feature for failing to meet that goal is unfair.

I would like to note that all readers—including risk managers—were invited by the magazine to nominate individuals to be considered for this list. In addition, it should be noted that BI in 2000 published a special feature on the Top 100 Women in insurance.

Rising Stars feature overlooked the real stars

To the editor: Am I only the only who thinks there is a Grand Canyon-sized gap between the 35 Rising Stars list published Oct. 7 and your tongue-in-cheek Oct. 14 article, "Kicking Flava Into the Industry," that implies the industry is out of touch with the new generation of insurance buyers?

Most of the individuals you named are not rising because, technically, they have already risen. Your 35 Rising Stars list looks like a who's who of people sitting in

cushy senior executive jobs. There wasn't one maverick or iconoclast in your group of 35. These folks were all your typical play-by-the-rules corporate ladder climbers, blue bloods, incremental-improvers and status-quo-type managers. How much leadership does it take to follow corporate business plans and delegate the same old incrementalism to some senior vp of operations?

Perhaps my definition of a rising industry star differs from that of most of the industry, but after 15 years in this arena, I get tired of seeing insurance corporations with tens of millions of dollars in the bank that won't invest \$100,000 on a worthy innovation vs. some guy who cashes in his 401(k) to chase a passion and a mission and from his garage builds a \$3 million company.

Who is the real leader and rising star? The chief executive officer of the big company who risked nothing and let others incrementalize some success or the gutsy entrepreneur who did something different?

I was hoping to see at least one or two people on the list who are something more than the typical status-quo, incremental visionary. Who has an idea for the next Progressive Insurance? Where is the next Bob MacDonald, who transformed his Life USA Holding company into Allianz Insurance Co. of North America?

I think you guys blew it. There are probably one or two real visionary leaders quietly—or not so quietly—working on revolutionary change whom I don't think you folks even tried to locate. It would be sad indeed if those true rising stars did not exist.

Corby Peltó
Minneapolis

Comings & Goings

Brokers

Philip S. Renaud II has joined Willis of Ohio Inc. in Columbus, Ohio, as senior vp. He previously was divisional vp/assistant treasurer, risk management for Kmart Corp., and prior to that was risk manager for Limited Brands.

Raye Singer has joined Near North Insurance Brokerage Inc. as Western region president and chief operating officer, overseeing offices in Los Angeles and Las Vegas. He previously was a senior vp of Fireman's Fund Insurance Co.'s commercial division.

Insurers

James Macdonald has been promoted to chief underwriting officer of ACE USA in Philadelphia. He previously was senior vp and chief underwriting officer with ACE Risk Management.

Hamilton, Bermuda-based Endurance Specialty Insurance Ltd. has promoted **David V. Cabral** to executive vp, excess casualty and professional liability, and named **Ronald H. Koch** senior vp, casualty reinsurance. Mr. Cabral joined Endurance last March as senior vp. Mr. Koch was previously an underwriting consultant at Gerling Global Financial Products.

Nancy Mueller was promoted to executive vp, corporate actuarial and risk management, at Zurich North America in Schaumburg, Ill. She previously was senior vp of corporate actuarial.

Robert E. White Jr. was named president of First Professionals Insurance Co. Inc. in Jacksonville, Fla. Mr. White, who previously served as executive vp and chief operating of-

ficer, replaces **David L. Rader**, who will retire Oct. 31.

Kenneth J. Fasola has been named chief operating officer of UnitedHealthcare, a unit of UnitedHealth Group Inc. in Minnetonka, Minn. Mr. Fasola previously served as chief operating officer, market operations, at Humana Inc. in Louisville, Ky.

Zurich Global Energy has promoted two officers in its London office. **Jane Hayes** will serve as head of the London office, and **Chris Knowles** will serve as manager of exploration and production. Prior to joining Zurich, Ms. Hayes worked for ACE Ltd. and within the Lloyd's of London market, specializing in various sectors of the energy industry. Mr. Knowles was formerly marine manager of the London market for Zurich Global Energy.

Reinsurance

Jon Ingersoll has joined Aon Re U.S. as senior vp in its Philadelphia office. Previously, he was part of the senior management team that formed the specialty reinsurance company Overseas Partners U.S.

Other

Alan S. Ogilvie has joined LaFollette Godfrey & Kahn in Madison, Wis., as special counsel to the firm's insurance practice group. Prior to joining the firm, Mr. Ogilvie was vp of legal and e-commerce for Caliber One Indemnity Co. in Yardley, Pa.

Mark E. Wilson has joined Kerns Pitrof, Frost & Pearlman L.L.C. as a partner in Chicago. Previously, Mr. Wilson was with the Lovells law firm in Chicago.

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International

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German buyers bracing for tough renewals

By CAROLYN ALDRED

Germany's commercial insurance buyers are holding their breath during this week's gathering of Europe's leading reinsurers in Baden-Baden, as they await indication of how reinsurance pricing will influence their own insurance renewals.

But buyers already are preparing for the worst.

Continued financial fallout from last September's terrorist attacks in the United States, recent flood losses in Germany, years of underpriced industrial insurance in Germany, and huge declines in Germany's capital markets all mean that corporate buyers face higher rates, increased retentions and reduced limits.

Approaching year-end renewals, German buyers know they face 'reduced capacity, higher prices and more hesitation from insurers about certain risks.'

*Gunter Schlicht
Deutsche Versicherung Schutzverband*

In addition, German buyers expect tough renewals will be exacerbated by continuing uncertainty surrounding the future of Gerling Konzern Allgemeine Versicherungs A.G. and recent rating downgrades and market capitalization declines for several insurers and reinsurers, including Allianz A.G. Holding and Munich Reinsurance Co.

Gerling earlier this month announced that it will cease underwriting some lines of property/casualty reinsurance if no buyer is found for its reinsurance unit, Gerling Konzern Globale Ruckversicherungs A.G. Meanwhile, talks still are continuing with potential investors—including mutual insurer Haftpflichtverband der Deutschen Industrie V.a.G., the parent of Hannover Ruckversicherungs A.G.—which could determine the future of its primary insurance operations.

Approaching year-end renewals, buyers know they face "reduced capacity, higher prices and more hesitation from insurers about certain risks," said Gunter Schlicht, managing director of the association of German commercial insurance buyers, Deutsche Versicherung Schutzverband.

