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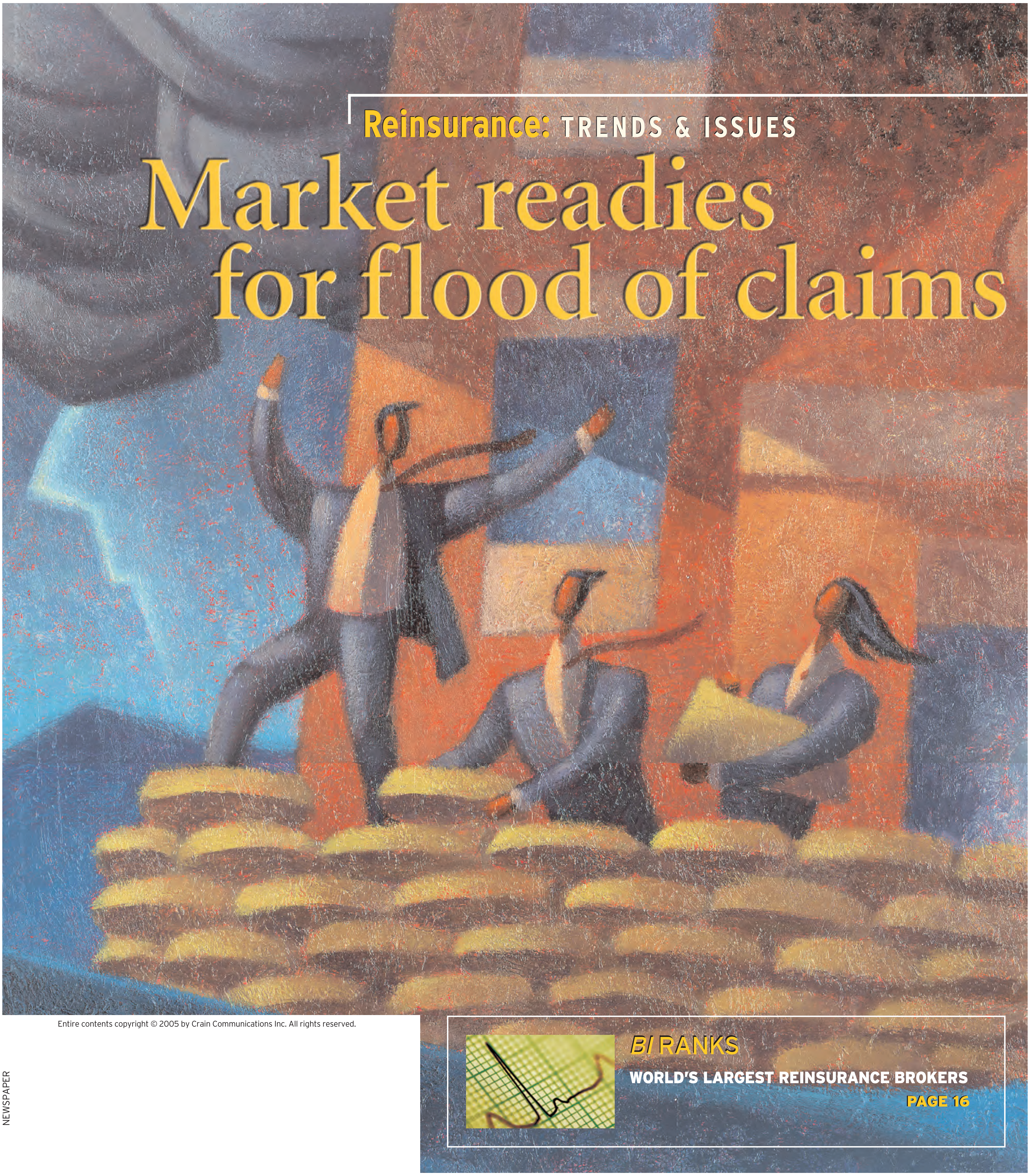
Market readies for flood of claims



BI RANKS

WORLD'S LARGEST REINSURANCE BROKERS

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Late News

Hotel owner sues Willis over Sept. 11 losses

The owner and operator of the Millennium Hilton in New York is suing Willis of New York Inc. for $45 million over the handling of its 2001 property program and resulting losses from the Sept. 11, 2001, terrorist attacks. The Millennium Hilton, located across the street from the World Trade Center site, was damaged in the attacks, remained closed until May 2003 and was not fully restored until that September. CDL Hotels USA Inc. and its parent, London-based Millennium & Copthorne Hotels P.L.C., allege that Willis failed to secure three years of business interruption coverage that it promised to obtain for the hotel as part of its 2001 property program, that it knowingly hid from the hotel that it actually had limited coverage, and that Willis' actions led to a dispute with one of the companies' property insurers. Willis declined to comment, and Millennium Hotels & Resorts could not be reached.

Markel forms unit for marine/energy

Steve Cullen has been appointed president and chief executive officer of Markel Corp.'s new Markel Global Marine & Energy unit. The operation will specialize in marine and energy coverages worldwide. Mr. Cullen will assume technical oversight for Markel's existing marine and energy operations at Markel International

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Senate panel OKs big PBGC premium hike

Budget bill's approach raises fears of more DB plan exits

By JERRY GEISEL

WASHINGTON—The battered employer-sponsored defined benefit pension plan system would suffer another blow if Congress enacts budget legislation passed last week by a Senate panel, pension experts say.

The Senate Health, Education, Labor and Pensions Committee on Tuesday included, as part of a broader budget bill, provisions that would more than double the base insurance premium rate assessed by the Pension Benefit Guaranty Corp. on employers that sponsor defined benefit plans.

Under the measure, starting Jan. 1, 2006, the base annual premium would rise to $46.75 per participant—up from the current $19 level—while future increases would be indexed to match the annual increase in average national wages.

Additionally, employers who terminate underfunded plans as part of the bankruptcy process would be liable for a fee of $1,250 per plan participant in each of the three years following their emergence from Chapter 11.

Some benefit experts describe the measure as a triple whammy for employers with well-funded plans.

Employers, they note, would face a premium increase more than 50% higher than the $30 base PBGC premium called for in a comprehensive pension funding reform measure that is currently stalled in the Senate.

Additionally, the HELP bill does not include any of the provisions in the broad funding reform measure intended to give the PBGC greater protection from future big losses. As a result, crit-

See **PENSIONS** / page 44

Coverage strikeout for tax shelter loss spurs legal dispute

By DOUGLAS McLEOD

SAN DIEGO—A leading sports memorabilia company facing more than $50 million in tax liabilities from its use of an allegedly abusive KPMG L.L.P. tax shelter is suing a unit of American International Group Inc. to recover under a policy it says was designed to ensure the shelter's success.

The Upper Deck Co., a privately held maker of baseball trading cards and other sports collectibles, charges in a bad-faith lawsuit that American International Specialty Lines Insurance Co. has refused to pay any of its $50 million policy limit to settle government challenges to the KPMG shelter, known as SC2.

The SC2 program was one of several allegedly abusive tax schemes outlined in a Senate report earlier this year on the marketing of shelters by accounting firms. KPMG L.L.P., based in New York, used the availability of insurance coverage from New York-based AIG and other insurers as a marketing tool to convince reluctant clients to buy SC2, the report states.

In August, KPMG avoided an

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Passage of reforms for gun, food liability fuels hopes for LARA

By MARK A. HOFMANN

WASHINGTON—Tort reform advocates are hoping that the House of Representatives' overwhelming votes in favor of two civil justice reform bills last week will open the door to final passage of a broader measure that could come to the House floor this week.

That bill, the Lawsuit Abuse Reduction Act—H.R. 420—would require federal judges to impose mandatory sanctions on attorneys who file lawsuits that are determined to be frivolous. Mandatory sanctions were the rule until 1993, when a change in the Federal Rules of Civil Procedure gave judges the power to decide whether or not to impose sanctions.

LARA would also curb what tort reform advocates have long branded as abusive "forum shopping," whereby plaintiffs attorneys seek the most plaintiff-friendly jurisdictions in which to file lawsuit against corporate defendants. Under LARA, a suit could be filed only in the jurisdiction in which the plaintiff lives, where the injury occurred or where the defendant has its principal place of business.

The House passed an earlier version of LARA last year, but the Senate did not act on the matter and no companion legislation has been introduced so far during this congressional session in the Senate.

The LARA vote had initially been expected earlier this month, but House leaders delayed it. A vote could, but is not guaranteed, to happen sometime this week.

The measures passed last week include the Personal Responsibility in Food Consumption Act—H.R. 554—which was passed by the House on a 306-to-120 vote. The measure would ban new claims and dismiss pending personal injury claims alleging that consumption of food products

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Reinsurers coping with huge storm losses.

HEDGING BETS
Hedge funds examine market opportunities.

Inside

Online poll - [10/17 - 10/21]

Do you think the Lawsuit Abuse Reduction Act will be enacted before the end of this year?

Yes 7.4% **No 85.2%**

Unsure 7.4%

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

Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Regulators' group unveils framework for worldwide solvency standards

By RICK MILLER

VIENNA, Austria—The International Assn. of Insurance Supervisors has adopted a paper that its drafters say lays the foundation for a worldwide solvency standard for insurers.

Considered an early step in a process that could take several more years, the IAIS document outlines the key elements for the formulation of regulatory financial requirements for assessing solvency. The Basel, Switzerland-based association, made up of regulators from 160 insurance authorities around the globe, approved the paper Friday at its general meeting in Vienna, Austria.

"It is clearly one of the most important documents to come out" of the IAIS, said Alessandro Iuppa, chairman of the IAIS executive committee and superintendent of insurance for the state of Maine.

Mr. Iuppa

The so-called "cornerstone" document will serve as a useful framework for both developed insurance markets and for some emerging markets "where you have infrastructure that has never existed before," noted Mr. Iuppa, who is president-elect of the National Assn. of Insurance Commissioners.

The paper, titled "A Common Structure and Common Standards for the Assessment of Insurer Solvency: Cornerstones for the Formulation of Regulatory Financial Requirements," was among several papers and initiatives discussed at the association's 12th annual conference last week. Most notably, the IAIS also issued a guidance paper on finite reinsurance to raise awareness among regulators about the potential misuse of the products.

The solvency standards paper outlines eight fundamental cornerstones that form the basis of any "decent solvency regime," said Tom Karp, chairman of the IAIS technical committee. Among those cornerstones is that the regime should use a risk-based approach in assessing insurer solvency (see story, page 42).

"The regime should specifically deal with

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Buyers say rates drop in third quarter, but storms reverse property price fall

By SALLY ROBERTS

Record profits for property/casualty underwriters led to a big dip in commercial insurance premiums during the third quarter, but that situation is changing dramatically as a result of hurricanes Katrina and Rita, according to a survey of risk managers.

While commercial buyers renewing insurance programs during the third quarter saw declines in their premiums of more than 5% on average, some who renewed after Oct. 1 are seeing their property premiums soar by as much as 20%, according to the latest "RIMS Benchmark Survey," conducted by the New York-based Risk & Insurance Management Society Inc.

"Risk managers who saw their renewal prices drop said they felt lucky, because those who experienced the hurricane effect are now explaining to their management why renewal premiums just went through the roof," said David Bradford, editor-in-chief at New York-based Advisen Ltd., which summarized the RIMS survey.

"The real question is whether Katrina and Rita will have a lasting effect and strengthen the market for a time—potentially in all lines of business, not just property—or whether this is a short-term blip in what has proved to be a pretty resolute soft market," Mr. Bradford said in a statement.

PHOTO:ZUMA PRESS

Hurricanes Katrina and Rita are estimated to have caused between $34 billion and $60 billion in insured losses.

During the third quarter, premiums renewed, on average, were down more than 5% compared with the same quarter last year, with directors and officers liability insurance premiums dropping 8.5%, the steepest decline, the survey found. Property premiums dropped just under 6%, while general liability premiums were down 5.2%. Workers compensation premiums fell 3.8%.

Those familiar with the survey point to the strong financial performance of property/casualty underwriters as the catalyst behind the falling premiums.

"There is increased competition as carriers all vie for renewals in this profitable market," said Karen Beier, a member of RIMS' board of

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Senator pledges action on backstop

By MARK A. HOFMANN

WASHINGTON—The Senate Banking, Housing and Urban Affairs Committee plans to take up federal terrorism insurance legislation "as soon as we can," according to the panel's chairman.

Committee Chairman Richard Shelby, R-Ala., made that pledge Tuesday in response to a question by Sen. Robert Bennett, R-Utah, before the committee began a hearing on the future of the National Flood Insurance Program.

Sen. Bennett is co-sponsor of a bill that would extend the Terrorism Risk Insurance Act—which provides a federal financial backstop for insurers facing losses from future catastrophic terrorist attacks—for two years beyond its current Dec. 31 expiration. Sen. Shelby, one of 11 senators who voted against TRIA when it was approved in 2002, assured his colleague that "we're coming along" and intend to move the issue as soon as possible, though he declined to give a date for committee action.

Sen. Bennett then said he was "delighted" to have heard Senate Majority Leader Bill Frist, R-Tenn., say TRIA is on his list of legislative initiatives that need to be addressed before Congress adjourns later this year.

The Bush administration, which pushed for initial enactment of TRIA, opposes continuation of the program unless it is significantly scaled back.

PHOTO: PHOTOGRAPHERS SHOWCASE

Sen. Shelby

Meanwhile, Tom Donohue, president of the U.S. Chamber of Commerce in Washington, called on Congress to move swiftly to extend TRIA. "We need to keep pressure on the government to pass" extension legislation, which would keep a federal backstop in place for insurers facing future losses from catastrophic terrorist attacks, said Mr. Donohue during a press briefing last week.

The actions came against a backdrop of anticipation that congressional committees would unveil some sort of backstop legislation during the next few weeks. According to some observers, one of the ideas being floated is to craft a program in which specific lines of coverage would be segregated into so-called "silos," with the details of the federal backstop varying according to the line covered. The Bush administration, however, has said it wants certain lines of coverage—such as automobile and general liability—removed entirely from any federal backstop.

Employers still committed to work/life programs: Survey

By JUDY GREENWALD

Small employers often offer more workplace flexibility to their workers than do their larger counterparts, according to a survey by the New York-based Families & Work Institute.

Results from the institute's survey of 1,092 employers with 50 or more workers also indicate that employers have largely remained committed to work/life assistance programs over the years except for some programs that cost money.

According to the survey, conducted between September 2004 and April 2005, 47% of employers that have a least eight work/life initiatives say they provide them to recruit and retain employees, 39% say they do so to support employees and their families, and 25% say these initiatives enhance productivity and commitment.

The survey found that large employers with 1,000 or more employees are more likely to provide initiatives that have direct costs than are small employers with 50 to 99 workers.

Smaller employers, though, are more flexible, according to the survey. For example, while 66% of small employers permit employees to return to work gradually after childbirth or adoption, only 49% of large employers do so. Additionally, 15% of small employers permit job sharing, while only 4% of large employers allow the practice.

Families & Work Institute Vp

See WORK/LIFE / page 42

Balancing work and life

Percentage of employers offering flexible work options to employees.

	Organization allows **SOME** employees to . . .	Organization allows **ALL** or **MOST** employees to . . .
Periodically change starting and quitting times	68%	33%
Have control over when they take breaks	78%	53%
Return to work gradually after childbirth or adoption	86%	67%
Phase into retirement	50%	28%
Take time for education/training to improve skills	83%	55%
Take extended career breaks for caregiving or other family or personal responsibilities	73%	57%

Source: Families and Work Institute, 2005 National Study of Employers

CPCU designation offers elite status to risk managers

Risk manager president touts society's value

By MICHAEL BRADFORD

ATLANTA—Millicent W. Workman sees a golden opportunity in the CPCU Society for risk managers.

While memberships in other professional organizations may be more obvious choices for risk managers, overlooking a society for chartered property casualty underwriters means missing out on benefits that can't be found in other groups, according to Ms. Workman.

"There are other educational courses that people can take, but the CPCU designation is an elite one."

Millicent W. Workman
CPCU Society

As she begins her term as president of the Malvern, Pa.-based CPCU Society at its annual conference in Atlanta this week, Ms. Workman said she hopes to attract additional risk manager members, emphasize the group's diversity and continue efforts to bring greater visibility to the society.

The number of risk managers who belong to the CPCU Society "has grown, but I'm disappointed that there are not more," said Ms. Workman. "Obviously, there are other educational courses that people can take; the CPCU designation is an elite one, though. Why would risk managers not want that?"

Ms. Workman is something of a rarity in her position as president of the society. She has more risk management experience than any former president of the organization, having worked in the insurance and risk management profession since 1965. Most recently, she served as director-risk financing at Memphis, Tenn.-based Baptist Memorial Health Care Corp. until departing a few weeks ago from the company to work as an independent consultant.

"The CPCU Society has people from all different walks of our industry," Ms. Workman said. Brokers, agents and insurance company professionals make up a large portion of the society's ranks. As a president who is a "pure risk manager, I'm unique," she acknowledged.

Ms. Workman said her colleagues would do well to follow her into the society, though, because the education provided by earning the Chartered Property Casualty Underwriter designation and the networking opportunities are valuable benefits for risk managers. "Admittedly, it's highly technical," she said of the requirements for earning the designation, "but I believe a good grounding in technical knowledge is important."

A CPCU designation gives risk managers an understanding of how insurance companies operate and a

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SICO countersues AIG in stock dispute

Greenberg-led company asks court to recognize its independent status

By RUPAL PAREKH

NEW YORK—The legal battle between American International Group Inc. and former affiliate Starr International Co. escalated last week when SICO filed a countersuit against the insurer, denying any obligation to surrender control over more than $19 billion worth of AIG stock.

The suit, filed in a U.S. District Court in Manhattan, comes in response to charges of breach of contract and violations of fiduciary duty that AIG leveled in a suit against SICO last month.

As part of that suit, the insurer had demanded that SICO forfeit control of its AIG holdings under certain "agreements and understandings" whereby it "promised to use its AIG stock to fund a deferred compensation program for AIG employees" (*BI*, Oct. 3).

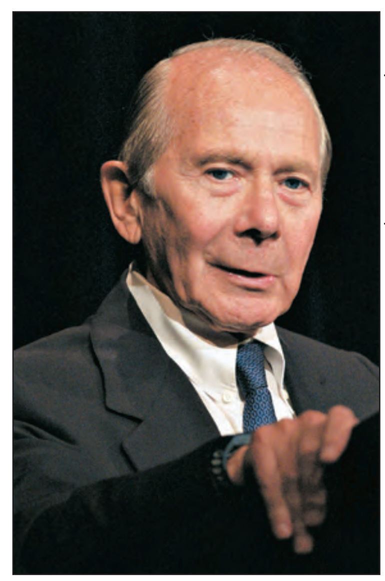

PHOTO:LARICK MAIMAN/BLOOMBERG NEWS /LANDOV

Mr. Greenberg

SICO, based in Dublin, Ireland, is led by former AIG Chairman and Chief Executive Officer Maurice R. Greenberg, who resigned from AIG earlier this year amid a mounting probe of the insurer's accounting. The company—with which AIG has been unwinding its ties—owns 310.8 million shares of AIG common stock with a current market value of more than $19 billion, according to court papers.

The deferred compensation program referred to in the suit is a decades-old compensation plan for AIG employees that was operated by SICO and through which certain

See SICO/ page 40

RRGs face regulatory blocks despite years of operation

By JERRY GEISEL

WASHINGTON—Nearly a quarter of a century after Congress exempted risk retention groups from most regulatory interference, the groups still face obstacles in several states, RRG observers note.

In 1981, responding to the product liability crisis of the late 1970s, during which rates in the commercial market soared, Congress passed legislation to allow certain captives—known as risk retention groups—that met the licensing requirements of one state to operate in other states without having to also meet their requirements.

Five years later, Congress broadened the law—which originally allowed RRGs to write only product liability and completed-operations coverage—to enable the groups to write all commercial casualty coverages except workers compensation.

The intent of the legislation was to pre-empt state laws that made it difficult or expensive—or, in some cases, impossible—for buyers to set up captives that could operate in multiple states.

NRRA
NRRA coverage continues on page 40

Buyers have responded to the opportunity Congress provided. Currently, there are well over 200 RRGs operating, generating more than $2 billion in premiums annually.

While the federal law has enabled RRGs to operate through the pre-emption of state laws, it has by no means ended conflicts with state regulators, those attending the National Risk Retention Assn. conference in Washington this month were told.

The problems are taking various forms and are of varying severity, say RRG managers and regulators in states where many of the groups are licensed.

California regulators, for example, require RRGs that are licensed in other states and that want to write coverage for policyholders in California to wait 60 days before they can do so, said Gary Osborne,

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PAUL WINSTON

Editorial Director

Fighting for TRIA

To paraphrase the Secretary of Defense, you go into 2006 with the TRIA you have, not the TRIA you'd like to have.

That may well be the case as the clock winds down on this session of Congress. It is increasingly uncertain whether lawmakers have the time to devote their attention to renewing the federal backstop for private terrorism insurance. Between considering hurricane relief measures, Supreme Court nominees and cheeseburger liability reform, there is little time for lawmakers to give their full consideration to reauthorizing the Terrorism Risk Insurance Act—due to expire at year end unless Congress acts.