Particularly difficult areas to insure likely will be the chemical and pharmaceutical industries and cy-

See **GERMANY**/next page

Airline cover available but costly as government programs end

By EDWIN UNSWORTH

BRUSSELS, Belgium—Commercial war risk and terrorism insurance is likely to be available to European airlines after Oct. 31, when the European Union ends its approval for state insurance programs, but airlines should brace for considerably higher premiums.

One leading aviation broker active in London warned: "If an airline is paying around \$1 million now for its entire insurance program,"—hull, war risk, and liability—"this year, it might be paying as much as \$15 million."

While the broker, who did not want to be named, also noted that capacity for aviation coverage in the commercial market is improving and that insurance will be available for all airlines that seek it, he said that, as with any insurance product, "it will be available at a price."

When it announced its decision to end government subsidies earlier this month, the European Union said it favored a return to the private insurance market and the creation of mutual alternatives, in particular, a plan devised by the Inter-

national Civil Aviation Organization, a Montreal-based association that promotes airline interests and safety.

The ICAO scheme, known as Globaltime, would require government funding and would cap third-party coverage for airlines at \$1.5 billion per occurrence for claims in excess of the \$50 million limit

currently available from the private insurance sector.

The E.U. endorsement of Globaltime effectively scuttles a similar proposal from London-based brokers, known as Eurotime, which would have been limited to European airlines, according to brokers.

Lloyd's of London aviation underwriter David Whiter said he agrees that coverage will be both available and expensive, but the \$15 million scenario quoted by the broker is excessive, he said. "As more airlines are forced to purchase (in the commercial market), more competition undoubtedly will emerge. More competitors will put downward pressure on rates," he said.

Mr. Whiter, who underwrites for

Brockbank Syndicate Management Ltd., said another factor that will curb rate sharp rate increases is that, as more airlines return to the commercial insurance market, it will create "a more-healthy spread of business."

With airlines returning to the commercial market, aviation insurers should be able to bring down rates from their current levels, provided there are no more major losses, said Ken Coombes, vp-aviation, for Marsh Ltd. in London.

"That influx of business will allow us to improve prices for everybody," he said.

But, while coverage will be available, airlines won't be able to buy the limits they had under the government guarantees, Mr. Coombes said. European government guarantees currently provide most airlines with \$1 billion of war risk and third-party liability coverage.

The Brussels, Belgium-based Assn. of European Airlines, which had been pressing for a continuation of state support as well as looking into the establishment of a mutual insurance program, is concerned about rates.

An AEA spokesman said that a See **AIRLINES**/page 51

Insurer not invoking terrorism exclusion

Finnish mall bombing insured

By GERARD O'DWYER

VANTAA, Finland—The up to \$3 million in property damage caused by a bomb at a shopping mall in Finland is fully covered by insurance, according to the mall's owner.

Although Finnish police labeled the bombing of the Myyrmanni Shopping Center in Vantaa, Finland, "an individual act of criminal terrorism," the shopping center's insurer is not expected to invoke terrorism exclusions in the mall owner's policy.

"The Myyrmanni mall is completely insured against material damage and loss of rent," said Antti Uski, managing director of Kiinteistö Oy, the Helsinki-based property developer that owns the mall. The extent of possible liability claims stemming from the bombing remained unclear last week.

The policy does not cover terrorist attacks, and Kiinteistö does not have separate terrorism coverage, he said. However, the loss will not be viewed as an excluded peril under Kiinteistö's property and liability coverage, which is written by pan-Scandinavian insurer If Property & Casualty Insurance Ltd., Mr. Uski said.

A spokesman for If in Helsinki confirmed that the insurer will treat the loss as "criminal damage" rather than as a terrorist attack.

The Oct. 11 bombing killed eight, including the suspected

PHOTO: AFP



Finnish property developer Kiinteistö Oy is covered for damages stemming from a deadly bombing at its Myyrmanni Shopping Center.

bomber, and injured more than 80 others. The motive behind the bombing remained unclear last week.

The bomb blast caused part of the glass roof of the 130-store mall to shatter and crash down on the mall's floor.

About 2,200 shoppers were in the mall when the bomb exploded, damaging an area of around 900 square feet in the three-story, glass-

walled shopping center.

According to Kiinteistö, initial surveys indicate that there was no serious structural damage.

The mall will remain closed pending the outcome of police investigations and renovations, which could take up to three weeks.

The Myyrmanni mall, Finland's second-largest shopping complex, was built in the late 1990s at a cost of around \$30 million.

World Updates

Indonesia-bound ships face higher premiums

Marine war risk underwriters in London will raise rates for shipowners calling at Indonesian ports in the wake of the Oct. 12 bombing in Bali. Beginning Oct. 22, war and terrorism coverage for ships scheduled to call at Indonesian ports will be suspended and written back for an additional premium, said Rupert Atkin, chairman of the Joint War Committee and active underwriter of Talbot Underwriting's marine syndicate 1183. Increases will vary depending on the ports and underwriters involved. The Oct. 12 bombing at a popular Bali nightclub killed at least 181. No estimates of insured losses have been issued.

U.K. regulatory risk not widely managed

Although most U.K. companies are aware that regulatory risks are growing, many remain unprepared to manage such exposures, a survey reveals. The survey of 50 large U.K. companies found that 96% believe regulatory risks are becoming a larger concern. But 30% of respondents, which included top executives and heads of risk departments, said their boards were unaware of the activities the company undertakes that could lead to regulatory intervention. The survey was conducted by the London School of Economics on behalf of London-based law firm DLA. Only 18% of respondents said they were "very confident" in their regulatory risk management processes.

Greenshields resigns from Zurich

Ray Greenshields has resigned as chief executive of Zurich Financial Services Group's United Kingdom, Ireland and international life businesses. Sandy Leitch, chief executive of Zurich's operations in the United Kingdom, Ireland and South Africa, said in a statement that he and Mr. Greenshields had "agreed the time is right to move on." No successor has been named.

Credit Suisse sells stake in Swiss Re

Swiss investment bank Credit Suisse has sold its remaining 3.5% stake in Zurich-based Swiss Reinsurance Co. for 1 billion Swiss francs (\$674.4 million). Credit Suisse has steadily reduced its stake in the reinsurance giant from 6.67% since April 2001. Earlier this month, the bank sold a large part of its stake in Winterthur Insurance Co., the insurer it helped found in 1863.

See **UPDATES**/page 51

Germany: Buyers prepare for the worst

Continued from previous page
ber and biotech risks, he said.

"Everyone is waiting for what Baden-Baden will bring, but for the time being there is a fear that the next two months will be a very difficult renewal period," said Mr. Schlicht.

"There is considerable uncertainty about the amount of capacity that will be available for corporate buyers," agreed Joerg Ritthaler, an insurance analyst with Standard & Poor's Corp. in Frankfurt, Germany.

Most German companies renew their property/casualty insurance programs at year-end.

Dusseldorf-based steel and manufacturing company ThyssenKrupp A.G., which had a Sept. 1 renewal, saw its insurance program renewed

"at a much higher cost for worse conditions," a spokesman said.

"The large reinsurers need more equity to give more capacity to the primary market and the lack of capacity in the primary market will mean increased premiums" for commercial buyers, said Peter Windheim, managing director of property underwriting for Hannover-based HDI. The reduction in capacity is particularly affecting business interruption and natural catastrophe risks, he said.

Some large policyholders will see contingency business interruption limits, for example, cut to 5 million to 10 million euros (\$4.9 million to \$9.8 million), compared with about 100 million euros (\$98.1 million) a year ago, he said. Similarly, proper-

ty catastrophe limits will fall from hundreds of millions of euros to tens of millions of euros for large clients, he said.

Leo Zagel, member of the board of Gerling Allgemeine Versicherung A.G., the lead property/casualty insurer of the Gerling Group, agreed that buyers will see "very small loss limits for storm, flood and earthquake" as well as reduced limits for contingency risks.

The property market is particularly tough for German buyers and many policies have not yet renewed for next year, said Gilbert Van den Eynde, a member of the board of broker Marsh GmbH in Dusseldorf.

Liability insurance also will be more expensive and with higher deductibles and lower limits at year-

end, he said, particularly for the pharmaceutical industry, which has had some high-profile losses.

As a result of the continuing hard market, many companies are looking at other risk financing alternatives, including retaining more of their own risks and, in some cases, setting up captive insurers.

Traditionally, German commercial policyholders have been less inclined to establish captives than buyers in the United States.

Economic conditions and weak investment returns are not making the establishment of captives the optimal solution for all companies, Mr. Van den Eynde said.

Both insurers and buyers are placing a much greater emphasis on risk management, noted a spokesman

for Allianz.

"It is important to find intelligent solutions" to the lack of capacity and if "companies take higher retentions it puts more focus on risk management," said the spokesman.

"Risk management is growing in importance and now has the attention of top management. The hardening insurance market adds to that and companies increasingly are asking themselves how they can manage their risks better and find alternatives to traditional insurance," said Mr. Schlicht of DVS, noting that his organization is encouraging insurance buyers to take a more active role in risk management.

"Risk management is coming more into focus and our clients are using risk management more and more," said Gerling's Mr. Zagel, noting that insurers are looking more closely at the quality of risk management within companies.

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Airlines: Cover available, costly

Continued from page 49

small number of European airlines are buying third-party coverage in the commercial market at about the same rates as those airlines receiving government guarantees, but "what will happen when other airlines come to the commercial market?" he said.

A second concern for the AEA, the spokesman said, is the continuing terrorism threat and what might happen if there were another incident like the Sept. 11 attacks, even if it were not aviation-related. "Right now is not a good time to dismantle government guarantees,"

'We're happy to support any scheme that ensures that European carriers are not disadvantaged against the U.S. carriers.'

*Spokeswoman
British Airways P.L.C.*

he said.

European airlines are also concerned that increased insurance costs to put them at a competitive disadvantage to U.S. airlines, which will still be covered by a govern-

ment program.

A spokeswoman for British Airways P.L.C. said, "We're looking at the schemes that are out there, and we're happy to support any scheme that ensures that European carriers are not disadvantaged against the U.S. carriers."

In order for Global Time to become effective, the ICAO needs endorsement from member governments representing 51% of annual contributions. The deadline for an agreement had been extended to Oct. 15 and the ICAO is due to meet this week to discuss the next stage.

World Updates

Continued from page 49

Misselling could be one PI claim: Court

Multiple cases of pension misselling by an insurer could constitute one claim for the purposes of its professional indemnity coverage, the High Court in London ruled. The preliminary ruling in a dispute between Countrywide Assured Group P.L.C. and its professional indemnity insurers means that, if the insurers can prove at trial

that pension misselling at Countrywide stemmed from improper training of its sales force, the insurers would be able to aggregate all related claims on Countrywide's professional indemnity coverage. As part of that, the insurers could apply a £1 million (\$1.56 million) total policy limit to the sum of all such claims, limiting the primary insurers' exposure. The case centers on the pensions misselling debacle in the United Kingdom in the 1980s and 1990s.

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NOTICE OF EFFECTIVE DATE IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION

No. 001448 of 2002

IN THE MATTER OF

NORTH ATLANTIC INSURANCE COMPANY LIMITED

(Scheme Administrators Appointed)

and IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that by an Order dated 15 October 2002 made in the High Court of Justice in England and Wales in the matter of North Atlantic Insurance Company Limited ("the Company") a scheme of arrangement pursuant to section 425 of the Companies Act 1985 ("the Scheme") between the Company and its Scheme Creditors (as defined in the Scheme), which was at meetings held on 3 October 2002 in London, voted on and approved by the requisite majorities of each class of Scheme Creditors, was sanctioned. An office copy of the Court Order sanctioning the Scheme was delivered to the Registrar of Companies for registration on 18 October 2002. The Effective Date of the Scheme is therefore 18 October 2002.

Paul Anthony Brereton Evans and Mark Charles Batten, partners in PricewaterhouseCoopers, are the Joint Scheme Administrators responsible for implementing the Scheme. Anybody believing themselves to be a Scheme Creditor who has not received notice of the Effective Date of the Scheme, should contact the Joint Scheme Administrators at the address below.

The Bar Date for submitting claims via Provisional Claim Forms ("PCFs") or amending and submitting claims via Full Claims Packs ("FCPs") is 30 April 2003. All Scheme Creditors must notify the Joint Scheme Administrators of their claims via the website or in writing with supporting documentation prior to the Bar Date. If a PCF or an amended FCP is not received by this date, the Scheme Creditor concerned will be deemed to have accepted and agreed the information contained in their PCF. The Joint Scheme Administrators are not required to take account of any PCFs, amendments to the FCPs, or to admit claims, of which they receive notification after the Bar Date.