Why has possible action on this important effort come so close to the wire?

A big reason is that the Treasury Department did not issue its mandated report on the law until the last minute. There's also the crowded agenda mentioned above.

But I believe there also was less urgency at an earlier stage because the lobbying effort on this issue is too limited. Lawmakers needed to hear from more than insurers, reinsurers, brokers and risk managers, all of which have been at the forefront of pushing for TRIA reauthorization.

Where are the leaders of companies that will be affected by a dearth of terrorism coverage? To date, I have seen few, if any, high-profile CEOs calling for TRIA. Instead, many seem content to let their risk managers carry the torch, as if it's merely an arcane insurance issue for them to sort out.

Speaking at the Katie School of Insurance and Financial Services Executive Forum in Chicago last week, Arlene Corsetti, executive vp of Willis Inc. in San Francisco, commented on this lack of support from top management and corporate boards.

"After 9/11, there was great interest by CEOs, CFOs and COOs in insurance," but that has now disappeared, she said. "I'm amazed at how short that attention span was."

Not only are top executives missing in the debate, but also the rank and file. Where is the voice of individuals who will find their jobs at risk if the law lapses? That could occur, for example, as building projects stall for lack of financing without adequate terrorism coverage, or as employers withdraw from high-risk urban areas to lessen the burden of workers comp premiums that will surely soar. Such dislocations can easily produce a domino effect in our interconnected economy.

When TRIA was enacted in the wake of the Sept. 11 attacks four years ago, there was much written about insurance groups coming together with risk managers to lobby for TRIA. And that did occur. But the constituency that truly got the attention of politicians was when the building trades, realizing their union members could soon be idled on construction projects, got involved and pressed Washington.

In a recent online panel discussion on TRIA sponsored by *Business Insurance*, Brad Wood, senior vp-risk management for Marriott International Inc., underscored how the risk of a terrorist attack anywhere affects businesses and individuals nationwide.

"The events of Sept. 11 were far reaching. It affected multiple lines of insurance—not just the property insurance, but in our world we saw workers compensation claims, we saw liability claims, we saw life claims, we saw health insurance claims—coming across all products simultaneously. The impact on business went well beyond the borders of New York City to Washington D.C. In our world, it also went to the kitchen workers in Seattle, who lost their jobs. It went to the airport taxi cab drivers in Los Angeles, who found few riders.

"For policyholders, whether you're in the heartland or the large cities, we've got to think about this much beyond our own individual insurance challenges. Because collectively, our success is built upon the stability of each other in the event of another terrorist attack. These interdependencies that we all have are critical to protect business to business relationships," Mr. Wood said.

The full TRIA panel discussion can be viewed online by visiting *www.businessinsurance.com/webinars*.

Congress clearly has many distractions at the moment. If the risk management and insurance communities are to win a meaningful consideration of TRIA—improving the odds that some form of a federal backstop for the private terrorism insurance market remains intact—they must strive to gain new and important allies in this effort. Grab the attention of corporate CEOs and corporate shareholders. Reach out to union leaders and union rank and file workers.

With that support, it will be harder for Congress to continue to make TRIA a lower priority. Without it, it's anyone's guess whether lawmakers will act in time.

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

Editorial

'Clarification' still muddled

A FEDERAL APPELLATE COURT'S ruling on what constitutes clear language in benefit plan documents is not appreciably different than the court's earlier offering, which makes us wonder whether this latest guidance is any safer for plan sponsors.

We believe that plan sponsors should use a little more ink than the ruling suggests to avoid problems the next time this or any other court changes its mind about plan language.

The case of *Hugo Diaz vs. Prudential Insurance Co. of America* centers on what language clearly notifies plan participants that their claims administrator has the "discretionary authority" to make coverage decisions that are largely insulated from judicial review. The issue involves claims challenged under Section 1132(a)(1)(B) of the Employee Retirement Income Security Act.

Under a 1989 U.S. Supreme Court ruling, if a plan has issued an appropriate notice, a court can review only whether a disputed coverage decision was arbitrary or capricious. Barring such a finding, the coverage decision stands.

The 7th U.S. Circuit Court of Appeals years ago told plan sponsors what would constitute a clear notification to plan participants seeking disability benefits. The court instructed plans to inform benefit applicants that the plan first would require medical and other evidence "satisfactory to us."

But a three-judge panel of the court nixed that language last month. The panel now suggests that documents state that the plan administrator has the "discretion" of determining whether an applicant is entitled to benefits.

We fear that a future court may find that language just as inadequate as the "satisfactory to us" language, because it still does not explain that judicial review of coverage decisions would be limited.

We think that after incorporating the court's suggested wording, plan sponsors should add, "This means that," followed by a clear and full explanation of how the judicial review process would work.

Throughout plan documents, adding explanations should provide plan sponsors a little sleep insurance against courts that are restless with their earlier decisions.

TRIA gets welcome boost

SUPPORTERS OF AN EXTENSION of the Terrorism Risk Insurance Act received what could be some welcome news last week.

It came during a chat between the chairman of the Senate Banking, Housing and Urban Affairs Committee—Sen. Richard Shelby, R-Ala.—and Sen. Robert Bennett, R-Utah, while the committee awaited the presence of a quorum for a vote on a non-TRIA-related bill.

Sen. Bennett, the chief Republican cosponsor of a bill that would extend and expand TRIA beyond its scheduled Dec. 31 sunset, asked the chairman what was happening with TRIA.

"We're coming along," said the chairman, who added that the committee would move on some sort of TRIA legislation "as soon as we can."

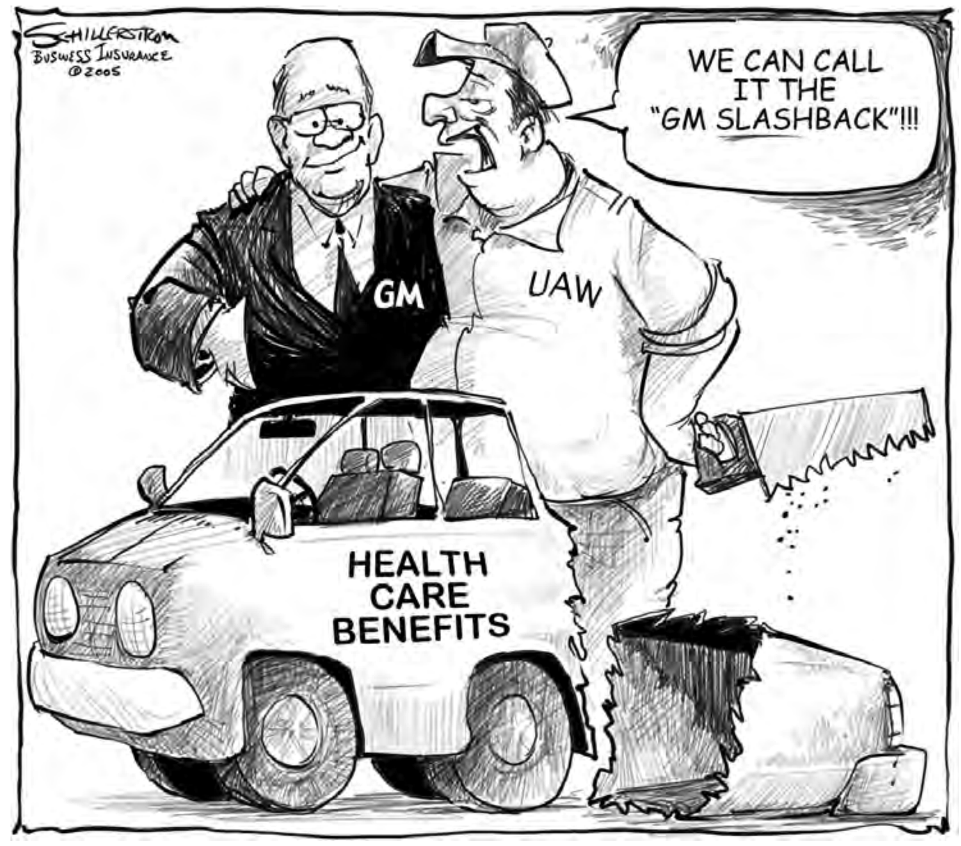
The commitment to go ahead with TRIA legislation—informal as it might be—can only be taken as a significant step in the right direction. Sen. Shelby has not been among TRIA's staunchest backers. In fact, he was one of only 11 senators to vote against TRIA when it first won Senate approval nearly three years ago. His attitude toward the need for an extension of TRIA could generally be described as agnostic at best.

But the chairman's pledge to move ahead, even without a timetable, is most welcome. Supporters of extending TRIA—which provides a federal financial guarantee for insurers paying losses from future catastrophic terrorist attacks—are pretty much resigned to the probability that any extended program will be less expansive than the current one. The Bush administration has said that only a significantly scaled-back program would be acceptable to the White House.

With the congressional calendar shrinking by the day and other legislative business piling up, time has become of the essence in the effort to assure that some sort of federal backstop, even a diminished one, remains in place at the beginning of next year.

Sen. Shelby's pledge to move ahead with as-yet-unknown backstop legislation is reason to hope that the goal will be achieved. Supporters should welcome his commitment and do everything possible to encourage him to honor that commitment before Congress adjourns and TRIA expires.

Schillerstrom



Letters

Swett offers thanks for readers' votes

To the editor: This is an open letter to the readers of *Business Insurance*. Thank you so very much for naming Swett & Crawford as the Best Wholesale Broker in the recent Readers Choice Awards.

It is truly a testament to the talents and diligence of our hard-working corps of 800 specialty insurance professionals. In a year filled with turmoil, these specialists have consistently kept their focus on meeting your high standards of performance and helping us to maintain our industry leadership. We are especially grateful to the thousands of independent agents and brokers who continued to rely on us even as we were pursuing our future course.

As Swett & Crawford moves into a new era, as an independent company, we won't rest on these laurels. Our people have a larger stake than ever before in doing our jobs smarter, faster and better than any other wholesaler. So we are even more dedicated to nurturing our relationships and helping our agent and market partners to prosper.

Again, we thank you for acknowledging our team for its efforts.

Dave Hartoch
Chairman and Chief Executive Officer
Neal Abernathy
President and Chief Operating Officer
Swett & Crawford Group
Woodland Hills, Calif.

Write Us

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Spotlight

Reinsurance: Trends and Issues

Reinsurers face upheaval after big storm losses

By JUDY GREENWALD

Hurricane Katrina is causing turbulence in the reinsurance market.

Not only will rates increase but reinsurers are re-examining their entire programs, including their reinstatements and their use of catastrophe modeling, while they anticipate increased demand from an insurance market reeling from the hurricane's impact.

Meanwhile, many are still struggling to determine their total losses from the catastrophe.

Observers predict that Katrina, as well as Hurricane Rita, which followed, will cause property and property catastrophe rates to increase, particularly in coastal areas affected by the hurricane.

But there is likely to be a significant spillover effect, both in property and property cat rates elsewhere, as well as in casualty lines, say observers.

While it is now unclear precisely how much these nonhurricane-affected lines of business will be affected, at the very least rates will halt their downward movement.

Still, the industry should readily absorb the losses, say observers. Furthermore, there are expected to be relatively few disputes between reinsurers and insurers about claims payments, say most observers, who note that problems are expected to lie essentially between insurers and insureds (see story, page 14).

The reinsurance industry's ample capital means there will be few new reinsurers, unlike the situation following Hurricane Andrew in 1992 and the Sept. 11, 2001, terrorist attacks (see story, page 18).

Hedge funds, though, are likely to continue to pursue their interest in the reinsurance industry, particularly if rates increase (see story, page 20). And catastrophe bonds are expected to continue their slow but steady growth, despite the expected trigger of one cat bond in the wake of Katrina (see story, page 22).

A white paper by the Tillinghast and reinsurance units of Towers Perrin released earlier this month estimates that Hurricane Katrina will generate $40 billion to $55 billion in private insurance payments, with reinsurers absorbing roughly half of the insured loss. This compares with a 25% to 35% share of last year's four hurricanes. Insurance payment estimates for Hurricane Rita have ranged from $2.5 billion to $7 billion.

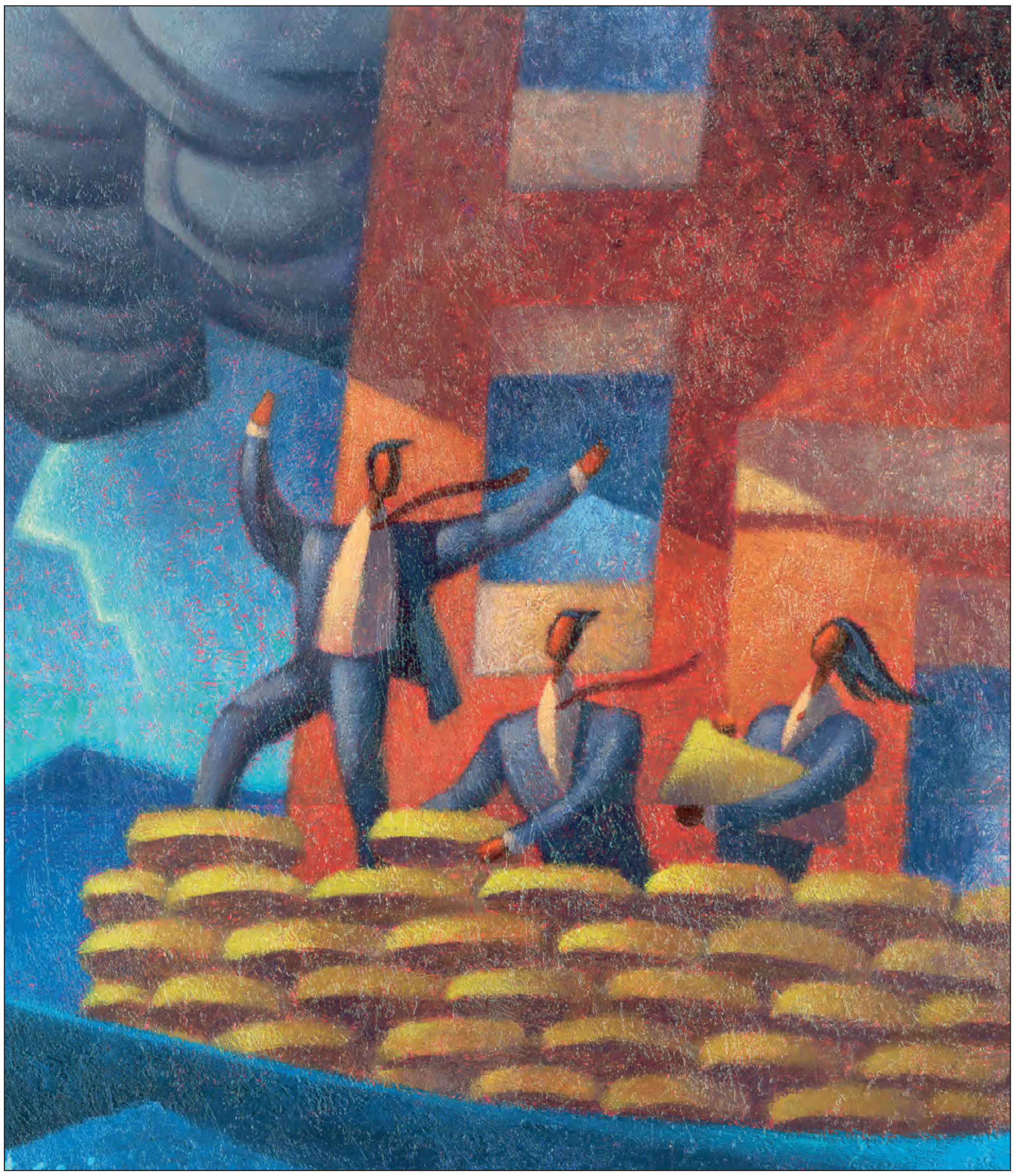
The industry should readily absorb the losses, say observers. Mark Rouck, a senior director at Fitch Ratings in Chicago, said the losses from Katrina and Rita "are manageable in relation to the sector's capital base, and, unless there's another shock loss, we think the sector can recoup what it's going to lose from Katrina and Rita in a 12- to 18-month period."

Uncertain tally

For now, though, the final tally is unclear. "Certainly, the industry getting its arms around the magnitude of the hurricane losses is going be an activity that goes on through the end of this year and the first part of 2006, and I think it's going to be a large part of what people are focused on," said Gregory T. Doyle, Shelton, Conn.-based executive chairman of BMS Vision Re, a reinsurance intermediary.

"There's just great uncertainty," said John Wicher, principal of John Wicher & Associates in San Francisco. "We'll see how the rest of the hurricane season develops; we'll see what the extent of the losses are, and we'll see what happens in terms of coverage," which may be driven by political interests, he said, in a reference to the Mississippi attorney general's lawsuit seeking

See MARKET / next page



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coverage for flood losses.

"I think that it's still pretty early" to determine the market's outlook, said Bill Adamson, chief executive officer of reinsurance intermediary Carvill America Inc. in Chicago. "There's a number of people raising capital, whether to shore up to prevent ratings downgrades or to give them an opportunity to write more business."

In addition, Mr. Adamson said, "there's a lot of focus on being ready for year-end renewals," with reinsurers trying to understand the extent of their losses and where the market will go from a rating perspective. He noted that, in some cases, reinsurers have increased their initial estimate of hurricane losses by 50% to 60%.

Clearly, though, Katrina's impact will be widespread and dramatic, say observers.

"We hear from companies that the softening of prices across the board that they were experiencing before Katrina has stopped, and it's time to regroup," said Bruce Ballentine, vp at Moody's Investors Service in New York.

From the standpoint of pricing and terms and conditions, "it's gong to have the effect of clearly hardening the market," said Larry Spoolstra, Barrington, Ill.-based chief underwriting officer for North American and Asian Pacific reinsurance business for GE Insurance Solutions.

Mr. Spoolstra pointed to the industry's reaction after both the Sept. 11 attacks and Hurricane Andrew. "You can make a reasonable argument" that pricing pre-Katrina was probably stronger than it was before Andrew or Sept. 11 and that may have a moderating effect, "but, clearly, we see this as being a seminal event" that will have an impact both on how the industry prices the business and on how it is viewed, he said.

"It looks very much as if Katrina will be an industry-changing event," agreed Steven Bolland, president of reinsurance intermediary Gill & Roeser in New York.

Capital event

"It appears to be an event that will eat into reinsurers' capital significantly, and that's going to impact pricing," he said. While property cat rates will be higher, "if suddenly we're in a hard market, it's probably going to be a hard market across the board," Mr. Bolland said, although he noted that these hikes will not be the same level of increases seen after Sept. 11, "because we're starting from a higher base."

Certainly, there will be rate increases in lines directly affected by Katrina and/or Rita, said Fitch's Mr. Rouck. And while "it's much harder to get a grip" on what will occur in other lines, such as aviation or liability, which did not have hurricane exposure, "I think losses are big enough, there's going to be some upward pressure in those lines as well," he said.

"We definitely see a hard market in the short-tail reinsurance lines through 2006," predicted Adam Klauber, director of investment research at Chicago-based Cochran, Caronia & Co. Property cat rate hikes could average in the 20% range, he said. "You could definitely see more demand for buying property cat, so you'll see more of an upswing in that market," as well

> "It appears to be an event that will eat into reinsurers' capital significantly, and that's going to impact pricing."
>
> **Steven Bolland**
> **Gill & Roeser**

as in the marine and energy reinsurance markets, said Mr. Klauber.

"For other markets, I think there's a question of how much spillover the impact of the storm will have on nonproperty cat and noncoastal exposures," Mr. Klauber said. There will probably be stabilization on the nonexposed lines of business, he said.

Greater demand is expected as well. Cincinnati-based independent insurance analyst John L. Ward said, "I see a turn in property reinsurance rates and then a surge in demand as companies realize that the exposures maybe were bigger and broader than they had realized."

"When you see how Katrina took a large city like New Orleans completely off guard, I think it's a wake-up call" for primary insurers across the board "just to buy more reinsurance, so that will have an impact," said Mr. Ward.

Most cedents would say they are protecting for at least a 100-year event, and yet Katrina "was not a 100-year event; it was something less that that," said Mr. Spoolstra. What happened has to raise some questions as to whether cedents purchased as much reinsurance as they thought they were, he said. "One thing I think is reasonably clear, and that is there is going to be more demand next year."

Peter Emblin, senior vp for Armonk, N.Y.-based Swiss Re America, Inc., said companies are going to look at their reinsurance programs "to see how well they fared through Katrina and particularly in respect to the total capacity that was made available or they purchased under their cat covers."

Roderick P. Thaler, executive vp

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Market: Reinsurers reassess rates, risk exposures

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and national director at reinsurance intermediary Willis Re in New York, said, "Catastrophe retentions will be nudged upward, as many of the large, global catastrophe programs were exhausted by Katrina. There's going to be, obviously, an increased focus on exposure rating and the use of cat models and identification of exposures arising out of non-modeled cat perils" such as floods, said Mr. Thaler.

Katrina will also cause the industry to rethink cat models, said Mr. Spoolstra. It is pretty clear that these models failed to capture all the exposures from Katrina, including the increased demand for repair services, the storm surge and business interruption losses, among other factors, he said.

Frequency is a factor that will also be more closely examined, say observers. With two straight years of large hurricane losses and scientists predicting a decade or two of heavy hurricane activity, frequency is something reinsurers "may be studying" with an eye toward changing their programs, said Gary Ransom, managing director at Fox-Pitt, Kelton Inc. in Hartford, Conn. The Tillinghast-Towers Perrin white paper holds that a $20 billion hurricane loss will occur about every 15 years.

Reinsurers, though, "will attempt to control their exposure, and they're not going to want more frequency. They're going to want less frequency, and they are going to want to control the exposure that goes into their contracts and understand them so they can price them better," said Mr. Spoolstra.

Mr. Thaler said cedents' desire to arrange multiple reinstatements up front as part of their catastrophe renewal negotiations "may require some integrated solutions, where traditional reinsurance is supplemented by capital market products or the use of hedge funds and/or collateralized reinsurance arrangements."

Few coverage battles likely for reinsurers

But insurers expect fight over flood coverage

By JUDY GREENWALD

Despite all the claims reinsurers are likely to pay cedents as a result of hurricanes Katrina and Rita, most observers expect relatively little litigation to result between the two sides.

The focus, they say, instead will be on disputes between insurers and insureds, in particular over the issue of whether flood damage is covered by their policies. Mississippi Attorney General Jim Hood, for instance, has already filed a pre-emptory civil suit seeking to invalidate exclusions for flood damage in homeowners' policies.

Historically, "if the insurer is found to have to pay ... then the cat guy will go along with it," said Steven Bolland, president of reinsurance intermediary Gill & Roeser in New York.

"Basically, cat excess-of-loss treaties tend to be broader in scope than primary insurance policies," noted Mr. Bolland. Reinsurers' attitude will be, "We're stuck, what are we going to do?" he said.

Furthermore, Mr. Bolland pointed out, most reinsurance contracts specify that disputes must be arbitrated. Arbitration panels' decisions will be strictly in accordance with the law and industry opinion, and, typically, industry practice is that something is deemed covered if it is not explicitly excluded, he said.

"Increasingly, reinsurance contracts have become much clearer," noted Roderick P. Thaler, executive vp and national director at reinsurance intermediary Willis Re in New York. "We think that reinsurers will honor their obligations where there's a contractual basis that's clear, and that ceding companies, particularly where they have provided flood sublimits, will prevail," he said.

Bruce Ballentine, vp at Moody's Investors Service in New York, said also that, based on conversations he has had with reinsurers, for the most part, reinsurers "should go along with the coverage outcomes at the primary insurers. We don't foresee glaring examples of unclear reinsurance contracts such as we had at the time of Sept. 11," he said, referring to the 2001 terrorist attacks.

"The battle will be fought between the insureds, the regulators and the primary carriers," said Cincinnati-based independent insurance analyst John L. Ward. "To the extent the reinsurers are drawn into that, I expect them to fight it, and probably successfully."

However, insurance analyst John Gwynn, managing director at Memphis, Tenn.-based Morgan Keegan & Co., said, "Disputes have been exploding anyway. I think this is just going to be another area of significant difference."

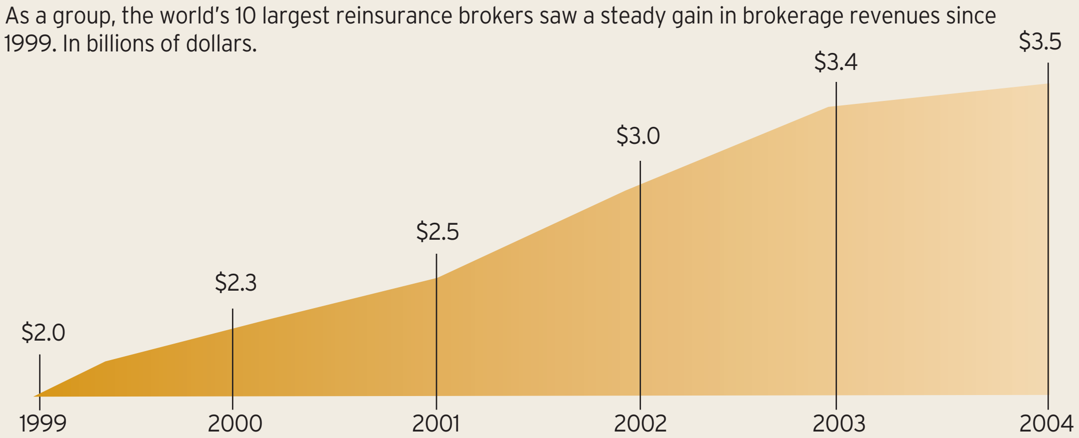
In particular, "the primary companies will be bending over backward on the flood vs. wind perils issue, and reinsurers may not be particularly thrilled with completely following the fortunes" of the insurers, said Mr. Gwynn.

John Wicher, principal of John Wicher & Associates in San Francisco, said also that while one can hope there will not be significant litigation, "the reality is, over the years the follow-the-fortunes provision has come to mean follow the fortunes in some cases, and that's just a fact."

BI RANKS

Growth in reinsurance brokerage revenues

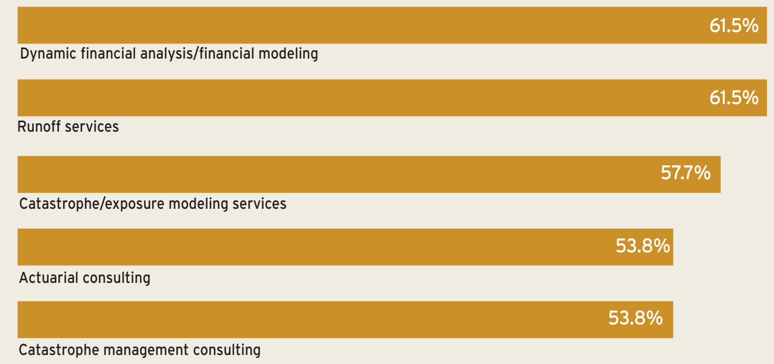
As a group, the world's 10 largest reinsurance brokers saw a steady gain in brokerage revenues since 1999. In billions of dollars.



Source: *BI* Survey

Services provided by reinsurance brokers

Based on percentage of companies offering services other than reinsurance brokering.



Source: *BI* Survey

World largest reinsurance brokers

Ranked by 2004 gross revenues from reinsurance brokerage and related services*

Rank	Company/Address	Phone/Fax/Web site	2004 reinsurance gross revenues	2003 reinsurance gross revenues	% change	2004 employees	Principal officer
1	Aon Re Global Aon Center, 200 E. Randolph St. Chicago, Ill. 60601	312-381-1000 *www.aon.com*	$940,000,000	$945,000,000	-0.5%	3,000	Michael D. O'Halleran, chairman/CEO
2	Guy Carpenter & Co. Inc. 1 Madison Ave., Fourth Floor New York, N.Y. 10010-3658	917-937-3000 Fax: 917-937-3500 *www.guycarp.com*	$868,000,000	$850,000,000	2.1%	2,606	Salvatore D. Zaffino, chairman/CEO
3	Benfield Group Ltd. 55 Bishopsgate London EC2N 3BD England	44-207-578-7000 Fax: 44-207-578-7001 *www.benfieldgroup.com*	$558,331,800 [1]	$490,994,759 [2]	13.7%	1,700	Grahame Chilton, group CEO
4	Willis Re 10 Trinity Square London EC3P 3AX England	44-207-488-8111 Fax: 44-207-488-8976 *www.willisre.com*	$550,000,000	$513,000,000	7.2%	1,159	Grahame Millwater, chairman/CEO
5	Towers Perrin Centre Square East, 1500 Market St. Philadelphia, PA 19102-4790	215-246-1600 Fax: 215-246-1700 *www.towersperrin.com*	$146,000,000	$135,000,000	8.1%	433	William H. Eyre Jr., managing director/CEO
6	Jardine Lloyd Thompson Group P.L.C. 6 Crutched Friars London EC3N 2PH England	44-207-528-4000 Fax: 44-207-528-4500 *www.jltgroup.com*	$145,173,600 [1]	$164,390,460 [2]	-11.7%	N/A	Ken Carter executive chairman
7	Cooper Gay (Holdings) Ltd. 52 Leadenhall St. London EC3A 2EB England	44-207-480-7322 Fax: 44-207-481-4695 *www.coopergay.com*	$87,550,000 [3]	$85,000,000 [3]	3.0%	475	Tobias C.D. Esser, group chief executive/COO
8	Gallagher Re [4] 6 Alie St. London E1 8DE England	44-207-204-6000 Fax: 44-207-204-6262 *www.ajg.com*	$78,000,000	$77,710,000	0.4%	200	Simon Gander, CEO-Gallagher Re (UK)
9	BMS Group Latham House, 16 Minories London EC3N 1AX England	44-207-480-7288 Fax: 44-207-374-5928 *www.bmsgroup.com*	$72,951,798 [1]	$51,964,380 [2]	40.4%	311	John Spencer, group chief executive
10	Heath Lambert Group Friary Court, 65 Crutched Friars London EC3N 2NP England	44-207-560-3000 Fax: 44-207-560-3504 *www.heathlambert.com*	$59,931,675 [1]	$107,255,788 [2]	-44.1%	377	Adrian Colosso, group chief executive

*Include all reinsurance revenue reported through their holding and/or subsidiary companies. NA=Not Available 1 Fiscal year 2004 British pound=$1.833. 2 Fiscal year 2003 British pound=$1.6341. 3 Fiscal year ending 9/30. 4 Formed in 2004, includes Arthur J. Gallagher Intermediaries (Bermuda) Ltd., Arthur J. Gallagher Intermediaries, Arthur J. Gallagher (UK) Ltd. and John P. Woods Co. Inc.
Source: *BI* survey

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Storms prompt capital raising but little startup interest

By JUDY GREENWALD

Few, if any, new reinsurers are likely to be formed in the aftermath of hurricanes Katrina and Rita, say observers.

Instead, particularly in light of the dearth of available reinsurance talent in the industry, investors with capital seeking to invest in the industry may prefer to boost existing reinsurers' capital instead.

The reinsurers, for their part, will want to replace capital lost as a result of the hurricanes, as well as be prepared for possible increased demand, observers say.

Several Bermuda-based companies have already raised capital. Montpelier Re Holdings Ltd., for example, raised $600 million though a common stock offering last month, and Platinum Underwriters Holdings Ltd. raised about $161.9 million.

In addition, earlier this month, Bermuda-based Everest Re Group Ltd. said it has agreed to sell approximately $475 million of its newly issued common shares to New York-based Goldman, Sachs & Co. for a subsequent sale to public investors. It later filed to sell another $76 million of various securities.

Bermuda-based Endurance Specialty Holdings Ltd. has just raised a total of $600 million over a two-week period through a combination of common equity, preferred equity and debt offerings totaling $200 million each.

Also, Pfäffkon, Switzerland-based Glacier Reinsurance A.G. has raised $100 million through a share issue to shareholders.

Bermuda-based Max Re Capital Ltd. said also it plans to raise up to $300 million in a stock offering. In addition, Bermuda-based PXRE Group Ltd., which has already raised $475 million through the sales of common and preferred stock, has called a special meeting of its shareholders in November to consider the authorization of an additional share issuance.

On the other hand, Bermuda-based Rosemont Reinsurance Ltd. will likely be placed in runoff after efforts to sell or raise new capital for the reinsurer failed, according to its parent, London-based Goshawk Insurance Holdings P.L.C.

"There was a lot of noise after Katrina of people looking around for staff to try and put something together," said Larry Spoolstra, Barrington, Ill.-based chief underwriting officer for North American and Asian Pacific reinsurance business for GE Insurance Solutions. But "that seems to have gotten pretty quiet as of late, so our belief is that there's not likely to be much in the way of new companies," he said.

While new companies are "distinctly possible," it is easier to invest in existing companies, said Steven Bolland, president of reinsurance intermediary Gill & Roeser in New York. "It's not as easy as it sounds in a small industry like reinsurance, where there aren't that many professional cat underwriters," said Mr. Bolland. "But I would not be surprised to see a couple of new companies setting up," he said.

> "There was a lot of noise after Katrina of people looking around for staff to try and put something together," but "that seems to have gotten pretty quiet as of late."
>
> **Larry Spoolstra**
> **GE Insurance Solutions**

Roderick P. Thaler, executive vp and national director at reinsurance intermediary Willis Re in New York, agreed. "There may be some new reinsurance capacity coming in, but the bulk of the new capacity, I think, is going to come in through existing reinsurers."

Mr. Thaler said, "Existing reinsurers already have a much better diversification and penetration into a number of different lines of business, as well as geographic diversification, within both insurance and reinsurance, so it would be more difficult for a new player today starting from scratch" to achieve this same diversification "while still adhering to conservative underwriting guidelines. It's easier to do it through an existing reinsurer who has an established portfolio," he said.

Britt Newhouse, president, Americas, for reinsurance intermediary Guy Carpenter & Co. Inc. in New York, said, "There are existing platforms there who have proven they're able to generate attractive returns and manage the risk well and who don't have enormous legacy issues. They will be able to attract new capital, and that'll be an easy way for capital to come in, because the management track record and business is there."

Gregory T. Doyle, Shelton, Conn.-based executive chairman of BMS Vision Re, a reinsurance intermediary, said the general market will not change as it did after the terrorist attacks of Sept. 11, 2001, "where, I think, the capital markets had an expectation that the broader market was turning and there was an opportunity to capitalize companies pretty quickly, getting in, make good returns and cash out."

Hedge funds see investment opportunity in reinsurance

Increased interest expected as market hardens following Katrina

By JUDY GREENWALD

Hedge funds, which are already a visible presence in the reinsurance industry, are expected to increase their involvement as they see new opportunities emerge as a result of Hurricane Katrina.

Hedge funds, which are exempt from many of the regulations that govern traditional mutual funds, are private investment limited partnerships that use a hedging strategy to offset investment risk. The appeal of reinsurance to the funds is that the risks inherent to that industry may be uncorrelated with the overall economy, thus providing a hedge to their investments.

To date, hedge funds' involvement in the reinsurance industry has taken essentially two forms: investments in catastrophe bonds and in new reinsurance companies.

Companies recently established with backing from hedge funds include Pfäffikon, Switzerland-based Glacier Reinsurance A.G.; Hamilton, Bermuda-based CIG Reinsurance Ltd.; and Ritchie Risk-Linked Strategies Ltd., also of Bermuda.

In addition, Hamilton-based Montpelier Re Holdings Ltd. earlier this year founded a reinsurance vehicle, Rockridge Reinsurance Ltd., in partnership with hedge fund manager West End Capital Management (Bermuda) Ltd. Rockridge was established to assume attractive high-layer, short-tail risks, principally from Montpelier's wholly owned subsidiary, Montpelier Reinsurance Ltd.

Although observers estimate hedge funds now account for only about 1% of the capital in the reinsurance market, many expect involvement to grow despite the losses generated by Hurricane Katrina.

Hedge funds have become involved in the reinsurance market over the past couple of years, "and I believe what Katrina is going to do is accelerate that process," said Paul Schultz, president of Chicago-based Aon Capital Markets.

"Others have been contemplating doing this, so while there may have been some losses that the hedge funds will pay, this is still viewed as an attractive way for them to put their money to work, in large part because returns related to insurance are uncorrelated with their other investment strategies," said Mr. Schultz. Such uncorrelated profits have a positive impact on total return to their partners, he said.

Mr. Schultz said among the opportunities being explored by hedge funds are forming new companies similar to the reinsurers created following the Sept. 11, 2001, terrorist attacks; creating special-purpose reinsurance vehicles to write collateralized reinsurance; investing in funds managed by existing insurers and reinsurers; and investing in these companies' public equities.

"There's a tremendous amount of money within the hedge fund world that is taking a look at the best way they believe they can deploy their funds and earn returns," said Mr. Schultz.

> "There's a tremendous amount of money within the hedge fund world that is taking a look at the best way they believe they can deploy their funds and earn returns."
>
> **Paul Schultz**
> **Aon Capital Markets**

Robert J. Cooney, chairman, president and chief executive officer of Hamilton-based Max Re Ltd.—one of whose largest shareholders is a hedge fund—said that if new companies do emerge after Katrina, "it would not surprise me if some of the leading investors are hedge funds, because I do think, by nature, they tend to be traders, and they can get in quickly and take advantage of market opportunities."

"And I think there is quite a common consensus there will be a much-improved pricing environment for property cat and some of the specialty areas," including marine and energy, Mr. Cooney said.

"Certainly, if they're going to participate, I guess this would be the time to do so, as the property market hardens," said Robert DeRose, assistant vp at Oldwick, N.J.-based A.M. Best Co. "I think they're going to take advantage of the situation. You might see some additional cat bonds" arranged by the hedge funds, he said.

"There is considerable interest from the hedge fund world looking at this space," said Christopher McGhee, managing director at MMC Securities Corp. in New York, an affiliate of reinsurance intermediary Guy Carpenter & Co. Inc.

"I actually think their influence may have been somewhat exaggerated. It is the topic du jour, but it's still a relatively small number of players," Mr. McGhee said. "It will

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Hedge funds: Investors eye insurance industry

Continued from page 20

be interesting to see what happens with Katrina" and whether hedge funds perceive the insurance business as a potentially profitable area in which to diversify their risk, he said.

The answer is not clear yet, said Mr. McGhee, "but, on balance, I would say, I guess, that there would be more hedge fund money next year than this year" in the industry.

"We definitely see that there's a role hedge funds have," said Roderick P. Thaler, executive vp and national director at reinsurance intermediary Willis Re in New York. "They seem to have a good risk appetite, and reinsurance provides some noncorrelated business that's attractive to the hedge fund," he said. "We see them continuing to be a factor."

Buyers, for their part, may welcome the involvement of hedge funds. "I think buyers of reinsurance are going to be more and more attracted to diversifying their risk and their credit exposure," which hedge funds provide, said Britt Newhouse, president, Americas, for Guy Carpenter in New York.

But Steven Bolland, president of reinsurance intermediary Gill & Roeser Inc. in New York, said, "I think people talk a lot about hedge funds, but hedge funds come in all different shapes and sizes, and they're all doing a lot of different things for different reasons."

The aggressive hedge funds may look at the current situation and say, "pricing is up," which creates more opportunities, said Mr. Bolland. "The more cautious ones will say, 'Well, historically you can make money, but Katrina wipes out profits for a long time,' and the only real hedge against insurance risk is shorting insurance company stocks."

Hurricanes may boost interest in cat bonds

By JUDY GREENWALD

The catastrophe bond market, which has experienced slow but steady growth over the years, may get a boost in the wake of hurricanes Katrina and Rita, say observers.

At the same time, a cat bond may be triggered for the first time as a result of the hurricane losses (see story, page 24).

Meanwhile, although the first casualty catastrophe bond was issued earlier this year, property bonds are expected to continue to dominate the market, say observers (see story, page 26).

From 1997—the first year in which multiple transactions occurred—through September of this year, 65 catastrophe bonds have been issued, totaling $9.87 billion in volume, according to New York-based MMC Securities Corp., an affiliate of reinsurance intermediary Guy Carpenter & Co. Inc. The number of bonds issued has ranged from five in 1997 to a high of 10 in 1999.

Some observers say there now may be greater interest in cat bonds as a result of the hurricanes. "We certainly think companies took a greater loss of capital than expected, and, certainly, investing in cat bonds may be a way to mitigate that going forward," said Keith Lennox, managing senior financial analyst at Oldwick, N.J.-based A.M. Best Co.

> "We certainly think companies took a greater loss of capital than expected, and, certainly, investing in cat bonds may be a way to mitigate that going forward."
>
> **Keith Lennox**
> **A.M. Best Co.**

Roderick P. Thaler, executive vp and national director at reinsurance intermediary Willis Re in New York, said the losses from Katrina and Rita "will have prompted many companies to look more closely at cat bonds to provide a complement to their traditional reinsurance programs, so if there are multiple large events in any one 12-month period, having access to an alternative capital base provides diversification," which companies may find increasingly attractive, Mr. Thaler said.

"I think the cat bonds offer insurance and reinsurance buyers a couple of very important characteristics or ingredients," said Paul Schultz, president of Aon Capital Markets in Chicago. "The bonds are fully collateralized, so buyers of reinsurance don't have the credit risk associated with buying reinsurance from a reinsurance company."

Furthermore, "cat bonds have multiyear limits available," so instead of the 12 months of coverage the reinsurance market offers, "cat bonds can offer three- to five-year transactions." Mr. Schultz said. As the higher layers in some programs are considered, he said, "those issues can be very important."

As a result, the cat bond market could become "a relatively more important part of property cat capacity than it has in the past," said Mr. Schultz.