It is requested that FCPs or PCFs be submitted via the website, www.northatlanticinsurance.co.uk, or in writing, as applicable, to the Joint Scheme Administrators, North Atlantic Insurance Company Limited, PO Box 137, Harlands Road, Haywards Heath, West Sussex RH16 1YG, United Kingdom, fax number +44 (0)1444 450 458, telephone number +44 (0) 1444 414 177.

All other enquiries should be addressed to the Joint Scheme Administrators at the above address.

Dated this 18th day of October 2002

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NOTICE OF EFFECTIVE DATE OF SOLVENT SCHEME OF ARRANGEMENT IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES)

CHANCERY DIVISION

COMPANIES COURT

NO 3346 OF 2002

IN THE MATTER OF

CITY GENERAL INSURANCE COMPANY LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an Order (the "Order") dated 3 October 2002 made in the High Court of Justice of England and Wales in the matter of City General Insurance Company Limited (the "Company"), the scheme of arrangement ("the Scheme") proposed 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 at a meeting held on 16 August 2002, was sanctioned. A copy of the Order was lodged with the registrar of companies on 7 October 2002, and the Scheme became effective on that date.

Scheme Creditors wishing to claim in the Scheme must complete and return Claim Forms in accordance with the instructions accompanying them and the provisions of the Scheme, by 23:59 on the Final Claims Submission Date, being 7 January 2003. Failure to do so will result in the Scheme Creditor concerned not being entitled to claim in or receive payment under the Scheme.

Should you have any questions regarding this Notice, please address them to David Evans at:

City General Insurance Company Limited, Suite 208, Coppergate House, 16 Brune Street, London EC1 7NJ.

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Deal: Compromise reached on bill

Continued from page 1

ly charge that the White House caved in to the trial bar in dropping its demand for comprehensive tort reform.

"Many people on Capitol Hill are unhappy. It just doesn't make sense at any level," one business lobbyist said.

But the AIA's Ms. Rochman disagreed with that assessment, noting that the measure does contain elements of tort reform, such as the consolidation of suits in federal court. "This prevents forum shopping," she said.

While insurer lobbyists say they recognize that some House Republicans are unhappy that the compromise bill didn't go further in the area of tort reform, they also say they doubt that would prevent the ultimate passage of the bill. The measure first must be approved by a congressional conference committee and then by the full House and Senate before it would go to President Bush.

If passage is won, it would cap a

long battle to bring in the federal government to back up insurers writing terrorism insurance. While full details were not available last week, insurers and buyers believe the new federal reinsurance program would bring stability to the market.

"We're very optimistic that the reinsurance program will now largely restore the marketplace and that the underwriting of this risk can occur and at reasonable prices to corporate consumers," said the CIAB's Mr. Wood.

"With passage, RIMS will look for action by the insurance industry to immediately impact on capacity availability, policy terms' and conditions' improvement and pricing," said Christopher Mandel, president of the New York-based Risk & Insurance Management Society Inc.

Though full details are not yet available, a Democratic staff outline broadly explains how the three-year program would work.

The legislation would establish a program within the Department of



PHOTO: AFP

The Bush administration capitulated on its tort reform demands, paving the way for a deal to be reached on terrorism insurance.

Treasury under which the federal government would share the risk of

loss from future terrorist attacks with the insurance industry.

The law would be triggered when the treasury secretary and the secretary of state, with the concurrence of the attorney general, certify that an act meets the definition of "terrorism."

Each participating insurance company would be responsible for paying a deductible before federal assistance would be available. The deductible would be based on a percentage of direct premiums written from the previous calendar year, rising from 7% during the first year to 10% in the second year and 15% in the third year.

The federal government would cover 90% of the losses above the insurer's deductible, and the insurer would cover 10%.

The government could recover its

payments below a fixed amount on an industrywide basis—\$10 billion in the first year, \$12.5 billion in the second year and \$15 billion in the third year—through a surcharge, up to 3% of premiums, on policyholders.

Losses covered by the federal program would be capped at \$100 billion.

The agreement came nearly a year after the House passed a terrorism insurance bill drafted by Reps. Michael Oxley, R-Ohio, and Richard Baker, R-La., that would have allowed the federal government to lend money to insurers after a terrorist attack, with the requirement that insurers pay the government back over time (*BI*, Dec. 3, 2001). The bill also provided protections against punitive damages for property owners that were sued for negligence in the wake of attacks.

The Senate, though, bogged down in disputes over which, if any, tort limitations should be contained in its bill and did not pass its version until June (*BI*, June 24). The Senate measure called for insurers and the federal government to share the cost of future catastrophic terrorist attacks without insurers having to pay back the government's share. The Senate bill, though, contained no tort relief other than a ban on the use of federal funds to pay punitive damages.

The White House, which favored tort limitations and cost-sharing, became involved in the negotiations, with President Bush repeatedly calling for passage of a terrorism insurance bill as a means to jumpstart the economy. But a conference committee named to work out the differences between the two bills did not meet because of continuing disagreements between the Senate Democratic leadership and the White House and its Republican congressional supporters over the tort language.

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IRS: Ruling may curb PORCs

Continued from page 1

Tax experts say that the government may be targeting parent companies that have been able to avoid taxes on commissions they earn selling warranty contracts by shifting part of that income to captive reinsurers. The IRS may also be focusing on cases in which a captive is hugely overcapitalized for the small amount of premium it writes and is able to avoid taxes on large investment gains by virtue of its 501(c)(15) status.

It is unclear how broad an impact the IRS announcement will have on car dealer and other producer-owned captives.

IRS challenges to captive arrangements "will be very much fact-intensive" and vary with each case, said Brenda Viehe-Naess, a Washington-based tax lawyer. Any litigation that results from the challenges, though, could have broader implications if, for example, courts rule on such an issue as how an insurance company should be defined for tax purposes, she said.

Some experts point out that the IRS announcement does not change any existing law and that properly structured captive arrangements should still pass muster.

"It's not pleasant having the IRS scrutinizing these things, and it's certainly incumbent (on captive owners) to structure them correctly," said Jon Harkavy, vp and general counsel of Risk Services L.L.C., an Arlington, Va., captive management firm. But "there's nothing new in what the IRS is saying. It would have an uphill fight going after a properly structured program."