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Cat bonds: Slow, steady growth

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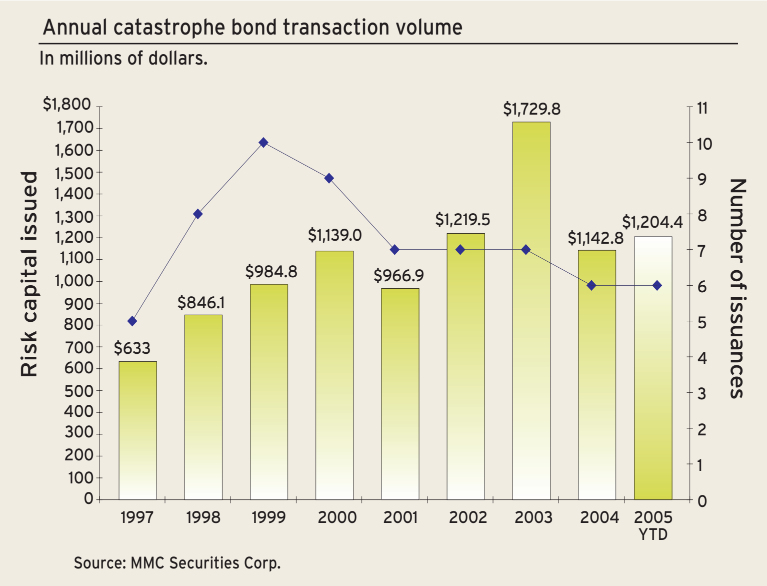
James Doona, director, insurance capital markets, for Standard & Poor's Corp. in New York, noted that "traditional reinsurance is quicker and cheaper." But, he added, "to the extent that rates firm up in the traditional markets, they may not firm up as much in the cat bond market, and so that might help."

"We continue to see it as a positive growth market," said Christopher McGhee, MMC Securities managing director. "It's been a slow, steady, growth, and we expect to see at least the continuance of that slow, steady growth," he said.

"It's possible that we might get an uptick in growth as a result of the hurricane activity," he added.

Cat bonds are an "evolving area," said Cincinnati-based independent insurance analyst John L. Ward. "It's a good, creative response to the need for more reinsurance capacity. It's a growing market, but not a fully developed market. It's a very complicated investment," he said.

"It's difficult to understand and explain, and so it has experienced good growth but will experience more growth going forward once it's more widely understood by a broader audience," said Mr. Ward.



Cat bond may be triggered by Katrina

By JUDY GREENWALD

The catastrophe bond market apparently has not emerged from Hurricane Katrina unscathed.

Observers say a $190-million cat bond, issued by a special-purpose vehicle, KAMP Re 2005 Ltd., in August on behalf of Swiss Reinsurance America Corp., is likely to be triggered.

If the bond's entire principal is required to pay Katrina losses, it will be the first cat bond issue to totally call in investors' funds, say investors.

The bond, which was sold in a private placement, was intended to provide Swiss Re protection in the event that cedent Zurich Financial Services' ultimate net losses from U.S. hurricane and earthquake claims were more than $1 billion. Current estimates indicate Zurich's Katrina losses will exceed that level; the company announced earlier this month that it expected losses of about $600 million net of reinsurance from Katrina.

KAMP Re was an indemnity bond, whose trigger is based on claims paid. The bond "won't be triggered until there are paid losses, but paid losses seem extremely probable at this point," said James Doona, director, insurance capital markets, for rating agency Standard & Poor's Corp. in New York.

Neither Zurich nor Swiss Re would comment on whether the bond would be triggered.

S&P initially rated the bond BB+ but downgraded it on Oct. 13 to CC. It is under review with negative implications.

The situation, though, is going to "have a very minimal effect," on the cat bond market, predicted Mr. Doona. Cat bonds are very popular because, "in general, they pay a pretty good yield," he said.

The impending trigger has not had a significant impact on the market, according to Paul Schultz, president of Aon Capital Markets in Chicago. "I don't think we're seeing any behavior that would cause us concern," he said.

"Right around Katrina, the (cat bond) prices reflected the uncertainty related to the magnitude of the loss, but now we see the market has come back more in line where it was pre-Katrina, except for the bonds that were potentially exposed to Katrina, so the market is becoming more stable," Mr. Schultz said.

"It is behaving the way we would want it to be behave, which is that the investors appear to be rational about the way they're pricing future deals," he said.

There is some speculation,

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KAMP Re: Bond may be triggered

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though, that the loss may lead to greater interest in parametric bonds, which are cat bonds that may be triggered by factors such as the magnitude for earthquakes or, in the case of hurricanes, by wind speeds as measured by the National Hurricane Center of the U.S. National Oceanic and Atmospheric Administration. A third type of bond, index bonds, which are similar to parametric bonds, may depend on industry losses.

Mr. Doona said that out of the total volume of $8.1 billion in cat bonds issued since March 1999 that he has tracked, $3.5 billion were parametric, $3.1 billion were indemnity and $1.5 billion were index.

The situation with KAMP Re "is going to tend to have a dampening effect on indemnity-based transactions" Mr. Doona said.

Observers say that among the advantages of parametric bonds is that investors know right away whether they will be triggered, rather than having to wait to see what the insurers pay in claims, which is the case with indemnity bonds.

"You have to concern yourself with, in an indemnity-based transaction, the behavior of the claimants and the behavior of the ceding insurer," noted Mr. Doona.

Casualty cat bond still a novelty

Property deals expected to continue to dominate securitization market

By JUDY GREENWALD

The first casualty catastrophe bond, which was issued this year, will be closely scrutinized by the market and more may follow, but observers say they expect property cat bonds to continue to predominate.

Earlier this year, Avalon Re Ltd., a special-purpose vehicle based in the Cayman Islands, issued three notes of $135 million each that covered successive layers of reinsurance to Oil Casualty Insurance Ltd., a Bermuda-based excess liability insurer owned by energy industry companies.

Proceeds will be used to protect OCIL for three years against cumulative worldwide excess general liability exposures, including general liability risks such as third-party bodily injury and property damage.

Excluded are protections from war and terrorism; damage from nuclear, biological and chemical weapons; and gradual pollution such as asbestos or groundwater contamination.

George Hutchings, OCIL's senior vp and chief operating officer, said the chances of the bond being triggered are "not terribly high." Mr. Hutchings said the company has paid out only seven losses in 19 years. Triggering the bond would require at least three losses for the insurer over a three-year period totaling more than $300 million.

"On average, we expect a loss every three years, so it would be a very unusual set of circumstances" for the bond to be triggered, said Mr. Hutchings. "As of today, we do not have any losses that have been ceded to us," he said, speaking of damage resulting from Hurricane Katrina.

> "We may see more of that moving forward, but, just as it took time for the property cat market to take off, it will take a period of time for everyone to be comfortable with those risks."
>
> **Paul Schultz**
> **Aon Capital Markets**

Observers say they do not anticipate a rush to issue comparable bonds.

"I think investors will be open to taking a look at these risks, albeit they will want to do it on a very calculated basis," said Paul Schultz, president of Aon Capital Markets in Chicago. Investors want to make sure they understand the modeling underlying transactions, he said.

"We may see more of that moving forward, but, just as it took time for the property cat market to take off, it will take a period of time for everyone to be comfortable with those risks," said Mr. Schultz.

Christopher McGhee, managing director of reinsurance at MMC Securities in New York, an affiliate of intermediary Guy Carpenter & Co. Inc., said, "I don't think it will be a precursor to a rapid growth of casualty cat bonds."

"I think you need to have a very specific set of circumstances that allows that kind of issuance to occur and, in particular, you need to get a solid fix on the probability of loss and know that the losses will be knowable in a relatively short amount of time, and that has not been true of a lot of casualty losses," Mr. McGhee said.

Property will remain the predominant type of cat bond, he said.

Mr. Hutchings agreed. Those who are able to follow OCIL will be companies like itself "that have pure cat liability exposure that can be readily identified and quantified." He said he is unaware of any comparable deals that are now in the works.

Bankruptcy law change may secure policyholder funds

Revision aims to stop alleged abuse of bankruptcy code by non-U.S. insurers, restore control of claims funds to courts

By MEG FLETCHER

A recent amendment to U.S. bankruptcy law will protect policyholders with insurance coverage backed by non-U.S. insurers and reinsurers, supporters of the change say.

The changes to a section of the Bankruptcy Code, which are intended to make it more difficult for non-U.S. companies to control funds they hold in the United States to secure policyholder claims, will help ensure that adequate funds are available to pay claims, they say.

Others, though, oppose the changes, saying they will make it more difficult for U.S. policyholders to obtain funds from insolvent non-U.S. insurers.

At issue are changes to what was previously called Section 304 of the code, which allowed a non-U.S. company required to post mandatory assets in the United States to participate in the disposition of those assets. The change prohibits a bankruptcy court from relinquishing control of funds being held in trust to pay U.S. policyholder claims.

The Washington-based Reinsurance Assn. of America supported the amendment because "several non-U.S. reinsurers have used the provision to circumvent state liquidation" of certain trusts established to guarantee reinsurance payments, according to Matthew T. Wulf, the RAA's assistant vp and legal counsel. The problems were specifically related to trusts with multiple beneficiaries.

In the United States, states' primary way of regulating unauthorized reinsurers is by determining how much statutory credit U.S. primary insurers are given on their balance sheets for business they cede to unauthorized reinsurers. All states currently require unauthorized reinsurers to post 100% collateral in the United States against reinsurance obligations underwritten in the U.S.

Mr. Wulf said non-U.S. reinsurers have used that Section 304 provision, even though explicit language in the bankruptcy code prohibits U.S. insurance companies from filing for bankruptcy in lieu of a state-regulated liquidation process.

As a result of federal bankruptcy court decisions, though, cedents and liquidators "have been forced to pursue claims in foreign jurisdictions under foreign distribution schemes, despite the trust fund's purpose, which contemplated that claims would be settled under local law," Mr. Wulf said.

Foreign jurisdictions "do not usually give a priority to policyholders over other creditors as do U.S. laws," Mr. Wulf said. In addition, receivers in states such as New York and Pennsylvania have said they have lost control of funds that they believe should have been used to pay U.S. policyholders' claims, he said.

According to the RAA, examples of decisions that have affected the ability of U.S. policyholders or ceding insurers to access collateral that had been provided by non-U.S. insurers and reinsurers include Panama-based Latino Americano de Reaseguros S.A., Israel Reinsurance Co. Ltd. and Bermuda-based River Plate Reinsurance Co.

> Foreign jurisdictions "do not usually give a priority to policyholders over other creditors as do U.S. laws."
>
> **Matthew T. Wulf**
> **Reinsurance Assn. of America**

Several policymaking groups supported changing the law, including the National Assn. of Insurance Commissioners, the National Conference of Insurance Legislators and the National Conference of State Legislatures.

Earlier this year, the RAA and other amendment advocates were successful in amending the U.S. bankruptcy code. Replacing Section 304 is a new provision that states that the bankruptcy court "may not grant relief…with respect to any deposit, escrow, trust fund or other security required or permitted under any applicable state insurance law or regulation for the benefit of claim holders in the U.S.," the code says.

At least one insurance insolvency expert, though, disputes the need for the change.

Mary Cannon Veed, an insurance insolvency lawyer with Chicago-based Arnstein & Lehr L.L.P., questions whether it will be helpful. "Although the full impact of the changes is not yet clear…the change the RAA arranged for undermines the ability of U.S. policyholders to participate in the insolvency

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Market shift should kick start growth for brokers

By SALLY ROBERTS

The world's largest reinsurance brokerages are gearing up for a change in the reinsurance market, with many also adjusting to other internal changes within their organizations.

While the full extent of insured losses from Hurricane Katrina is still unknown, reinsurance rates are expected to rise and capacity to shrink following one of the costliest disasters in U.S. history.

At the same time, reinsurance brokers say they expect insurers to re-examine their exposures and potentially purchase more reinsurance coverage after nearly two years of ceding less business and boosting net retentions.

This should come as welcome news to the reinsurance brokerage community, whose revenue growth has been under pressure recently.

Indeed, excluding the effects of foreign exchange rates, revenue growth was generally kept in check at the world's largest reinsurance brokers in 2004.

While Aon Re Global, the world's largest reinsurance brokerage, reported a 0.5% revenue decline in 2004, to $940.0 million, its largest competitors reported modest increases. New York-based Guy Carpenter & Co. Inc. reported a 2.1% rise in revenues, to $868.0 million, while London-based Benfield Group Ltd. reported a 1.4% rise, to £304.6 million ($558.3 million) and London-based Willis Re reported a 7.2% rise, to $550.0 million.

Although the extent of any reinsurance market tightening due to Hurricane Katrina is still unclear, executives from the world's largest reinsurance brokerages are expecting a challenging renewal period for ceding clients.

"Whether it's a $30 billion storm or a $60 billion storm, there's going to be a significant impact on reinsurance rates, reinsurance capacity, and the supply-and-demand curve is going to tighten up," said Michael D. O'Halleran, chairman and chief executive officer of Aon Re Global.

The biggest challenge facing ceding companies right now, according to Sal Zaffino, chairman and CEO of Guy Carpenter, is assessing the extent of their own losses and re-examining their exposures.

In addition to operating in a harder reinsurance market, many of the brokerages will be doing so under new organizational structures.

Willis Re, for example, revamped its structure over the past year as a reflection of its growing size, according to Grahame Millwater, former chief operating officer of Willis Re, who succeeded John Pelly late last year as the company's new chairman and CEO.

By changing its structure to reflect areas of reinsurance expertise rather than general risk categories, Willis Re should be able to build on its well-established market position, according to Mr. Millwater.

Guy Carpenter last year revamped

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> While the full extent of insured losses from Hurricane Katrina is still unknown, reinsurance rates are expected to rise and capacity to shrink following one of the costliest disasters in U.S. history.

Bankruptcy: Policyholders protected

Continued from previous page

proceedings of their foreign insurance companies," she said.

The change "replaces their rights with a power vacuum," she said, noting that most states' insurer liquidation laws do not directly apply to non-U.S. insurers. "That can't be good."

The cases the RAA cites as examples "simply are not the horror stories they make them out to be," she said. "In every single one, the regulator with jurisdiction over the trust fund agreed with the outcome. Also, every one of them involved an attempt by a single, aggressive creditor—invariably a reinsurer, but not always an American one—to get more than its fair share of a U.S. trust fund. The bankruptcy court's intervention simply protected the rights of American policyholders to a pro rata share of that fund."

Vincent Laurenzano, former assistant deputy superintendent of the New York Insurance Department, said he and the NAIC supported amending Section 304 because "it makes a lot of sense" and provides "better protection to policyholders." He said, though, that he did not recall any specific cases of problems with policyholders not being able to have access to assets. Mr. Laurenzano is currently an insurance finance consultant with the New York law firm of Stroock & Stroock & Lavan L.L.P.

Now that the new bankruptcy amendment has been approved, the NAIC is expected to consider updating its model legislation related to credit for reinsurance.

Brokers: Market shifts ahead

Continued from previous page

its reporting structure to further separate itself from its bigger retail affiliate Marsh Inc., which was accused by New York Attorney General Eliot Spitzer last year of steering business and rigging bids. It also implemented a new global compensation disclosure policy on its treaty and facultative accounts as a result of Marsh's $850 million settlement agreement with Mr. Spitzer.

Aon Re also is running its business with the knowledge that it must avoid any conflicts of interest between Aon Re and the retail brokerage arm of Aon Corp. In addition to steering charges, Aon was accused by Mr. Spitzer and other state authorities of linking insurance placements with reinsurance brokerage business.

But while Aon Re recently launched a new global model, which included legally changing its name and structuring its operations into four regions around the world, it is not a reflection of its settlement agreement with Mr. Spitzer and others, executives say.

Benfield, the only reinsurance brokerage with more than $500 million in gross revenues that operates independently of a larger retail parent, also is restructuring, albeit a little differently.

In September, Benfield launched a primary brokerage unit, Benfield Corporate Risk.

But even as the company grows and expands into commercial retail business, independent thinking will remain at its core, according to Grahame Chilton, Benfield's CEO.

Profiles of those reinsurance brokerages with gross revenues exceeding $500 million follow.

Aon Re Global

Aon Re Global may have a new name and its leader a new title, but the world's largest reinsurance brokerage remains committed to its focus on client advocacy, according to its chairman and chief executive officer.

Such a strategy serves the ceding clients of Chicago-based Aon Re well in all market conditions, said Michael D. O'Halleran. "We're a client advocate firm that's very focused on making sure that our clients win and win first. We're going to be very aggressive in pursuit of making sure we solve their needs in a very robust and creative way."

Toward this end, Mr. O'Halleran said, the reinsurance brokerage added and continues to add client advocacy services, investing in its catastrophe modeling, actuarial, capital markets, claims, financial and legal areas. The brokerage also has expanded its global practice groups in areas such as retrocession, marine, energy, aviation and surety.

At the same time, "we've hired some new brokers in our expansion into our regional market approach, particularly going after direct reinsurance business," he said.

Mr. O'Halleran noted that Aon Re managed to add such services despite the soft market conditions that pervaded the reinsurance market throughout 2004 and most of 2005. "I feel good that we were able, in a period that had some significant revenue pressures, to continue to reinvest in the business and still post some very reasonable returns," he said.

"We're a client advocate firm that's very focused on making sure that our clients win and win first."

Michael D. O'Halleran
Chairman and CEO

Lower rates, higher retentions and some consolidation among ceding clients contributed to a slight decline in revenues at Aon Re to $940.0 million in 2004, although new business growth offset the decline somewhat.

Aon Re's biggest challenge now is to "make certain we have enough people and enough resources to solve the needs of our clients in this very difficult market environment," Mr. O'Halleran said. Indeed, after nearly two years of a soft reinsurance pricing environment, the reinsurance market is beginning to harden once again following Hurricane Katrina, which many predict will go down as the nation's costliest disaster.

"We're going to work very, very hard on their behalf to minimize and mitigate the severity of rate increases and work toward finding creative solutions to help them through what's going to be a very difficult renewal season," he said. "But under any scenario—whether it's a $30 billion storm or a $60 billion storm—there's going to be a significant impact in reinsurance rates, reinsurance capacity, and the supply-and-demand curve is going to tighten up," he acknowledged.

Not only are ceding clients going to be looking to fill their capacity for cat exposures but, in many cases, they also will be purchasing more coverage as a result of two seasons of "monumental" catastrophe

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losses around the world, Mr. O'Halleran predicted.

Aon Re will attempt to meet those clients' needs while working under a new global leadership model. Aon Re recently legally changed its name to Aon Re Global from Aon Re Worldwide, and the company is now structured into four regions: the Americas, continental Europe, the United Kingdom and Asia-Pacific.

The CEOs of those regions—Mike Bungert, Olivier du Passage, Philip Stamp and Malcolm Steingold, respectively—report to Mr. O'Halleran. Dennis Mahoney remains deputy chairman of Aon Re.

Mr. O'Halleran is quick to point out, though, that the new model is more of "a redefinition of what Aon Re has been" than a restructuring effort. "A lot of the players that have been in place continue to be in place," he said. Indeed, while Mr. O'Halleran recently assumed the title of chairman and CEO, he had already overseen Aon Re as senior executive vp of parent company Aon Corp.

At least one leader, though, will not be part of the new global model. Clement Booth, former CEO of Aon Re International, is leaving the company at the end of the year to assume a management position with Allianz A.G. "While we are sad to see Clem leave…we are feeling quite good about where we're going," Mr. O'Halleran said.

In addition to operating under a new global model, Aon Re also is running its business in accordance with a settlement agreement reached between its parent company and attorneys general in three states. Aon earlier this year agreed to pay $190 million in restitution to policyholders to settle charges that it steered business to those insurers paying the highest contingent commissions (*BI*, March 7). Officials also charged that Aon linked insurance placements with reinsurance brokerage business.

According to Mr. O'Halleran, Aon Re has "taken very seriously" the agreement with the attorneys general. "We're running our business with the knowledge that we must avoid any conflicts of interest that we obviously are aware of," he said.

"Disclosure is at the heart and central to everything that we do, but I don't think that was an issue to begin with from the reinsurance side," he said. "From the standpoint of our operating within the Aon model, clearly, there are no meetings that take place between retail and reinsurance relevant to markets or clients. That is something we're very cognizant and compliant (about)," he said.

Mr. O'Halleran stressed, though, that the settlement has had no consequential impact in terms of revenue. The amount Aon Re collected in contingent commissions before the settlement, he said, was "immaterial."

"This is an organization that was built on the fundamentals of its technical competencies," Mr. O'Halleran said. "People pick us for those, as opposed to any other decision."

—By Sally Roberts

Guy Carpenter & Co. Inc.

Guy Carpenter & Co. Inc. expects to see its business pick up in coming months as reinsurance markets tighten in the wake of Hurricane Katrina and as it weathers the regulatory storm that has engulfed its parent, Marsh & McLennan Cos. Inc.

While the extent of any market tightening won't be clear until after the Jan. 1, 2006, renewals, the world's second-largest reinsurance intermediary will benefit from the expected firming of property/casualty reinsurance rates and from ceding insurers' likely moves to reduce retentions, said Sal Zaffino, Guy Carpenter's chairman and chief executive officer.

Meanwhile, Mr. Zaffino said Guy Carpenter has not been significantly damaged by New York Attorney General Eliot Spitzer's fraud and antitrust charges against MMC and its primary brokerage unit, Marsh Inc.

"Carpenter has lost no (existing) business as a result of the investigation," he said, adding, though, that it's harder to gauge whether any new business opportunities have been lost.

Mr. Spitzer's suit focused on Marsh's retail operations, and while the attorney general attacked the practice of reinsurance tying in a complaint against rival Aon Re Worldwide, no such allegations were leveled against Guy Carpenter.

Tying involves brokers pressuring insurers for their reinsurance placement business in exchange for retail production.

"We felt it was in the best business interests of Carpenter, Marsh and MMC to keep operations separate. As a result, there was no tying," Mr. Zaffino said.

The operations have been separated further as part of the MMC restructuring that followed the Spitzer suit. While Guy Carpenter's top executives previously reported to the head of Marsh Inc., lines of authority have changed and Mr. Zaffino now reports directly to MMC Chairman Michael Cherkasky.

Guy Carpenter also has implemented a global compensation disclosure policy on both its treaty business, which accounts for 92% of its volume, and its facultative business, which accounts for the remainder. On treaty placements, for example, Guy Carpenter reports its compensation on the cover note for each treaty, and its expected total compensation for brokerage and other services when it wins appointment as broker of record and at each subsequent renewal.

While MMC's retrenchment over the past year has involved thousands of layoffs at Marsh and other units, Guy Carpenter's staffing level has remained relatively steady at

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about 2,600, the company reports.

"The staffing reductions had no effect on Guy Carpenter worldwide," Mr. Zaffino said, noting that the intermediary has added employees in various locations in the United States and abroad and has expanded staff at its Instrat catastrophe modeling unit.

After more than a year of softening market conditions prior to this year's hurricanes, Guy Carpenter expects its own prospects to improve over the next year.

Gross revenues, as reported by Guy Carpenter, inched up 2.1% in 2004 to $868 million. This figure includes interest income on fiduciary funds and other items not included in MMC's own 2004 report of reinsurance brokerage revenue. During the first half of 2005, though, reinsurance brokerage revenues as reported by MMC fell 4% to $474 million from the first half of 2004.

In part, this was because insurers ceded less of their profitable business, boosting net retentions to higher levels than they have carried for several years, Mr. Zaffino said. Rate softening that was noticeable with the last Jan. 1 renewals also accelerated through the spring and summer of this year, he added.

"We felt it was in the best business interests of Carpenter, Marsh and MMC to keep operations separate."

Sal Zaffino
Chairman and CEO

These trends are likely to reverse themselves as record losses from Hurricane Katrina pile up, though the extent of any market tightening is still unclear, he said.

Right now, the biggest challenge facing ceding companies is assessing the extent of their own losses and re-examining their exposures, Mr. Zaffino said. The size and complexity of Katrina losses—which will hit an array of coverages from property and flood to pollution liability insurance—exposed shortcomings in catastrophe modeling programs, and those models will have to be "recalibrated," he said.

Mr. Zaffino said he expects business from U.S. cedents, which represent 58% of Guy Carpenter's client base, to be strong next year, particularly in its mid-America region, where it is targeting regional specialty insurer clients.

The intermediary is also expanding outside the United States and expects solid growth in the United Kingdom and continental Europe, Australia, China and other Asia/Pacific countries, he said. Management of global facultative operations has been centralized in London under Managing Director Julian Samengo-Turner, and facultative business—while still a small part of overall revenues—could see double-digit growth next year, Mr. Zaffino said.

Guy Carpenter has offices in 17 U.S. cities, including New York, and in 28 other cities around the globe.

In August, Guy Carpenter named David Spiller as its new president, effective Jan. 1, 2006. Mr. Spiller was formerly CEO of rival Benfield Ltd. in London.

Last month, the intermediary also hired Jack Snyder, former chief marketing officer of American Re-Insurance Co., to become its managing director in charge of business development for the Americas.

—By Douglas McLeod

Benfield Group Ltd.

Independence and analytical expertise are the key qualities that cedents value in Benfield Group Ltd., according to Grahame Chilton, the reinsurance intermediary's chief executive officer.

The London-based intermediary is the only reinsurance brokerage with more than $500 million in gross revenues that operates independently from a larger retail parent, and that independence helps Benfield to stay focused on its clients, he said.

Even as the company grows and expands into commercial retail insurance, independent thinking will remain at Benfield's core, he said.

"Independence is a state of mind," Mr. Chilton said. "If you work for Benfield, the absolute focus should be your customer. Everybody here is focused on what's best for the customer," he said.

Although a relative newcomer to the ranks of the global reinsurance brokerages, Benfield can trace its history in reinsurance brokerage back to 1874. Mr. Chilton joined the group in 1982 and was part of a management team that led the buy-out of Lloyd's of London broker Benfield, Lovick & Rees in 1988.

"Independence is a state of mind. If you work for Benfield, the absolute focus should be your customer. Everybody here is focused on what's best for the customer."

Grahame Chilton
CEO

Since Mr. Chilton's appointment as group CEO in 1996, Benfield has expanded rapidly through a combination of organic growth and acquisitions, including those of Grieg Fester, Bates Turner Inc. and E.W. Blanch Holdings Inc.

Over that period, Benfield's revenues have increased sixfold. Last year, revenues from reinsurance brokerage and services totaled £304.6 million ($558.3 million) and the company employed 1,700 staff members around the world.

Mr. Chilton said he has driven the company forward in the strong belief that customers want a large, independent global reinsurance broker. That is more true than ever, he said, following investigations by New York Attorney General Eliot Spitzer and others of the contingent commissions charged by some retail brokerages.

Mr. Chilton said that Benfield has never participated in placement service agreements or market service agreements. "We have always believed in a transparent environment," he said. As a result, in today's environment, Benfield is well placed to make the most of the new regulatory climate for risk intermediaries, according to Mr. Chilton.

In addition, strong analytical and technical skills are among Benfield's main strengths.

Much of Benfield's technical expertise is provided by its ReMetrics division, which provides a quantitative approach to risk management and the purchase of reinsurance. This division's units include:

- An actuarial team, which helps

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customers determine their most significant risks and risk accumulation potentials to better identify and compare reinsurance and other services.

- A natural-hazards team, which includes analysts, engineers, scientists and software developers.
- An industry analysis and research team, which provides credit risk and analytical services on reinsurers and Lloyd's syndicates.
- An alternative risk transfer brokerage team, which works on nontraditional products, combining insurance and risk transfer, sometimes with financing features, to protect companies from all types of risk. Transactions have included advising on and placing a multiyear, multiline contingent credit facility for up to £500 million ($885.0 million) for Lloyd's Central Fund.
- A risk software team, whose products include ReMetrics, a dynamic financial analysis and risk-modeling tool and EXPECT, an exposure, evaluation and control tool aimed primarily at terrorism exposure.

ReMetrics also includes a risk consulting team and a specialist corporate finance and advisory team.

Although Benfield has historically focused on reinsurance brokerage services, in September it launched a primary brokerage unit, Benfield Corporate Risk, to focus largely on marine, energy and power businesses, along with some corporate and aviation insurance (*BI*, Sept. 12).

Looking ahead, Mr. Chilton predicted that events such as hurricanes Katrina and Rita will result in a resurgence of reinsurance buying. "Companies will begin to question the size of their retentions and how much protection they need, and we will see more companies coming back into the insurance and reinsurance market for more cover," he said.

"The world is terribly underinsured, and self-retention levels in the developed world are too large," Mr. Chilton said. "Sept. 11, Katrina and Rita have made the world significantly more aware of risk."

—By Carolyn Aldred

Willis Re

Willis Re is well-positioned to grow after revamping its organizational structure over the past year, according the reinsurance intermediary's senior executive.

By changing its structure to reflect areas of reinsurance expertise rather than general risk categories and taking advantage of opportunities to hire talented brokers that fit in with the Willis culture of teamwork, communication and integration, the intermediary should be able to build on its well-established market position, he said.

In addition, over the next several months, Willis Re will complete senior management changes that began last year.

Willis Re has seen significant growth over the past several years and now employs more than 1,000 in 38 offices worldwide.

"We realized that we needed a slightly different infrastructure to manage that size of business," said Grahame Millwater, chairman and chief executive officer of Willis Re. Mr. Millwater was named head of Willis Re last year, when he succeeded John Pelly, who retired after 33 years with the London-based reinsurance broker. Mr. Millwater was previously chief operating officer at Willis Re.

The revamped infrastructure is based on its main areas of operations: U.S. property and casualty reinsurance; international property and casualty reinsurance; and specialty lines such as marine, aerospace and retrocessional business.

The reorganization formalizes Willis' U.S. and international division structure and brings specialty lines reinsurance brokers into one unit, said Mr. Millwater. Previously, for example, marine reinsurance brokers would have worked alongside marine insurance brokers.

Willis Re U.S. is headed by Peter Hearn, and Willis Re Specialty is lead by Chris Clark. Mike Murray is currently chief executive of Willis Re International, but he will retire next spring and be succeeded by James Vickers, who is currently chief operating officer of the unit.

The reinsurance intermediary, which is a unit of London-based Willis Group Holdings Ltd., saw an increase in revenues and staff last year. Revenues increased 7.2% to $550 million in 2004, and staff numbers increased to 1,159 from 1,110.

Staff numbers could increase this year, too, as Willis Re seeks to recruit from rival brokers amid the dislocation in the brokerage market following New York Attorney General Eliot Spitzer's investigation into the insurance brokerage industry last year, Mr. Millwater said.

"We have a lot of people knock-

Continued on next page

Continued from previous page

ing at our door—there are opportunities to recruit," he said.

Willis aims to be selective about whom it hires to ensure they fit in with the company's culture and, therefore, speaks to many more potential hires than actually are recruited, he said. The broker has, however, hired some new staff members from smaller brokers in recent months, he said.

"What appeals to us about them is that they're hungry—they have had to fight for business, but when they walk into Willis they then have all the resources and skills at their disposal, and the Willis name gives them the ability to walk into places they have never been able to walk into," he said.

In addition to hiring new staff, Willis Re will also look to grow through acquisitions, Mr. Millwater said.

In recent years, Willis Re has made some small acquisitions to gain a better foothold in certain geographical markets, and it will continue with that strategy, he said.

Earlier this year, Willis announced that it was combining its French and Belgian business with that of Paris-based broker Gras Savoye S.A. to form Willis Gras Savoye Re.

"We have a lot of people knocking at our door—there are opportunities to recruit."

Grahame Millwater
Chairman, CEO

Willis acquired a minority stake in Gras Savoye in 1997, but, Mr. Millwater said, believed it needed to integrate the brokerages' French and Belgian business in order to effectively serve the French and Belgian markets.

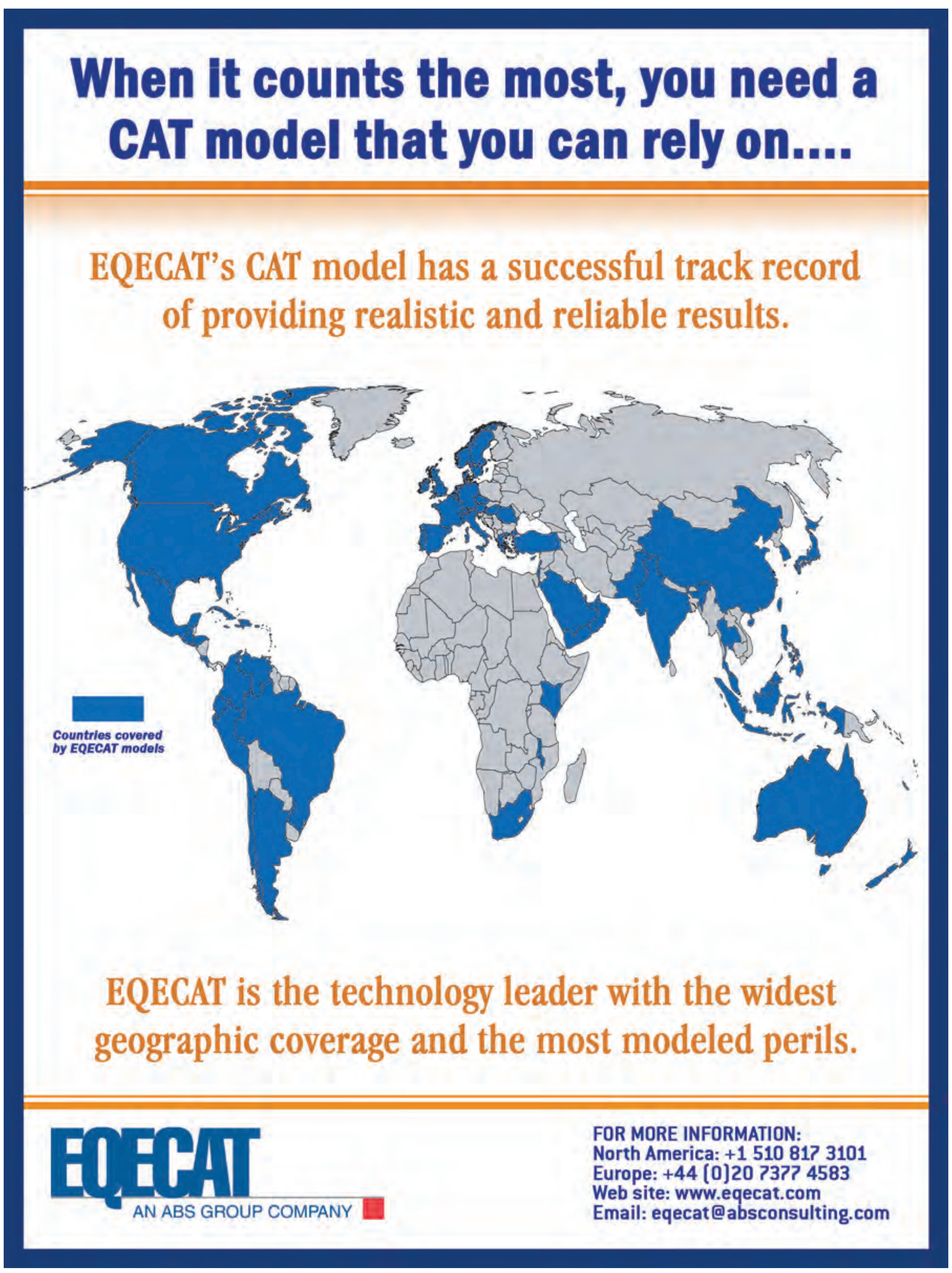
"This is an ideal match, because (it gives Willis) a French presence on the ground that is very entwined with the French insurance market—which is not a market you can do from anywhere else but France," Mr. Millwater said.

The company is headed by Luc Malâtre of Gras Savoye and retains the Gras Savoye name in its title because of the importance of that brand in the French and Belgian marketplace, he said.

In addition, earlier this month, Willis Re acquired the business and assets of Johannesburg, South Africa-based Reinsurance Consultants and Intermediaries Ltd., the reinsurance division of South African broker Glenrand M.I.B. Ltd.

Willis Re is looking at a couple of other potential areas in which it wishes to expand, Mr. Millwater said, but "if we do acquisitions they will be relatively small acquisitions."

—By Sarah Veysey



Reinsurance brokers reorganize, recruit amid market changes

Intermediaries strive to expand

Substantial changes also took place last year among reinsurance brokerages outside of the big four.

Several brokers within the top 10 made significant organizational changes last year, while others expanded their reach.

At Towers Perrin Reinsurance in Philadelphia, the worlds fifth-largest reinsurance broker continued to expand and make strategic hires in 2004, said William H. Eyre Jr., managing director and chief executive officer.

"We set up a marine and energy division (in Philadelphia, New York and London) and hired folks from several of our competitors. We also entered the agribusiness (sector), with the operation based in Chicago," he said.

"This year, we've had a lot of things happening—we continue to grow our senior staff," Mr. Eyre said. "We snapped up the father-and-son duo John and Jay Woods from Gallagher Re to augment our national production efforts. In addition, we hired former Guy Carpenter broker Mike DiLoreto in Dallas, and Adrienne Reid, the former chief underwriting officer of American Re Broker Market."

"Along with these new hires, Towers Perrin Re had realigned its production efforts along the lines of regional large and specialty companies with various practice groups assisting its clients," said Mr. Eyre.

London-based broker Jardine Lloyd Thompson P.L.C., the sixth-largest reinsurance intermediary, is creating a new unit, JLT Re, to house the reinsurance business that is currently handled through JLT Risk Solutions.

JLT Re will officially launch on Jan. 1, 2006, subject to Financial Services Authority approval.

Alan Griffin, who will be chief executive of JLT Re in London, said: "We wanted our own defined management and identity in the reinsurance community. And as a separate company, JLT Re has senior management with a clear focus on the reinsurance business, and this is more attractive to new recruits and particularly when you want to build on the business."

Mr. Griffin joined JLT Risk Solutions in July from Aon Re U.K., where he was chief operating officer. Mike Hammond, who will remain CEO of JLT Risk Solutions, will serve as chairman of JLT Re.

Mr. Griffin said that there has been a "long lead-in time" for the reinsurance division to begin. Between 1997 and 2001, JLT's reinsurance results were "good" but its client base was "narrow," he said. The Sept. 11, 2001, terrorist attacks were the "catalyst for change," he said.

JLT saw a 21.3% drop in reinsurance revenues in 2004 to £79.2 million ($152.1 million). The reasons for the fall include changing buying patterns of reinsurance buyers, the impact of lower rates and the weaker U.S. dollar, according to JLT.

Going forward, JLT Re will seek to grow its nonmarine business, in particular, Mr. Griffin said.

"It's our biggest opportunity, because it's the biggest sector but has been our smallest penetration."

Cooper Gay (Holdings) Ltd., the seventh-largest reinsurance brokerage, has expanded its global presence over the past year and "has every intention to grow (its) reinsurance operation" over the coming year, according to Toby Esser, the London-based company's group CEO.

Cooper Gay in August established Cooper Gay & Cashman, a treaty reinsurance brokerage headquartered in Minneapolis and headed by Michael W. Cashman, formerly vice chairman of Aon Re Global.

In addition, Cooper Gay in September 2004 opened a North American treaty division based in New York.

And in May 2005, Cooper Gay opened an office in Brazil, and in April it opened offices in Moscow and in Minsk, Belarus, among other developments.

Itasca, Ill.-based Arthur J. Gallagher & Co., reorganized its reinsurance operations last year to form Gallagher Re, which ranks as the eighth largest reinsurance brokerage. The unit comprises previously separate businesses in the United States, Bermuda and London.

BMS Group, the ninth-largest brokerage, saw a more than 40% increase in gross revenues in 2004 to $73 million, due to the purchase of Vision Reinsurance Intermediaries Inc. in Dallas and the expansion of its other international reinsurance business, said Graham McKean, chairman of the London-based brokerage.

In particular, BMS' international business in southeastern Europe and in India saw increased revenues last year, he said. BMS currently manages its Indian business through its London office but has applied for a license to operate in India, Mr. McKean said.

Heath Lambert Group, the 10th-largest reinsurance brokerage, saw a more than 44% drop in revenues to $59.9 million in 2004. The London-based brokerage announced a restructuring in 2003 and sold off several units.

—Barbara Cockburn, Mark A. Hofmann, Gavin Souter and Sarah Veysey contributed to this article.

PRODUCTS & SERVICES

IFEBP updates handbook for trustees

BROOKFIELD, Wis.—The International Foundation of Employee Benefit Plans has published its sixth edition of "Trustees Handbook—A Practical Guide to Labor-Management Employee Benefit Plans."

The book is a reference tool for trustees or professionals who serve multiemployer funds. Some of the topics discussed include fiduciary duty and responsibility, investment of plan assets, collections and administration of Taft-Hartley Plans.

To purchase the book, contact the IFEBP's publications department at 888-334-3327, option 4, or e-mail books@ifebp.org. More information on the books can be found at *www.ifebp.org/bookstore.*

FM Global releases risk management studies

JOHNSTON, R.I.—Factory Mutual Insurance Co., which does business as FM Global, has issued two studies on the state of risk management.

The report, "Managing Business Risk in 2006 and Beyond," has North American and U.K. versions. The North American edition surveyed more than 600 financial executives around the world who work for North American-based companies with at least $500 million in annual revenue. The U.K. version surveyed 500 financial executives from Europe and North America who work for European-based companies with at least £300 million ($528.06 million) in annual revenues and compiled their perspectives and opinions of the U.K. business market.

Some of the findings in the North American report are that risk management is a moderate to high corporate priority for 96% of North American-based companies surveyed; and that corporate governance reforms are increasing the corporate focus on risk management for 88% of North American-based companies.

In the U.K. study, findings indicate that risks associated with globalization and outsourcing are more of a priority for U.K.-based companies than for those based in other countries; and that many of the U.K. companies surveyed do not view "terrorism/ sabotage" as a major business threat.