The announcement, nevertheless, could deter some dealerships, retailers and others from establishing warranty reinsurance captives, some add.

"I would hope they are just going after egregious cases," observed Roy Sedore, a partner with Baker & McKenzie in New York. But "with a notice like this out there, people are going to think very hard about whether to form them."

Offshore domiciles such as the British Virgin Islands and the Turks & Caicos Islands have attracted large numbers of producer-owned reinsurers, including 501(c)(15) companies, and could be hurt by the IRS effort, some tax experts add.

As much as 40% of BVI's new captive formations in 2001 were 501(c)(15) companies, the domicile's insurance supervisor, William McCullough, reported earlier this year.

Under the arrangements the IRS has targeted, a company such as a car dealership typically acts as an insurance agent for a licensed, unrelated insurer, selling extended warranties or other products to its customers. The dealership collects a commission for the sale and remits premiums to the insurer, which, in turn, cedes the business to a reinsurer owned by the dealership and, often, incorporated offshore.

These offshore reinsurers typically elect to be treated as domestic insurance companies under the tax code and claim tax breaks under one of three code provisions. In ad-

dition to 501(c)(15), these provisions are Section 806, which provides deductions to life insurers with taxable incomes of less than \$15 million; and Section 831(b), which allows property/casualty insurers with net premiums of between \$350,000 and \$1.2 million to be taxed only on investment income.

Many of these programs "have been designed to use a reinsurance arrangement to divert income properly attributable to (the) taxpayer" to its captive reinsurer, the IRS warned. "The Service intends to challenge the purported tax benefits from these transactions on a number of grounds."

One route the IRS said it will take is to assert that the captive is not a valid insurance company for tax purposes. To qualify as an insurer under existing law, a company "must use its capital and efforts primarily in earning income from the issuance of contracts of insurance," the agency noted.

A grossly overcapitalized captive writing a minimal amount of business while earning tax-exempt investment returns on its surplus would likely attract IRS scrutiny, tax experts say.

"If it gets more of its income from investments rather than premiums, that will be one factor," Ms. Viehe-Naess observed.

The IRS said it will consider "all the relevant facts" in deciding whether a captive qualifies as an insurer, including its sources of income, whether it is engaged in other trades or businesses and the size and activities of its staff.

If the agency finds that an offshore captive is not a valid insurer, it would be treated as a controlled foreign corporation and part of its income would be attributed to its parent.

Another route the IRS might take is to use its existing powers to reallocate income from a captive to its parent when the agency decides it is "necessary to prevent evasion of taxes or clearly to reflect income." The IRS generally exercises this authority when related parties are found not to be dealing at arm's length, resulting in an artificial benefit to one party.

Where appropriate, the IRS said it will also disallow captive reinsurance arrangements that it regards as "shams in fact" or "shams in substance," where transactions have no economic substance or business purpose other than tax avoidance.

While the IRS notice on captive reinsurers is recent, the agency has apparently been zeroing in on the arrangements for a while, tax experts say.

Congress considered legislation a few years ago that would have denied 501(c)(15) benefits to corporations formed offshore, but the legislation was never enacted, experts note.

Enron funds sought

NEW YORK—Two surety insurers that have paid more than \$251 million to a public utility company over an Enron Corp. unit's contract default are seeking \$34 million in collateral Enron was required to put up in connection with the deal.

Under the 1999 contract, Enron Natural Gas Marketing Corp. agreed to provide American Public Energy Agency with a specified amount of natural gas over a 12-year period, with Lincoln, Neb.-based APEA prepaying its full value of \$287.6 million. In the event of an Enron default, APEA was entitled to a termination payment to compensate the utility for any undelivered gas.

The deal included a provision protecting the utility against "market exposure damages" in the event of a default. Under the provision, APEA would recover the difference between the price it paid and the current market price on the amount of gas remaining to be delivered.

To back the deal, ENGMC purchased a surety bond from American International Group Inc. unit Ameri-

can Home Assurance Co. and Federal Insurance Co., a Chubb Corp. subsidiary. The insurers paid APEA \$251 million in January after the utility declared the Enron unit in default and ended the contract.

As part of the deal, ENGMC had to maintain a margin account to cover the market exposure damages provision. Earlier this year, \$77 million was paid from that account to satisfy the provision, leaving the \$34 million the insurers now seek in U.S. Bankruptcy Court for the Southern District of New York.

The insurers contend that, having made good on their surety bond, they have subrogation rights to Enron and APEA's interests in "any and all" remaining contract funds. Enron's lawyers contend the margin account was separate from the termination payment and the related surety bond. Because the account existed only to pay the utility's market exposure damages, they say, any remaining funds should return to the Enron subsidiary and its bankruptcy estate.

—Rodd Zolkos

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Tylenol: Looking back at lessons learned in tragedy

Continued from page 1

Strength Tylenol capsules. It was later determined that bottles of Tylenol, a product of J&J subsidiary McNeil Consumer Products Co., were taken from various stores over a period of time. The capsules were emptied, refilled with cyanide, and then placed on the shelves of five stores in the Chicago area. The perpetrator was never found.

"Most of us at that time were as stunned by that as we are today by the random shootings in and around the Washington D.C. area," said Richard Hackenburg, president and chief executive officer of St. Louis-based Willis of Missouri Inc. In 1982, Mr. Hackenburg was the risk manager for Allegheny International Inc., an industrial metal and chemical company based in Pittsburgh.

"It was a very significant event that woke people up," said Charles R. Lee, a principal with Tillinghast-Towers Perrin in Dallas. "Unfortunately, in our lifetime, things happen like that that wake you up to the unthinkable."

"The severity of the incident really demonstrated the need for crisis management as a risk management tool, and that went beyond product tampering to crises in general," said Bernhard Steves, a vp with wholesaler Swett & Crawford Group in Chicago. "Companies suddenly realized the importance (of crisis management) and the damage that can be done if they are not well-prepared."

Indeed, the way in which Johnson & Johnson responded to the crisis saved the company from what could have been a financial disaster, observers say.

The drug giant, for instance, immediately warned the nation not to consume any type of Tylenol product and recalled approximately 31 million bottles of the pain reliever, with a retail value of more than \$100 million. To rebuild its brand image, the company, among other things, offered consumers incentives such as free replacement of

capsules with caplets and coupons for future purchases. It then reintroduced the product in a new triple-seal tamper-resistant package.

While J&J's share of the non-prescription pain reliever market dropped significantly immediately after the incident, it was only a few months before it regained its market share of 35%.



The Tylenol poisoning prompted manufacturers to adopt innovations in tamper-proof packaging that today are routine.

Officials at Johnson & Johnson declined to comment for this story.

After his initial shock from the incident and then feeling "sheer disgust" toward the plaintiffs attorneys who jumped on the case, Mr. Hackenburg said his next reaction "was absolute awe at the way Johnson & Johnson handled the event."

The company did not make excuses. Instead, it responded with concern for consumers and for the families of those affected, Mr. Hackenburg said. It then worked to resolve the matter and devise safeguards to prevent further tampering incidents.

The way most people responded to that was, "We will be Tylenol fans for the rest of our lives," he said.

"A lot of people learned lessons from J&J in how it handled the event. I wish everybody learned, and that the response was universal, but that's not the case. Some people could well learn by going back and revisiting how J&J conducted itself," Mr. Hackenburg said.

"I think what we found was a tremendous amount of professionalism...in how J&J handled the whole crisis," said Joe Hardy, director of risk management and insurance for Hudson's Bay Co., a Toronto-based retailer that sells general merchandise and food.

Risk managers learned that if a crisis is dealt with appropriately and professionally, "you get more of the sympathy of the consumer" rather than having people focus on what the company should have done or should have known, he said.

"They were very proactive rather than pointing the finger at the person who brought the harm," Mr. Hardy said. In the end, "the company's credibility and brand name continued, and today it's still a very reputable pharmaceutical product most people will buy. Good risk management happened there."

At least one crisis management expert, however, said that although J&J's actions were positive, its response was reactive rather than preventive, which is not enough in today's scandal-prone world.

"Johnson & Johnson did a lot of things right, which is why it became a role model," said Ian I. Mitroff, president of Comprehensive Crisis Management Inc. in Manhattan Beach, Calif., and professor of business policy at the University of Southern California in Los Angeles.

"I praise J&J on how it handled the Tylenol poisonings, but that was then, and that's not good enough now," he said. Crisis management needs to be proactive, and it "needs to be blended in with the

whole operation of the company," he said.

Mr. Mitroff advocates creating a chief crisis officer position and a crisis learning center to gather and disseminate crisis management information throughout an organization. "If that is not there, you'll just be reacting," he explained.

Besides the concept of crisis management, the Tylenol incident 20 years ago led to the development of tamper-resistant packaging, observers say.

"The No. 1 thing people see out of the Tylenol situation is you can no longer buy a product that is not protected in some manner," said Mr. Steves of Swett & Crawford. "I think risk managers and companies in general realize that no package is tamper-proof, but they can at least be tamper resistant, and there has been more emphasis on that" since the Tylenol incident, he said.

At the same time, the incident also spurred the creation of a new insurance product: malicious product tampering coverage.

In 1982, then-broker Johnson & Higgins and American International Group Inc. had a "product integrity impairment" policy that covered the cost of a recall, loss of earnings and rehabilitation. But it was the Tylenol incident that prompted AIG to introduce a malicious product tampering product in 1986, said Jane McCarthy, product line manager-contaminated product insurance for American International Underwriters in New York.

"I think the Tylenol incident really focused everyone's attention on the fact that this could happen, and there could be a catastrophic loss for something completely unpredictable," Ms. McCarthy said.

Like the product integrity impairment product, the malicious product tampering policy covers the costs of a recall, business interruption and rehabilitation. But the malicious product tampering policy goes further, covering public relations and security consulting costs to assist policyholders in a crisis,

Ms. McCarthy said.

AIG's product was expanded in the mid-1990s to include accidental contamination, and other underwriters jumped into the market, but capacity for such insurance has diminished because of poor claims experience and the current hard market.

"A lot of people came into the market in the mid-90s; a lot of people got burned on accidental contamination; and a number of markets went out of business or left the business because they couldn't make it profitable," Ms. McCarthy said. "Right now, there's less capacity in the market than there was five years ago."

But, as Tillinghast's Mr. Lee pointed out, while an insurance policy may help to recover costs associated with a product tampering, perhaps more crucial to companies is having good crisis response.

"Most of us humans don't have a perfect crystal ball to know what's going to happen," he said. "What we learned from Tylenol is that we have to be cognizant that something could happen, and very likely it's going to be something we don't anticipate. But just the fact that we have anticipated that something could happen, and are prepared to respond in a very effective, efficient, proactive and communicative way, is the most important thing, because that's what people are looking at."

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WTC: Citigroup, Silverstein in legal battle

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negotiating a settlement of the leaseholder's claim for the building, sources familiar with the situation say. As with Silverstein's claim for the Twin Towers, an issue to be resolved is whether Silverstein will receive a discounted amount reflecting the actual cash value of the building—requiring it to forgo rebuilding plans—or receive a higher replacement cost amount over several years as rebuilding goes forward, one source noted.

Silverstein has developed plans for a new building on the site and is in talks with its lenders over the proposal.

As negotiations over the 7 World Trade Center claim progressed, New York-based Citigroup last month sued IRI to recover more than \$280 million of the Silverstein policy's

limits for improvements made on several floors of 7 World Trade Center occupied by Salomon. The

'Even if Citigroup were a loss payee under the policy, it would be entitled to collect only a portion of any payment IRI makes to Silverstein and would not be entitled to collect directly from IRI.'

*William E. Reed III
Robins, Kaplan, Miller & Ciresi*

amount includes \$106.7 million of infrastructure improvements and more than \$180 million for the

build-out of the office space, including Salomon's 45th-floor executive offices, court filings show.

The IRI policy included coverage of improvements and betterments, and Willis last year issued a certificate naming Citigroup as a loss payee for the value of improvements it owned, according to the complaint.

After the building's destruction, Citigroup asked Silverstein to compensate it for the loss, but Silverstein refused, according to the suit. In August, the bank submitted a claim to IRI, but the insurer last month said that Salomon has no rights under the IRI policy, the suit says.

In a Sept. 9 letter, a lawyer for IRI said that Willis had no authority to issue the loss payee certificate to Citigroup and that IRI personnel had earlier denied Willis' request

for such a certificate.

"Not only did Willis not have authorization to issue this certificate, (but) they did so in direct contravention to the directive from IRI," wrote the lawyer, William E. Reed III with Robins, Kaplan, Miller & Ciresi in Boston.