In addition to these two reports, a France-oriented version will be available in the coming weeks. To download the executive summary and report, visit *www.protectingvalue.com*. For more information on Johnston, R.I.-based FM Global, *visit www.fmglobal.com.*

AIG Consultants enhances crisis management tool

NEW YORK—AIG Consultants Inc., a subsidiary of American International Group Inc., has enhanced its Planning and Tracking Response Online program by adding wireless capabilities.

The PATROL crisis management tool helps businesses prepare and respond to crisis situations by providing access to a global network of crisis-related service providers for pre-event planning, event response and postevent support. Services offered include business intelligence, investigation, workplace violence prevention and response, and employee protection, among others.

The new wireless capabilities allow businesses to order vendor information via a cell phone or a hand-held e-mail device.

For more information, contact AIG Consultants at 714-436-3247.

MHN launches program for anger management

POINT RICHMOND, Calif.—Managed Health Network Inc., a behavioral health and employee assistance program provider, has launched an anger self-management program designed to assist employees on a voluntary or court-ordered basis to learn how to deal with their anger in a functional way.

The anger self-management training is available in a classroom setting or by telephone. MHN's 12-hour program is conducted by a certified anger management counselor. The program focuses on what is known as the "four A's": awareness of triggers, arousal control, automatic thought control and action management.

The program was created due to rising reports of workplace violence and domestic abuse.

For more information, contact the company at 800-327-7526 or visit its Web site at *www.mhn.com.*

Lexington introduces policies for motor carriers

BOSTON—Lexington Insurance Co., a unit of American International Group Inc., is offering a transportation product suite with two policies, with additional coverage endorsements for motor carriers.

Lex TransportPlus includes a motor truck cargo policy and a vehicle physical damage insurance policy, which are available together with a single aggregate deductible and limit or on a standalone basis.

The motor truck cargo policy covers any legal obligations of common and contract carriers. In addition, several optional endorsements are available within the policy, including employee theft, contract penalties and expediting expenses.

Vehicle physical damage insurance is available to school, commuter and tour buses, as well as rescue vehicles and dump trucks, among others. The policy offers coverage options for a variety of specified perils and damages and can be extended to include temporary transportation rental expenses and temporary replacement vehicle physical damage. In addition, optional limits are available for towing, storage and debris-removal expenses.

More information can be obtained by contacting Steve Silverman, assistant vp-Lexington Property, at 617-330-8492 or *lexproperty@aig.com.*

We'd like to report on new risk management and employee benefit products and services offered by your company. Send information about your new offerings to: Carrie A. Peinado, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; telephone: 312-649-5313; fax: 312-649-7801; e-mail: cpeinado@businessinsurance.com.

COMMENTARY

Senior Editor Douglas McLeod

Handing off(shore) pension obligations

Defined benefit pension plans are beginning to look like the tar pit that will swallow their dinosaur sponsors along with the U.S. Pension Benefit Guaranty Corp.

Companies ranging from giant auto parts maker Delphi Corp. to tiny Pittsburgh Brewing Co. are lining up to terminate their plans and shift billions of dollars of unfunded liabilities (well, $12 million in Pittsburgh Brewing's case) to the PBGC. The PBGC itself is already running a $23 billion deficit, and Congress may or may not get around to enacting funding reforms this year.

Given all of that, I have a suggestion: The Pension Outsourcing and Caribbean Basin Development Act. This law would allow employers to spin off their underfunded defined benefit plans to newly created companies based in Anguilla, Montserrat, St. Eustatius or some other such domicile.

Capital requirements for these new companies would be nonexist-…uh, flexible. Employers would still be required to make contributions to the plans, or course, but the spinoffs would be given plenty of leeway in their actuarial assumptions. The assumed annual rate of return on plan assets, for example, could be set at any reasonable level up to, say, 80%.

Offshore managers would have the same kind of leeway in investing plan assets, allowing them to opt for investments with big long-term potential, like undeveloped Brazilian timberland or vermiculite futures.

And if, after all of these improvements, the plans still ran out of money, at least you couldn't blame anyone for not trying.

On the plus side, the law would assign no responsibility for an insolvent plan, meaning that pension debts could not drag plan sponsors into bankruptcy or create billions of dollars in added costs for the PBGC.

And this says nothing of the economic benefits to Montserrat.

Actually, the growing pension debacle reminds me of "The Corporation," a 2004 book by University of British Columbia law professor Joel Bakan. The book's premise is that corporations, by their nature fixated on their own interests, often behave in ways that would be considered sociopathic in a person.

Enron Corp., to take Mr. Bakan's most egregious example, worked hard to deregulate energy futures trading in the 1990s and then cooked up schemes to create artificial shortages in California, reaping billions of dollars in profits.

Now, for all I know, Enron's former energy traders are not bad people—they may love their children and treat their dogs well—but the fact is they joked about gouging "Grandma Millie" and other California ratepayers while keeping power plants offline.

Struggling employers' efforts to dodge pension obligations, while possibly less odious than Enron's manipulations, grow out of the same kind of disregard for interests other than the company's.

Plan sponsors may argue that they are in dire straits, that plan terminations are a desperate last resort needed to keep businesses alive. They're probably right.

But it's not as if the pension burden appeared out of nowhere. Companies that have terminated plans typically underfunded them for years before they reached a crisis point. Some promised bigger benefits to satisfy workers even as they failed to set aside enough to fund existing benefits. Some continued paying regular dividends to stockholders at the same time they were shortchanging their retirement plans.

The existence of a federal guarantee—the PBGC—has increased plan sponsors' temptation to give their funding duties short shrift.

The history of government financial guarantees in the absence of strict standards of corporate behavior is not pretty. Take the savings and loan crisis of the 1980s: Deregulation allowed S&Ls to make riskier investments with depositors' money, while the government kept deposit insurance protections in place. The result was a massive federal bailout of depositors damaged by reckless S&L entrepreneurs.

The point of Mr. Bakan's book is that regulation is an essential counterweight to the tendency of corporations to look out only for their own interests. Regulation's role is to remind companies that larger interests are at stake.

Congress must pass pension funding reforms that require companies to back up their promises. The private sector is working hard enough on the other end to scale back promises to current workers and to diminish expectations of the kind of benefits earlier generations of workers enjoyed.

Without reforms, the pension commitments of some U.S. corporations won't be worth much more than the promises of a fly-by-night company in Montserrat.

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

AARP appeals ruling letting EEOC issue regulation on retiree benefits

PHILADELPHIA—The AARP is appealing a September federal court ruling that said the U.S. Equal Employment Opportunity Commission has the authority to implement a rule that would exempt from the Age Discrimination in Employment Act changes to health care plans that affect retired workers when they become eligible for Medicare.

The practical effect of the rule, first proposed by the EEOC two years ago, would be that employers could provide a two-tiered system of retiree health care coverage—with younger retirees receiving more-generous benefits than Medicare-eligible retirees—without running afoul of the ADEA.

Judge Anita Brody ruled last month that federal courts are bound to follow interpretations of law by regulatory agencies if those interpretations are reasonable—which was the case in this issue, Judge Brody said.

In a court filing, the Washington-based AARP said it was appealing the ruling to the 3rd U.S. Circuit Court of Appeals in Philadelphia. The AARP said it believes if the EEOC is allowed to issue its rule, it will result in more employers cutting health care benefits for older retirees.

Employers say the rule will help to preserve the level of health care benefits they provide to retirees.

—By Jerry Geisel

Illegal immigrant ruled eligible for comp benefits in California

LOS ANGELES—The federal Immigration Reform and Control Act of 1986 does not pre-empt California laws holding employers liable for injured employees regardless of such workers' immigration status, a state appeals court ruled Monday.

California's 2nd District Court of Appeal, ruling in *Farmers Brothers Coffee vs. Workers' Compensation Appeals Board*, also found that an illegal immigrant's use of a fraudulent Social Security card and number to obtain employment and file a workers compensation claim did not violate a state anti-fraud insurance code. The employee in the case did not violate the code because he had not been convicted of fraud; such a conviction is necessary to render a worker ineligible for compensation.

The Los Angeles-based court also found that Congress did not intend to pre-empt state labor laws when it passed IRCA, which provides penalties for employers that hire illegal immigrants.

The appeals court's ruling upholds findings by a workers comp judge and the state Workers' Compensation Appeals Board.

—By Roberto Ceniceros

Business Resources

Employers liable for subcontractor negligence

Court finds "dual vicarious liability" applies in flooding damage case

By SARAH VEYSEY

LONDON—Two employers can both be held vicariously liable for the conduct of a subcontracted employee, the Court of Appeal in London has ruled.

Previously, case law had held that only one employer could be found vicariously liable for a subcontracted employee's negligence.

In the case of *Viasystems (Tyneside) Ltd. vs. Thermal Transfer (Northern) Ltd., S&P. Darwell Ltd., and T. Hall & C. Day trading as CAT Metalwork Services*, judges Lord Justice May and Lord Justice Rix ruled that two separate building companies could be held vicariously liable for the negligence of a single employee.

In passing judgment on the case, Lord Justice May noted that "it has always been assumed, since the early 19th century, to be the law that where an employee, who is lent by one employer for work for another, is negligent, liability must rest with one employer or the other, but not both."

But in their judgment handed down earlier this month, Lord Justices May and Rix ruled that two employers both could be held vicariously liable for the negligent actions of a worker who caused a flood and that both employers must share the damages.

The court has not yet decided the amount of damages that must be paid.

In July 1998, South Shields, England-based Viasystems (Tyneside) Ltd., engaged Thermal Transfer to install air conditioning in a factory. Thermal Transfer subcontracted the ducting work involved in the project to S&P Darwell, who, in turn, subcontracted CAT Metalwork Services to provide workers on a labor-only basis.

One of the workers employed was a Mr. Megson, and his assistant was Darren Strang. Both Messrs. Megson and Strang were installing ductwork under the supervision of Mr. Horsley, a self-employed pipe fitter contracted to S&P Darwell.

Messrs. Megson and Strang, therefore, were employed by CAT Metalwork Services, according to the court judgment.

At the time of the incident, the men were working in a roof space at the factory. Mr. Megson sent Mr. Strang to retrieve some fittings, during which time Mr. Horsley was helping Mr. Megson with the ducting.

When returning with the required fittings, Mr. Strang crawled through some sections of ducting

See **VICARIOUS**/page 39

Changing fortunes

Rosemont Re financial results for 2003 and 2004, in millions.

	2004	2003
Gross written premiums	$147	$200
Net earned premiums	$150	$233
Combined ratio	107%	87%*

*Excluding one off commutation

Rating downgrade will likely prompt Rosemont runoff

BY SARAH VEYSEY

HAMILTON, Bermuda—Goshawk Insurance Holdings P.L.C., the parent of Bermuda-based Rosemont Reinsurance Ltd., said last week that Rosemont's downgrade to B from A- by A.M. Best Co. increased the likelihood of the reinsurer being placed into runoff.

Oldwick, N.J.-based Best last week downgraded Rosemont Re after Goshawk said the unit, which has suffered significant hurricane losses this year, likely would be put into runoff after attempts to raise capital or sell the company failed.

The downgrade will "severely impair Rosemont Re's ability to write existing or new business and makes the prospect of a runoff more likely," Goshawk said in a statement.

Many cedents—particularly those in the United States—will not place business with a reinsurer that is rated below A-.

Earlier this month, London-based Goshawk said Rosemont Re expected net losses of about $90 million from hurricanes Katrina and Rita. The Hamilton-based reinsurer wrote gross written premiums of $147 million in 2004, mainly in marine and property lines.

In 2004, Goshawk rebranded its Bermuda-based reinsurance operations as Rosemont Re to distinguish them from Goshawk's Lloyd's of London operation, multiline syndicate 102, which was placed into runoff in 2003.

UK bill extends parental leave

LONDON—Fathers in the United Kingdom could take up to six months' paternity leave under the U.K. government's new Work and Families Bill, while from April 2007 mothers will be able to take up to nine months' maternity leave with statutory pay.

Statutory pay is a minimum salary required by U.K. law.

Trade and Industry Secretary Alan Johnson announced a series of measures aimed at giving greater flexibility to working parents.

Under the bill, statutory maternity leave will be extended to nine months from six months beginning in April 2007 "with the ambition of moving to a year by the end" of the current session of Parliament, the Department of Trade and Industry announced last week.

And fathers will be able to take an additional paternity leave on statutory pay if the mother returns to work after six months' maternity leave but before the end of her statutory maternity leave.

In addition, the DTI said it would, from April 2007, introduce a right for caregivers to request flexible working hours. Currently, parents of children younger than 6 or disabled children younger than 18 have the right to request flexible working hours, and employers have a duty to consider such requests.

The London-based Confederation of British Industry, which represents employers in the United Kingdom, said in a statement that while businesses are generally supportive of more flexible working for parents, the new bill could increase the administrative burden on U.K. companies.

The CBI said it would continue to lobby the government for the administration of statutory maternity pay to be handled by the government rather than by employers if companies—particularly small employers—wished to hand over this task.

The Institute of Directors, a London-based employers association, said it cautiously welcomed the bill but said it believed the cost of administration of the proposals should be handled by the government's tax collection department.

—*By Sarah Veysey*

Enterprise risk management must be part of companies' culture: Panel

By REGIS COCCIA

LISBON, Portugal—Enterprise risk management approaches may vary at different organizations, but one essential common thread is that ERM must become embedded within an organization's culture, advised an international panel of risk managers.

"Risk management must be high enough within an organization to address risks properly," said Susan Meltzer, president of the International Federation of Risk & Insurance Management Assns. She moderated a panel on ERM during IFRIMA's recent workshop in Lisbon, Portugal, in conjunction with the Federation of European Risk Management Assns.' biennial forum.

Risk managers "add value by ensuring the long-term viability of the organization," said Ms. Meltzer, who also is assistant vp-risk management at Toronto-based Sun Life Financial. She suggested that, to succeed, ERM approaches must:

Ms. Meltzer

- "Contribute to overall business objectives."
- "Establish a consistent, transparent framework for corporate governance."
- "Protect the organization from adverse variances and catastrophes."

"Implementation of ERM will differ from one organization to another. Your plan must include how you're going to embed ERM into the organization's culture," Ms. Meltzer said.

Risk managers must not shy away from expressing their views inside their companies, said Ellen Vinck, vp-risk management and benefits at BAE Systems Ship Repair in San Diego, formerly known as United States Marine Repair Inc.

"If risk management is buried beneath another department, it's very difficult to implement your strategy," said Ms. Vinck, who also is president of the Risk & Insurance Management Society

See **ERM**/page 39

Updates

Bill allows transfer of pension benefits

A proposed European Commission directive might mean European citizens could change jobs or move to a different country without losing work pension benefits. Currently, changing job or country can mean losing occupational pension benefits in some member states, but under the proposed directive, employers within the European Union will be able to transfer benefits with the employee across sectors and countries.

FM Global to open office in Singapore

Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global, plans to open a branch office in Singapore following regulatory approval. In a statement, the group said it is "excited about the opportunity to offer local Singapore companies an insurance and risk management program."

U.K. reaches pension deal with public workers

Public-sector workers in the United Kingdom will be able to continue to retire at 60 and be eligible for defined benefit pensions under a deal between the Trades Union Congress and the government. Last week, the Department of Trade and Industry said current public-sector employees would continue to be allowed to retire at 60 and begin drawing their pensions, while a retirement age of 65 for new public-sector workers will be introduced.

Equitable reaches deal with former executive

Equitable Life Assurance Society has reached a settlement with its former chief executive, Alan Nash. Under the settlement, Equitable Life will withdraw its negligence claim against Mr. Nash, and both sides will pay their own court costs. Equitable said in a statement that it will continue its legal action against 10 other former directors of the company. Additionally, Equitable Life Assurance Society has withdrawn a "lost sale" claim against 11 of its former directors.

Prettejohn to head Prudential in U.K.

Nick Prettejohn, chief executive of Lloyd's of London, will leave the market at the end of the year to become chief executive of U.K. operations for London-based life insurer Prudential P.L.C. Luke Savage, director of finance and risk management at Lloyd's, will be acting chief executive from Jan. 1, 2006, until a successor for Mr. Prettejohn is found.

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AAMGA American Association of Managing General Agents

INSURANCE TRADE ASSOCIATION EDUCATION DIRECTOR

The American Association of Managing General Agents (AAMGA) is a non-profit insurance trade association. Its University Foundation seeks a creative, self-motivated and experienced insurance professional for the leadership role of Education Director. Based in the AAMGA's headquarters in suburban Philadelphia, the qualified candidate will have a B.A or B.S. degree with advanced degrees, insurance (or other related) designations (e.g., CPCU, CIW, ARM, etc.), and at least 5 to 10 years experience working for the insurance industry. Teaching experience is a plus.

Travel will be required. The Director will also be responsible for championing the University Foundation's endowment program and managing its fund-raising activities. Proficiency with Microsoft Office Suite and the Internet is required.

Please send or fax resume in confidence to: Hiring Coordinator, Accolade Management, Inc., 150 South Warner Road, Suite 156, King of Prussia, PA 19406; fax: 610-225-1996. No telephone inquiries please. For more information please check our website at: **www.aamga.org**. Accolade Management, Inc. is the association management company for the AAMGA and the University Foundation, and is an equal opportunity employer.

LEGAL NOTICE | LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES)
No 4138 of 2004
CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF
THE HOME INSURANCE COMPANY
(IN LIQUIDATION AND IN PROVISIONAL LIQUIDATION)
AND
IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that a hearing to sanction a scheme of arrangement pursuant to Section 425 of the Companies Act 1985 (the "Scheme") between the above named company (the "Company") and its creditors with claims arising out of American Foreign Insurance Association treaty business written by the Company (the "AFIA Creditors") is scheduled to be held on 3 November 2005 before the High Court of Justice of England and Wales (the "High Court").

The Company is in liquidation in the State of New Hampshire, USA and in joint provisional liquidation in England and Wales.

At a meeting held in London on 8 September 2004, AFIA Creditors present in person or by proxy and voting at the meeting unanimously approved the Scheme. However, before the Scheme may become effective, certain conditions must be satisfied. One such condition is that the Merrimack County Superior Court of New Hampshire (the "New Hampshire Superior Court") must approve the sharing arrangement contained in the Scheme (the "Proposal") in principle.

The New Hampshire Superior Court initially granted approval on 29 April 2004. However, such approval was the subject of creditor challenge before both the New Hampshire Superior Court and the New Hampshire Supreme Court. The Joint Provisional Liquidators decided not to apply to the High Court for sanction of the Scheme until these challenges had been resolved.

By orders dated 8 October 2004 and 22 September 2005, the New Hampshire Superior Court reaffirmed its approval of the Proposal and, as a result, an important condition to the Scheme becoming effective has now been satisfied. The Joint Provisional Liquidators now intend to apply to the High Court for the sanction of the Scheme and to take all steps to implement the Scheme as soon as possible.

Any queries in relation to the Scheme or this notice should be raised with the Joint Provisional Liquidators, c/o Matthew Harrison at Ernst & Young Limited Liability Partnership, 1 More London Place, London, SE1 2AF, (telephone: +44 (0)20 7951 1195, fax: +44 (0)20 7951 9002).

DATED 18 October 2005
Clifford Chance Limited Liability Partnership
10 Upper Bank Street
London E14 5JJ
(Ref: DJS/JXXB)

LEGAL NOTICE

NOTICE OF BANKRUPTCY OF LLOYD'S NAME

On August 29, 2005, James Robert Phillips, a former Name in Lloyd's Syndicate Nos. 48, 65, 97, 104, 105, 109, 112, 126, 210, 218, 270, 293, 483, 484, 488, 529, 544, 566, 597, 601, 657, 684, 697, 732, 740, 741, 839, 923, 945, 947, 957, 963, 979, 1001, & 1036 filed Chapter 7 bankruptcy case no. 05-33502 in the United States Bankruptcy Court for the Western District of North Carolina, PO Box 34189, Charlotte, North Carolina 28234-4189. Policyholders and other beneficiaries of policies insured or reinsured by these syndicates may have claims against Mr. Phillips and should consult an attorney. You may obtain additional information from Mr. Phillips' attorney, Joseph M. Grier, III, Grier Furr & Crisp, PA, 101 N. Tryon St., Suite 1240, Charlottle, NC 28246 (telephone 704-375-3720, email **jgrier@grierlaw.com**) or you may view the Bankruptcy Court's website at **http://www.ncwb.uscourts.gov**. The Bankruptcy Court has set a deadline of December 27, 2005 for the filing of Proofs of Claim on the official court form. Failure to file a timely claim may lead to the claim being disallowed and to the discharge of any liability on the claim. Complaints to determine dischargeability of certain debts must be filed on or before November 28, 2005.

LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
COMPANIES (WINDING-UP)
1992: No.331
IN THE MATTER OF THE COMPANIES ACT 1981
AND IN THE MATTER OF
DESERT INSURANCE COMPANY LIMITED
IN LIQUIDATION
NOTICE TO CREDITORS AND CONTRIBUTORIES OF LIQUIDATORS' INTENTION TO APPLY FOR RELEASE

NOTICE IS HEREBY GIVEN that the Liquidators of the above-named company, intend to apply to the Court for their release, and further take notice that any objection you may have to the granting of the release must be notified to the Court within twenty-one days of the date hereof.