Even if Citigroup were a loss payee under the policy, it would be entitled to collect only a portion of any payment IRI makes to Silverstein and would not be entitled to collect directly from IRI, the letter adds.

IRI has not yet responded to the complaint.

Citigroup, meanwhile, is pursuing wider claims for Sept. 11-related losses against its own property insurers, according to the court filings, which do not provide details of the amount or type of claims.

For the Record

This roundup of news from the previous week is generated by *BI's* daily news reporting. To get breaking news as it occurs, log on to www.businessinsurance.com, or sign up online for free *BI* Daily News by e-mail.



Government cracks down on delinquent reporting

The federal government is beginning a push to put more pressure on employers to file required benefit plan financial reporting forms. The Labor Department's Pension & Welfare Benefits Administration and the Internal Revenue Service are researching their databases to identify employers that have not filed Form 5500 reports. The agencies will mail letters of inquiry to employers identified as potential nonfilers, who can be liable for penalties of up to \$1,100 per day for each report.

Conning forecasts slow P/C recovery

Although the U.S. property-casualty insurance industry is enjoying significant premium growth, profits

will improve at a more modest pace over the next two years, according to a report by Conning Research & Consulting Inc. Underwriting improvement is expected, but investment returns are likely to remain "depressed," the report says. Conning reports that the industry's net written premiums increased 10.0% in 2001, and it projects a 13.3% increase for 2002. But, it notes, growth rates will decline to 9.2% in 2003 and 6.5% in 2004.

Supreme Court to rule on HMO suit procedure

The Supreme Court has agreed to decide whether physicians' federal racketeering charges against health maintenance organizations should be decided by arbitration. The case, *PacifiCare Health Systems Inc. et al. vs. Jeffrey Book et al.*, involves allegations by doctors that managed care companies defraud physicians in violation of the federal Racketeer Influenced and Corrupt Organizations Act. PacifiCare and UnitedHealth Group Inc. argued that the physicians were contractually bound to arbitrate disputes with the HMOs.

Government loses liquidation lawsuit

The federal government does not automatically have priority over other creditors, including state

guaranty funds, in insurer liquidations, an appeals court ruled. The court, however, also ruled that the federal government is not bound by claims-filing deadlines in states' insurance guaranty fund and liquidation laws. The case stems from a suit filed by former Massachusetts Insurance Commissioner Linda Ruthardt, who, acting as liquidator for American Mutual Liability Insurance Co., sued the federal government after it protested her liquidation plan.



PHOTO: PHOTOGRAPHER SHOWCASE

N.Y. Comptroller H. Carl McCall charges that secret loans were made to WorldCom's former CEO.

WorldCom exec, others sued over loans

A lawsuit filed by New York Comptroller H. Carl McCall on behalf of the state's pension fund charges that Travelers Insurance Co. made \$679 million in secret loans to WorldCom Inc.'s former Chief Executive Officer Bernard J. Ebbers in 1999, just months before the telecommunications company picked Salomon Smith Barney, a then-

Travelers affiliate, to be lead underwriter for two bond offerings worth \$17 billion. The complaint names Mr. Ebbers and other WorldCom executives, Salomon, accounting firm Arthur Andersen L.L.P. and others. Citigroup, then Travelers' parent, denies both the size of the loan and the facts concerning it that the suit alleges.

AIG unit launches online crisis management tool

AIG Consultants Inc. has launched a Web-based crisis management tool for commercial policyholders. The program, Planning and Tracking Response Online, or PATROL, gives policyholders access to an international network of business continuity and security-related services, according to the company, which is a unit of American International Group Inc. "PATROL's service offerings can respond to a wide range of crisis events, including sabotage and terrorism, natural disasters, workplace violence, kidnap and ransom, environmental incidents, and medical and political evacuations," AIG said.

Briefly noted

Suspended Louisiana Insurance Commissioner Jim Brown reported to federal prison in Oakdale, La., last week to begin serving a six-month sentence. Mr. Brown was convicted in 2000 of lying to the FBI....**Chicago-based claims adjuster McLaren's Toplis North America** has changed its name to VeriClaim. The company also has launched a new Web site, www.vericclaiminc.com....**A U.S. District Court judge** has ordered surety bond insurers to pay \$370 million to Rio de Janeiro-based **Petroleo Brasileiro S.A.**, the Bank of Tokyo-Mitsubishi Ltd. and the Long-Term Credit Bank of Japan, in a dispute over construction of two oil platforms. The awards were handed down late last month in U.S. District Court in New York against United States Fidelity & Guaranty Co., which is now part of The St. Paul Cos. Inc., and American Home Assurance Co....**Ford Motor Co.** last week said the return on its U.S. pension fund dropped by 15% this year, making the plan underfunded by \$6.5 billion. Stocks make up about 70% of the Dearborn, Mich.-based automaker's pension assets.

Online Poll [10/14 - 10/18]

Compared with the soft market, in the current hard market how likely are you to pursue additional education and training?

More likely

55.7%

Less likely

11.5%

The same

32.8%

Take part in our weekly poll at www.businessinsurance.com

Errors: Reporting brings risk

Continued from page 2

harm their risk profiles. That, in turn, could increase their insurance costs, the risk managers say.

"The insurance implications are huge," Ms. Berry said.

Using error data to punish medical providers and hospitals also discourages them from reporting incidences for fear it will affect their ability to practice or increase their exposure to liabilities, risk managers say.

It is possible, though, to improve systems and reduce the opportunity for mistakes to occur without creating a punitive system, said Elizabeth Summy, ASHRM's executive director.

So, among other assurances, risk managers want patient safety legislation that would protect hospital data from discovery by plaintiff attorneys. They also want data protected from regulators that routinely take punitive measures.

Risk managers want to report their error data only to a neutral research agency, one that does not have regulatory powers and that would use the information only to

improve knowledge and help develop best practices regarding patient safety.

For example, a letter dated Oct. 9 and sent from ASHRM to Sen. Edward Kennedy, D-Mass., asks that the Agency for Healthcare Research and Quality, the health services research arm of the Department of Health and Human Services, receive authorization to collect hospital information and facilitate its flow back to health care professionals.

The letter is addressed to Sen. Kennedy because he recently introduced S. 3029, one of the four pieces of legislation addressing patient safety. Among other things, Sen. Kennedy's "Patient Safety Improvement and Medical Injury Reduction Act" would establish a data collection and research facility.