PETER C.B. MITCHELL *Joint Liquidator*

Dated: 17 October 2005

EDUCATION

Florida State University

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November 7 **Bermuda Market Report** **Bonus Distribution at IRMI & WCF** Ad Closing: November 1	November 14 **Professional Liability Risks** **Bonus Distribution at PLUS** Ad Closing: November 8	November 21 **Open News & Features** Ad Closing: November 15	November 28 **E-Commerce Risks** Ad Closing: November 22

Vicarious: Employers found liable for worker's negligence

Continued from page 37

already in place, moving them and causing a fire protection sprinkler to break. This caused a flood resulting in extensive damages.

A lower court ruling, at Newcastle County Court in 2004, judged that Mr. Strang was negligent but rejected an appeal by CAT Metalwork Services that he had acted on the express instructions of Mr. Horsley.

The lower court had not considered the issue of dual vicarious liability, according to the appeals court, and had determined that CAT Metalwork Services was vicariously liable for the accident.

CAT Metalwork appealed the decision on the grounds that it believed S&P Darwell to be wholly liable for Mr. Strang's negligence.

The appeals court, though, ruled that, despite the fact that the "conventional test" for vicarious liability did not consider the possibility of dual vicarious liability, the court was "of the view that there was no binding authority upon them to hold that dual vicarious liability was not possible," according to a statement by the Newcastle upon Tyne, England-based law firm of Crutes, which acted for Viasystems.

The judges ruled that both S&P Darwell and CAT Metalwork were vicariously liable and, because they had exercised dual control over Mr. Strang, "there should be an equal contribution by both," the Crutes statement said.

Rebecca Howitt, a partner at Langleys solicitors in York, England, who was not involved in the case, said the decision is a significant one because it addresses an issue that has not been looked at for 200 years.

In instances where dual vicarious liability applies, "the insurers of the general and temporary employers will be sharing the outlay on claims which previously would most likely have been paid exclusively by the insurer of the general employer," Ms. Howitt said.

In addition, she said, the appeal court's decision highlights the need for employers that subcontract certain functions to consider requesting that subcontracted companies provide indemnities for any claims arising from the negligence of the employees of the subcontracted firms.

Viasystems (Tyneside) Ltd. vs. Thermal Transfer (Northern) Ltd., S&P. Darwell Ltd. and T. Hall & C. Day trading as CAT Metalwork Services, Court of Appeal, Civil Division, Decided Oct. 10, 2005, No. B2 2004/2659; (2005) EWCA Civ. 1151.

ERM: Plan must be embedded in company culture

Continued from page 37

Inc. "Too many risk managers are afraid to challenge—you can't be timid. Offer to help and you will be accepted. One failing (of many risk managers) is that risk management should be looked at as a tool or a bridge. Too many risk managers turn it into a wall. You've got to tear the bricks down."

Ms. Vinck advised risk managers to "make friends with all the appropriate people at the company—the CEO, the board, CFO, treasurer, general counsel" as well as employees at all levels. Every risk manager should build relationships with "the people who really run the company, all the executive assistants," she said.

"If you are a risk manager who is a leader, others in your organization will follow you," Ms. Vinck said. "Don't forget the basics" of managing insurance programs and getting claims paid, and "don't give an answer if you don't know it's the right one—it's OK to say you don't have the answer," she said.

"If you believe in enterprise risk management, your organization will believe in you," Ms. Vinck said.

Gert Cruywagen, group manager of risk management at South African pulp and paper company Sappi Ltd., told the audience they should remember that "risk management is a process, not an event." Therefore, ERM requires a methodical approach.

Mr. Cruywagen said he likes to view risk from both sides. "A risk is not just a bad thing happening; it's a good thing not happening," he said

> "Don't forget the basics" of managing insurance programs and getting claims paid, and "don't give an answer if you don't know it's the right one—it's OK to say you don't have the answer."
>
> **Ellen Vinck**
> **BAE Systems Ship Repair**

The "four T's" of risk management, he said, are: treat, transfer, terminate and tolerate. Modern risk strategies follow a course that includes avoiding losses, treating or mitigating them, exploiting business opportunities that accompany risks, transferring risks, terminating them such as by exiting operations where the risks arise, and tolerating or accepting risks, Mr. Cruywagen explained.

A similar approach has been adopted by Switzerland-based packaging equipment company Tetra Laval International, noted Paul Taylor, head of group risk management and insurance.

Mr. Taylor said Tetra Laval has seen several important opportunities in implementing enterprise risk management. They include:

- Impacting the predictability of business planning.
- Delivering planned profitability.
- Reducing unwanted surprises.
- Exploiting business opportunities through better management of downside risks.
- Bringing a more consistent approach to risk.
- Increasing the effectiveness of insurance and risk financing.

"We are moving from informal processes to fully integrated and embedded business risk management," he said. One method he advised risk managers to consider is risk mapping by probability. For example, a company's risk map may show many low-severity events that are highly likely, along with catastrophic events that are less likely to occur. "It's important to identify acceptable risks and plot where to put controls," Mr. Taylor said.

GAO report ignores vital role RRGs play for buyers

Many policyholders could not operate without facilities

By JERRY GEISEL

WASHINGTON—A recently released U.S. Government Accountability Office report on risk retention groups does not provide a complete and fair picture of the RRG industry, according to a long-time RRG observer.

The report, made public in September, does not give enough attention to the vital role RRGs have played as a market for buyers of commercial insurance—in some cases, providing coverage where none was available, said Karen Cutts, managing editor of The Risk Retention Reporter, a Pasadena, Calif.-based monthly publication that tracks the RRG industry.

"There are doctors in Pennsylvania who could not have stayed in practice" had it not been for their ability to form an RRG to provide professional liability coverage, Ms. Cutts said during a presentation at the National Risk Retention Assn.'s recent annual conference in Washington. In addition, in New York, many small grocery stores owned by immigrants from the Dominican Republic who were shut out of the commercial market probably would have gone out of business had the RRG option not been available, she noted.

The GAO report recommends that the states and the National Assn. of Insurance Commissioners adopt a set of uniform regulatory standards for RRGs. Once those standards are developed, the GAO suggested, Congress may want to rewrite the federal Liability Risk Retention Act to limit the special pre-emption RRGs now enjoy from state insurance laws to groups domiciled in those states that have adopted the NAIC's standards.

In support of this recommendation, the GAO said nondomiciliary regulators are wary of RRGs because of variations in state regulatory requirements and because "domiciliary states may be relaxing chartering or other requirements to attract RRGs" for economic development, the GAO report said. Additionally, in support of more-uniform standards for RRGs, the GAO report, citing statistics from the NAIC, noted that 22 RRGs have failed between 1990 and 2003.

Ms. Cutts, while not disputing the GAO's numbers, said they don't tell the full story, noting that RRGs regulated as captives have a superior solvency rate compared to traditional insurers.

Lawrence Cluff, the author of the GAO report and the agency's assistant director of financial markets and community investments, who also spoke at the NRRA conference, said such comparisons, because of certain methodological issues, are difficult to make.

Ms. Cutts also said that though the GAO report says that nondomiciliary states may be wary of RRGs because of variations in state regulatory standards, she maintains the real reason behind their concern is regulatory resentment about the pre-emption of their ability to regulate the groups. "The real issue is not competence; it is loss of control," she said.

Still, Ms. Cutts said the GAO report is a valuable document. "It is a significant contribution to the industry because it enables self-reflection," she said. The risk retention industry needs to consider how to make itself "the best industry" it can be, she said.

As the NAIC considers possible new standards for RRGs, it is crucial that the NAIC's rule-making process be as open as possible, Ms. Cutts said. At the same time, the RRG industry has to do a better job of communicating the role the groups play as an alternative to the commercial insurance market. "Get your stories out about how important this industry has been," she advised.

The GAO's Mr. Cluff said he doesn't believe the Risk Retention Act should be changed in any ways that would prevent risk retention groups from being creative. But, he told NRRA attendees, there is a need for greater regulatory consistency and greater protection for members of the groups.

Additionally, he said, the law needs clarification so that RRG policyholders would be required to contribute to a group's capital and surplus, giving them a greater financial stake in the operation of the arrangement. A policyholder's interest is that premiums be as low as possible, while a policyholder-owner's interests are that premiums be adequate to meet future claims and that risk be appropriately managed to reduce the likelihood of future losses, Mr. Cluff said.

Chicago is '06 meeting site

WASHINGTON—About 100 people attended the National Risk Retention Assn.'s 2005 annual conference, held Oct. 17-18 in Washington.

Attendees heard presentations on a wide range of subjects, including problems risk retention groups continue to face in dealing with state regulators, growth in the RRG market and a U.S. Government Accountability Office report that makes numerous recommendations on how the groups should be regulated and organized.

The NRRA has not determined the dates for its 2006 conference, though NRRA officials say it will be held in Chicago next October.

More information about the NRRA—whose membership includes RRGs, risk purchasing groups, insurers, reinsurers and other service providers—is available at *www.nrra-usa.org*.

RRG: Some regulators still oppose coverage option

Continued from page 4

president of USA Risk Group in Montpelier, Vt. The federal law does not give nondomiciliary states authority to impose such a waiting period.

Mr. Osborne said California regulators have informally said that if they haven't acted one way or another after 60 days, an RRG can write business. He added, though, that the regulators have in some cases violated their own guideline, raising issues nearly a year after a group filed notice that it intended to do business in the state.

In another California situation, regulators are refusing to allow a group established to provide coverage to nonprofit organizations on the grounds that the members are not sufficiently homogenous, Mr. Osborne said. The federal law requires only that the groups comprise members of similar businesses.

Other types of interference include the imposition of registration and annual licensing fees on RRGs—fees that group supporters say are barred by federal law.

Regulators in states with captive laws acknowledge that some members of the regulatory community have an anti-RRG attitude.

"Many states have never liked the Liability Risk Retention Act. They have resisted it. They will do anything to change it," said Dana Sheppard, associate commissioner of the Risk Finance Bureau, the captive and RRG regulatory unit of the District of Columbia's Department of Insurance, Securities and Banking.

While the hostility of some state regulators to the Risk Retention Act has been widely attributed to regulators' resentment of the law's pre-emption of their authority, Mr. Osborne noted that regulators still retain significant control over the groups.

For example, a state regulator can stop an RRG from operating in any state if it obtains a federal court order that the group is in hazardous financial condition.

"They have tools that they are ignoring," he said.

Even in the face of regulatory obstacles and a softening of rates in the traditional market, new risk retention groups continue to be formed.

Health care providers—despite greater availability of professional liability coverage in the traditional market—continue to form new groups.

"We still have hospitals and physicians calling us," Mr. Osborne said. The issue that providers now face is the cost of coverage, not the availability, he said.

Mr. Osborne noted that while rates for such coverage may have stabilized, they are at a very high level.

SICO: Countersuit filed in AIG stock dispute

Continued from page 4

AIG executives were entitled to postretirement payments in the form of AIG common stock and cash, allotted above base salaries and bonuses paid by AIG (*BI*, July 4). That program was eliminated last month, when AIG board members approved a new deferred compensation and profit-participation plan to replace the SICO-operated plan.

As of March, SICO had awarded approximately 33 million shares of AIG stock to AIG employees via the deferred compensation plan since its inception, though 23 million of those shares have been awarded contingently and have yet to be distributed, according to court papers.

In its lawsuit, SICO states that it regards the commitment it made to plan participants "sacrosanct" and that it is prepared to distribute the 23 million contingent shares among past and current AIG employees who do not forfeit their right to collect them prior to reaching age 65.

However, to transfer the stock awards to participants free of restrictions imposed by federal securities laws, SICO requests that federal court declare that it is not considered an affiliate of AIG.

The lawsuit further asks a court to recognize that despite SICO's status as a shareholder of AIG, the insurer has no legal or contractual rights to SICO's assets. SICO has "no duty to use its assets to benefit AIG or AIG employees," the complaint states.

A spokesman for AIG declined to comment on SICO's complaint.

Workman: Valuable designation

Continued from page 4

knowledge of business law, management and other areas of insurance industry operations, Ms. Workman said. "It has all these pieces pulled into it," she said.

Ms. Workman pointed out, too, that risk managers can take advantage of the contacts they make within the society. "The network-

> "The network throughout the society is amazing. ... I find that extraordinarily valuable."
>
> **Millicent W. Workman**
> **CPCU Society**

ing throughout the society is amazing," she said. While Ms. Workman acknowledged that other organizations, such as the Risk & Insurance Management Society Inc., also provide great networking opportunities, she stressed that the CPCU Society is unique in that its membership cuts across many insurance-related professions. "I find that extraordinarily valuable," she said.

Ms. Workman, who was *Business Insurance*'s Risk Manager of the Year in 1992, earned her CPCU designation in 1975. She served in a variety of local and national positions with the society before being named the society's vp for the 2003/04 term.

As president, Ms. Workman plans to continue the work the society has begun to inject fresh points of view into its membership. The way to do that, she said, will not be to focus on diversity of gender or race but to encourage new participants in leadership roles at the organization. That will give the group a "diversity of views" that it currently lacks, she said.

Ms. Workman said that she has one new CPCU designee working on the group's annual meeting task force. "That's how you do that," she said of the diversity effort, "by bringing in new people."

Getting the word out about the benefits of joining the society will help improve its visibility at a time when many organizations are closely watching expenses, according to Ms. Workman.

Insurers, in particular, have been hard hit by this year's catastrophic storms after suffering heavy disaster losses in 2004, she said. Downsizing and budget cuts have been a response by some of those companies, Ms. Workman said.

"That impacts their support of a society like CPCU," she said. "Certainly, a lot of our members can support their involvement, but it becomes hard for some others to do that."

Finite cover needs regulation not prosecution

Clear rules required for valuable tool

By Roxani Gillespie and Albert Lewis

Nature abhors a vacuum—and so, apparently, do prosecutors.

In the absence of clear guidelines governing finite reinsurance, prosecutors have stepped in to create their own rules—through litigation and prosecution. More than 50 blue-chip companies—including General Electric Co., Metropolitan Life Insurance Co., Berkshire Hathaway Inc., CNA Financial Corp., MBIA Inc., St. Paul Travelers Cos. Inc. and Lloyd's of London—have received subpoenas from federal and state regulators regarding their finite reinsurance transactions.

An obscure transaction between American International Group Inc. and General Reinsurance Corp., owned by Berkshire Hathaway Inc., has resulted in two guilty pleas and the precipitous removal this spring of industry titan Maurice R. Greenberg from the position he earned atop the insurance industry over almost 40 years.

While we don't know all of the specifics of this transaction—regulators and midlevel executives at Gen Re have offered their version, but Mr. Greenberg and others have not yet had the opportunity to have their say—it seems clear that the murky rules on finite reinsurance call for clarification, not criminalization.

Finite reinsurance is a fairly arcane product that accounts, at most, for 3% to 5% of the premiums written annually by the U.S. reinsurance industry. A relatively new concept, developed in the 1980s, it has become a vital and legitimate tool for insurers seeking to manage risk, which, after all, is what insurance is all about.

This growth, though, has taken place in a regulatory vacuum. The various rule-setting organizations, from the Financial Accounting Standards Board to the National Assn. of Insurance Commissioners, have had little to say about finite reinsurance, and what they have said often has been vague or even contradictory.

The absence of clear guidelines has tempted some law enforcement officials, such as New York Attorney General Eliot Spitzer, to step in and begin a process of rulemaking by litigation or prosecution, rather than by debate and analysis among insurance industry regulators and professionals. This is both wrongheaded and unfair.

A core issue in the transaction between AIG and Gen Re and in other investigations is the scope and definition of "risk transfer." While rules on finite reinsurance may be vague, there is broad agreement that if there is no transfer of risk, then the transfer of a loss portfolio is a loan and not reinsurance and should be accounted for and disclosed as such.

But there are no hard and fast rules for determining what level of risk is necessary for making this determination. The process for determining whether a finite reinsurance contract qualifies for reinsurance accounting is complex and highly subjective.

The general, informal rule of thumb that has developed is to categorize a contract as eligible for reinsurance accounting if the reinsurer has at least a 10% probability of occurrence of at least a 10% risk of loss. The FASB and the NAIC are only now studying how to clarify the rules. At a meeting of the FASB in April, a FASB executive said the body "would start work on defining 'a contract' and 'a risk' more specifically and use those definitions as a starting point for a proper finite insurance accounting framework."

Many in the industry view the 10/10 rule as requiring that only 1% risk be present in a transaction in order to qualify for reinsurance accounting treatment. In an April 12 Bloomberg article, Robert Herz, chairman of the FASB, said when referring to the 10/10 rule, "It's insurance if there's been a 10% risk of losing 10%...that's 1% and doesn't sound like much risk to me."

It will be interesting to see whether the Gen Re portfolio had 1% risk of loss to AIG.

We agree with Mr. Herz and others that clarifying the rules is a good idea. Applying new rules retroactively or prosecuting industry executives who operated in good faith under imprecise standards is not.

The regulatory bodies should craft a clear definition of finite reinsurance that differentiates it from loans and other financing transactions. Critically, they must work to clarify the requirements for risk transfer.

These are complex, difficult issues, and their proper resolution should come through the careful, deliberative processes followed by the regulatory organizations. The NAIC and other groups have assigned task forces to research and draft the needed standards, but they must be given time to do their work.

Finite reinsurance is an example of innovation in the industry that—when disclosed and accounted for properly—is beneficial to businesses, policyholders and stakeholders. It is needed, wanted and sought by sophisticated purchasers, and the insurance industry should be able to sell the product without having prosecutors approve each transaction.

Innovation frequently outpaces regulation in business, but the solution to imprecise or outdated rules is new regulation, not rule-setting through selective prosecution.

Roxani Gillespie is a former California insurance commissioner and currently a partner in the San Francisco office of Barger & Wolen L.L.P. Albert Lewis is a former New York insurance commissioner and currently of counsel to the New York-based law firm of D'Amato & Lynch.

Survey: Hurricanes reverse drop in property premiums

Continued from page 3

directors, in the statement. "The natural market reaction is to drive down prices."

Ms. Beier noted, though, that the devastation of hurricanes Katrina and Rita only now is beginning to translate into higher renewal prices. "The whole picture could change dramatically in the coming quarters," she said.

> Insured damages from hurricanes Katrina and Rita have yet to be fully tallied, and "what that number finally ends up being is going to be a big driver of how severely the market actually responds to it."
>
> **David Bradford**
> **Advisen Ltd.**

Indeed, most of the renewals in the survey had secured pricing before the impact of the two hurricanes hit the market, RIMS said.

Advisen conducted a secondary set of interviews with approximately 30 risk managers who renewed their programs on or after Oct. 1. Most of those risk managers said the quotes they received prior to Hurricane Katrina are being honored. Some who had either not yet received quotes or whose verbal quotes were not honored, though, said they experienced increases as high as 20% over the premiums they had anticipated or had been originally quoted for their property insurance programs.

In a follow-up interview with *Business Insurance*, Mr. Bradford noted that insured damages from the two hurricanes have yet to be fully tallied, and "what that number finally ends up being is going to be a big driver of how severely the market actually responds to it."

The big unknown now, he said, is Hurricane Wilma, which was projected to hit the Florida coast early this week.

"In the absence of Wilma, it might take a little while for the market to digest (hurricanes Katrina and Rita), but if Wilma is as bad of a storm as it potentially could be, we could see a steeper turn very quickly," Mr. Bradford said.

For more details about the RIMS Benchmark Survey, visit *www.rims.org/benchmark*.

Work/life: Survey indicates continuing commitment

Continued from page 4

Lois Backon said companies with workplace flexibility have employees who are more engaged, more satisfied with their jobs and more productive, along with having better mental health. Offering workplace flexibility may require a cultural change and a commitment, but it "is usually very good for business, meaning that bottom-line goals are met," she said.

The survey concludes, though, that the movement toward a more flexible workplace is still in transition. For instance, while 63% of all employers said supervisors are encouraged to be supportive of employees with family needs, only 27% said they make an ongoing effort to inform employees of available assistance for managing work and family responsibilities.

Furthermore, while 72% of employers said supervisors are encouraged to assess employees based on what they accomplish and not just the number of hours they put in, only 31% said their management rewards those within their organizations who support effective flexible work arrangements.

The study compared the results of the most recent survey with those from one conducted in 1998, looking at just the employers with 100 or more employees, the minimum size included in the 1998 sample. It said programs that have been cut in the interim because of their costs include health care insurance, disability programs, pension plans and retirement plans.

For instance, 18% of employers in 2005 provided new mothers with full pay for disability, compared with 27% seven years ago. In addition, 7% of employers in 2005 paid all the premiums for family members' health care insurance, down from 12% in 1998.

Among other survey findings:

- There has been an increase in daily flextime, with 31% of employers with 100 or more workers allowing at least some employees to change their starting and quitting times on a daily basis, compared with 24% in 1998. There also has been an increase in compressed workweeks, climbing to 44% of employers allowing at least some employees to compress their workweeks, compared with 37% in 1998.
- Employers are more likely to provide information about elder care resources to employees, with the total increasing to 34% in 2005, compared with 23% in 1998.
- In 2005, 21% of employers provided health insurance coverage for their employees' unmarried partners vs. 14% in 1998.
- The number of employers that provided employee assistance program services specifically to the parents of teens increased to 5% in 2005 from none in 1998.