But in its current form, the bill is too complex and could make hospital reporting of errors mandatory by imposing civil monetary penalties for hospitals that fail to do so, Ms. Berry explained. Risk managers want voluntary error reporting, she said.

States that now mandate report-

ing have found that underreporting is common, because doctors and hospitals fear the information will be used against them, risk managers say.

The other three other bills currently before Congress are: S. 2590, sponsored by Sen. James M. Jeffords, I-Vt.; H.R. 4889 sponsored by Rep. Nancy L. Johnson, R-Conn.; and H.R. 5478, sponsored by Rep. Michael Bilirakis, R-Fla.

All four of the bills share several similar components, Ms. Berry said, but some are more favorable than others. H.R. 4889, for example, places greater emphasis on voluntary reporting.

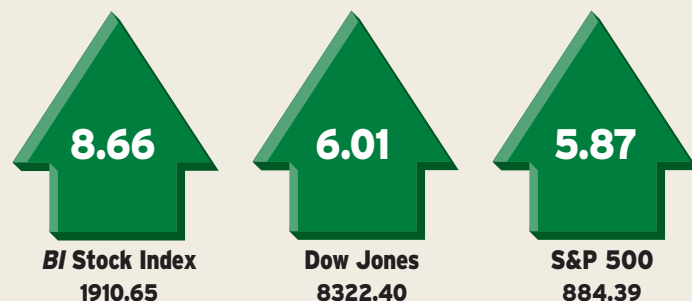
ASHRM, though, is not supporting any of the specific bills. Instead, the organization is helping its members identify specific elements it would like to see in any law that emerges. The group also is urging its members to communicate with their representatives and senators.

If risk managers do not take the initiative by participating in the creation of a culture of safety in hospitals, they could face mandates they don't want, Ms. Berry said.

BI Stock Index [10/14 - 10/18]

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



Largest gains

SCOR	18.49%
AXA-UAP Group	15.31%
Citigroup	15.07%
Lincoln National	13.48%
Montpelier Re Holdings	12.50%

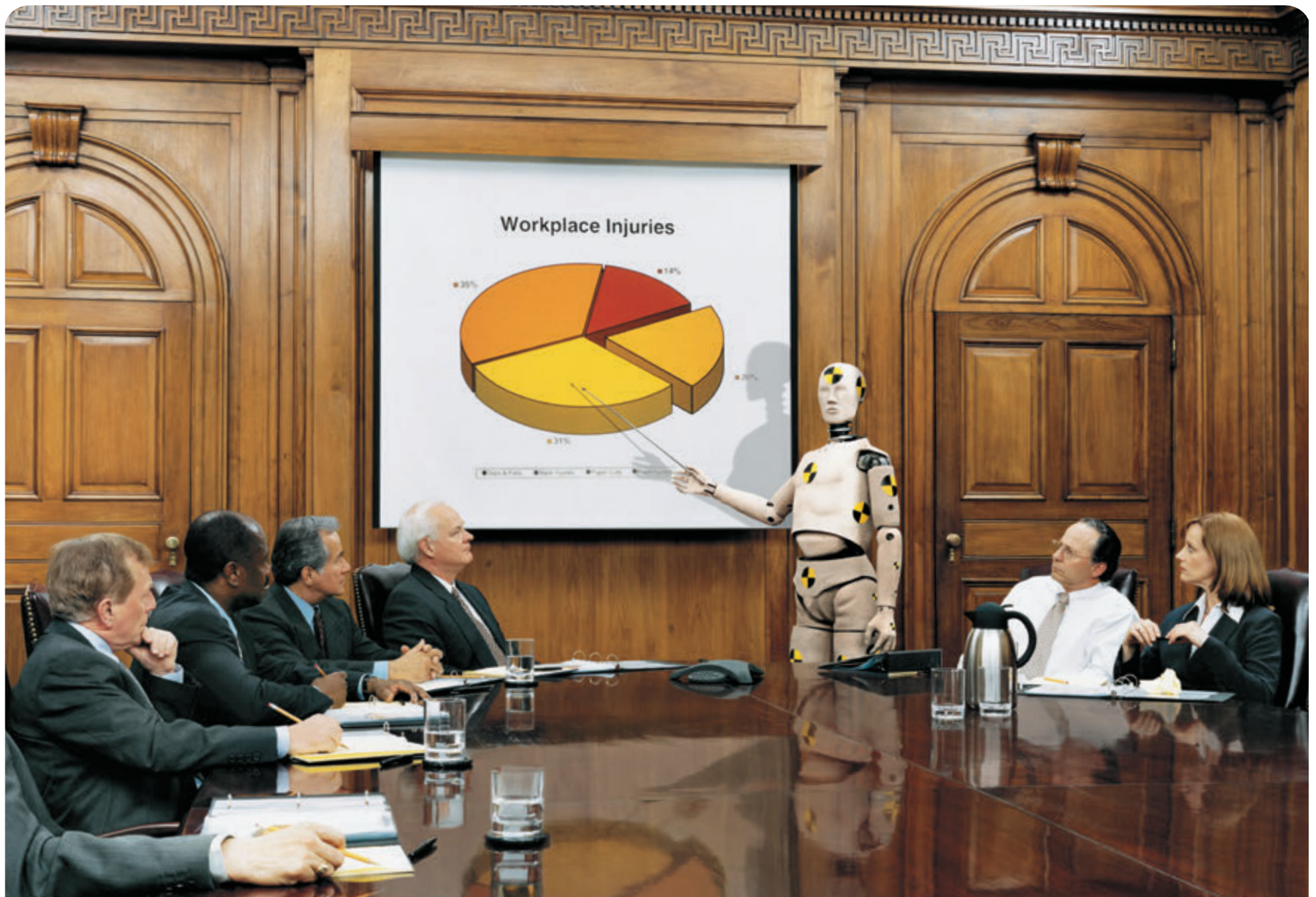
Largest losses

Gainsco Inc.	-16.67%
Unico American Corp.	-9.66%
PMA Capital Corp.	-9.16%
Allmerica Financial Co.	-4.56%
Vesta Insurance Co.	-3.17%

Weekly change by market segment

Brokers	3.71%
Insurers/Reinsurers	4.64%
Managed Care Organizations	5.59%

Source: CNET Investor (investor.cnet.com)



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