Copies of the survey are available at www.whenworkworks.org.

Solvency: Global standards in the works

Continued from page 3

how a value is placed on insurance liabilities or, in insurance parlance terms, the technical provisions. And in coming up with the number that is put against that, the regime should identify what is commonly called the best estimate of the payout from the insurer to the policyholders to pay off those obligations, but it should have a risk margin in it," Mr. Karp said.

IAIS plans to circulate before year end a "road-map paper" containing a detailed timetable for completing its "common structure and common standards" for solvency assessment, according to an IAIS statement.

"We will have a lot more work to do in the next few years on this issue of solvency, and we may eventually get to setting some hard numbers on capital," Mr. Karp said. "But, at the moment, the short-term objective is to get out there that all good solvency regimes should be built on this foundation.... If we can get that, then we can more easily compare one regime to another."

The IAIS, a global standard-setter in the field of insurance supervision founded in 1994, has been working on different aspects of solvency since 1997. The cornerstone paper comes as the European Union is also developing its own regulatory standards, known as Solvency II. Ultimately, the IAIS and E.U. standards may have similarities, because many Europeans are involved on the IAIS solvency committee, Mr. Iuppa said.

From an industry perspective, Helmut Perlet, chief financial officer of Allianz A.G. Holding in Munich, Germany, said the cornerstones are "pretty much in the right direction." However, he said he has areas of concern, such as how a future solvency regime would recognize the benefits of maintaining diverse business units within one group. "If you would calculate solvency requirements for an insurance or financial services group without diversification benefits, obviously it doesn't make a lot of sense," he said.

In addition, "we crucially need a lead supervisor concept, because otherwise you drive a lot bureaucracy and complexity into the process," Mr. Perlet said.

Building a foundation

Under the IAIS' eight "cornerstones" for further work toward solvency standards, a regime:

- Addresses the robustness of the insurer to meet its liabilities both short-term and over a longer time span.
- Is sensitive to risk and is explicit as to which risks, individually and in combination, lead to a regulatory financial requirement, and how they are reflected in the requirement.
- Is explicit on how, for each of the risks that attract a financial requirement, individually and in combination, prudence is reflected in these requirements.
- Requires a valuation methodology that makes optimal use of and is consistent with information provided by the financial markets and generally available data on insurance technical risks.
- Includes the definition of technical provisions. Technical provisions have to be prudent, reliable and objective and allow comparison across insurers worldwide. Technical provisions include an explicit risk margin.
- Requires the determination of a "best estimate" of the costs of meeting the obligations arising from the insurance portfolio, taking into account the time value of money.
- Establishes a range of solvency control levels and the supervisory instruments associated with each.
- Allows a set of standardized and more advanced approaches to determine the solvency requirements, and includes the use of internal models, if appropriate.

Source: IAIS

Finite guidance

Meanwhile, in a more than 70-page primer on finite reinsurance, the IAIS attempts to inform regulators about these transactions, which have received "heightened scrutiny from supervisors, media and industry participants," the paper states.

Finite reinsurance has come under scrutiny in the United States and elsewhere since regulators and New York Attorney General Eliot Spitzer launched investigations into whether major insurance and reinsurance companies have improperly accounted for finite deals.

"We have had a number of cases in Australia and other places around the world where this particular product has been abused and used to dress up balance sheets," said Mr. Karp, executive general manager in charge of supervisory support at the Australian Prudential Regulation Authority in Sydney. "We are not saying the product itself is something that should be totally banned, but some of the uses of it need to be proscribed in some way."

Concerns surrounding finite reinsurance may eventually lead IAIS to recommend standards for regulating the products, Mr. Karp added.

The issuing of the guidance hasn't been without controversy, though.

Axel Wehling, managing director, cross-sectoral issues for the Gesamtverband der Deutschen Versicherungswirtschaft e.V., a trade group representing some 450 German insurers, questioned whether supervisors in various jurisdictions can draw the proper conclusions from cases in countries with different accounting rules.

"The question is, how do you define guidance?" he said. "Guidance, to me, is that you do not single out individual cases but (offer) more help on an abstract basis."

Copies of the documents are available at www.iaisweb.org.

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Issue of October 24

LARA: Action on guns, food may fuel wider effort

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caused weight-related health problems brought against food manufacturers, marketers, advertisers, distributors, sellers and trade associations. Claims alleging breach of contract unrelated to health problems, violations of applicable federal or state law and actions brought by federal regulatory agencies would be exempt from the liability shield.

The Senate has yet to vote on its version of the bill.

Also last week, the House gave its approval to the Protection of Lawful Commerce in Arms Act—S. 397—on a 283-to-144 vote. The bill, which won Senate approval in July, would shield firearms and ammunition manufacturers and dealers from civil liability arising from the misuse of guns and ammunition by third parties. House passage without amendment of the Senate bill meant that the bill would go directly to the president for his signature.

Tort reform advocates hailed the House actions.

"It definitely helps the momentum for LARA," said Matt Webb, vp-legal reform policy at the U.S. Chamber Institute for Legal Reform in Washington. "The chamber is very pleased that the House did pass both the gun liability bill and the cheeseburger bill. We're also very pleased that the president is going to be signing the gun liability bill as soon as he possibly can. And we hope that the strong bipartisan votes this week on both of those pro-legal reform bills will help encourage and allow a strong vote on the Lawsuit Abuse Reduction Act when the House considers it."

"We're very confident that we'll get a very strong vote out of the U.S. House of Representatives and that strong vote–along with support for these two important measures–together will build momentum for balanced legal reform in both houses of Congress," said Sherman Joyce, president of the American Tort Reform Assn. in Washington.

> "Passing common-sense consumption and firearms bills both add to the momentum for restoring a sense of personal responsibility and getting away from what amounts to frivolous litigation in this country."
>
> **Dave Golden**
> **Property Casualty Insurers Assn. of America**

"Regarding LARA, it's important to get a strong vote coming out of the House to demonstrate the breadth of support for the underlying measure," Mr. Joyce said.

"Passing common-sense consumption and firearms bills both add to the momentum for restoring a sense of personal responsibility and getting away from what amounts to frivolous litigation in the country," said Dave Golden, director of commercial lines for the Property Casualty Insurers Assn. of America in Des Plaines, Ill.

"LARA is a natural extension of that concept, although LARA would primarily benefit small to midsize companies in general," Mr. Golden said. "LARA really involves a couple of simple concepts. … We hope the Senate sees the logic in the LARA bill and takes action."

Supporters note, though, that Senate action isn't guaranteed.

"LARA's been considered in the House before, and I believe it will pass," said Melissa Shelk, vp-federal affairs at the American Insurance Assn. in Washington. "As far as the Senate, we still don't have a Senate companion, so, obviously, it's a step behind in the process, but it's also the newest kid on the block, so to speak. Most of these bills take more than one Congress to get through."

"I think it's good news that the House is interested in liability reform, but there's no indication of what the Senate will do," said Glenn Lammi, chief counsel of the Washington Legal Foundation's legal studies division. "There's no reflection on whether the Senate will even act on the food liability bill, let alone LARA."

BI Stock Index [10/17 - 10/21]

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

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

***BI* Stock Index**	2651.07	0.39
Dow Jones	10215.22	-0.70
S&P 500	1179.59	-0.59

Largest gains	
RLI Corp.	13.93%
Tower Group Inc.	8.01%
WellPoint Health Networks	6.01%
Aetna Inc.	5.99%
Aon Corp.	5.34%

Largest losses	
IPC Holdings Ltd.	-6.71%
SCPIE Holdings Inc.	-6.17%
United Fire & Casualty	-5.64%
CNA Surety Corp.	-5.44%
Vesta Insurance Group	-5.15%

Weekly change by market segment	
Brokers	0.79%
Insurers/Reinsurers	-0.26%
Managed Care Organizations	2.96%

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

Late News

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in London and Essex Insurance Co. in Richmond, Va., "with plans to build a new marine and energy team in the United States," according to a statement. Mr. Cullen most recently served as president and global product line leader of the Marine and Offshore Energy Division of XL Insurance.

Allianz bolsters reserves at Fireman's Fund unit

Allianz A.G. Holding is transferring another $882 million in reserves to one of its U.S. subsidiaries to help cover its exposure to asbestos and environmental claims. The German insurer disclosed the information about reserves at Fireman's Fund Insurance Co. as part of a prospectus document related to the previously announced buyout of minority shareholders in Italian subsidiary Riunione Adriatica di Sicurtà S.p.A. Allianz is making its reserves available under a reinsurance contract with Fireman's Fund, in addition to $750 million that Allianz funneled into the unit's A&E reserves during the third quarter of 2002, a Munich-based spokeswoman for Allianz said. Due to its present reserves for Fireman's Fund A&E exposures, the move is not expected to adversely impact Allianz's 2005 earnings, she said.

White Mountains names Fass as CEO

Steven E. Fass has been named president and chief executive officer of White Mountains Insurance Group Ltd. Mr. Fass replaces Ray Barrette, who retired from the Hamilton, Bermuda-based insurer. Mr. Barrette, who also is departing the insurer's board of directors, will assist Mr. Fass in the leadership transition. Mr. Fass has been a senior partner at White Mountains for nearly a decade as head of reinsurance operations.

AIG board adopts oversight guidelines

American International Group Inc.'s board last week adopted guidelines for board member oversight, including a mandate that director nominees in an uncontested election obtain a greater number of "for" votes than "withheld" votes or be possibly forced to resign. The board also implemented a mandatory retirement age for directors, stating that individuals older than 73 generally will not be permitted to stand for election. AIG also has elected Michael H. Sutton, former chief accountant for the Securities and Exchange Commission, to its audit committee.

California high court won't hear temp case

The California Supreme Court will not hear the California Insurance Guarantee Assn.'s appeal of an appellate court decision that held that the association should bear responsibility for the workers compensation claims of about 500 RemedyTemp Inc. employees who were covered by the now-defunct Reliance National Insurance Co. According to RemedyTemp, the guarantee association had argued that because its clients' policies for their own employees did not specifically exclude coverage for temporary employees, the issuers of those policies were obliged to cover the claims.

ACE names top reinsurance officer

ACE Ltd. has named Bill O'Farrell chief reinsurance officer for the ACE Group of Cos. Mr. O'Farrell, who previously was senior vp-reinsurance recoverables, will be responsible for overseeing reinsurance programs for the members of the ACE Group, ACE said in a statement. In addition, he will remain responsible for reinsurance recoverables and for managing the runoff of ACE's Brandywine operations. Before joining Hamilton, Bermuda-based ACE in 2003, Mr. O'Farrell was vp and legal counsel for the reinsurance division of Berkshire Hathaway Inc.

Glacier Re raises capital

Glacier Reinsurance A.G. has raised $100 million through a share issue to existing shareholders. The increased capital will enable the reinsurer to expand its underwriting capacity following losses from hurricanes Katrina and Rita, the Swiss reinsurer announced. Glacier estimates its losses from hurricanes Katrina and Rita will result in a 2005 net loss of $38 million to $58 million. The reinsurer said it expects its underwriting capital to be in excess of $400 million on Dec. 31.

At *BusinessInsurance.com*

New **Online Poll:** In light of recent efforts by international regulators, what are the chances that international solvency standards for insurers will be in place within the next five years?

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

Pensions: Proposed bill would more than double PBGC base annual premiums

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ics say, legislators will eventually have to again substantially raise PBGC premiums as the agency, already facing a huge deficit, continues to be hit with more big losses.

And, the budget measure—unlike the comprehensive reform measure—would not alter the interest rate methodology used by employers to calculate the value of their pension plan liabilities. As a result, when a temporary law expires next year, employers would have to revert to using a methodology that relies on 30-year U.S. Treasury bond yields. That approach, many pension experts maintain, overstates plan liabilities, resulting in employers having to kick more into their plans than necessary.

The combined effect of all those factors, some say, will be to accelerate the exodus of employers from the defined benefit plan system.

"This encourages more employers with well-funded plans to exit," said Ethan Kra, chief actuary with Mercer Human Resource Consulting in New York.

"Legislators should be trying to protect the system. Instead, they are providing incentives to leave," said Mark Ugoretz, president of the ERISA Industry Committee in Washington, an employee benefits lobbying group.

The Senate panel's action comes as strains on the defined benefit plan system increase. The PBGC, which already has a $23.3 billion deficit, could face billions of dollars in losses from troubled commercial airlines and the auto parts industry.

At the same time, a slew of huge employers over the past year—including IBM Corp., Hewlett-Packard Corp., Motorola Inc., Sears Holdings Corp. and Lockheed Martin Corp.—have announced they are phasing out their defined benefit plans. Over the long term, such moves will mean a diminished source of premium income for the PBGC at a time when the agency already is financially strained.

HELP Committee members said they reluctantly took action after the comprehensive reform bill, which had been slated earlier this month for a vote by the full Senate, got bogged down in a dispute over a proposed amendment.

The rising costs of sponsoring defined benefit plans

What the budget bill passed by the Senate Health, Education, Labor and Pensions Committee would do:

- Raise single-employer premiums paid to the Pension Benefit Guaranty Corp. to $46.75 per participant from $19
- Raise multiemployer pension plan PBGC premiums to $8 from $2.60
- Index future single-employer and multiemployer premium increases to wage inflation
- Impose for three years after an employer emerges from bankruptcy an annual fee of $1,250 per pension plan participant on companies terminating underfunded plans

That amendment, offered by Sens. Mike DeWine, R-Ohio, and Barbara Mikulski, D-Md., would modify the broader bill by, among other things, deleting a provision that would require employers lacking an investment-grade credit rating to use certain actuarial assumptions that would have the effect of increasing plan liabilities and, as a result, boosting their required pension plan contributions.

"None of us wants this ($46.75) premium ultimately to be enacted into law," said HELP Committee Chairman Mike Enzi, R-Wyo.

But committee members said they had to act to raise revenues they earlier agreed to as part of a budget resolution bill. Other parts of the pension reform bill that would raise revenue can't—under certain budget rules—be included in the latest budget measure, which is known as a budget reconciliation bill.

As a result, to raise revenues to meet the target earlier set by legislators, the HELP committee boosted the base PBGC premium to a much greater level than the $30 figure in the pension funding bill.

"The committee has to hit its funding target," said Bob Shepler, director of corporate tax and finance for the National Assn. of Manufacturers in Washington.

Sen. Enzi said the increase in the PBGC premium would be automatically rescinded if legislators pass the comprehensive funding bill. It remains unclear, though, whether the current stalemate can be broken.

Some say the threat of a massive PBGC premium will keep all sides working to reach an agreement.

"This gets people talking," said Larry Sher, director of retirement policy at Buck Consultants Inc. in New York.

"We are hopeful that there still is time for a compromise," said Aliya Wong, director of pension policy at the U.S. Chamber of Commerce in Washington.

Shelter: Coverage strikeout for tax loss leads to legal dispute with insurer

Continued from page 1

indictment by admitting to criminal wrongdoing related to several shelter programs—though not specifically SC2—and agreeing to pay $456 million in fines and restitution.

Federal prosecutors last week filed a superceding indictment charging 17 former KPMG executives and two others with conspiring to defraud the Internal Revenue Service. The charges cited four allegedly bogus shelters known by the acronyms BLIPS, FLIP, OPIS and SOS.

Officials of both Carlsbad, Calif.-based Upper Deck and AIG, meanwhile, declined to comment on their litigation, on details of Upper Deck's SC2 transactions or on its AISLIC insurance policy.

AISLIC has not yet answered the complaint, filed Oct. 13 in U.S. District Court in San Diego.

In early 2000, KPMG launched an aggressive campaign to market its S-Corporation Charitable Contribution Strategy, or SC2, despite internal concerns that the IRS could successfully challenge elements of the strategy, according to an April report by the staff of the Senate Permanent Subcommittee on Investigations.

SC2 targeted individual owners of businesses organized as "S corporations" under Chapter S of the U.S. tax code, which attributes an S corporation's income directly to its owner. The program aimed to provide these owners with large charitable deductions while deferring taxes on the majority of their income, the Senate report noted.

The complex SC2 scheme typically called for a company to contribute nonvoting stock representing 90% of its shares to a tax-exempt entity—often a municipal pension fund—and take a charitable deduction. The corporation would then attribute 90% of its income to the tax-exempt entity but would not actually distribute that income; instead, the corporation would retain it. After a few years, the corporation would buy back its stock and distribute the retained earnings to its owner; this income would be taxed at a lower capital gains rate rather than at a higher personal income rate, Senate documents say.

The tax-exempt entity would pocket a one-time payment for returning the shares. To counter the possibility that the entity might refuse to part with the stock, SC2 also called for the S corporation to issue stock warrants to its owner; if exercised, the warrants would severely dilute the tax-exempt entity's shareholding.

> A KPMG memo outlining SC2 sales strategies notes that as a "last resort," tax professionals can tell reluctant clients that certain insurers offered policies guaranteeing SC2's tax benefits for a "small premium."

Potential SC2 clients had qualms about the strategy, as suggested by KPMG documents cited by Senate investigators. A KPMG memo outlining SC2 sales strategies notes that as a "last resort," tax professionals can tell reluctant clients that certain insurers offered policies guaranteeing SC2's tax benefits for a "small premium."

Senate investigators concluded that "at least half a dozen" SC2 purchasers also bought the insurance.

One was Upper Deck, one of the country's largest producers of trading cards and sports collectibles and owned by its chief executive officer, Richard P. McWilliam.

Seeking coverage

Upper Deck became an SC2 client in early 2001, when MPR Trust, a trust controlled by Mr. McWilliam, donated 8.3 million nonvoting Upper Deck shares to a "municipal plan," according to the lawsuit, which does not identify the plan.

In October 2001, Upper Deck paid a $3.25 million premium to AISLIC for a "fiscal event insurance policy," according to the suit.

The policy provided a $50 million limit excess of a $500,000 retention and insured Upper Deck's expected SC2 tax benefits from the policy's August 2001 inception to either November 2006 or the expiration of a statute of limitations on tax issues related to the program, the suit says.

AISLIC's policy specifically covered losses from an "insured tax event," defined as an assertion by the IRS or state tax authorities that:

- An action by Upper Deck—such as issuing stock warrants as part of the SC2 program—created a second class of company stock, imperiling its S corporation status. If a company's S corporation status is terminated, its income is no longer attributed to shareholders and the corporation itself becomes taxable.
- A charitable deduction for the Upper Deck's stock contribution is not allowable.
- The allocation of Upper Deck income to the "municipal plan" is improper.

KPMG notified Upper Deck in early 2003 that the IRS was demanding the names of its SC2 clients, and Upper Deck, in turn, notified AISLIC, the suit says.

In 2004, the IRS issued a bulletin and follow-up analysis of an "S corporation tax shelter" similar to SC2, determining such shelters to represent "tax avoidance transactions."

The IRS notified Upper Deck in August 2004 that it was examining the company's SC2 deal in light of the bulletin and earlier this year informed the company that it planned to disallow the claimed tax benefits. The IRS concluded, among other things, that none of Upper Deck's income should be allocated to the "municipal plan" that received the company's stock gift and that the gift could not be counted as a charitable deduction, the suit says.

The resulting federal tax claim against Upper Deck exceeds the AISLIC policy's $50 million limit by "millions of dollars" and falls squarely within the policy's definition of "insured tax event," the company's complaint says.

The IRS has offered to settle its claim for an amount that still exceeds the limit but which represents a "multimillion-dollar savings" from the liability that could result from fighting the claim, Upper Deck contends.

AISLIC initially "communicated its consent" to the IRS offer but told Upper Deck in July that the policy provides no coverage for the SC2 losses. The company stands to incur millions of dollars of additional liabilities if AISLIC's denial of coverage disrupts the settlement, the lawsuit alleges.

Upper Deck's complaint seeks a declaratory judgment that the tax claims are covered. It also levels breach-of-contract charges and seeks punitive damages for bad faith, calling AISLIC's actions "fraudulent and malicious."

The AISLIC policy included an arbitration clause that provides, among other things, that no award can exceed the policy's limit. While Upper Deck says it is prepared to arbitrate, it also argues that the limitation is "unconscionable and unenforceable" and asks the court to rule that it be allowed to pursue extracontractual damages in addition to its policy limit.

NAIC approves finite disclosures

KANSAS CITY, Mo.—The National Assn. of Insurance Commissioners has approved finite reinsurance disclosure requirements for property/casualty insurers.

The disclosures that the NAIC adopted for insurers' 2005 annual statements require them to report to state regulators the contract terms and management objectives of any finite reinsurance agreement that "has the effect of altering policyholders' surplus by more than 3%, or representing more than 3% of ceded premium or losses," according to an NAIC statement.

The NAIC disclosure requirements also mandate that an insurer's chief executive officer and chief financial officer sign a document attesting that risk transfer has occurred and there are no side agreements.

—By Mark A. Hofmann